

30.11.1990

Present : Shri B.B. Raval, counsel for the applicant.

Shri K.C. Mittal and Mrs. Raj Kumari Chopra,
counsel for the respondents.

We have heard the arguments of the learned counsel for both the parties and gone through the documents. Both the parties have filed their pleadings on the merits of the application and with their consent, the case has been heard for final orders at the admission stage, in view of the fact that the applicant is to retire on superannuation today itself. Since ~~principal~~ ^{a number of} issues of facts and law are involved in this case, we do not find it feasible to pronounce the judgement today itself but in view of impending superannuation, the judgement will be pronounced on 5.12.1990. In view of the short period involved ^{till} in the pronouncement of the judgement, we do not find it necessary to pass any orders on the interim relief prayed for. The case be listed for orders on 5.12.1990.

[Signature]
(T.S. OBEROI)
MEMBER (J)

[Signature]
(S.P. MUKERJI)
VICE-CHAIRMAN (A)

5.12.90 Present - Pt. in person
one for the
Respondents

Judgment pronounced
in the open court today.

[Signature]
S. P. MUKERJI
C. O.
5/12/90

Service book of
Shri M.C. Sharma
and Shri M. A. Sengupta
cc/ 28(2) of IT
Section 19(1)(b)
dated 10/12/90

[Signature]
All Dated
10/12/90
Counsel
B.B. Raval
6/12/90

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promotions he was confirmed and promoted as an Assistant w.e.f. 1.5.1985. He asserts that he had filled up attestation forms showing his date of birth as 24.10.1934 supported by the matriculation certificate. In support of his contention about the date of birth being 24.10.1934, he has produced photostat copies of the seniority list of L.D.Cs. dated 23.3.1967 (Annexure-A 1), copy of seniority list of U.D.Cs. dated 10th March, 1977 at Annexure-A 2 and another seniority list dated 9th July, 1984 at Annexure - A 3, in all of which against his name the date of birth has been shown as 24.10.1934. In the seniority list of Assistants published on 10.11.1986 at Annexure-A 4 also his date of birth has been shown as 24.10.1934. He was shocked and taken by surprise by the order dated Nil at Annexure-A 5 in which against his name, the date of birth was shown as 1.12.1932 and date of retirement as 30.11.1990. Immediately thereafter on 16.10.1989, he represented (Annexure-A 6) indicating that his date of birth was 24.10.1934 and not 1.12.1932 as indicated at Annexure-A 5. He also referred to the seniority list of Assistants in support of his representation. Thereafter the respondents issued another seniority list of Assistants on 21st November, 1989 in which against his name, the date of birth originally recorded as 24.10.1934 was seen to have been changed by manuscript to 1.12.1932 *i.e.,* at Annexure - A 7. The respondents in reply to his representation dated 16th October, 1989 issued memorandum dated 31st October, 1989 (Annexure-A 8) affirming that in accordance with the entry in his Service Book, his date of birth was 1.12.1932 and not 24.10.1934. He represented again on 11.6.1990 (Annexure-A 9.) which was rejected by the memorandum

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of 15th June, 1990 (Annexure-A 10). The ground of rejection was indicated as follows :-

"According to the rules, alteration of date of birth of a Government servant can be made, with the sanction of the Ministry/Department of the Central Government, if :-

- (a) request in this regard is made within five years of his entry into Government service.
- (b) it is clearly established that a genuine bonafide mistake had occurred; and
- (c) the date of birth so altered would not make him eligible to appear in any school or University or UPSC examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.

" Further, normally the requests for alteration of date of birth made within a year or two of the date of the superannuation are not countenanced. Where, however, such requests are not regarded as time-barred, they should be supported by satisfactory documentary evidence (such as matriculation or equivalent certificate and a duly attested extract of the date of birth register or baptismal certificate in original) together with a satisfactory explanation of the Government servant of the circumstances in which the wrong date of birth has been recorded in the office records and the efforts made by him to have the record amended correctly.

