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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 701/87
T.A. No.

1987

DATE OF DECISION 14.7.1988

Shri J. S. Sehgal

Petitioner

Shri S. C. Luthra

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri K. C. Mittal

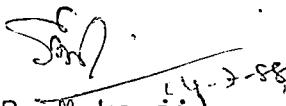
Advocate for the Respondent(s)

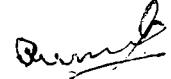
CORAM :

The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. S. P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No


(S.P. Mukerji)
Administrative Member


(P. K. Kartha)
Vice-Chairman (Judl.)

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Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-701/87

Date: 14.7.1988

Shri J.S. Sehgal Applicant

Versus

Union of India & Others ... Respondents

For the Applicant Shri S.C. Luthra, Advocate.

For the Respondents Shri K.C. Mittal, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.)
Hon'ble Shri S.P. Mukerji, Administrative Member.

(Judgement of the Bench delivered by the
Hon'ble Vice-Chairman, Shri P.K. Kartha)

The applicant, who had been working as a Section Officer in the Intelligence Bureau, Ministry of Home Affairs, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the notification dated 2.1.1987 issued by the respondents should be quashed, that he should be allowed to continue in service till he attains the age of superannuation on the basis of his date of birth being 14.7.1929, and that the eviction order issued by the Estate Officer, Directorate of Estates, on 30.4.1987, should be quashed.

2. The impugned notification dated 2.1.1987 reads as follows:-

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"On attaining the age of superannuation, Shri Joginder Singh Sehgal, Section Officer, I.B. Headquarters, stands retired from service w.e.f. the afternoon of 31.7.1985."

The above notification was issued on the basis that the correct date of birth of the applicant is 14.7.1927. According to the applicant, his correct date of birth

is 14.7.1929.

3. At the time of the filing of the present application on 15th May, 1987, the applicant was in service. Even according to the date of birth claimed to be correct by the applicant, he would have superannuated by 31st July, 1987. Therefore, the relief claimed by the petitioner regarding his continuance in Government accommodation cannot be granted at this stage.

4. The validity of the impugned notification dated 2.1.1987, would depend on the correct date of birth of the applicant. If it is found that the correct date of birth is 14.7.1927, as contended by the respondents, there will be no infirmity in the impugned notification as it only notifies that the applicant stood retired from service on attaining the age of superannuation on 31.7.1985. On the other hand, if the correct date of birth of the applicant is 14.7.1929, as claimed by the applicant, the validity of the impugned notification will have to be considered in the light of the relevant legal principles.

5. It is common ground that the date of birth entered in the service-book of the applicant at the time of his joining the Intelligence Bureau in 1950 was based on the date of entry contained in his Matriculation Certificate. Unfortunately, the Matriculation Certificate is not now available and the applicant has expressed his inability to produce the same. According to the applicant, the original certificates had been furnished by him at the time of joining the service in 1950 and the same were

retained in the office records. The respondents have denied this.

6. The original Service Book was produced before us at the time of the hearing of the application. At page 1 of the Service Book, col.5 deals with the date of birth. Against this column, there was an original entry which cannot be deciphered by us as it is mutilated. However, against this column, 14.7.1927 has been written in ink and 14.7.1929 has been written in blue pencil, side by side. In two forms of leave account which are also incorporated in the Service Book, there are two columns relating to date of birth and date of compulsory retirement. The relevant portion of these forms has been torn.

7. In the reply filed by respondents 1 and 2, it has been alleged that the applicant has tampered with his service record with a view to having two extra years of service beyond the age of superannuation. They have added further that the President of India has ordered on 12.2.1987 the institution of a departmental inquiry under Rule 9 of the Central Civil Services (Pension) Rules, 1972 against the applicant for having tampered with the records. The memorandum of charges has been issued to the applicant on 27.5.87. On 10.6.1987, the applicant has denied the charge against him. An Inquiry Officer has been appointed. In view of this, the respondents 1 and 2, have stated that the applicant has not exhausted all the remedies available to him. In his defence statement dated 10.6.1987, the applicant has stated that he has filed the present

application before us challenging his retirement w.e.f. 31.7.1985 and has contended that since the matter is sub judice, no inquiry can be held by or on behalf of the department till the matter is adjudged in the court of law. It has further been contended by the respondents that by filing the present application, the applicant has tried to scuttle the inquiry ordered against him by the President of India.

