

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1584/93

New Delhi this 25th day of February 1994

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. A.K. Singh, Member (J)

Shri Manmohan Singh,
son of Late Shri Sardar Singh,
Resident of House No. 19/1341

(By Advocate : Shri B.L. Chawla) ... Applicant

Versus

1. The Secretary to the Govt. of India,
Ministry of Foreign Trade,
Udyog Bhavan,
New Delhi.

2. The Director General Foreign Trade,
Ministry of Foreign Trade,
Udyog Bhavan,
New Delhi.

3. The Joint Director General Foreign Trade,
Central Licensing Area, Asaf Ali Road,
New Delhi. ... Respondents

(By Shri P.P. Khurana, with Shri George
Paricken)

O R D E R (Oral)

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

The applicant has filed this application aggrieved by the action of the respondents in superannuating him on 31.8.1993 on the basis of the date of birth as 1.9.1935. After making representation he filed the present application on 26.7.1993 and prayed for the grant of the relief that the communication by the order dated 25.1.1993 regarding his date of superannuation as 31.8.1993 be quashed and the respondents be directed to correct the date of birth in the service record recorded on the basis of matriculation certificate i.e 1.10.1937 and he should be made to superannuate on 30.9.1995.

-: 2 :-

2. A notice was issued to the respondents who contested and stated that the Date of birth in the service record of the applicant is 1.9.1935. The applicant had requested for the change of Date of Birth in October 1988 on the basis of matriculation certificate issued by the University of Punjab dated 14.5.1955 in which the Date of Birth is shown as 1.10.1937. Firstly it is contended that under amended FR 56(5) the applicant should have approached for correction of Date of Birth within a period of 5 years from the date of joining the service and when he has not done so he cannot come after such a long time. The second contention is that the applicant was asked to explain regarding the discrepancy in Date of Birth as given by him at the time of his appointment as a Packer in GPO, Delhi and further what has been given in the Matriculation Certificate. The applicant replied by the letter dated 24.2.1989 stated that he is pursuing the matter to get the details (Annexure II). In August 1993 the applicant was informed that his prayer cannot be acceded to.

3. The applicant has also filed rejoinder reiterating the same facts as averred in the application.

4. I have heard the learned counsel for the respondents at different sittings of this Bench and the respondents were directed to place the record which has come before us today. The learned counsel for the applicant has also been shown the relevant record and he has consulted the applicant also regarding his signatures on the service sheet. The contention of the learned counsel for the applicant is that he was unaware

-: 3 :-

of the recorded Date of Birth till he learnt on the first seniority list in 1986 wherein one of the columns the Date of Birth was shown as 1.9.1933 another seniority list was issued in March 1988 in which the Date of Birth was shown as 1.9.1935 against the entry of the Date of Birth in the earlier seniority list the applicant made a representation in May 1986 and against the subsequent seniority list he made a representation in March 1988. The learned counsel argued that the Date of Birth recorded in the Matriculation Certificate has to be taken as the correct Date of Birth. This is also in the O.M. Issued by the Dept. of Personnel & Training. The respondents, therefore, cannot give an imaginary Date of Birth as when he got appointment through the Employment Exchange the applicant did not have the Matriculation Certificate nor he has given any details of his Date of Birth. Subsequently when he joined as LDC with the respondents on 6.12.1956 he has given the copy of the High School Certificate but the respondents did not make correct entry in his service record. The learned counsel of the applicant, therefore, argued that the Date of Birth be corrected from the recorded Date of Birth 1.9.1935 to correct Date of Birth 1.10.1937.

5. I have considered the arguments but I am not swayed to accept them on the ground that the applicant himself why he joined as Packer on 21.12.1954 under Government of India in the Postal Department gave his Date of Birth under his signatures as 1.9.1935. Normally, this should have been authenticated by a document but at that time the applicant obviously was not matriculate. In the absence of the document the Date of Birth has been recorded with verification. The

J
d

-: 4 :-

applicant, therefore, who knows English and writes legibly in good hand cannot plead ignorance of the recorded Date of Birth. The contention of the learned counsel that in the seniority list the Date of Birth was shown from which the applicant learnt about the incorrect entry cannot be accepted.

6. Secondly I find that when a person has already taken benefit of a given Date of Birth and got employment representing that he is major, he cannot subsequently claim another Date of Birth though this may be correct and may be based on a Matriculation Certificate, because he has earned benefit of the given Date of Birth for seeking employment which otherwise he could not have got. The applicant admittedly on the basis of Date of Birth 1.10.1937 was only 17 years and few months and was under 18 years of age which is eligibility age for Government Servant. The applicant therefore cannot now say that the earlier Date of Birth was not the Date of Birth given by him at the time when he was employed as a Packer in December, 1954.

7. The applicant has also signed the service record in 1962 besides having signed it earlier in 1955. Incidentally, these signatures are just below the column where Date of Birth 1.9.1935 is written. The learned counsel for the respondents pointed out that he has also signed on the second part of the Service Book. In view of this the credibility cannot be attached to the averments made in the application, that applicant has not given his Date of Birth correctly or that the Date of Birth recorded in Matriculation Certificate is correct. The respondents are not bound by the

-: 5 :-

entry of Date of Birth in the Matriculation Certificate.

The applicant has passed that examination after joining

service. It was open to the applicant while living

at Delhi to pass examination from Punjab University

by giving any Date of Birth. No horoscope or any

affidavit of the parents if alive or any member of the

family who had occasion to be present at the time of

birth of the applicant is filed. When two different

versions are coming then the other version which

is supported by the service record is to be accepted.

The contention of the respondents that the applicant

should have moved for correction of Date of Birth within

5 years of joining service also holds ground because

FR 56(5) has been amended in 1979 which debars the

employee to move for correction of Date of Birth after

5 years. This has been upheld by the Hon'ble Supreme

Court ~~Hira Lal~~ vs. Union of India, 1993⁴ATC p 92.

In view of the above facts and circumstances the

application is devoid of merit and therefore is

dismissed.

J. Sharma

(J.P. Sharma)
Member (J)

Mittal