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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

D.A.No.49/87

DATE OF DECISION 15.2.91

SHRI KRISHAN SINGH

- - APPLICANT

-Vs-

Delhi Administration

- - RESPONDENT

CORAM

SHRI P.C.JAIN, HON'BLE MEMBER (A)

SHRI J.P.SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

- - SHRI G.D.GUPTA

FOR THE RESPONDENT

- - MRS.AVINASHI AHLAWAT

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

J U D G E M E N T

(DELIVERED BY SHRI J.P.SHARMA, HON'BLE MEMBER (J))

The applicant was initially appointed as Labour Welfare Supervisor on 24-12-1955 in the Labour Department of the then Delhi State. Applicant was in the Excise Department as Grade II (E) Inspector and was transferred to the Labour Department on 31-5-1975 from the Excise Department. The applicant sought his voluntary retirement under F.R.56K with effect from 30th September, 1977. The grievance of the applicant is that his date of retirement was unilaterally changed as 30th September, 74 vide office order dated 12-6-86 on the

basis of unilaterally determining the date of birth of the applicant as 1.10.1916. The ^{other} grievance of the applicant is that he has not been afforded any opportunity against this unilateral decision by the Respondents. The applicant filed the application under Sec.19 of the Administrative Act, 1985 on 15.1.1987 for the following reliefs:-

- i) quashing the impugned order dated 12.6.86 to the extent that it determined the date of birth of the applicant unilaterally as 1.10.1916 and later the date of retirement of the applicant from 30.9.1974 to 30.9.1977.
- ii) declaring the date of birth of the applicant as 24.4.1919 and date of retirement of the applicant as 30.9.1977 (by way of voluntary retirement).
- iii) declaring the applicant entitled to all retirement benefits including full pension, gratuity, leave encashment (including earned leave benefits of 121 days) referred to above, crossing of efficiency bar from Nov.'70 and consequent arrears of increments and re-riaxation of pay and allowances, other consequential benefits along with compound interest @ 18% per annum from the date of expiry of two months from the date of retirement i.e. 30.9.1977.

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The facts of the case are that the applicant joined Labour Department in the Delhi State on 24.12.1955 as a Labour Welfare Supervisor and at that time the applicant did not furnish the High School Certificate as the same was said to have been lost. He was medically examined and on 9.11.1955 his age was recorded as 37 years. According to the said age the date of birth of the applicant came as November, 1918. It is stated by the applicant that he was not aware that his date of birth is 24.4.1919 as is also recorded in the birth certificate issued by the Agra Municipality (Annx. P-1). In the application for service, the applicant has recorded his date of birth as 1.10.1917 on 25th July, 1955, when the applicant applied for a post in the Labour Department in Delhi Administration. It is further stated that the date of birth was unilaterally recorded in the service record of the applicant as 1.10.1916 and before doing that no opportunity of being heard was afforded to the applicant. Subsequently when the applicant had worked in the office of the Excise Commissioner in Delhi Administration, the date of birth of the applicant in the Excise Service record was recorded as 1.10.1918 and that was so even in the seniority list of Grade III Executive Officers issued by the service department of Delhi Administration in January, 1974. The Delhi Administration by order dated 12.6.1986 passed the order as follows:-

"In supersession of previous order, Sh. Krishan Singh, Grade-II (Executive), whose date of birth

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as per Service Book is 1.10.1916 and who entered into Govt. service w.e.f. 24.12.1955 stands retired from Government service w.e.f. 30.9.74 on attaining the age of superannuation."

The applicant was posted in Labour Department on 30.11.1969 on promotion as Labour/Minimum Wages Inspector (Grade-II D) till his date of ^{Voluntary} retirement (30-9-1977). The basic pay of the applicant according to him continued at Rs.500.00. The applicant was transferred back to Labour Department in May, 1975 from Excise Department. According to the applicant ^{after} two years ~~of~~ his voluntary retirement the Labour Department made a false report to the Police against the applicant in September, 1979 for suspected forgery and cheating the government and he was charge sheeted under Sections 420/468/471 of the I.P.C. The applicant was acquitted of the above charges in April, 1984.

