

16

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

...

Date of Decision: 5-5-1989.

Regn. No. O.A. 1144/87.

Shri O.P. Khanna	Applicant
vs-		
C.S.I.R. & Ors.	Respondents.

CORAM:

Hon'ble Mr. Ajay Johri, Member (A)

For the applicant:	Shri K.L. Bhatia, Advocate
--------------------	----------------------------

For the respondents:	Shri A.K. Sikri, Advocate.
----------------------	----------------------------

JUDGMENT.

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant, who was working as an Assistant in the office of the Council of Scientific and Industrial Research, New Delhi (C.S.I.R.), admittedly stood retired on the basis of his recorded date of birth with effect from 31.3.1983, has now challenged by this application the order of his retirement and the subsequent rejections of the representations made by him against the impugned order. He has prayed for the relief that his retirement on the basis of the impugned order be set aside and his date of birth be taken as 20.9.1927 instead of 9.3.1925.

2. The facts of the case as put forth by the applicant are that he, after passing matriculation examination, joined as Lower Division Clerk in the Ordnance Depot at Lahore on 25.5.1945. As his matriculation certificate was not immediately available, his age was recorded as '18 years'. He worked at Lahore till about September, 1947 whereafter,

he migrated to India. On migration, he was posted to the Ordnance Depot at Shakurbasti and worked there upto 13.8.1953. Thereafter, he joined the present employer, i.e. the CSIR on foreign service terms. At the time he joined the CSIR, a new service book was opened for him and his date of birth column was initially kept blank. He came to know only recently that the respondents have entered 9.3.1925 as his date of birth instead of 20.9.1927. After this knowledge, he made several representations for correction of the entries but to no avail. Subsequently, on 4.2.1983 he made yet another representation in which he enclosed the birth certificate obtained from the Municipal Corporation, Lahore and sought the change on the basis of that certificate. According to him, the Administration has taken no action, so his retirement has been done prematurely.

3. The respondents have opposed this application on the point of limitation. They have also said that as per the matriculation certificate submitted by the applicant, his date of birth is 9.3.1925. This was also mentioned by the applicant in his declaration given to the defence authorities. The applicant had joined the service with CSIR on 14.8.1953 and while giving details of his family in the prescribed form mentioned the same as June, 1925. In the service book, the date of birth has been stated as 9.3.1925 in words and in figures, the entry seems to have been made subsequently. At no point of time till February, 1983, the applicant has stated his date of birth as 20.9.1927. According to the respondents, the applicant sought permission to visit Pakistan to witness the Cricket match. On return from Pakistan, he submitted the certificate of the Lahore Municipal Corporation and requested for change of date of birth. But on grounds that the applicant had submitted the matriculation certificate and also declared

18

his date of birth at the time of appointment, the date of birth entered in his service record being based on documentary evidence, has to be relied upon and in accordance with F.R. 56, the date of birth thus declared by the employee and accepted by the appropriate authority cannot be subject to any alteration. According to the respondents, the representations made by the applicant have been examined and no bonafide error has been found. In regard to the birth certificate, the respondents have said that it would be very difficult to say from this certificate whether it belongs to the applicant.

4. I have heard the learned counsel for parties. On behalf of the applicant, the contentions raised before me by the learned counsel were that the age/or date of birth once recorded in the service record could not be changed. He referred to G.F.R. 79, 80 and 81 in this respect. According to the learned counsel, the age declared at the time of appointment was 18 years and it is given in the service record opened at Lahore. The learned counsel further contended that though the applicant had passed the matriculation examination before joining service, the certificate was not readily available and was produced only subsequently and that the date of birth shown in the matriculation certificate was not correct. He further relied on the certificate given by the Lahore Municipal Corporation based on the birth register on the basis of which the date of birth should be 20-9-1927. This certificate was procured by the applicant on his visit to Lahore. These contentions were supported by the learned counsel on the ground that in response to the respondents' query, the Sr. M.O. Health has denied that any entry exists in the birth register in the year 1925. Moreover, the entries of date of birth in the service book maintained by CSIR were made in 1968 and the ink is different in some

38

18

of the ntries. On the other hand, the learned counsel for the respondents submitted that in the service record, the date of birth shown is 9.3.1925 and it tallys with the date of birth given in the matriculation certificate which was submitted by the applicant in 1952. It was further submitted by the learned counsel that GFR 80 does not apply to the applicant's case. It was also submitted by the learned counsel for the respondents that the Lahore Municipal Corporation has, in a letter in response to their query, denied any entry in the birth register in the year 1927 too. Moreover, the representation made by the applicant in 1983 having been rejected in 1983 itself, the application filed in 1987 is barred by limitation. I have also perused the service book of the applicant and gone through the documents and papers filed by the parties carefully.

