

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

199

O.A.NO. 1421/93.

DATE OF DECISION 12.8.1993SHRI K.C. TYAGI,

Petitioner

SHRI B.S. MAINEE,

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & OTHERS

Respondent

SHRI B.K. AGGARWAL,

Advocate for the Respondent(s)

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The Hon'ble Mr. B.S. Hegde, Member (Judicial).

The Hon'ble Mr.

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. Whether it needs to be circulated to other Benches of the Tribunal?

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[Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial)]

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved with the impugned order dated 12.5.1993 (Annexure A-1) and seeks direction to the Department not to retire him till his superannuation which is on 31.7.1995 as per the date of birth recorded in his service book at the time of his



appointment and to quash the impugned order.

2. The applicant was appointed as a Loco Cleaner on 5.4.1958 and at the time of appointment, the respondents had recorded the date of birth of the applicant in service record as 20.7.1937 on the basis of the documents produced by the applicant in accordance with the rules.

3. The short point for consideration is whether the respondents can unilaterally alter the date of birth without issuing a show-cause notice to the applicant concerned as it was done in this case. The Learned Counsel for the applicant, Shri B.S. Mainee, draws my attention in support of his contention stating that the date of birth was recorded as 20.7.1937 and adduced various documents i.e. Annexures A-2 to A-4 wherein the date of birth stated to be mentioned as 20.7.1937. He further urged that the seniority list furnished by the respondents in the year 1983 was neither shown to him nor supplied to the applicant.

4. The respondents, in their reply, conceded, that the original service book and the personal file of the applicant were not traceable in the Divisional Office.

Therefore, in the year 1989 the respondents directed

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the applicant to file an affidavit declaring his date of birth. The applicant gave the same date of birth as was given by him at the time of his appointment i.e. 20.7.1937. The file was reconstructed and the enquiry was held at his back and collected the alleged original High School Certificate where the applicant had studied and relied upon the date of birth entered in the seniority list and accordingly issued a charge-sheet on 8.12.1992. Though the Inquiry Officer was appointed to go into the matter further regular enquiry had not been completed. The applicant denied the contention of the Respondents alleging that the applicant's matriculation certificate has been tampered with. It is not the case of the respondents that the applicant has sought for the date of birth what was given at the time of his appointment. Whatever date of birth was given at the time of his appointment, he continued to state the same till his date of birth was altered unilaterally by the respondents without giving him any show cause notice or associating him at the time of processing of alteration.

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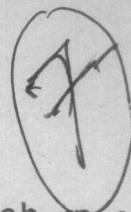
5. The/counsel for the applicant relied upon the decision rendered by the Supreme Court in Binapani Dei & Others versus State of Orissa's case/AIR 1967 SC 1269_7

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wherein it was held that the respondents had not issued any show-cause notice and altered the date of birth to the detriment of the applicant without any enquiry, which is against the principles of natural justice. In the instant case, the applicant has not been given any show cause notice while altering the date of birth and there is nothing to show on record that the seniority list had been published or intimated to the applicant concerned. It is also not disputed that the entire service record had been reconstructed in the year 1989 and the respondents entirely relied upon the date of birth entered in the seniority list issued by them. It has come on record that the applicant had not received the seniority list and he is unaware of the same. The contention of the applicant is that the alleged seniority list issued in the year 1983 is not based on record. It is a well-settled principle that the authority cannot alter the date of birth unilaterally without giving an opportunity to the aggrieved person. The courts have uniformly laid down that the change of date of birth of an

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employee involve civil consequences. Such an order to the prejudice of the employee can be made only after an inquiry is made in which the employee is given adequate opportunity to set up his defence and to correct or controvert the evidence which is being relied upon against him. If a unilateral determination of the age of the employee such an order is likely to be quashed by the Court of Law.

Even the charge-sheet was issued after a lapse of three years though the respondents have allegedly in the know of things as the applicant had given a wrong declaration in the year, 1989

6. Recently, Supreme Court in the case of UOI, Vs Harnam Singh [JT 1993(3)SC 311] held that it is not open to the aggrieved person to change the date of birth after lapse of many years which is inordinate and unexplained delay. When such is the case, notice to retire the applicant from service with effect from 12.5.1993 does not appear to be in consonance with the relevant

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procedure because the date of birth as recorded in the service records which is stated to have been misplaced by the respondents in their office and the entire service record was re-constructed in the year 1989 and alter the date of birth at his back without any intimation or show-cause notice before doing so. In the instant case, the applicant never sought the change of Date of birth and throughout he gave the same date of birth as was given at the time of appointment. Hence it is not the case of the Respondents that Date of Birth was required to be done at the instance of the applicant.

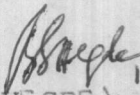
7. In the circumstances, I hold that the act of the respondents in issuing show-cause notice to retire the applicant without holding any enquiry is not based on record and changing his date of birth after a long time is not only arbitrary but causes undue prejudice to the applicant's interest losing his valid service

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till his superannuation. I am satisfied that the applicant has made out a justifiable case in allowing him to continue in service on the basis of the original date of birth declared by him till superannuation. Accordingly, I am of the view, that the letter of the respondents dated 12.5.1993 requires to be quashed. The same is accordingly set aside and quashed. I further direct the respondents not to give effect to the order dated 12.5.1993 and allow the applicant to retire on the basis of the date of birth declared by him at the time of his appointment i.e. 20.7.1937.

8. The O.A. is disposed of as above with no order as to costs.

 12/8/93
(B.S. HEGDE)
MEMBER(J)