

(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

DA NO. 797/90

DATE OF DECISION: 4-6-90

SHRI LAL CHAND

APPLICANT

VERSUS

UNION OF INDIA

RESPONDENTS

SHRI D.C. VOHRA

ADVOCATE FOR THE APPLICANT

SHRI M.L. VERMA

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member (A))

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

4/6/90

T.S. Oberoi
(T.S. Oberoi)
Member (J)

R

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

DA NO.797/90

DATE OF DECISION: 4.6.1990

SHRI LAL CHAND

APPLICANT

VERSUS

UNION OF INDIA

RESPONDENTS

SHRI D.C. VOHRA

ADVOCATE FOR THE APPLICANT

SHRI M.L. VERMA

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member (A))

This application has been filed by Shri Lal Chand, an employee of the departmental canteen, run by the Respondent-Ministry of External Affairs, under section 19 of the Administrative Tribunals Act, 1985 against the impugned order dated 4th December, 1989, issued by the respondents informing the applicant that he stands relieved on 31st May, 1990 (afternoon) on attaining the age of 60 years, in terms of the provisions contained in GSR 54 notified by the Ministry of Home Affairs on 23rd December, 1980.

2. The case of the applicant is that as per the original affidavit dated 16.2.1983 submitted by him, his date of birth is

28.5.1948. On 4.12.1989, however, the respondents issued an order informing him that he would stand relieved on 31.5.1990 on attaining the age of 60 years, when in fact, he would attain the age of 42 years on 28th May, 1990. The applicant made a representation to the respondents, but his grievance has not been redressed. He has further pleaded that he is the third son of his parents and the age of his three brothers are as under:

Elder brother	62 years
Second elder brother	50 years
(Applicant's) Younger brother	33 years

Further, his family comprises wife and 7 children whose ages are as under:

Wife	39 years
eldest son	22 years
second son	20 years
daughter	18-1/2 years
third son	17 years
fourth son	14 years
fifth son	12 years
sixth son	10 years

He was married at the age of 18 years when his wife was only 15 years of age in the year 1966 and their first child was born in 1968. All this information according to him supports the conclusion that he is only 42 years old. He, has, therefore, submitted that the order of the respondents seeking to retire him at the age of 42 years is highly discriminatory and arbitrary and therefore violative of the provision of Article 14 and 16 of the Constitution.

7

By way of relief he has prayed that the Tribunal:

- (a) may set aside/revoke/quash the impugned order No.Q/WEL/853/23/85 dated 4.12.1989; and
- (b) may direct the respondents to allow the applicant to superannuate at the age of 60 years, which he would attain only on 31.5.2008 in accordance with declaration of date of birth as per affidavit earlier mentioned, submitted by him to the respondents.

3. At the preliminary hearing the Tribunal directed the respondents not to take any action on the impugned order dated 4.12.1989 as an interim measure.

4. The Respondents in their reply have submitted that the applicant had filed an affidavit with the respondents that his date of birth was 25.5.1930 and as such he was to retire on 31.5.1990 on attaining the age of 60 years. The same date of birth recorded in his service book has been signed by him. It has been further pleaded that the request for change of date of birth cannot be accepted if such a request is not made within 5 years from the date of entry into Government service in accordance with FR 56. Again In view of Rule 79(2) of General Financial Rules, the recorded date of birth cannot be altered except in case of clerical error. It has been further urged that the application is barred under Section 20 and 21 of the Administrative Tribunals

8

Act, 1985.

On merit it has been submitted that the applicant was appointed on 30.3.1976 in the Ministry of External Affairs, Departmental Canteen. Subsequently all the posts in the canteens run departmentally by the Government of India were declared as posts in connection with the affairs of the Union, and the incumbents of such posts were declared as holders of civil posts under the Central Government w.e.f. 1.10.1979. The recruitment rules for the said posts in the departmental canteen were framed and notified vide CSR 54 dated 23.12.1980 and thereafter cadre was initially formed.

According to the copy of the affidavit sworn on 21.2.1983, furnished by the applicants, to the respondents, his date of birth is 25.5.1930. The allegation that he is being retired prematurely is, therefore, baseless. They have further submitted that the sworn-in affidavit dated 16.2.1983, was never submitted, in original, by the applicant to the respondents. However, a copy of the affidavit was received on 4.5.1990 along with a copy of applicant's representation dated 19.12.1989.

