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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No. 530/93
T.A.No.

199

DATE OF DECISION 22-09-1993

Sh. Joginder Poddar Applicant(s)

Versus.

Union of India & ors. Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? *yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(S)
(S.K. DHAON)
VICE-CHAIRMAN(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.530/93

Date of decision: 22-09-93

Shri Joginder Poddar

... Petitioner

vs.

Union of India through
Secretary
Ministry of Agriculture,
New Delhi & ors.

.. Respondents

For the petitioner .. Sh.B.B.Raval, Counsel.

For the Respondents .. Sh.Manoj Chatterjee, Counsel.

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THE HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
THE HON'BLE MR.S.R.ADIGE, MEMBER(A)

JUDGEMENT

(BY HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN)

On 31.12.1992, the Chief Administrative Officer of the Indian Agricultural Research Institute (hereinafter referred to as the Institute) passed an order that since the petitioner retired from service on 30.6.1991 he would stand relieved with effect from the afternoon of 31.12.1992 and the recovery and adjustment of dues for the excess period of service rendered by him will be regulated as per Rule 71 of the Central Civil Services(Pension) Rules. On 23.1.1993, the Assistant Administrative Officer in continuation of the said order dated 31.12.1992, issued a memorandum directing the petitioner to vacate quarter No.461 Type-II(KK) forthwith failing which eviction proceedings under the Public Premises Act, 1971 would be initiated. The order dated 31.12.1992 and the memorandum dated 23.1.1993 are being impugned in the present OA.

2. According to the petitioner, he was born on 5.6.1931 whereas according to the respondents his date of birth is 16.6.1936.

3. The material averments in the OA are these.
The petitioner joined as a Work-shop Mate on 23.9.1953.

While joining service he was not required to fill up any form or sign any document as such he is not aware whether his date of birth was recorded in any document. While working as Work-shop Mate he applied for and was granted permission by the respondents to study and appear privately for the Matriculation examination of the Punjab University. He passed the said examination in the year 1960. The certificate issued to him recorded his date of birth as 16.6.1936. The respondents sponsored the petitioner to undergo a certificate training at the Pusa Industrial Training Institute and he passed an examination held by that Institute on 2.7.1962. While sponsoring his candidature to the said Institute, the respondents themselves had given out that his date of birth was 16.6.1936. After receipt of the Matriculation certificate on 23.6.1960, he submitted the same to the respondents for entering his educational qualification into his service record. The respondents took note of the said fact and returned the certificate to the petitioner. In that certificate his date of birth was recorded as 16.6.1936. The petitioner was summoned a few days before 31.12.1992 by Shri A.K.Chaturvedi, Chief Administrative Officer (Respondent No.3), who informed him(the petitioner) that since his date of birth is recorded as 5.6.1931, he should have retired in June 1991. However, he continued to hold the post on the basis of altered date of birth(16.6.1936). Shri Chaturvedi demanded a substantial amount from the petitioner as "quid pro quo" for being permitted to continue in service but the petitioner refused to oblige him. After 31.12.1992, the petitioner submitted a series of representations.

4. A counter-affidavit has been filed on behalf of the respondents by Dr.S.K.Sinha, Director of

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the Institute in his capacity as the Administrative head. The material averments in the affidavit are these. The petitioner worked as a daily paid labourer with the respondents from 1950 till 1953. He could not be recruited as daily paid labourer if his date of birth really was 16.6.1936 as he would have been only 14 years old. The petitioner did not produce a school leaving certificate at the time of his initial appointment. He himself gave his date of birth as 5.6.1931, the date entered in the original service record. He never asked for a change/modification in the same and there is no order to that effect. In the absence of any such order for correction, the date of birth as claimed now by him, cannot be acceded to and is devoid of any merit. If the petitioner's date of birth is considered to be 16.6.1936, he would retire from service in the year 1996 thereby putting in more than 42 years of regular service. Thus he would be crossing the limit of effective service which he can legally render to the respondents. The petitioner was considered as one of the departmental candidates for the post of Work-shop Filtermate when he was working as a casual labourer and daily paid labourer. The vacancy of the Work-shop Filtermate arose in 1953. His name was in the list of departmental candidates and ^{he} was also recommended to be called for the trade test and interview. The petitioner, while applying for this post, had himself in his own handwriting in English written letters/representations where he clearly indicated his age. The declaration of age by the petitioner in those letters/representations indicated that he was born in 1931. The petitioner was registered with the Employment Exchange during the period when he was