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"In view of the above position, you would appreciate that it would not be possible to alter the date of birth of Shri Sharma at this belated stage when he has hardly 5 months left for retirement. However, if Shri Sharma feels aggrieved, he may be asked to submit his original matriculation certificate alongwith an attested extract of date of birth register of MCD for further action at our end." (emphasis supplied)

2. Since the applicant had misplaced his original matriculation certificate, he issued an advertisement in the daily paper and thereafter applied to the Secretary, Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad for duplicate matriculation certificate. He also submitted to the Parishad a copy of the U.P. Gazette dated 3rd October, 1953 in which his roll number and date of birth as 24.10.1934 and ^{his} having passed the examination in third division had been notified. A photostat copy of the gazette notification has been appended by the applicant at Annexure-A 13. The applicant's contention is that on the basis of his correct date of birth as 24.10.1934 as indicated in the matriculation certificate, he has the fundamental right to be retained in service till he attains the age of 58 years and the respondents had no right to unilaterally alter the date of birth to 1.12.1932 after ^{having} _{being} published his date of birth ^{commonly} as 24.10.1934 in the seniority lists of L.D.Cs., U.D.Cs. and Assistants between 1967 and 1986. According to him he was not asking for altering the date of birth, but to maintain the correct date of birth as accepted by the respondents themselves. He has contended that the date of birth mentioned in the Personal File of the applicant as Laboratory Attendant also shows his date of birth as

24.10.1934. His further argument is that the respondents themselves have asked him to produce the original matriculation certificate and he had already applied for a duplicate copy which would be produced as and when received from the U.P. Parishad.

3. In the counter-affidavit, the respondents have stated that at the time of the applicant's joining service, he had declared his date of birth 1.12.1932 which was entered on the first page of the Service Book on which he appended his signature twice in 1966 and 1979. The applicant has not produced any authentic document like matriculation certificate or the extract from the birth register of the Municipal Corporation. According to the respondents, he cannot challenge the recorded date of birth at the fag end of his service. They have further indicated that when the applicant joined the Intelligence Bureau as a Class-IV employee for which matriculation qualification was not required, he might not have produced the matriculation certificate and the date of birth was recorded as per his declaration and if it was wrong, he should have produced the matriculation certificate at that time. He endorsed the recorded date of birth on the Service Book in 1966 and 1979. According to the respondents, seniority list is not the primary documentary proof of date of birth which was circulated to ascertain whether there ^{was} ~~is~~ any mistake in the service particulars of the employee. The applicant was taking advantage of the typographical mistake in the seniority list. If he really felt that the date of birth recorded was wrong, he should have represented at the time of affixing his signature on the first page of the Service Book in 1979. The respondents corrected the date of birth in the seniority list at Annexure-A 7 as soon as the discrepancy

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in the date of birth was discovered. The respondents conceded have ~~conceded~~ that on his representation of June, 1990 at Annexure-A 9, he was asked to submit the original matriculation certificate alongwith the attested extract from the birth register. According to them, the applicant took belated action for issue of duplicate matriculation certificate. They have also indicated that the gazette notification dated 3.10.1953 shows the name of Mahesh Chand Gautam with the date of birth as 24.10.1934 whereas in all ~~files~~ records ^{and} in Service Book his name has been shown as Mahesh Chand Sharma. The respondents have argued that they have not changed his date of birth which continues as 1.12.1932. They have denied that the cover of the Personal File of the applicant bears the applicant's date of birth as 24.10.1934. In his rejoinder, the applicant has stated that the entry on the first page of the Service Book was not in his own hand-writing and his signatures on that page were not in confirmation of the date of birth being 1.12.1932. This cannot be taken to be his acceptance. He has challenged that contrary to the instructions, the entries were not re-attested or renewed every five years. The applicant at the time of filing the rejoinder had already furnished a certified duplicate matriculation certificate issued on 22nd October, 1990 alongwith a number of other documents in which his father has been shown as Shri Ram Swaroop Gautam and the applicant alongwith his three brothers shown as "Mahesh Chand". He has also produced a photostat copy of the letter issued by D.S.Jhansi, Central Railway addressed to him as Mahesh Chand son of late R.S.Gautam to his Karol Bagh address in New Delhi. He has also produced a photo-copy of notice from the Property Tax Department of Agra, Municipal Corporation addressed to his brother and him named as