The respondents have admitted that the family of applicant comprises wife and seven children, as per the declaration made by the applicant on 18.8.1988. The ages of the children are however as under:

eldest son	27 years
second son	25 years
third son	21 years
daughter	20 years
fourth son	18 years
fifth son	15 years

2

sixth son

7 years

9

There ages vary from the ages as given in the original application which respectively are 22, 20, 18-1/2, 17, 14, 12 & 10 years. It is, therefore, averred that according to the record available with the respondents, the applicant is due to retire on 31.5.1990 based on the date of birth i.e. 25.5.1930, declared by the applicant in the affidavit sworn on 21.2.1983 submitted to the respondents.

5. Regarding exhausting the departmental remedies by the applicant, the respondents have submitted that the representations addressed to the Joint Secretary (Admn) and Respondent No.2, dated 19.12.1989 and 20.4.1990, respectively, were delivered by the applicant to the respondent No. 2 only on 4.5.1990.

6. The learned Counsel for the applicant referred to a catena of judicial pronouncements in support of the case of the applicant. We have carefully gone through the judicial

1. SLJ 1980 SC 704, Jiwan Kishore V. Delhi Transport Corporation.
2. SLJ 1987(3) CAT PR.179, Sikander Beg S. Mirza Vs. UOI & Ors.
3. SLJ 1987(2) CAT, 180, L.N. Sinha Vs. Union Of India.
4. SLJ 1987 (2) CAT 677, Manik Lal Vs. Union of India.
5. SLJ 1987 (1) CAT 307, Radhey Shyam Shukla Vs. Union of India
6. SLJ 1987(4) CAT 179, Ghasite Lal Vs. Union of India
7. SLJ 1987(3) CAT 925, Hira Lal Vs. Union of India.
8. SLJ 1983(1) Delhi 475, S.S. Sandhu Vs. Union of India.
9. SLJ 1974 Orissa 299 K.Venkataraman Vs. Union of India.
10. SLJ 1988 (2) CAT 608, Magan Lal Furshottam Patel Vs. U.O.I.

dicta cited before us. We find that the facts and circumstances in each case cited before us are materially different from the facts and circumstances of the present case and these citations are, therefore of no assistance to the applicant. The learned counsel for the applicant stressed us that the affidavit relied upon by the respondents is only a copy and not the original affidavit, whereas the affidavit filed by him now is in original. He pleaded that the copy of the affidavit does not even constitute secondary evidence while the documentary evidence produced by him is primary evidence. Relying on the Calcutta High Court decision in R.K. Chatterjee Vs. Union of India, SLJ, 1984 (1) Cal. 592, the learned counsel urged that there was need for resolving this issue by obtaining opinion of medical experts. The High Court in the said case had observed that "the opinion of medical experts for determination of age in a controversy like this is very important." Further the Supreme Court in a similar case of conflicting record of age of an employee showing variation of 10 years determined the age of the employee on the basis of opinion of the medical board (1980 SLJ SC 704, Jiwan Kishore Vs. Delhi Transport Corporation). The learned counsel for the applicant also submitted that the court was not precluded from entering upon a decision of questions of fact raised by the petitioner; the Court can use its discretion to conduct an enquiry under Article 226 of the Constitution to determine the fact with a view to provide relief to the aggrieved party in a rare deserving case.*

*AIR 1967 SC 1265, State of Orissa Vs. Dr. Binapani Dei & Ors.

0

(11)

7. The learned Counsel for the respondents relied upon 1987 (4) ATC-425, Union of India Vs. Abdul Shah. In this case the plaintiff had declared his date of birth at the time of his initial appointment and maintained it in subsequent dealings. The plaintiff had also signed certain documents bearing his date of birth. It was held that the entry could not be corrected later on the basis of school certificate.

8. We have carefully considered the rival contentions and gone through the records. It is observed that at the time of his appointment, the applicant furnished a copy of sworn affidavit dated 21.2.1982 declaring his date of birth as 25.5.1930. The copy of the affidavit filed by him bearing his signature declares his date of birth as 25.5.1930. The same date of birth viz. 25.5.1930 is recorded in the relevant column of the applicant's Service Book which also bears his signature. His signature on the copy of the affidavit available in the Service record and the signature on the Service Book itself appear to be of the same person. Again in proforma giving details of his family as 10.8.1986, the applicant's date of birth in the, relevant column is recorded as 25.5.1930. Thus the date of birth in the records of the respondents which are signed by the applicant is 25.5.1930. The only document which questions this date of birth is the affidavit sworn by the applicant on 16.2.1983 giving his date of birth as 28.5.1948. The affidavit sworn on 16.2.1983 reveals a wide variation in the two dates of birth. The learned Counsel for the applicant had urged that in such a situation one of the reasonable courses open would be to obtain medical opinion to settle the matter.

