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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(11)

OA No.166/93

Date of decision: 04.08.1993.

Shri Behari Lal

...Petitioner

Versus

Union of India through the
Secretary, Ministry of
Agriculture, New Delhi
and Another

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr.B.S. Hegde, Member (J)

For the petitioner

Shri B.B. Raval, Counsel.

For the respondents

Shri Manoj Chatterji, Counsel.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

We have heard the learned counsel for both the parties. The case of the petitioner is that he was appointed as a Mason in the Indian Agricultural Research Institute (IARI) after he was sponsored by the Employment Exchange vide order dated 22.2.1966 w.e.f 31.1.1966. He had declared his date of birth on affidavit as 4.3.1940. This date of birth had been entered in the service roll of the petitioner both thus "4th March 1940 (4-3-1940)" (page 35 of the paperbook). The service roll was reviewed by the respondents on three occasions viz. 25.2.1972, 31.8.1979 and on 12.5.1982 respectively when the particulars entered therein were verified. No question was raised about the veracity of the date of birth as recorded in the service roll. The respondents issued a seniority list vide endorsement dated 23.4.1983 of Masons/Mistries in category-I as on 1.3.1983 (page 37 of the paperbook). In

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the said seniority list the date of birth (correctly put only year of birth as no date was indicated) of the petitioner was shown as 1933 instead of 4.3.1940. The petitioner submitted a representation against the changed date of birth as recorded in the seniority list of 15.4.1983. From the inter office memo dated 17.9.83, a copy of which was endorsed to the petitioner (page 37 of the paperbook), it is seen that the Administrative Officer of the IARI asserted that the date of birth of the petitioner was 1933 and not 4.3.1940. He submitted another representation on 2.11.1983 which was responded by the respondents vide memo dated 28.7.1992. The petitioner was informed that although he had made a request for change of date of birth from January, 1933 to 4.3.1940 but he failed to submit a school leaving certificate for the 5th class which he allegedly has passed in accordance with the direction of the respondents. It was further stated therein that "The records have been checked and it has been seen that Shri Behari Lal had been indicating that he is 5th class pass not only in his bio-data for Technical personnel but also in two of his Assessment forms for the year ending 1976 and 1981 (photostate copy of each is enclosed for ready reference). It is apparent that he had been misleading and giving false information and changed his statement to suit the requirement. Shri Behari Lal is, therefore, asked to explain as to why disciplinary action should not be taken against him for giving false information/supersession of the factual information. It is only when he was asked to submit the school leaving certificate that he has changed the statement of being illiterate. His explanation should reach this office within seven days of the issue of this letter failing which further action, as per rules, will be taken against him." The petitioner submitted his explanation on 17.8.1992 in which he reiterated that he is an illiterate person and that he had never asked for change of date of birth nor

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claimed that he is 5th clas pass. He further submitted that bio data for the technical personnel and assessment forms for the year 1976 and 1981 were filled by the office as he did not know any language and was not capable of filling up these forms. He, therefore, asserted that he had neither possessed any educational qualification certificate nor filled up the forms adverted to above. He also referred to his earlier representation reiterating that his date of birth was 4.3.1940. On receipt of this representation the respondents shifted their stand and issued a memorandum dated 9.9.1992, directing him to undergo medical examination in Dr. Ram Manohar Lohia Hospital, New Delhi. The Chief Medical Officer of the said hospital was asked to give a report within a week. The purpose of the medical examination was to determine the exact age of the petitioner. The medical authority remarked on the memorandum itself to the effect "It is not possible after 21 years" (page 41 of the paperbook). The concerned medical authority thus conveyed the position that once the bone formation of a person is complete on attaining the age of 21 years it is not possible to determine the age of a person by subjecting him to medical examination. The petitioner also submitted a representation on 15.9.1992, stating that he attended Dr. Ram Manohar Lohia Hospital on 14.9.1992 and that the comments of the concerned Doctor were available on the enclosed memo.