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working as a daily paid worker and had produced the registration number before the respondent-Institute as T/8325/52. Since the Employment Exchange did not register the name of a person below 18 years of age it should be presumed that the petitioner had attained that age. The medical report signed/ issued by the Civil Surgeon on 20.8.1964 clearly shows that the date of birth of the petitioner was 5.6.1931 which had been signed by the petitioner himself and counter-signed by the then Head of the Agricultural Engineering Department of the respondents. The petitioner has set up a false and fictitious claim. The date of birth of the petitioner continued to be 5.6.1931 all through without any objection from him. "However, it appears that by influencing someone the applicant without any request, permission from proper authority as well as without a proper order managed to alter the date which cannot be relied upon." The alteration of the date of birth in the service book, if at all made by any person of the Institute, had been made without any knowledge and permission of the competent authority and there is neither any request nor representation nor any order to that effect. As soon as Respondent No.3 was apprised of the gross manipulation in the date of birth of the petitioner, he alongwith other responsible officers called the petitioner and enquired from him about the school leaving certificate. The school leaving certificate shown to them by the petitioner bore overwriting in the column relating to the date of birth. The respondents, while scrutinising certain record, lay their hands on the record of the petitioner and found that his date of birth had been manipulated and changed ^{into} / 1936 from 1931 without any sanction and approval of the proper authority.

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5. Annexure R-1 to the counter-affidavit is an order dated 4.3.1953 passed by and on behalf of the Head of the Division of Agricultural Engineering. By it, he directed that certain candidates be called for interview/test. It also recites that the departmental persons who have applied for the post mentioned against them, may be allowed to be trade tested alongwith those called through the Employment Exchange. At Sl.No.11, the petitioner's name is to be found. It indicates that he had applied for the post of Fitter Mate. Annexed to Annexure R-1 is a photostat copy of a document showing therein that the petitioner was appointed on 16.6.1950 as a daily rate labour. His registration number was T/8325/52. Annexure R-2 is a photostat copy of the application dated 21.2.1953 given by the petitioner to the Head A.E. of the Institute. In it, it is recited that the petitioner worked as daily wager for 3 years in the Division of Agricultural Engineering from 1950-53. In it, he had given his age as 21 years. It bears the signature of the petitioner. Another document marked as Annexure R-2 is an application dated 22.1.1954 addressed by the petitioner to the Director of the Institute. In it he had given his age as 23 years. It also bears the signature of the petitioner. Annexure R-3 is a photostat copy of the medical certificate issued by the Civil Surgeon New Delhi on 20.8.1964. According to this, the date of birth of the petitioner by Christian era as nearly as can be ascertained is 5.6.1931. However, it is noted that the certificate does not bear any signature or thumb impression of the petitioner. Annexure R-4 is a photostat copy of the application dated 27.3.1962 addressed by the petitioner to the Medical Superintendent, Willingdon Hospital, New Delhi. In it, it is recited that the petitioner

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had been working in the Agricultural Engineering Division since 1950. This also bears the signature of the petitioner. This application had been given by the petitioner for allotment of an accommodation. Annexure R-5 to the counter-affidavit is a communication dated 18.11.92 from the Asstt. Administrative Officer to the Administrative Officer. The contents of the same are these. The petitioner was appointed as Workshop Mate with effect from 23.9.1953. At the time of his appointment his date of birth was recorded as 5.6.1931. On scrutiny of the service book it is seen that he passed his Matriculation examination from Punjab University held in March 1960. His date of birth accordingly changed to 16.6.1936 based on the Matriculation certificate. If the new date of birth i.e. 16.6.1936 is considered to be correct, the petitioner was below 18 years at the time of his appointment and if 5.6.1931 is considered to be the date of birth, he would have retired with effect from 30.6.1991. He served as daily paid labourer for 2-2½ years before his appointment. A request is made that the case may be reviewed and necessary orders of the competent authority be communicated at the earliest possible.

6. In the rejoinder-affidavit filed, the petitioner has accepted that in 1950 he was engaged as a casual labourer.

7. The service book of the petitioner is before us. We have perused the same and we are satisfied that it bears the signatures of the petitioner. We are also satisfied that the said document was prepared on 24.9.53 and in it the date of birth of the petitioner is indicated as 5.6.1931.

8. After due consideration, taking into account

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the averments made in the affidavits exchanged between the parties, the documents produced by the respondents alongwith the counter-affidavit and the entries made in the service book, we are convinced that the petitioner entered service of the respondents in the year 1950 as a daily wager. He was appointed as Workshop Mate on 23.9.1953 and on that date his date of birth was recorded as 5.6.1931. We are also convinced that the alteration in the date of birth of the petitioner took place later on.