8. In the proceedings before us, we do not consider it appropriate to go into the question as to who tampered with the Service Book and other records. That is a matter which is being inquired into departmentally. We, therefore, confine our examination to the records made available to us and to our conclusion as to whether 14.7.1927 or 14.7.1929 should be taken as the correct date of birth of the applicant.

9. The applicant has relied upon the following evidence in support of his contention:-

(1) Certificate of age admission given by the Life Insurance Corporation vide their letter 9.1.1987. In this certificate a reference has been made to the applicant's letter dated 7.1.78 requesting for the copy of a certificate submitted by him for admission of date of birth. The L.I.C. informed him that his age stands admitted with L.I.C. on the basis of his service record. It has been stated that his date of birth is 14th July, 1929. They, however, regretted their inability to provide him the true copy of the certificate.

(2) Entries in the service record to the effect that his date of birth is 14.7.1929.

(3) The computer input form in respect of the applicant showing his date of birth as 14.7.29. The respondents have contended that the deptt. has introduced the modern technique of the use of computer in maintaining records very recently. The relevant particulars, including date of birth of I.B.'s employees have been fed into the computer personnel index system and periodically lists of the officers retiring during the next 24 months are taken from the computer and supplied to the concerned authorities for processing of their pension cases. However, the computer input form in respect of the applicant was filled by him and it is he who furnished his wrong date of birth. This mistake could not be detected till a thorough scrutiny of his date of birth was made in the latter half of 1986.

(4) The certificate given by Shri S.V. Galagali, Section Officer, Intelligence Bureau, dated 14.3.1974 to the effect that "as per the records of this office, the date of birth of Shri Joginder Singh Sehgal s/o Shri Raghbir Singh Sehgal, is 14th July, 1929." According to the respondents, Shri Galagali was never posted in the concerned Administration Section and he was never authorised to issue any such certificate to any employee. The certificate issued in his name does not bear any official number. According to the

respondents, this establishes that the applicant, in collusion with Shri Galagali, managed a false certificate of date of birth to mislead L.I.C. authorities.

(5) A note dated 30.11.1986 put to the computer index asking for the applicant's date of birth, - ✓ The reply from the computer was that the date of birth recorded therein is 14.7.1929.

(6) Copy of a seniority list issued by the Intelligence Bureau vide their memorandum dated 8.1.1985, showing the date of birth of the applicant as 14.7.1929.

(7) Printed volume No.13 (copy No.21 of index) (series 68-72) and manuscript (Index) Book No. 187 (Series 1973-77) showing that the applicant's date of birth is 14.7.1929. These volumes are departmental publications. They were not published contempraneously. ✓

10. The respondents have relied upon the following evidence in support of their contention:-

(i) Attestation form filled by the applicant on 1.3.1950 at the time of his recruitment in the I.B. This is stated to be in his own handwriting. This shows his date of birth as 14.7.1927.

(ii) Application dated 8.8.1951 addressed to the Chief Commissioner of Delhi for the post of Sales Tax Inspector. This also bears the signature of the applicant. In this application, he has stated that he is a youngman of 24 years. This would also indicate that his year of birth is 1929.

(iii) The proposal for insurance submitted by the applicant to the L.I.C. in 1961 showing his date of birth as 14.7.1927 and his age as 34 years as on 19.3.1961.

(iv) The seniority list of UDCs issued by the department in 1950 and seniority list of Assistants issued in 1981 showing the applicant's date of birth as 14.7.1927.

(v) The letter of the Registrar, Punjab University, dated 12.2.1987, whereby the Punjab University has confirmed that the applicant passed the matriculation examination from Government Intermediate College, Jhang, in 1943 and that his date of birth was 14.7.1927.

(vi) Letter dated 8.10.1986 from the L.I.C. confirming that the applicant had stated his date of birth as 14.7.1927 at the time of seeking the L.I.C. policy in 1961 which was subsequently changed to 14.7.1929 in 1974 on the basis of extract of "service record", which was apparently not genuine. They also referred to the certificate issued from the Ministry of Home Affairs (Shri Galagali's letter mentioned above).

