

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Decision: 03.02.93.

OA 837/92

MADAN MOHAN RAWAL

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

HON'BLE SHRI C.J. ROY, MEMBER (J).

For the Applicant

... SHRI SANT LAL.

For the Respondents

... NONE.

J U D G E M E N T (ORAL)

(DELIVERED BY HON'BLE SHRI C.J. ROY, MEMBER (J).)

Heard the learned counsel for the applicant. This is a case filed by the applicant under Section 19 of the Administrative Tribunals Act (13 of 1985) to quash the impugned order of transfer or the in alternative to direct the respondents to dispose of the representation made by the applicant on 13.11.91 (Annexure A-7).

2. The brief facts of the case are that the applicant joined Government service as Junior Engineer in Delhi Telephones on 30.4.1974 and he was appointed as Assistant Director in the Central Electricity Authority under the Ministry of Energy (Department of Power) New Delhi w.e.f. 18.9.1975. He alleges that his date of birth was actually 5.8.1951 but it is entered in the service record as

15.8.1950. The records/papers were found out later by the applicant at home, and learnt that his actual date of birth is 5.8.1951. Thereafter he made representation to the respondents on 13.11.91 (Annexure A-7). He also filed a Special Certificate of Birth, issued by the Municipal Corporation Delhi (Annexure A-4).

3. The respondents have filed counter stating that his date of birth was recorded in the service register on the basis of his Higher Secondary School Certificate. They admit that his request was supported by a Special Certificate of Birth, issued by the Municipal Corporation of Delhi. But they rejected his representation on 7.4.88 on the ground that he has not made the request for alteration of his date of birth within five years of his entry into the Government service and that authentic evidence has not been produced to establish that a bonafide mistake has occurred in entering the date of birth. They also aver that the applicant has filed another representation, which was also rejected on 28.4.1991. They further allege that he has also made another request dated 13.11.91 and he was suitably replied on 11.12.91. They have stated that Special Certificate of Birth does not contain the date, month and year of issue, and page-2 of the Certificate is not completely filled up. The Certificate does not contain any date even below the signature of issuing authority.

4. They have also quote FR-56-Note 5 for support of their rejection stating that an alteration in the date of birth of a Government servant can be made at a later stage only with the sanction of a Ministry or Department of the Central Government or an administration of a Union Territory under which the Government servant is serving, if it is established that a bona fide clerical mistake has been committed in recording the date of birth in the Service Book.

5. Note 5 of FR-56 has come into force w.e.f. 5.4.1975 and an amendment was also issued w.e.f. 15.12.1979, which is reproduced below:-

FR-56-Note 5: "The date on which Government servant attains the age of fifty eight years or sixty years as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of his appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as Matriculation Certificate or extracts from Birth Register.

The date of birth so declared by a Governmentt servant and accepted by appropriate authority shall not be subject to any alteration after the preparation of his service book and in any event, after the completion of probation period or declaration of quasi-permanency, whichever is earlier. An alteration in the date of birth of a Government servant can be made at a later stage only with the sanction of a Ministry or Department of the Central Government or an administration of a Unior Territory under which the Government servant is serving, if it is established that a bonafide clerical mistake has been committed in recording the date of birth in the Service Book".

6. I have heard the learned counsel for the applicant and have gone through the records. The first point I have to

discus and decide that whether FR-56-Note 5 is applicable in the case of the applicant or not. Note 5 of FR-56 has come into force w.e.f. 5.4.75 and an amendment was also issued w.e.f. 15.12.79 and the applicant's case is prior to that. So that notification is prospective in its operation. Therefore, it is clear FR-56-Note 5 cannot be applied retrospectively to the case of the applicant, whose date of appointment is 30.4.74. Under the circumstances, the objection raised by the respondents is not tenable and the same is rejected. Learned brother Mr. J.P. Sharma, Member (J), has already condoned the delay in filing the application in MP 904/92. Annexure A-4 contains the Registration No.1809 and Date of Registration is 7.8.51 and date of birth shown is 5.8.51. This Certificate is a Xerox copy, the original is not produced. In the writ jurisdiction this detailed enquiry need not be made.

7. I, therefore, direct the respondents to hold an inquiry after calling for the original records from the Municipal Corporation regarding Annexure A-4 and pass orders as per law on merits. This exercise may be carried out within a period of three months from the date of receipt of a copy of this order.

8. With this direction this application is disposed of without costs.

hsh
(C.J. ROY)
MEMBER (J)
03.02.93