9. Under our dirctions, the respondents have produced for our perusal the following:

- (1) A copy of the Office Order constituting the committee on the case of alteration of date of birth of the petitioner alongwith the findings submitted by the committee.
- (2) Medical examination report of the petitioner conducted by the Assistant Surgeon Class II(Non-gazetted) Willingdon Hospital, New Delhi showing his age as 22 years on 28.9.1953.
- (3) Rules and bye laws of the Institute.
- (4) Manual of administrative instructions.

10. Now we may examine the contents of the report of the committe constituted by the Head, Agricultural Engg.Division to look into the circumstances under which the date of birth of the petitioner was changed from 5.6.1931 to 16.6.1936/ ^{allegedly} without the approval of the competent authority. The report recites that the committee had scrutinized the following documents:

1. Service Book.
2. Personal file
3. School leaving certificate issued by the Bihar and Orissa Education Board.
4. Certificate issued by I.I.T, New Delhi.

11. The committee had made the following observations:

- (i) The date of birth of the petitioner originally entered into his service

book is 5.6.1931. He had himself signed on the same page on 24.9.1953. The then Head, AE had also signed the service book on the same day.

- (ii) The original date of birth had been struck-off and a new date, i.e. 16.6.1936 had been entered which had been initialled by the then acting Head, AE on 14.11.68.
- (iii) A statement "passed the matriculation examination of the Punjab University held in March, 1960 and was placed in third division" has also been entered on page 1 of the service book which has been initialled by the then Head. However, the date of the entry is illegible.
- (iv) The petitioner had requested on 22.8.1960 that his matric qualification acquired in 1960 should be entered into his service report. He enclosed an attested copy of the matriculation examination certificate. In this certificate the date of birth had been indicated as 16.6.1936.
- (v) No request to effect the change in the date of birth was found in his personal file.
- (vi) He passed ITI fitter examination in 1962. However, there is no entry in his service book about having acquired this qualification.

12. On the basis of the above observations, the committee made the following comments:

1. The petitioner had signed his joining report and the service book in legible English and also possessed a school leaving certificate of class sixth. He, therefore, was fairly educated to know that his date of birth at the time of joining was recorded as 5.6.1931. in his service book.
2. The date of birth recorded on his school leaving certificate is 16.06.1936. At the time of the initial appointment, this date of birth should have been recorded instead of 5.6.1931. It appears that the date of birth of the petitioner

in the school leaving certificate has been tempered with, which may, however, be examined by an expert, if considered necessary. It is important to note that if the petitioner had declared his date of birth as 16.6.1936 at the time of initial appointment, he would have been only 17 years of age and which, possibly, would have rendered him ineligible for the job.

3. In the year 1960, after passing his matriculation examination, the petitioner had requested for the entry of this qualification enhancement in his service book. However, even at that time he did not request for the change of his date of birth entry in the service book. If the date of birth needed to be changed on the basis of the matriculation certificate, it could have been done at the same time. However, the entry in service book indicates that the change in the date of birth was made on 14.11.1968.
4. The date of birth recorded in the ITI certificate also needs to be examined by an expert ^{about} its authenticity.

The report goes on to state that the date of birth of the petitioner was changed on 14.11.1968 under the signature of the then acting Head, Sh. T. H. Nirmal, who has since retired. The committee did not find any approval of the competent authority to effect this change. It may be ascertained whether the acting head was empowered at that time to make such a change in the service book at his end. With the documentary evidence at hand, it is not possible for the committee to spell out the exact circumstances under which the change in the date of birth of the petitioner was made.

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13. We will now examine the alleged certificate of the Assistant Surgeon Class II(Non-gazetted), a photostat copy of which has been produced before us by the respondents. This certificate was given on 28.9.1953. In it, it is recited that the petitioner according to his own statement was 22 years and by appearance about 22 years. There is a column (signature of officer). There are no signatures against the said column. This shows that the petitioner had not affixed his signatures.

14. Now let us examine the Rules and Bye Laws of the Indian Council of Agricultural Research. Bye Law 30 states that except in regard to matters for which specific provision has been made in the Rules, Bye-laws, Regulations or Orders made or issued by the Society, the service and financial Rules framed by the Government of India and such other Rules and Orders issued by the Government of India from time to time, shall apply mutatis mutandis to the employees of the Society in regard to matters concerning their conditions of service. Column No.31 says that the Central Civil Services(Classification, Control & Appeal) Rules, and the Central Civil Services (Conduct) Rules of the Government of India for the time being in force, shall apply, so far as may be, to the employees of the Society subject to certain modifications with which we are not concerned.

