

CS

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 1105/2004

New Delhi this the 9<sup>th</sup> day of March, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Smt. Bhagwati,  
Widow of Shri Faqir Chand,  
R/O 6/8, Khichripur,  
Delhi-110091

..Applicant

(By Advocate Shri R.K.Shukla)

VERSUS

1. Union of India through  
Comptroller Auditor General of India,  
10, Bahadur Shah Zafar Marg,  
New Delhi-110002
2. The Deputy Director (Administration),  
Commercial Audit, Commercial Audit,  
Board-II, I.P.Bhawan, New Delhi.
3. The Medical Superintendent,  
Institute of Human Behaviour and Allied Sciences,  
G.T.Road Shahdara, Delhi
4. The Deputy Medical Superintendent,  
Hospital for Mental Diseases, I.H.B.A.S.,  
G.T.Road, Shahdara, Delhi.

..Respondents

(By Advocate Shri Madhav Panikar for respondents 1-2)

(By Advocate Shri S.D.Singh, for respondents 3-4 )

ORDER (ORAL)

Applicant has challenged the order dated 5/6/7/1995 whereby she was informed that no corrections to her date of birth are considered in the Service Book which has been challenged by the applicant in the present OA. It is submitted by the applicant that she had initially filed OA 1279/1994 for correction of date of birth, which was disposed of vide order dated 8.2.1995 by giving direction to Deputy Director (Admn.) Office of the Director of Commercial Audit, New Delhi to cause a detailed enquiry to be made to



20

ascertain the applicant's date of birth in the background of a certificate dated 1.8.1994 issued by the Institution of Human Behaviour and Allied Sciences (IHBAS), G.T.Road, Shahdara, Delhi, certifying that the applicant's date of birth is 20.7.1950 as per their records. It was further observed that in the event respondent No.2 finds that applicant's date of birth, in fact is 20.7.1950 and not 1.7.1934, necessary corrections should be made in the applicant's service book maintained in the office of the Respondent No.2.

2. It is submitted by the counsel for the applicant that since respondents were directed to carry out the enquiry keeping in view the certificate dated 1.8.1994 issued by the IHBAS, her request could not have been rejected by a non speaking order as it is not clear whether any enquiry was made, as directed by the Tribunal.

3. Counsel for the applicant submitted that applicant had given her affidavit showing her date of birth to be 20.7.1950 whereas in the Service Book it has been wrongly shown as 1.7.1934. Therefore, the same should have been corrected in view of the various representations given by the applicant. In support of her contention, applicant has relied on the certificate dated 1.8.1991 alleged to have been issued by the IHBAS ( page 18) as well as the representations dated 18.11.1992, 18.5.1994 and 21.10.1997 etc.

4. O.A is opposed by the respondents. Respondents 3 and 4 i.e. IHBAS, Shahdara have filed separate counter affidavit wherein they have stated that Hospital for Mental Diseases (HMD) was converted into the Institute of Human Behaviour and Allied Sciences by an order of the Hon'ble Supreme Court in the year, 1991. Thereafter it became an autonomous body under the Government of NCT of Delhi. Therefore, all the staff working in the Hospital for Mental Diseases were transferred and repatriated in Govt. of NCT of Delhi along with their personal files etc. Therefore, no record of the earlier employees of HMD is available with the Institute. They have thus submitted that the Institute is not in a position to comment on the documents which have been relied upon by the applicant in the present matter, particularly when original document has not



- 3 -

(5)

been filed by the applicant containing the signature of the officers of the replying respondents. They have further submitted that as per the applicant's own averment she had resigned from the service of HMD on 8.10.1984. Therefore, the document relied upon by her stated to have been issued on 1.8.1991 cannot be commented upon without the availability of original document. They have thus prayed that they should be deleted from the array of parties as they have unnecessarily been impleaded as respondents in the present case.

5. Respondents No.1 and 2 have filed separate counter affidavits. They have stated that as per the directions given by the Tribunal, the matter was looked into and necessary clarification regarding the date of birth of the applicant was called for from respondent No.3 vide letter dated 6.3.1995. It was only after repeated reminders, necessary documents were received from them on 13.5.1995. Accordingly, the order dated 5/6.7.95 was passed. They have submitted that the applicant concealed the material facts regarding her mental disturbance and also her existing service in IHBAS at the time of accepting the appointment in this office which makes her liable to be dealt with departmentally under the CCS (CCA) Rules. They have further submitted that the OA is barred by limitation and it should be dismissed on this ground alone.