11. In the rejoinder filed by the applicant, he has denied that the attestation form dated 1.3.1950 and the application dated 8.8.1951 mentioned in para 10(i) and (ii) above, are in his hand-writing. The respondents have contended that Shri S.V. Galagali, Section Officer from whom the applicant obtained a certificate of his date of birth, was never posted in the

concerned Administration Section. Nor was he authorised to issue such a certificate to any employee. The certificate issued to the applicant does not also bear the file number of the department from which the alleged letter should have been issued. These facts have not been controverted by the applicant by producing any evidence to the contrary. The respondents have relied upon the letter dated 12.2.1987 from the Registrar, Punjab University, confirming that the applicant passed his matriculation examination from Government Intermediate College, Jhang in 1943 with Roll No.15200 and that his date of birth was 14.7.1929. In the rejoinder affidavit filed by the applicant, he has not offered any comments in this regard except for the remark that the letter dated 10.2.1987 addressed by the respondents to the Registrar of the University should also have been annexed. The respondents have produced a photostat copy of the said letter as an annexure to their reply to M.P.937/87 filed on 26.8.1987. The letter addressed to the Registrar reads as follows:-

" Shri Joginder Singh Sehgal S/o Shri Raghbir Singh Sehgal, an ex-employee of the Intelligence Bureau had furnished the following information at the time of entry in service:-

- i) Passed Matriculation Examination in 2nd Division in 1943 through Government Intermediate College, Jhang, Punjab University.
- ii) Passed Intermediate Examination in 3rd Division in 1945 through Government Intermediate College, Jhang, Punjab University.
- iii) Passed BA examination (1947 Session) by Social Service from East Punjab University. He completed the educational session at Forman Christian College, Lahore.

It has, now become necessary to have the information furnished by the above-mentioned employee confirmed

from the Punjab University, Chandigarh. We shall be grateful, if the relevant records pertaining to the above-mentioned period are checked up and the correct position intimated as early as possible. We shall be further obliged, if an attested copy of the Matriculation certificate is also made available."

(2)
Other than the letter from the Registrar, Punjab University *(2)* 12. The records produced before us are only of secondary evidence and are not conclusive regarding the date of birth of the applicant.

13. We have carefully gone through the records and heard the learned counsel for both the parties. To our mind, the information given by the Registrar of the Punjab University can be taken as a reliable piece of evidence as regards the correct date of birth of the applicant. There is a catena of decisions to the effect that the date of birth recorded in the matriculation certificate is ordinarily reliable and that the onus of proving that the same is incorrect is on the person who disputes it (vide S.S. Sandu vs. Union of India & Another, 1983(1) SLJ 475; S.K. Sen Gupta vs. Union of India and Others, A.T.R. 1986, C.A.T., 177; Udai Ram vs. Northern Railways, A.T.R. 1986 CAT 435; R.M. Sharma vs. Union of India, A.T.R. 1987(2) C.A.T. 342; and Asim Banerji vs. Union of India, A.T.R. 1988(1) C.A.T. 186).

(2) 13. The date of birth entered in the service-book and in the leave account form *(part of the Service Book)*, has been tampered with in this case. The explanation of the applicant in this context given in the application is that there has been litigation between the promotees (to which category the applicant belongs) and the direct recruits of the department regarding their seniority. In the said litigation, the claim of the promotees has been upheld by

the Supreme Court in its judgement in K.R. Mudgal Vs. R.P. Singh, 1986(4) SCC 531 and that as a result of this, the applicant stands to gain by about 30 numbers in seniority and would be senior to some of his colleagues who had been erroneously promoted to higher ranks during the pendency of the case and who belong to the direct recruit class. In order to deprive the applicant of the promotion that he is entitled to by implementation of the said judgement of the Supreme Court, respondent officers have evolved a novel procedure to get rid of the applicant by retiring him retrospectively w.e.f. 14th July, 1985 without any basis. In the rejoinder affidavit, the applicant has stated that the respondents themselves have tampered with the records and the blame is sought to be put on him. We are not impressed by this contention as, in our view, the tampering of the Service Book was with a view to show that the applicant's date of birth could be 14.7.1929.

14. We also consider that the tampering of the record in the present case has been done fraudulently. The applicant cannot be allowed to derive any gain out of the said fraud. We, however, refrain from going into the question as to who is responsible for tampering with the records in view of the on-going departmental inquiry against the applicant on the same matter.

15. In the facts and circumstances of the case, we have come to the conclusion that the correct date of birth of the applicant is 14.7.1927, as evidenced by the letter dated 12.2.1987 received from the Registrar of the Punjab

University. In the circumstances, there is no infirmity in the impugned notification dated 2.1.1987 whereby it was notified that the applicant stood retired from service w.e.f. the afternoon of 31.7.1985. We are also of the view that as the applicant has superannuated on 31st July, 1987, he is not entitled to continue in Government accommodation at this stage. There will be no order as to costs.

S.P. Mukerji
(S.P. Mukerji)
Administrative Member

P.K. Kartha
(P.K. Kartha)
Vice-Chairman (Judl.)