15. The Rules and Bye-laws were enforced with effect from 3.4.1975. By virtue of Bye-law 30 Fundamental Rules should be applicable to the employees of the Institute. Note 6 to Fundamental Rule 56(m) saw the light of the day by Notification dated 30.11.1979 published in the Gazette of India on 15.12.1979 and the same took effect from 15.12.1979. The said Note cannot invalidate the order passed way back in 1968 in the case of the petitioner and divest him of the rights accrued to him in that year. In fact, the Fundamental Rules became applicable to the petitioner on 3.4.1975.

16. We will now examine the Manual of Administrative Instructions published by the Indian Council of Agricultural Research. At page 427, in the category of supporting staff, the grade indicated is Grade III. The post is shown as non-selection post. The age for direct recruits is shown as 18-25 years

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(relaxable as per Col.12). 8th class pass, relaxable for posts specified by the Controlling Authority on the basis of proficiency in the appropriate trade along with other qualifications/ ^{is} required for direct recruits. Relaxation in age is allowable to Scheduled Castes and Scheduled Tribes candidates as per rules framed by the Government of India from time to time. On the face of it, the instructions aforesaid were not applicable when the petitioner was recruited in service on 23.9.1953.

17. We have examined the service book of the petitioner as well his personal file. We are satisfied that the contents of the relevant portion of the service book, as material, have been correctly reproduced by the committee. It is clear that the service book bears the signatures of the petitioner. However, its contents on the relevant page are not in his handwriting.

18. We accept the finding of the committee that the date of birth of the petitioner was altered in the service record as 16.6.1936 on 14.11.1968. The question, therefore, to be examined is as to what is the effect of this entry in the service book since November 1968. It is to be noted that it is not the case of the respondents either in the counter-affidavit filed or in the findings of the committee that Shri T.H.Nirmal, the then acting head was not competent to effect the change in the date of birth of the petitioner. It is also not the case of the respondents that, at the relevant time, there was no provision for correcting the date of birth of an employee. No provision has brought

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to our notice throwing light either way. On the contrary, the stand taken is that no written application for correction had been made and no order of any competent authority had been passed allowing correction. Thus, there is an implied admission that a correction of date of birth was permissible provided a written application was given and the competent authority passed an order to that effect.

19. So far as the making of an application in writing is concerned, that is a matter in the realm of a procedure. In an application, the desire for the change of the date of birth can be either express or implied. Obviously an express desire for a change in the date of birth is not to be found. Para 3 of the comments of the committee may be again read in the context of this particular controversy. It recites that after passing his matriculation examination, the petitioner had requested for the entry of this qualification enhancement in his service book. This corroborates the version of the petitioner in the OA in para 4.5 that after the receipt of the matriculation certificate, he submitted the same in original alongwith the photostat copy to the respondents for entering his educational qualification into his service record. It is not the case of the respondents that the petitioner did not, by means of an application, make a request to the respondents to receive original matriculation certificate alongwith a true copy and thereafter add the qualification in his service book. Therefore, there can be no difficulty in taking the view that the application made by the petitioner contained an implied request that on the basis of the contents of the certificate, which also included the date of his birth, a necessary change in his date of birth

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be also made in the record. We may note that no rule has been brought to our notice to show that a change in the date of birth can only be made by means of an application. The facts of this case disclose that on the basis of the matriculation certificate submitted by the petitioner a change in the date of birth of the petitioner was made under the signatures of an official of the Institute. In these circumstances, the petitioner is entitled to invoke the provision of Section 114(e) of the Indian Evidence Act which states that the court may presume that the judicial and official acts have been regularly performed.

20. Neither the Director in his counter-affidavit nor the committee in its report disclose as to who was, at the relevant time, the authority competent to permit a change/alteration in the date of birth. No rule or provision has been brought to our notice to indicate as to which authority or officer was competent to do so. However, in para 4 of its comments, the committee observed: ".....The committee did not find any approval of the competent authority to effect this change. It may be ascertained whether the acting head was empowered at that time to make such a change in the service book at his end." These observations, in our opinion, spell out an implied admission that the head was the competent authority to effect a change in the date of birth. The only fact required to be ascertained, according to the committee, was whether the acting head could exercise the power of effecting a change in the date of birth. It is not the case of the respondents in the counter-affidavit that the acting head was

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not empowered or competent to effect such a change. Normally, unless provided to the contrary, an acting head, in the absence of the head, exercises all the powers and functions of the head. The principles underlying Section 17 of the General Clauses Act, 1897 which inter-alia provides that it shall be sufficient for the purpose of indicating the application of law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed, are relevant for examining the question whether the acting head could discharge the powers and functions of the head. Therefore, there can be no difficulty in taking the view that the acting head had the power to effect the change in the date of birth of the petitioner.

