

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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S.A. NO. 1400/91

DATE OF DECISION : 04.09.1992

Shri M.S. Rana

...Applicant

Vs.

Union of India & Ors.

...Respondents

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Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri V.P. Sharma

For the Respondents

...Shri R.M. Bagai

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

JUDGEMENT

The applicant is Fitter (T& G), Tool Room, Ordnance Factory, Dehradun (U.P.). He joined the service of the respondents on 19.11.1962 when there was national emergency and mass recruitment by the Defence Ministry.

At the time of his appointment, the date of birth of the applicant was recorded as 15.11.1932 on the basis of the medical opinion. The grievance of the applicant is that he was born on 8.1.1941. The applicant represented for the correction of his date of birth and submitted various

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representations time and again and ultimately it was rejected by the letter dt. 7.10.1991 and the applicant was communicated earlier by the letters dt. 13.8.1990 and 30.3.1991 that the representation has been forwarded for necessary action. The present application was filed by the applicant on 1.5.1991 before the passing of the impugned order. The applicant in this application has prayed that the respondents be directed to correct the service record of the applicant pertaining to the date of birth and it should be corrected to 8.1.1941 from 15.11.193.

2. The case of the applicant is that on 16.2.1991, he was communicated the impugned order (Annexure A1) that his date of superannuation is 30.11.1992. By this, the applicant gathered that his representation moved earlier and forwarded to Ordnance Factory Board, Calcutta did not find favour with them. The case of the applicant is that he has studied in K.L.G.M. Inter College, Nakur, District-Saharanpur from 9.8.1955 to 30.6.1958. That the applicant also passed the Junior High School Examination from U.P.

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Education Board in the year 1955. The applicant has also annexed the said certificate issued by the District Inspector of Schools, Saharanpur dt. July, 1955 (Annexure A10) and the scholars register and transfer certificate forms (Annexure A11). This scholar register and transfer certificate form is of K.L.G.M. Inter College, Nakur, Saharanpur which shows that the applicant earlier got admission in ninth class and has studied in J.H. School, Nakur, district-Saharanpur. The applicant has annexed the evidence along with the representation to the respondents, but the respondents did not consider the evidence furnished and only rejected his representation that the decision cannot be taken at this belated stage. The number of representations have been filed by the applicant which goes to show that the applicant has been trying his best to get his date of birth corrected and even on one of the representations, the respondents have made certain enquiries and the District Inspector of Schools, Saharanpur has also written a D.O. letter to Shri S.K. Nafari, Works Manager (Admn.), Ministry of Defence, Ordnance Factory, Dehradun in reply to their letter No.D.O.-1/E/16B/LB dt. 8.8.1988 whereby the Works Manager has asked for the verification

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of the transfer certificate of the applicant and the same was verified by the aforesaid letter No.9208/88-89 dt. 25.11.1988. Thus the case of the applicant is that his date of birth should have been corrected, but the respondents have not corrected the same nor given any reason nor disposed of the representation of the applicant by a speaking order.

3. The respondents contested the application and took the preliminary objection of limitation. It is stated in the reply that the applicant had made the representations in 1982, 1984 and lastly in March, 1991 and all the three have been rejected. The applicant was duly communicated the result of the representations made by him. The date of birth of the applicant, therefore, rightly remains recorded at the time of his joining the Government service as 15.11.1932. The applicant has filed the present application beyond limitation in March, 1991. The applicant has tried to explain the delay on the basis of the order dt. 2.6.1987 in which there is also a reference of the Ministry of Defence Memo dt. 31.12.1959. The learned counsel

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for the respondents during the course of the arguments, stated that the copy furnished to him is not readable, so that should not be taken into account. However, a copy of the same is attached to the rejoinder and that has been taken on record. In this case, the aforesaid Memo has extended the date for applying for correction of date of birth upto 30.6.1987 for such employees who have any doubt about the correctness of the recorded date of birth in the service book and they can make a representation by filing the documents in support of the same, i.e., school leaving certificate, original birth registration certificate and if that is done, the matter will be pursued in consultation with the Ordnance Factory Board. Thus the point of limitation is to be considered in the light of the aforesaid Memo of 1987.