The Labour Commissioner in the letter dated 3rd January, 1985 (Annx.P-8) informed Under Secretary to the Government of India Ministry of Labour, that according to the documents and other circumstances it appears that the date of birth of the applicant was 1.10.16 and therefore he should have been retired from 30.9.1974 instead of 30.9.1977 and requested the Government of India to treat the period from 30.9.1974 to 30.9.1977 as extension in service. However by subsequent communication from the Ministry of Labour it has been decided that the order retiring the applicant from 30.9.1977 be ~~revoked~~ and he should have been retired from service with effect from 30.9.1974 when he attained the age of superannuation and the

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period ~~_____~~ from 1.10.1974 to 30.9.1977 may be ~~_____~~ treated ^{ed} ~~as~~ as reemployment after obtaining the ex post facto sanction/approval of the competent authority. In pursuance of this communication the order dated 12.6.1986 (Annx.P.3) was issued. The applicant made several representations but to ^{no} effect.

The Respondents contested the application and filed the reply. The Respondents took the preliminary objections regarding the maintainability of the application. It is further stated that the applicant before the Staff Surgeon himself mentioned his date of birth as 1.10.1916 while under going medical examination. The applicant passed his matric examination in 1931 and Inter in 1933. By this it is clear that he was of 15 years of age while he passed the matric examination in 1931. The applicant in the application to the ~~Union~~ U.P. Public Service Commission for the post of Welfare Officer, has mentioned his date of birth as 1.10.1916 in his handwriting. The application ^{is} ~~is~~ dated 26.9.1960. In the abstract of the attached Application ^{Form} ~~he~~ again mentioned 1.10.1916 as his date of birth in his own handwriting. According to Respondents on the basis of date of birth on 1.10.1916 the applicant should have already retired on 30.9.1974 when he was working in the Excise Department. However in connivance with the staff there he continued in the service. He was transferred in Labour Department on 15.5.1975 from the Excise Department. The Labour Department asked for his service book. Same was received on 9.9.1977. In the Service Book there was over writing against the column of date of birth, it was chang^{ed} from 1.10.1916 to 1.10.1920.

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He was called by the then Labour Commissioner and therefore he sought voluntary retirement which was accepted subject to the verification of date of birth. Thereafter the matter was referred to the Police to file a challan against the applicant before the Metropolitan Magistrate as he continued in the service beyond 1.10.1974 and he was the beneficiary in this cheating. However the applicant was acquitted in 1984.

It is further stated by the Respondents that date of birth was correctly written as 1.10.1916. Further the applicant has himself admitted in the application that he is not himself aware of his actual date of birth. The applicant has written different date of birth on different occasions and has concealed true facts in this application. Regarding the discrepancies in the official record ^{regarding the} ~~the~~ ^{regarding the} ~~the~~ date of birth of the applicant it is stated by the Respondents that in view of the documents showing the date of birth as 1.10.1916 written in the hand of the applicant, ^{this} ~~has no~~ ^{is} ~~relevant~~ ^{not} to the main issue. There was tampering in the service record when it was received in the Labour Department on which the applicant immediately sought voluntary retirement from 30.9.1977, though by the time he has completed only about 22 years of service.

We have heard the learned counsel of the parties at length and have gone through the record of the case. The applicant on his own saying retired voluntarily on 30.9.1977 but he did not take any step regarding the correction of his date of birth for 10

~~years. In the present case, the date of birth of the applicant is 1.10.1916. The applicant has not taken any step regarding the correction of his date of birth for 10~~

years, ^{when} he filed the present application for declaring the date of birth of the applicant as 24-9-1919. The applicant has given the reason that he was prosecuted on a charge of cheating the Government and making interpolation in the service record regarding his date of birth. The judgment of acquittal dated 28.4.1984 of the Criminal Court is not very much relevant as it can only be seen that the applicant was prosecuted for forging certain documents and cheating the Government. The burden lay heavily on the applicant to prove his correct date of birth. In this connection the applicant has filed the certificate of birth issued by Nagar Mahapalika, Agra showing his date of birth as 24.4.1919. It was issued sometime in 1981 i.e. after the retirement of the applicant and when he was facing trial in the Criminal case. According to the own admission of the applicant, he passed his Matric Examination in 1931 and Intermediate in 1933. If the date of birth of the applicant is taken as 21.4.1919 than he ^{would be seen to have} passed Matric at the age of 12 years which is not possible ^{to accept.} During the course of argument also the applicant's counsel has not explained this fact. In the case of V.K.Katturaja Vs. General Manager S.L.J. Southern Railway, Madras reported in 1990 (1) C.A.T. page 355 a similar matter came before the Madras Bench of an ex-service ^{army} man who entered in service in 1948.