6. They have submitted that applicant had resigned from her services on 15.5.1985 i.e after joining the office of the Pr.DCA and ex-officio MAB II ( copy of the office order dated 29.7.1985 of IHBAS regarding resignation acceptance w.e.f. 8.10.1984 is enclosed) They have further given document at Annexure 3 in support of resignation acceptance which is manipulated for misleading court as the order No. and date of issue of the original letter differs from the letter as enclosed with the OA. Copy of original resignation acceptance letter is enclosed as Annexure A 1. They have further submitted that the date of birth in the service record was recorded as per the affidavit given by the applicant herself. Further her representation dated 18.11.1992 regarding correction of

S

date of birth was rejected by C&AG's office on 3.12.1993. Further representations in this regard were not forwarded to C&AG's Office submitted by the applicant which was duly conveyed to applicant vide letter dated 31.3.1994. They have further explained that at the time of appointment of the applicant, she had submitted an affidavit regarding her date of birth stating therein specially that her date of birth is 1.7.1934 and even as per the nomination for DCRG given by her late husband against a column of date of birth her age has been shown as 38 years. Thus her year of birth comes to 1934. The order dated 5/6.7.95 was issued by the O/O the PDCA and MAB-II because the applicant has not only concealed the material facts regarding her mental disturbance but also about her then existing service in IHBAS at the time of accepting the appointment in the office as has been stated above. They have thus prayed that the OA may be dismissed with heavy costs.

7. I have heard the counsel for the parties and perused the pleadings as well. Perusal of the annexures filed by the respondents clearly show that all efforts were made by the respondents to verify the facts as directed by this Tribunal vide its order dated 8.2.1995 inasmuch as they wrote a letter to the IHBAS, G.T Road, Shahdara and received the document from them which shows that, in fact, on the date, applicant joined with respondents 1 and 2 she was already in service with the Hospital of Mental Diseases. Therefore, it was in that context that respondents in their order dated 5/6.7.1995 have stated that she had in fact suppressed these material facts from the respondents at the time of taking appointment with them.

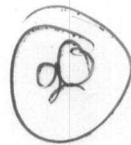
8. As far as her request to change her date of birth from 1.7.1934 to 20.7.1950 it is seen that at the time of joining the service with respondents 1 and 2 applicant had herself given her affidavit to the authorities wherein she had stated specifically that her date of birth is 1.7.1934 ( page 91). Accordingly in the service book maintained by respondents also applicant's date of birth is shown to be 1.7.1934 which is duly signed by the



applicant therefore, it is not open to her to now state that her date of birth is 20.7.1950. She had joined the services with the respondents in 1985 and as per the records maintained by respondents the date of birth was 1.7.1934. So naturally the respondents had to treat the date of birth as 1.7.1934. She had accordingly retired on attaining the age of superannuation. She had filed earlier OA also only in the year 1994 i.e. at the time when she was due for retirement. Hon'ble Supreme Court has held in the case of **Hindustan Lever Limited. Vs. S.M.Jadhav & another** reported in JT 2001(4) SC 129) that an employee cannot raise dispute regarding his date of birth at the fag end of his career. Similar view has been taken by the Hon'ble Supreme Court in the case of **State of UP and others Vs. Gulaichi (Smt).** reported in 2003(1) L&S page 908 wherein it was reiterated that if as employee seeks correction in the date of birth at the verge of retirement, The Courts/Tribunal should not normally entertain petition filed by the employee concerned for extension of age of retirement on the basis of such correction. It was further held that onus is on the employee to prove by adducing evidence regarding wrong recording of date of birth. In the said case since service book was signed by the respondent it was held that it cannot be said to be recorded wrongly. The present case before us is fully covered by the judgements referred to above as in the present case also not only the applicant had given an affidavit at the time of appointment showing her date of birth to be 1.7.1934 but she had also signed the service book wherein her date of birth was shown as 1.7.1934 which would clearly show that she was aware about the recording of the date of birth to be 1.7.1934 even at the time of her appointment with respondent No.1 and 2. No efforts were made by the applicant to seek change in date of birth all these years. First OA was filed only in the year 1994. Her request was, therefore, rightly rejected by the respondents keeping in view the various judgements given by Hon'ble Supreme Court on the question of change of date of birth.

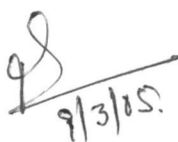
8





9. Even otherwise, in the present case it is seen that even now applicant has not placed on record any authentic certificate issued by any School to show that her date of birth was 20.7.1950 or any certificate issued by the Corporation to show that her date of birth was 20.7.1950. On the contrary she has merely relied on a certificate stated to have been issued by the IHBAS on 1.8.1991 whereas she had resigned from Hospital of Mental Diseases way back in 1985 itself. Thereafter the institute of IHBAS came into being which is an autonomous body and all the original records of the earlier employees were transferred to the Govt. of NCT of Delhi. Accordingly, IHBAS has certified that after 1991 no records of earlier employees were kept with them. Therefore, the authenticity of this certificate stated to have been issued on 1.8.1991 by IHBAS itself becomes doubtful as neither the applicant was an employee of institute of IHBAS nor they had the personal file of the applicant as has been stated by the officers of respondents 3 and 4 in their counter affidavit. The respondents have, therefore, rightly stated that there is nothing on record to show that her actual date of birth is 20.7.1950 as claimed by the applicant. In this view of the matter, I find no good ground to interfere with the order passed by the respondents. However, since applicant has already retired, it is observed that no action may be taken against her as suggested in para No. 2 of Memo. dated 5/6.7.1995.

10. In view of the above discussions, this OA stands disposed of with no order as costs.

  
9/3/05.

( Mrs. Meera Chhibber )  
Member (J)

sk