4. The other point taken by the respondents is that in the service record the date of birth is recorded on the basis of the medical opinion and further in 1975 the applicant has himself filled the nomination form of the G.P.F. and in that he has given his date of birth as 15.11.1932. Thus there is no

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case for correction of the date of birth of the applicant at the fag end of the service of the applicant while he is to retire in November, 1992 after completing 60 years of age counting from the recorded date of birth.

5. I have considered the point of limitation. It is a fact that the applicant has been trying by making representations for the correction of his date of birth since 1981 and the first rejection order was passed in 1982 and the other in 1984. However, by virtue of the fact that the Ministry of Defence issued the Memo dt. 30.5.1987 (Annexure A15) again opening the channel for correction of date of birth to the employees, it cannot be said that the applicant could not have made another attempt when it was specifically called by the respondents themselves. The decision on this application has been taken in October, 1991. The applicant has filed this application in March, 1991 when he has already preferred a representation and after waiting for the requisite period. When the representation was pending and the decision has been taken subsequently during the pendency of the present application under Section 19,

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in such a case it cannot be said that the present application for the redress of his grievance is barred by limitation. In view of this, the application is held to be within limitation and the preliminary objection taken by the respondents is over-ruled.

6. As regards the recorded date of birth as 15.11.1932, the certified copy of the service sheet filed along with the counter itself as Annexure RI goes to show that the applicant at the time of entering the service gave a statement that his age is about 21 years. However, the medical examination report goes to show that he has been adjudged to be of 30 years by appearance. The service sheet also shows that the applicant is non matric. Now it cannot be said that for the first time, the applicant of incorrect date of birth has taken the case / as at the time of joining the service gave statement of with the respondents, he / his 21 years of age. So it cannot be said to be an after thought. The respondents in their reply to the applicant have not at all dealt with this aspect of the matter. They have not even considered this fact that the applicant has given this statement at the time of

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entering into service. How this statement of the applicant was discarded has not been specifically replied to in the counter filed by the respondents. Along with the service sheet, the opinion of the medical expert has not been furnished as to what were the special features by which the age of the applicant was judged to be 30 years, whether there was any X-Ray of any part of the body on the basis of which this conclusion was drawn as by appearance a person can very much belie his age. A nourished person may look younger than his actual age and a person who is not so much looked after may not give the proper and exact age by his appearance. Thus the opinion formed about the age of the applicant by his appearance cannot be said to be an opinion drawn by medical examination of the applicant. The opinion given only by appearance cannot be said to be given on the basis of medical examination which involves a clinical examination according to established procedure laid down in medical jurisprudence or treatise. Thus the basis on which the age of the applicant was recorded in the service record cannot be justified. When the basis on which the age of the

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applicant was recorded does not confirm to norms, then the best evidence has to be seen about the age of the person. In this case, the applicant has filed the school leaving certificate of K.L.G.M. Inter College, Nakur and it is duly signed by the Principal of the institution having been issued in 1959. The photostat copy of the same is at Annexure A1. The genuineness of this has not been disputed. The applicant has also filed a certificate of having passed Junior High School Examination in 1955 in which the date of birth of the applicant is recorded as 8.1.1941. The certificates so filed are duly authenticated by the Inspector of Schools and its genuineness also is not disputed. Further there is another evidence of verification of this date of birth by the Principal of the institution by the letter dt. 25.11.1988 which was communicated to Works Manager, Ordnance Factory, Dehradun. All the three documents leave no scope of doubt that the date of birth of the applicant which he now desires to be substituted as correct date of birth in the service record in place of the recorded date of birth cannot be said to be without basis. The evidence in the form of documents relate to much

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earlier period and these documents on the face of it (19) are genuine and their correctness has not been disputed. Thus the correct date of birth of the applicant is 8.1.1941 and not 15.11.1932 as given in the service record.