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The recorded date of birth was July, 1924. He wanted the correction of the date of birth to 1-3-1931 and if that was accepted the applicant would have entered Army Service at the age of 12 years. On this very basis his plea was rejected. In the present case, with the counter-affidavit, the Respondents have filed photo state copy of the application submitted to Director of Industries in which the Applicant has shown to have passed High School in 1931 from St. John's High School Agra. There is another application submitted for service (the paper No. 115C of Part B) in which also applicant has shown to have passed High School in 1931 and this application is dated 24-5-1959. In the abstract of the attached Application Form paper No. 115E of Part B in the column of date of birth applicant has written in his hand 1-10-1916 and at the time of applying to U.P., P.S.C. the Applicant was Labour Welfare Supervisor and a photostat copy of the Original Application submitted to U.P., P.S.C. date of birth was mentioned as 1-10-1916. This record therefore goes to show that the Applicant has suppressed his date of birth and substituted other dates of birth at different time and in different Departments like Labour, Excise etc. where he had occasion to serve.

Not only this, the judgment of the Criminal Court (Annx. P-6) filled by the Applicant himself in the 1st Para in the facts it is written "accused

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has dishonestly induced Delhi Administration to allow the accused in service after 1974 till 1977 on the basis of High School Certificate showing his date of birth as 1-10-1920 instead of 1-10-1916". In the various representations made by the Applicant, he himself mentioned that one of the date of birth mentioned in the record is 1-10-1916. When there are two versions before the Court and both relate to the Applicant, than the applicant has to show and explain admission made in any of documents alleged to have been prepared by him that the date of birth mentioned in that document is not correct. The applicant is a Law Graduate and has tried to show ignorance of having applied in 1960 to Public Service Commission, U.P. but did not specifically deny the photo copy of the original Application Form and the abstract of the Application Form in which the date of birth is mentioned as 1-10-1916. The certificate issued by Nagar Mahapalika, Agra appears to have been issued after the controversy has arisen. The registration in Nagar Mahapalika Agra was ordered by City Magistrate Agra by the order dated 13-5-1981 which goes to show that the entry in Death and Birth Register of Nagar Mahapalika Agra was not made at the time of the birth of Applicant but was subsequently entered in the Register of Death & Birth on the order of City Magistrate in 1981. At that time a Criminal case was pending against the Applicant for forging the date of birth and cheating the Government on that basis for continuing in service beyond superannuation. The certificate issued by

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Nagar Mahapalika, Agra cannot be taken as conclusive proof of the correct date of birth of the Applicant. He has also not filed any other documents regarding his date of birth. In M.M. Cherian Vs. Union of India 1990 (1) SLJ CAT P-31, the Applicant of that case had School Certificate with him in 1963 and at that time did not raise the issue of the correction of the date of birth and relying on the following decisions*, the alteration in date of birth was not allowed.

The learned counsel for the Applicant placed reliance on A.I.R. 1967 P-1269, State of Orissa Vs. Miss Beenapani where it has been held that change of date of birth of an employee against his interest cannot be affected without giving him an opportunity of hearing. In the present case, however, the matter is not of the change of date of birth, but actually there has been some interpolation in the service record and so there was a verification of actual date of birth. The Applicant himself did not apply for any correction of date of birth.

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1. Senior Supdt. R.M.S. Cochin Vs. K.V. Gopinath, A.I.R. 1972 S.C. 1487.
2. State Bank of India vs. N.Sundaramoney, A.I.R. 1976 S.C. 1111.
3. Robert D. Souza Vs. The Executive Enginner, Southern Railway, A.I.R. 1982 S.C. 854
4. Bombay Union of Journalists vs. The State of Bombay and Another, A.I.R. 1964 S.C. 1617.