21. No reasoned order was necessary for effecting a change in the date of birth. The basis for the change was the Metriculation certificate. There is a reference of that certificate in the service book. The scoring off^{of} / 5.6.1931 and substitution of that date by 16.6.1936 was under the signatures of the acting head which had been affixed by him over the official seal with date. All this clearly implies that an order had been passed by the acting head.

22. Annexure A-8 to the rejoinder-affidavit is a circular dated 14.11.1983 issued by and for Administrative Officer stating therein that a seniority list of Technical Assistants as on 1.8.1983 has been prepared and a copy thereof is attached for circulation to all concerned. A perusal of the list shows that the name of the petitioner appears at Sl.No.180. In column 4 his date of birth is shown

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as 16.6.1936. Annexure A-9 to the rejoinder-affidavit is the circular dated 10.12.1986 issued by the Chief Administrative Officer stating therein that a seniority list of Technical Assistants in the Institute including its Regional Stations as on 1.8.1986 has been prepared and a copy thereof is being circulated amongst all concerned. In this list, the name of the petitioner is at Sl.No.160 and in it, his date of birth is shown as 16.6.1936. Annexure A-7 to the OA is a true copy of the Annual Assessment Report for Technical Personnel Category II and Category III for the period 1.4.1991 to 22.8.1991. This is a report with respect to the petitioner and in it his date of birth is shown as 16.6.1936. It bears the signatures of the officer concerned. In the counter-affidavit, the genuineness of this document has not been disputed. These documents indicate that the respondents accepted the change effected in the service record of the petitioner qua his age and also acted upon the same. No satisfactory explanation has been offered as to why in the aforesaid documents issued and prepared after 1968, the date of birth of the petitioner was shown as 16.6.1936.

23. It cannot be said that the petitioner did not acquire any right whatsoever as a result of the alteration of his age in the service book in the year 1968. The rights acquired cannot be destroyed unless a finding is recorded by some competent authority after due enquiry that the entry had been fraudulently made.

24. The report of the committee indicates that the enquiry is yet not complete. The committee has, therefore, recommended a fuller and further enquiry. Yet, without making any enquiry the impugned order was passed on 31.12.1992. It is to be noted that the committee met and made its recommendations after

31.12.1992. In the absence of any allegation that there was a collusion between the petitioner and the acting head, there can be no escape from the conclusion that the impugned order was passed irrationally. It can also be said that the same was passed on a mere surmise and without any relevant material that the date of birth of the petitioner had been altered illegally and unauthorisedly.

24. The events, as narrated above, speak for themselves. They depict a sorry state of affairs in the Institute. The committee appointed to inquire into the matter failed to come to a definite conclusion. The proceedings of the committee indicate that the inquiry has not yet closed. Therefore, the respondents shall hold a comprehensive inquiry as permissible under law and in accordance with the principles of natural justice. The inquiry shall be held and completed as expeditiously as possible but not beyond a period of four months from the date of receipt of a certified copy of this judgement by the relevant authority. We make it clear that we have not recorded any finding whatsoever as to what is the date of birth of the petitioner.

25. The petitioner came out with incorrect facts. We are not prepared to accept the allegations made by him against Shri A.K.Chaturvedi, respondent No.3 that he had demanded any amount from him. He has also used unsavoury language both in the OA as well as in the rejoinder-affidavit. Such a conduct has to be condemned. The learned members of the Bar are the officers of this Tribunal which is a substitute of High Court in service matters. They owe a duty not only to their clients but also to the Tribunal. They have to balance the interests of both. Use of intemperate language in the pleadings by the litigants per se lowers the dignity of the court. We hope that the

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learned members of the Bar will exercise their good offices and prevent the litigants from committing such acts of misconduct which may disentitle them to any relief in the exercise of jurisdiction under Article 226 of the Constitution.

26. The OA succeeds in part. The order dated 31.12.1992 passed by the Chief Administrative Officer and the Memorandum dated 23.1.1993 issued by the the Assistant Administrative Officer are quashed. The respondents shall treat the petitioner as in service and reinstate him. They shall pay him the arrears of salary and other emoluments which would have been payable to him on or before 1.1.1993 but for the impugned order dated 31.12.1992. The respondents shall not interfere with the services of the petitioner unless a decision adverse to him is taken after due enquiry and order is passed on merits and in accordance with law.

There shall be no order as to costs.

S.R. Adige
(S.R. ADIGE)
MEMBER(A)

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S.K. Dhaon
(S.K. DHAON)
VICE-CHAIRMAN(J)