7. Regarding the impugned order passed by the respondents rejecting the representation for correction of date of birth, it appears that the respondents have not considered all these documents and not even mentioned them in the reply given to the applicant. There should have been some speaking order to show the application of mind by the competent authority before disallowing the request for correction of date of birth. Thus the latest order of October, 1991 passed by the respondents, which is reproduced below is wholly a non speaking order :-

"Your representation about the amendment of date of birth was forwarded to Ordnance Factory Board Calcutta for consideration. Ord. Factory Board has expressed that decision cannot be taken at this belated stage."

In such a situation when the representation is disposed of summarily, then it cannot be said to be in proper exercise of powers vested in the competent authority. It is arbitrary exercise of power as well as against the principles of

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natural justice. Administrative orders which have the effect on the service career of a person should also be somewhat reasonable in their expression and conclusion both. The only point taken was that the decision for correction of date of birth could not be taken at a very late stage. The applicant has also filed a copy of the Punjab and Haryana High Court passed in the case of Brigadier Prithvi Raj Vs. Union of India, 1986(1) SLR p-755. In this reported case, Brigadier Prithviraj, after the correction of his date of birth in the Higher Secondary School Certificate which he passed from Punjab University, applied for correction of date of birth, but that request was not allowed on the point of delay and laches. However, by the aforesaid judgement, the request was allowed and it was held that the orders of the Ministry of Defence on which reliance has been placed by the respondents cannot take away the vested right of the petitioner to have his date of birth corrected in accordance with what has been actually and just now incorporated in the matriculate certificate by the Punjab University. In the present case also, the date of birth of

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the applicant is recorded in the Junior High School Certificate issued by the Education Authority of U.P. in the year 1955 when the applicant had passed that examination. That is a genuine document and can only be discarded with an acceptable reason. Merely the delay in applying for correction of date of birth will not be a ground to reject a genuine case which is otherwise true. The reliance has been placed by the learned counsel for the applicant on Sikander Beg Vs. Union of India, reported in 1990 (14) ATC p-20 and another case decided by the Calcutta High Court in Nihal Ranjan Bhagumik Vs. State of Bengal, reported in 1990 (7) SLR 69. The Delhi High Court also in the case of R. Shankar Narayan Vs. Union of India, 1990(1) SLR 31 laid down the law that the school certificates cannot be ignored. Further in the case of Hira Lal Vs. Union of India, ATR 1987(1) CAT 414, it has been held merely signing the service sheet will not take away the vested right for correction of date of birth. The learned counsel has also referred to the decision of Mellala Sri Rama Murthy Vs. Union of India, reported in 1989 (4) SLJ 557, with a Full Bench decision that the

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limitation will not apply in the cases of correction of date of birth. The learned counsel for the respondents, however, placed reliance on the case of Devraj Vs. Union of India, 1987 (2) ATC 189 and Satyabir Vs. Union of India, 1987 (2) ATR 265. However, the facts of both these reported cases are different. In the present case, the applicant has furnished the best evidence which remain unrebutted. Even a school leaving certificate and a certificate of having passed the junior high school in both of which the date of birth is recorded and these have not been rebutted. In the service sheet, there is a statement attributed to the applicant that he has given date of birth at the time of entering into service as 21 years.

8. Taking all these facts into account, there is a clear case that the order of rejection of the representation for correction of date of birth needs interference and the respondents have not decided the representation taking into account the evidence furnished along with the representations showing the actual date of birth of the applicant. In the above circumstances, the application is liable to be allowed.

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9. In view of the above facts, the application is disposed of with the direction to the respondents to correct the date of birth of the applicant in the service record from 15.11.1932 to 8.1.1941 and the applicant shall be entitled to all the consequential benefits thereof. In the circumstances, the parties shall bear their own costs.

J. P. Sharma
(J. P. SHARMA) 1-8-82
MEMBER (J)