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If date of birth 24-4-1919 is taken into account on the basis of the certificate of Nagar Mahapalika, Agra than the normal date of superannuation would have been 30-4-1977 but the applicant ^{remained} in service against the provision of F.R.56. In fact at the time when the Applicant sought voluntary retirement he was serving in the Labour Commissioner's office while his service record was lying in the office of the Excise Department from where he was transferred to the Labour Commissioner's office. In any case the Applicant has never made any representation for the correction of his date of birth nor he sent any authenticated certificate to the Respondents of his date of birth. In fact in the representations made by the Applicant on 12-9-1982 he has not written anywhere that his date of birth be treated as 24-9-1919, thus the authority relied ^{upon} by the Applicant does not apply.

The Applicant has further prayed that the order quashing the date of retirement from 30-9-1977 to 30-9-1974 be corrected. However in view of the fact that the established date of birth of the Applicant is 1-10-1916 so the date of retirement can only be 30-9-1974.

The next question arises regarding the revised pension ^{or} benefits as the Applicant has continued to work till 30-9-1977 when he sought voluntary retirement. In this connection the learned counsel for the Applicant has placed reliance on

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Tulsiram versus Executive Engineer (10) ATC page 199. In this reported case the Applicant continued to serve on the basis of letter dated 4-8-1987 that he should retire after the completing the age of 60 years. In the present case the Applicant by suppression of certain facts continued to serve for three years more and this has happened because the Applicant was transferred from Excise Department to Labour Department and the service record of the Applicant was received in the Labour Department in 1977 and when it was found that the Applicant should have retired much earlier than the Applicant himself sought voluntary retirement and had to face a criminal prosecution for forgery and cheating.

The learned counsel for the applicant has also placed reliance on the decision of Calcutta High Court C.R.No. 12776W of 1980 Ganendar Nath Mukharjee versus Executive Officers decided on March 18, 1982 reported in 1982 F.L.R. (44) page 314. This reported case is regarding extension of service ~~and extension of service~~ ^{as} distinguished with very concept of reemployment. It has been observed in this reported case that the question of reemployment arises when the contract of the service or employment comes to an end. However the extension is given to



an employee and service does not ^{come} to an end, but the period get enlarged. Thus the reported case does not apply to the facts of the present case.

The learned counsel for the Applicant also referred to 1972 CCS Pension Rules particularly Rule 8(10) sub clause 8(b). In the present case the Applicant without any right or authority continued to work beyond superannuation, by the letter dated 15-11-1985 the Labour Commissioner, Delhi wrote to Pay & Accounts Officer, No. X Old Secretariat, Delhi with a copy to the Applicant, on the subject of grant of pension to the Applicant (Annexure P-10) that the Applicant should have been deemed to retire from service w.e.f. 30-9-1974 when he attained the age of superannuation and the period of retention in service from 1-10-1974 to 30-9-1974 may be regularised by treating him as ^{a case of} reemployment, after obtaining the ex post facto sanction/approval by the competent authority. Thus the Applicant as far back in November, 1985 was informed that the period of working beyond September, 1974 was to ^{be} treated as the period of reemployment and the Applicant did not assail that order. What the Applicant has assailed is that his retirement date should not be 30-9-1974 but should be an actual date 30-9-1977. Since it has been held above that the date of birth

of the Applicant is 1.10.1916 so under F.R. 56, the date of retirement will be 30.9.1974. The present application has been filed in January, 1987. On another aspect also it is not a case of simple mistake of the office, but it is a case where due to interpolation in service record, the Applicant has continued to work beyond superannuation. In fact, the Applicant has been beneficiary of that forgery or fraud. In the case, Sanjeev Kumar Aggarwal Vs. Union of India, 1987 A.T.R. (II) 566 similar relief was not granted as grant of the relief would amount to allowing them to abuse the process of the Court.

Having given a careful consideration to all the aspects of the matter, we find that the application is devoid of merit and is accordingly dismissed leaving the parties to bear their own costs.

J. P. Sharma

(J.P. SHARMA)
MEMBER (J)

19/1/87

P. C. Jain

(P.C. JAIN)
MEMBER (A)

17/1/87