2. Shri B.B. Raval, learned counsel for the petitioner submitted that the date of birth was changed by the respondents unilaterally and without any basis. Neither the petitioner had made any request for change of date of birth nor was there any document which would have propelled the respondents to make any change in his date of birth. He, therefore, submitted that change of date of birth is not legally sustainable and the respondents order dated 30.12.1992 requires to be set aside and quashed. It was

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further brought to our notice that when the matter had come up for admission on 21.2.1993, notice was issued on interim relief. After hearing the respondents on 29.1.1993 an interim order was granted by the Tribunal to the effect that the impugned office order dated 30.12.1992, notifying the date of superannuation of the petitioner as the afternoon of 31.1.93 shall remain stayed." The petitioner accordingly is continuing in service and has not been retired on 31.1.1993 in terms of the impugned office order.

3. Shri Manoj Chatterji, learned counsel for the respondents referred us to the MP filed by him under diary No.3954 on 4.5.1993 enclosing certain documents in support of the case of the respondents. The most significant document is an office note recorded on 9.2.1966. Paragraph-2 of the said note states that Shri Behari Lal was over age for appointment in IARI at the time of entry in service. The Director of IARI, however, gave him relaxation of age by three years. Thereafter the respondents issued an office order dated 22.2.1966, communicating the sanction of the Director, IARI regarding the age relaxation in terms of Finance Department's Regulation No.205 CSIR dated April, 1984. The learned counsel for the respondents submitted that the three years age relaxation means that the petitioner was appointed in service at the age of 33 years. The normal age of recruitment is 25 years. Five years' concession was allowed, as the petitioner belongs to scheduled caste. A further relaxation of three years' was given to him under special sanction. Having regard to these facts the respondents worked out that his date of birth should be in 1933 and not as declared by him in the affidavit and as entered in the service roll. The respondents have no other material to indicate a different date of birth than what is recorded in the service roll.

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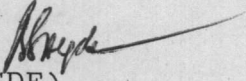
4. We have considered the submissions made by the learned counsel for both the parties. There is no dispute that the petitioner joined the service in 1966 and the matter of date of birth was raked up only after about two decades from the date he joined the service. It is also not disputed that the date of birth recorded in the office record is 4.3.1940. Admittedly the service roll of the petitioner was verified by the respondents on three occasions and the date of birth as recorded was not questioned. In fact it was accepted. The Supreme Court in Union of India v. Harnam Singh JT 1993 (3) SC 711 has held that "Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him." Harnam Singh (supra) is a case where the petitioner was seeking change in the date of birth after two and a half decades. Their Lordships refused to entertain the request and set aside the order of the Central Administrative Tribunal according to which he was given the benefit at later date of time on the ground of inordinate and unexplained delay or laches. The same principle would be applicable to the respondents in this case. Once the date of birth is entered in the office record and accepted, there is no reason to change it unless the proper procedure is followed. If the respondents suspected that the records have been tampered with or misplaced with the connivance of the petitioner, as alleged by the learned counsel for the respondents, the ^{petitioner} should have been taken up under the relevant rules. It is obvious from the facts of the case that the petitioner's explanation was initially called but after he submitted the representation, the contemplated action was not pursued. The learned counsel for the respondents at this stage pointed out that a seniority list was issued in 1976 indicating the revised date but the petitioner had not raised any objection. That does not help the respondents, as the date of birth has been specifically

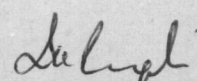
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recorded in the service records on the basis of the declaration given by the petitioner on an affidavit. If the respondents wanted to change the date of birth they ought to have given him a show cause notice before taking any precipitate action. They failed to do so.

5. In view of the above facts and circumstances we do not see any reason to not to grant the relief prayed for by the petitioner. There is no material on record or produced before us that would justify the unilateral action of the respondents. Accordingly the impugned order dated 30.12.1992 is set aside and quashed. There are no justifiable grounds to alter the date of birth from 4.3.1940 as recorded in the service record to an earlier date. The respondents are restrained from doing so. The petitioner shall be allowed to function in the post held by him till he attains the age of superannuation with respect to the date of birth 4.3.1940, as recorded in the service roll.

6. The O.A. is disposed of as above. No costs.


(B.S. HEGDE)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

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