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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2932/2004

New Delhi, this the 6th day of April, 2005

Hon'ble Shri S.K. Naik, Member(A)

Butan Rai

H.No.881, Krishi Kunj

New Delhi-110012

.. Applicant

(Shri Vijay Choudhary, Advocate)

versus

Union of India, through

1. Secretary

Ministry of Agriculture

Krishi Bhavan, New Delhi

2. Director General

Indian Council of Agricultural Research

New Delhi

3. Director

Indian Agricultural Research Institute

PUSA, New Delhi

..Respondents

(Shri N.S. Dalal, Advocate)

ORDER

Shri Butan Rai, applicant in this OA was appointed as Beldar in the Indian Agricultural Research Institute on 2.5.1974. At the time of his appointment, he got his date of birth entered in the service book as 1.2.1945. He also filed an affidavit to this effect. Subsequently, he went to his native village and obtained original school leaving certificate in which his date of birth has been entered as 18.3.1951. Thereafter he submitted the school leaving certificate before the Administrative officer, Genetics Division, IARI on 1.6.1975 requesting him to record his date of birth as given in the school leaving certificate. On the basis of this record, the earlier entry of date of birth in the service book was cancelled and in its place his date of birth as recorded in the school leaving certificate i.e. 18.3.1951 was substituted, vide endorsement dated 15.10.1975. The grouse of the applicant is that while his date of birth as recorded in the service book remained as 18.3.1951 ever since 1975, all of a sudden the seniority list circulated by the respondents on 22/25.9.2001 indicated a totally different date of birth. On being aggrieved, he filed his representation dated 18.10.2001 bringing to the notice of the respondents that not only the date of birth has been wrongly reflected in the seniority list but also the name of his father has been wrongly stated as Santokhi Rai where his father's correct name was Santoshi Rai. He has urged them to rectify the same by incorporating his date of birth as 18.3.1951. On consideration of his representation respondents came to the conclusion that while the name of his father could be corrected, date of birth as 18.3.1951 could not be acceded^{to} as the applicant had

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himself given an affidavit at the time of his initial appointment that his correct date of birth was 1.2.1945, which had also been corroborated by the medical authority. Subsequent cancellation of the original date of birth as entered in the service book by the Administrative Officer was irregular as he was not competent to do so and therefore the competent authority ordered restoration of the original date of birth as 1.2.1945. It is aggrieved by this decision of the respondents that the applicant is before this Tribunal seeking a direction to respondents to restore the date of birth as 18.3.1951 as corrected by the respondents on 15.10.1975.

2 Learned counsel for the applicant has contended that the applicant was a semi-literate person; he had studied only upto Class V from the village school in Bihar. At the time of his initial appointment in May, 1974, even though he had submitted an affidavit indicating his date of birth as 1.2.1945, that was so done on the basis of approximation and in order to avail the opportunity of appointment. The applicant however subsequently visited his village to obtain school leaving certificate which has recorded the correct date of birth and submitted the same immediately on his return on 1.6.1975. The counsel has contended that this was within the period of 5 years from the date of his initial appointment and was in accordance with provision of FR 54. To contend that the authority who entered the correct date of birth was not competent to do so and to reject the same after a long lapse of 29 years, the counsel contends, cannot be justified especially in the background of respondents acting arbitrarily without any show cause notice to the applicant. The applicant being a semi-literate person was not aware who was the competent authority to record the change of date of birth and therefore to deprive him of the benefit of his correct date of birth after a long period 29 years to say the least is not only unjust but illegal, the counsel contends.

3 Respondents have contested the OA. They have raised the preliminary objection that the OA is barred by limitation in that it has been contended that since the representation of the applicant had been turned down way back in the year 2002, filing of the present OA long after the period of limitation is bad in law.

4 On merits of the case, the learned counsel has justified the order passed by the respondents contending that at the time of initial appointment on 2.5.1974 respondents ascertained the date of birth from the applicant and had also referred him for a report from the medical authority. As per the affidavit sworn by the applicant, he had indicated his date of birth as 1.2.1945 whereas the medical authority had indicated his date of birth as 1.7.1944 after medical examination of the applicant. The competent authority, however, took a liberal view and going by his affidavit entered his date of birth as 1.2.1945 in the service book, which had also been endorsed and accepted by the applicant. The learned counsel contends that subsequent development of the applicant having gone to his native village and