Mahesh Chand Gautam, son of Shri Ram Swaroop Gautam and resident of 25-Ashoka Park, Main Rohtak Road, Delhi which is also the address given ^{in the original Application} as that of the applicant before us. Various other documents have also been shown to connect the applicant with his father Shri Ram Swaroop Gautam and to show that the applicant Shri Mahesh Chand Sharma was also known as Mahesh Chand or Mahesh Chand Gautam son of Shri Ram Swaroop Gautam.

4. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully and we have also seen the originals of some of the documents, the photostat copies of which have been appended by the applicant with the rejoinder. While the foundation of the case for the applicant to claim the date of birth as 24.10.1934 is the duplicate copy of the matriculation certificate and this date of birth shown in the various seniority lists published by the respondents themselves, the respondents' case is founded on the entry made on the first page of the Service Roll which has been signed by the applicant once on 3.2.1966 and again on 27.4.1979. We have seen the original of this page also.

5. So far as the applicant's case is concerned, the duplicate copy of the matriculation certificate clearly indicates that the applicant's date of birth is 24.10.1934. This is endorsed further by the certificate of marks obtained by the applicant in which also the date of birth has been shown as 24.10.1934. The U.P. Gazette notification also indicates the date of birth as 24.10.1934 against the applicant's name at Annexure-A 13. The respondents, however, have challenged this evidence on the ground that

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both in the matriculation certificate as well as in the gazette notification, the name has been shown as "Mahesh Chand Gautam" whereas the applicant's name is "Mahesh Chand Sharma". His name is also recorded in the Service Roll as Mahesh Chand Sharma, his father's name being recorded as Shri Ram Swaroop Sharma. The applicant's plea is that Gautam is a branch of the Brahmin community of Sharmas and both he as well as his father were being addressed both ^{as} _{as} Sharmas and Gautams. The learned Counsel for the applicant has produced in original a notice issued by the then Great Indian Peninsula Railway in which the applicant's father has been shown as Ram Swaroop Gautam son of Shri Girwar Singh Gautam. A railway provident fund statement of accounts of December, 1948 has been shown in the name of "Mr.R.S.Gautam". A court notice dated May, 1962 has been addressed to Bishan Swaroop, Mahesh Chand, Braham Prakash etc., sons of Shri Ram Swaroop Gautam. A letter dated 1.6.1963 from D.S. of Central Railway has been addressed to Shri Mahesh Chand, son of R.S. Gautam. A notice from Agra Municipal Corporation in respect of House No.24/59 has been addressed to Shri Mahesh Chand Sharma of 25-Ashoka Park, Rohtak Road, New Delhi, which address is also the same as that of the applicant before us. Agra Corporation's bill in respect of the same House No.24/59 has been addressed to Shri Ram Swaroop, son of Shri Girwar Singh. A property tax notice from Agra Municipal Corporation in respect of the same House No.24/59 has been addressed to Bishan Swaroop and Mahesh Chand Gautam as the successors to