2

9. The learned Counsel for the respondents, however, submitted that even the medical opinion cannot give a precise assessment of age as the ossification test etc. can be relied upon only upto certain age. The principal means which enable the medical experts to form a fairly accurate opinion about the age of an individual, are teeth, height and weight, ossification of bones and minor signs. *Based on these factors age can be assessed accurately assessed only upto to the age of 24/25 years and in our opinion, once an individual has fully grown, even the medical opinion cannot constitute an absolutely reliable basis for determining the age. Further, in view of the disagreement between the two parties, we do not feel, it will serve any useful purpose to go in for medical opinion. Even in Jiwan Kishore's case (supra), the medical opinion was relied upon, as both the parties were willing to accept the age, so determined. The respondents have also not violated the principle of natural justice as they have not altered the date of birth in their records. The date of birth has consistently remained as 25.5.1930, as initially recorded. The question of serving any show cause notice etc. on the applicant, therefore, does not arise. There is no other documentary evidence which has been brought to our notice by the learned Counsel for the applicant to support his contention of a later date of birth except the applicant's affidavit. The applicant also acknowledged atleast on two occasions, his date of birth, as recorded in the records of the respondents; first, when he signed the service

* Modi Medical Jurisprudence- chapter on Age.

0

(13)

book and, secondly, when he filed the proforma, giving details of his family, under his signature. He failed to protest on either of the two occasions. The respondents were also not aware of the affidavit of 21.2.1983 as a copy of the same is said to have been delivered only to respondent No.2 on 4.5.1990 alongwith the representation.

10. A few words about the variation in the ages of applicant's sons and daughter, as mentioned in an earlier paragraph, may also be said here. A careful perusal of these ages as given in the original copy of the DA, shows various overwritings/corrections not only in respect of all the children, but also even in respect of applicant's wife, so as to suit and fit in the age as now given in respect of the applicant himself. From this, another factor also comes to the fore, which seems to have motivated the applicant to make deletions/changes/overwritings in the ages as discernible in the original copy of the present DA which is that, according to the difference in the ages of applicant's wife and his eldest son, given in the declaration dated 18.8.1988, the first child was born when applicant's wife was barely 12 or so, even if taking that he was born within the earliest span after their marriage (though nowhere specifically averred) which is a phenomenon, which normally and generally does not happen, or at any rate, is a rare one. Even if it is taken into consideration that there might be some variation in the age of the applicant's wife, as mentioned above, for the reasons that no precise proof was available being an illiterate village lady, but the age so mentioned is to be accepted, as such, having been

10

2

(14)

given by the applicant himself, especially, in the absence of any other explanation from the applicant, in this regard. In any case, to our mind, this makes applicant's case highly doubtful or atleast, not worthy of any credence, particularly when there is no cogent and reliable evidence, such as an extract from village Panchayat or chowkidar's record etc. adduced by him, in support of the second version of his date of birth. Moreover, we have no reason to doubt the entries made in the applicant's service record, many years ago, in the normal official course, bearing no over-writing, whatsoever, and having applicants own signature as well duly attested by an officer, which go to suggest that even applicant had no agitation in this regard at that time, and all that which he has attempted to make out, is the result of after-thought. One's anxiety to continue in service Government for some time more, if possible, by seeking rectification of date of birth, due to some genuine discrepancy therein, is understandable, but that has to be supported by some worth-while evidence, and not merely by applicant's own affidavit or an entry in the ration card, which, too, is much later in point of time i.e. 1.1.1988.

10. As a result, the application fails and is dismissed with no orders, as to the costs.

11. Recognising the urgency of the matter, we had restrained the respondents from superannuating the applicant till further orders vide our interim orders dated 4.5.1990 and 31.5.1990. In view of the dismissal of the OA, as above, the interim orders are hereby vacated.

I. K. Rasgotra
(I.K. Rasgotra)
Member (Admn.) 4/6/90

T. S. Gheroi
(T.S. Gheroi)
Member (Judl.)