5. The facts of the case are not in dispute. The applicant was a matriculate when he joined service in the Ordnance Depot at Lahore but as he has himself said, since he did not have his matriculation certificate in possession, he declared some age and the age entered in the record maintained at Lahore was 18 years. This is evident from a copy of the service card No. 8467, which is placed in the service book of the applicant as maintained by the CSIR. On this service card, against the column of date of birth, '18' has been entered. When the applicant came to Shakurbasti, he gave a declaration on 28.2.1949 that he had passed the matriculation examination of the Punjab University in 1945. At the same time, he requested the Chief Ordnance Officer, Shakurbasti that since he was a bona fide refugee from West Punjab and left Lahore on 16.5.1947, he may be taken on duty with effect from 3rd October, 1947 and the period of absence may be treated as joining period or extraordinary leave. He evidently attached a copy of the

matriculation certificate which shows his date of birth in words as 'ninth March one thousand nine hundred twenty five' (9.3.1925). He also gave a personal declaration on 6.6.1951, which is placed at page 27 of the service documents pertaining to him as maintained at the Shakurbasti Depot, wherein his date of birth has been shown as 9.3.1925. Though this date of birth is entered in a different ink and has not been signed by any one in front of the entry, there is no doubt that this entry is based on the matriculation certificate, a copy of which was submitted by the applicant himself.

6. Thereafter, the applicant joined CSIR and a service book was opened in CSIR where his date of birth has again been shown as 9.3.1925 in figures as well as in words. Here also, the entries made are in a different ink, but the endorsement of the Section Officer, which has been made on 3.10.1968 at the bottom of the page, carries the same ink and it would appear that this entry had been made on the basis of service records and again this record could not be based on anything else except the matriculation certificate which was submitted by the applicant during the course of his service in the Ordnance Depot as well as after joining CSIR.

7. The applicant has taken a plea that he had originally declared his age as 18 years when he joined the Lahore Depot and the same was entered in the records which had been received from the Lahore Depot. There is no denial of the fact by the applicant that the matriculation certificate was not available to him at that time and, therefore, he gave a declaration. He has, however, now taken a stand that since he had lost his parents when he was very young, on his admission to the school, the age was entered by a legal guardian of his and was not based on any authentic information. In AIR 1982 SC 1057

Umesh Chandra vs. State of Rajasthan, the Hon'ble Supreme

have observed that entries in a school register and admission form maintained in the course of regular official duty, are reliable, more so, when the school is a reputed one. The Hon'ble Supreme Court has also observed that horoscopes are not considered reliable and absence of entries in the Municipal records or Village Chowkidar register can also not be considered as material evidence. Similarly, in AIR 1971 SC 173, State of Assam Vs. D.P. Deka, the Hon'ble Supreme Court has observed that the date of compulsory retirement is to be determined on the basis of service record and on what respondents claim to be the date of birth unless a service record is corrected consistent with the appropriate procedure. In 1986 (1) ATC 78, Udai Ram Vs. Northern Railway, this Bench of the Tribunal has held that the entry in the matriculation certificate is the best officially recognised authority for the date of birth. There can be no doubt about the fact that the matriculation certificate is a reliable document and it is not in dispute that the certificate submitted by the applicant was in any case ~~not~~ a valid certificate. The applicant's plea that the age given when he was admitted in the school by his guardian, was not based on material facts is also not supported in view of the fact that when the applicant had produced a certificate from the Lahore Municipal Corporation, a similar request made by the respondents has brought a negative reply from the said Corporation too. In any case, the entries in the birth register can only show that a child was born to a parent but it cannot be taken as a proof that the child was the applicant. Therefore, for all material purposes, the only reliance that can be placed is on the matriculation certificate which was in his possession because he had passed the matriculation examination in 1945.

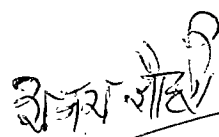
8. The applicant's plea that in the original record which had been received from Lahore, his age was entered as 18 years will also not have any material effect and will not help the applicant in seeking correction of his date of birth as entered in the matriculation certificate.

9. The learned counsel for the applicant has relied on a judgment of the Kerala High Court in 1971 KLT 188 - T.P. Sukumaran Vs. District Superintendent of Police, in which the Kerala High Court has held that the determination of the question relating to the date of birth of an officer is not to be done arbitrarily but only in a manner consonant with the basic concept of justice, and since one of the basic requirements of natural justice was that the order, although administrative in character, must be a speaking order and should state the reasons in support. The authority charged with the duty of taking a decision should have given the applicant a proper opportunity to prove his case. It has been further held in this judgment of the Kerala High Court that the application for correction supported by certain extracts of the Birth Register and Voters' List containing the name of the applicant and rejection of the same on ground that the date of birth was entered in official records only after verifying the school certificate, therefore, there was no reason why the petitioner in that case should be singled out for discriminatory treatment by putting this fact against him as debarring him from making any prayer for rectification of the alleged mistake which, according to him, had cropped up at the time of making original entry. I do not think the ratio of this judgment helps the applicant at all because it was not the question that he was not allowed to represent but the fact remains that the matriculation certificate had been submitted by him to the office of the respondents and also when he was working in

the Shakurbasti Depot and the entries in both these offices show the date of birth as being 9.3.1925.

10. The learned counsel for the respondents has relied on a catena of judgments given by the Benches of this Tribunal as well as the Hon'ble Supreme Court. In SLR 1987 Vol. III page 217 - Udai Ram Vs. Northern Railway, a case decided by this Bench, it was held that the matriculation certificate is the best officially recognised authority for fixing the date of birth and the date of birth as entered in the matriculation certificate should be entered in the service record.

11. It is, therefore, clear that the date of birth of the applicant entered in the service record as 9.3.1925, which is based on the matriculation certificate submitted by him, appears in clear writing and without any smudge or over-writing. I, therefore, do not find any merit in the request made in the application. The application is, therefore, rejected with costs on parties.


(Ajay Johri)
Member (A)