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the late Shri Ram Swaroop Gautam. After perusing these documents in the original, the photostat copies of which are on the file, we are left with no doubt in our mind that the applicant Mahesh Chand Sharma of Rohtak Road before us is the same person who is also known as Shri Mahesh Chand Gautam, son of late Shri Ram Swaroop Gautam. It will be more than a miracle if there will be two different persons of the same name as Mahesh Chand with two different fathers, with the same name Ram Swaroop ^{and grandfather} _{and Girwar} and living at the same address at Rohtak Road, New Delhi. If the applicant had not been the son of Shri R.S.Gautam, the original of these documents, some of which are more than 40-years old, of Shri R.S.Gautam should not have been available with the applicant. The Agra Municipal Corporation also should not have sent the notices and bills of the house belonging to Shri Ram Swaroop to the applicant's address at Rohtak Road. The father of Shri Ram Swaroop Gautam was Shri Girwar Singh Gautam as indicated in the agreement form of Great Indian Peninsula Railway and the same parentage of Shri Ram Swaroop has been shown by the Agra Municipal Corporation in the bill for House No.24/59. We are, therefore, inexorably led to the conclusion that it is the applicant who ^{as Mahesh Chand Gautam} passed the matriculation examination in 1953 as shown in the U.P. Gazette notification at Annexure-A 13 of 1953. This Gazette notification apart from anything else conclusively shows that his date of birth was 24.10.1934. The duplicate copy of the matriculation certificate also supports this date. The contention of the learned Counsel for the respondents is that the applicant obtained the duplicate matriculation certificate by giving a false

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affidavit that he is a private businessman, cannot take away the authenticity of the matriculation certificate so far as the date of birth is concerned, however, ~~reprehensible~~ and culpable the applicant's conduct in obtaining the certificate may be.

6. Apart from this the applicant has produced incontrovertible proof to show that his date of birth had been consistently shown in the seniority lists of 1967 (Annexure-A 1), 1977 (Annexure-A 2), 1984 (Annexure-A 3) and 1986 (Annexure-A 4) as 24.10.1934 as an L.D.C., as a U.D.C. and as an Assistant. Even in the seniority list of Assistants of 1989 at Annexure-A 7, his date of birth had been originally shown as 24.10.1934 which had been written over and changed in hand ^{to} ~~by~~ 1.2.1932 and that also only after the applicant had represented for the correction of his date of birth. In that context there was no occasion for the applicant to get his date of birth corrected between 1967 and 1989. It was all along represented to him by the respondents through the seniority lists that his date of birth was 24.10.1934. The respondents cannot suddenly and unilaterally switch over to a different date of birth without notice to the applicant. Now we come to the foundation of the case of the respondents i.e. the entry of date of birth recorded on the first page of the Service Book. We have seen the original of this page and we are not at all impressed by the entry made. First of all this entry on which the entire case of the respondents is based, figures on the first page of "Service Roll" which was meant for as indicated therein "Inferior servants other than members of the constabulary and for those superior servants for whom no Service Books

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are maintained." This page seems to have been filled up when the applicant joined originally as Class-IV employee. This Service Roll ~~cannot~~ be held to be valid for employee when he was not required to produce his matriculation certificate. This format of Service Roll is not valid for the grade of L.D.Gs., U.D.Gs. and Assistants to which he was appointed later. It was respondents' obligation to get the first page of the Service Book filled up in the proper format. Thus the entry of date of birth on the 'Service Roll' cannot be taken to be a valid entry in the prescribed format of the first page of the 'Service Book'. The learned Counsel for the respondents cited a number of rulings (1987) 3 ATC 102; (1987) 3 ATC 607 to establish the sanctity of the entry in services record which remained unchallenged for a long period. These rulings cannot be applicable to this^{case} as the entry of date of birth is not on proper service format and the respondents themselves had in seniority lists published periodically indicated a completely different date of birth which happens to be the same as claimed by the applicant.

7. We cannot accept the plea of the respondents that entry of date of birth as 24.10.1934 in the various seniority lists was ^{due to} ~~a~~ typographical error. The respondents could not explain the intriguing feature of the case that the date of birth in the seniority list indicated by ^{the} ~~a~~ typographical error as 24.10.1934 happens to be the same date of birth as occurs in the matriculation certificate and the U.P. Gazette notification of 1953 for