having obtained school leaving certificate indicating his date of birth and further entry by the authority who was not competent only goes to prove that the entry indeed had been manipulated. Referring to the school leaving certificate on which the applicant primarily placed his reliance, the learned counsel has pointed out that the said certificate, even if it is treated to be true, indicates the date of issue as 2.1.1963. Thus it is obvious that the applicant was in possession of the said certificate ever since 1963 and it has not been explained at any stage as to why he did not refer to the date of birth as indicated in the said certificate at the time of his initial appointment. On the contrary, he had sworn an affidavit indicating the date of birth as 2.1.1945. Pointing out to the contradiction in the stand taken by the applicant, counsel has submitted that while the applicant stated that he went to his village and obtained the certificate from the school, the date of issue belies the same as it was issued in the year 1963 and therefore it has to be presumed that the certificate was in possession of the applicant at the time of his appointment. Under the circumstances, how come the applicant gave an affidavit indicating the date of birth, the counsel questions. There is a difference of 6 years in the date of birth indicated by the applicant in his affidavit and the one recorded in the school leaving certificate. Since the applicant had studied upto Class V it was expected of him to at least remember the approximate year in which he was born. The counsel has therefore contented that whole the claim of the applicant is based on falsity and manipulation. As per GFR 79(2) the action taken by the respondents is legally and fully justified. Mere fact that an incompetent authority has changed the date of birth long back cannot be a ground for restoration of any illegal benefit, which has been conferred on the applicant, and it was therefore not necessary for any show cause notice to be given to the applicant. The order to restore the entry of the date of birth as 1.2.1945 was in keeping with GFR 79(2) and cannot be faulted.

5. I have heard the learned counsel for the parties and considered the pleadings available on record.

6 As has been rightly pointed out by the learned counsel for the respondents, based on the date of issue of the school leaving certificate i.e. 2.1.63, it is abundantly clear that the applicant was in possession of this certificate at the time of his appointment in May, 1974. His contention that he went to his native village to obtain the original school leaving certificate during 1975 is only an afterthought and an attempt of manipulation at a later stage.

7. With regard to the contention raised by the learned counsel for the applicant that the date of birth duly corrected during the year 1975, which remained on record for a long period of 29 years, could not be restored to its original entry, has to be considered in the background of the decision contained in GFR 79(2) which clearly states that "*once recorded, it cannot be altered, except in the case of*

a clerical error, without the previous orders of a Department of the Central Government or an Administrator". The note below endorsed therein states that "Heads of Departments are authorized to exercise the powers delegated to a Department of the Central Government". In the case in hand, cancellation of original entry to which applicant himself had acknowledged in token of its correctness was subsequently cancelled by the Administrative Officer who was clearly not competent to do so. The order of cancellation has to be viewed as not tenable in the eyes of law. There is nothing wrong in the subsequent order of the respondents to restore the original entry for which no show cause notice was required. Even otherwise, when the applicant had himself represented against the decision of the respondents to treat 1.2.1945 as the correct date of birth vide his representation forwarded by the Division of Genetics vide their letter dated 24/29.10.2001 and subsequently, the applicant submitted a second representation dated 25.8.2004, which have been duly considered by the competent authority, it cannot be said that principle of natural justice has not been followed. Since he has already availed the opportunity to state his case through his representation, non-issuance of a show cause notice would in no way prejudice his case.

8. Learned counsel for applicant has referred to the judgment of the Hon'ble Supreme Court in **Union of India v. Harnam Singh**, AIR 1993 SC 1367. By citing this judgment, the learned counsel has tried to draw support that since his corrected date of birth, i.e., 18.3.1951 continued to exist in his service book without any challenge for a long period of 29 years, it was not open for the respondents to change the same.

9. I am afraid that the judgment of the Hon'ble Supreme Court cited by the learned counsel was on a totally different issue. The Apex Court therein was seized with the matter of interpretation to Note 5 to FR 56 (m), which was incorporated in 1979. The Central Administrative Tribunal in that case had held that the period of limitation of five years within which an employee could seek correction in his date of birth was not applicable to those of the employees, who were employed before 1979. It was this matter in which the Hon'ble Apex court held that the classification between servants joining before 1979 and those joining thereafter for applicability of rule was not proper. It would, thus, be seen that the citation offered by the learned counsel for applicant would not render him any assistance since the facts of the case are clearly distinguished. Furthermore, the Hon'ble Apex Court in a catena of judgments have repeatedly held that "*evidence produced subsequently during or after service is of no avail, as applicant himself endorsed service record of date of birth*" (see **State of Orissa v. R. Patnaik**, JT 1997 (4) 660). In the instant case, it is an admitted position that the applicant had sworn an affidavit at the time of his appointment showing his date of birth as 1.2.1945 and had also acknowledged the same after the entry of the same was made in his service record.

Dr. R. K.

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10. In view of the above position, I find no merit in the present OA and the same ^{is} accordingly dismissed. No costs.

S.K. Naik
(S.K. Naik)
Member(A)

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