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the applicant. One is apt to suspect that between the Service Roll which was filled up when the applicant entered as a Class-IV servant and the seniority lists published from 1967 onwards in which the date of birth was shown as 24.10.1934, there ~~must~~ ^{could} have been some service records prepared in which the correct date of birth as recorded in the matriculation certificate was entered. The seniority list of L.S.C. published in 1967 at Annexure-A 1 specifically mentions in column-3 against the applicant that he is a matriculate. It is possible that before this list was prepared indicating his date of birth as 24.10.1934, the applicant had shown the original matriculation certificate to the respondents on the basis of which his educational qualification as also the date of birth entered in the matriculation certificate were accepted and entered in the service records which unfortunately have not been produced before us. The learned Counsel for the respondents could not explain how the ^{Matriculation} date of birth of 24.10.1934 got entered in the seniority list from 1967 onwards. The plea of the respondents that having accepted the recorded date of birth by signing on the Service Roll (which was not the proper format) in 1966 and 1979, the applicant cannot challenge the same at the fag end of his career, is also not acceptable. The signature by itself cannot be taken to be endorsement of the date of birth indicated in the Service Roll. It was his fundamental right to be retained in service like all other Government servants till he attained the age of super-annuation. The exercise of that fundamental right is based on the entry made ^{about} ~~on~~ the date of birth. The applicant cannot be presumed to have signed away his right to be retained in service till ^{the} ~~his~~ actual age of 58 years by simply signing on a wrong format of Service

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Roll. The fundamental right to get his date of birth corrected subsists not only till the last date of his services, but also ~~in~~ ^{the} and after retirement. In Surinder Singh vs. Divisional Engineer, Telegraph-1979 SLJ 660, the Allahabad High Court held that the stand taken by the respondents that the date of birth could not be corrected at the fag end of the service was wholly misconceived. In R.S.Kalolimath Vs. State of Mysore, AIR 1977 SC 1980, the Supreme Court held that an inquiry into the correct date of birth can be made even after the employee has retired. In State of Orissa vs. Binapani Dile-AIR 1987 SC 1269 and Sarjoo Prasad Vs. General Manager -AIR 1981 SC 1481, the Supreme Court held that the change of date of birth of an employee involves civil consequences and such an order to the prejudice of the employee can be taken only after holding an inquiry and following the principles of natural justice by giving adequate opportunity to the employee to set up his defence. In Mallela Sreeramamurthy and C.T. Rangami Vs. Union of India and Others-1990(1) SLR 264, a full Bench of the Tribunal ^{observed} ~~held~~ that even statutory rules limiting the time limit for making alteration of date of birth have not been treated as inviolable by the Central Government on one hand and by the Courts and the Tribunal on the other. Relying upon another decision of the Tribunal in AIR 1987(1) CAT 414, the full Bench in the aforesaid case found that Note-5 to FR-56 on the basis of which the respondents rejected the representation of the applicant vide the memorandum

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of 15th June, 1990 at Annexure-A 10, does not take away the right of a government employee who is appointed prior to coming into force of the said Note, to have his date of birth corrected.

In a similar case of Shri R.R. Yadav Vs. Union of India - 1987 (3) SLJ (page-223), it was held that where the applicant entered service in 1947 and recorded date of birth as 15.7.1929, his claim to get it altered to 11.7.1931 on the basis of certificates including matriculation certificate could not be rejected on the ground that he applied for a change very late. It was held that when there are sufficient proofs and no rebuttal thereof, the date of birth may be altered.

8. In the context of the facts and circumstances and the rulings of the Supreme Court, High Courts and the Tribunal, we allow this application declaring that the correct date of birth of the applicant is 24.10.1934 and that he is entitled to be retained in service, ⁱⁿ accordance with the relevant rules and orders, on the basis of this date of birth. His super-annuation on the basis of the impugned date of birth namely 1.12.1932 is set aside and the respondents are directed to reinstate the applicant in service with immediate effect as if he had never retired on the basis of the impugned date of birth. For the period

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between his retirement and reinstatement, i.e. 30.11.1990
^{including}
and 5.12.1990, he should be treated as on duty for
all purposes. In the circumstances of the case, there
will be no order as to cost.

Dec 5-12-90

(T.S. Oberoi)
MEMBER (J)

5-12-90
(S.P. Mukerji)
VICE-CHAIRMAN (A)