

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1362 OF 2005

Allahabad, this the 21st day of July 2011.

Present

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Sri Kant Tiwari, Son of Sri Vriksha Tiwari, resident of Village & P.O. Dudhai, District Kushi Nagar.

.....Applicant.

V E R S U S

1. Union of India, through Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. Post Master General, U.P. Lucknow.
3. Senior Superintendent of Post Offices, Deoria Division, Deoria Post Deoria.
4. Post Master, Padrauna, Distt. Padrauna

.....Respondents

Advocates for the applicant:- Sri J.A. Azmi

Advocate for the Respondents:- Sri S.N. Chatterjee
Sri H. Singh.

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O R D E R

(By :- MR. SANJEEV KAUSHIK, MEMBER-J):

By way of instant OA filed under Section 19 of A.T. Act, 1985, the applicant seeks quashing of the order dated 9.11.2004 passed by respondent No.3 whereby the date of birth of the applicant has been changed from 8.11.1943 to 01.03.1941 and accordingly the applicant has been ordered to be retired w.e.f. 28.2.2001 instead of 30.11.2003.

2. The brief facts of the case are that the applicant appointed as EDA on 19.7.1960 and was posted at Rampur Barhan under the jurisdiction of Dudhai S.O. At that time the applicant mentioned his date of birth 8.11.1941 and he was due for retirement on attaining the age of superannuation on 30.11.2003. An order was passed on 22.11.2003 by respondent No.3 informing that the applicant is going to superannuate on 30.11.2003 (Annexure-A-1). Immediately after superannuation vide letter dated 3.12.2003, the applicant was granted the provisional pension and other retiral benefit (Annexure-A-2). On 08.03.2004, the applicant was directed to produce original certificates of Upper Primary Pariksha and Junior High School Pariksha. The applicant stated to have

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submitted desired certificates. An order was passed on 9.11.2004 by the respondents whereby the date of birth of the applicant has been changed from 8.11.1943 to 01.3.1941 and the applicant has been ordered to be retired w.e.f. 28.2.2001 instead of 30.11.2003 (Annexure-A-1), hence the OA.

3. Pursuant to notice of motion respondents filed detailed counter. Under the heading of Preliminary Submission the respondents have stated that the applicant was appointed as EDA, Rampur Barhan on 19.7.1960. In first descriptive particulars the date of birth of the applicant has been shown as 1.3.1941 and in the second descriptive particulars dated 19.4.1962, the date of birth was shown as 8.11.1943, when the applicant was appointed as Grade 'D' vide order dated 15.7.1993, the date of birth of the applicant has been shown as 08.11.1943 and accordingly the applicant was ordered to be retired w.e.f. 30.11.2003. Later on an objection was raised by Director of A/Cs (Postal) Lucknow vide letter dated 10.4.2004 that the date of birth of the applicant was 1.3.1941 instead of 8.11.1943. In pursuance to the instructions issued by Director A/Cs (Postal) an order was passed on 7.4.2004 whereby the provisional pension of the applicant was stopped from July,

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2004 and the applicant was informed accordingly. In para No.(F) of the Preliminary Submission the detail has been given. Lastly it is submitted that an official having less than 10 years service is not entitled for pension. Therefore the applicant has got changed his date of birth from 1.3.1941 to 4.11.1943.

4. None appeared on behalf of the applicant and by exercising the power under Rule 15 of CAT (Procedure) Rule, being the old case, I proceed to hear the matter. Shri S.N.Chatterjee, learned counsel for the respondents has been heard.

5. Learned counsel for the respondents has vehemently argued that when the applicant was initially appointed on 19.7.1960, he recorded his date of birth as 1.3.194. Subsequently, he manages to get his date of birth changed from 1.3.1941 to 4.11.1943. It is argued that in terms of the rule applicable the date of birth can be changed within 5 years from the date of appointment by the competent authority not below the rank of Joint Secretary and in the instant case the date of birth has been changed after 32 years by an incompetent officer. It is further argued that when he was appointed on 19.7.1960, he was 18 years old

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as per the date of birth mentioned at that time i.e. 1.3.1941.

Later on 24.7.1993, he managed and actually got changed the date of birth as 4.11.1943. If his date of birth is to be considered as 4.11.1943 then he is not eligible to appoint as EDA as he was 17 years on 19.7.1963 and then he was not eligible to be appointed. He also placed reliance upon a judgment passed by Apex Court in the case of **Punjab & Haryana High Court at Chandigarh Vs. Megh Raj Garg and another reported as 2010 (6) SCC 482** and argued that it is held by Hon'ble Supreme Court that the date of birth cannot be changed at the belated stage when the employee is going to retire shortly.

6. I have considered the submission made by learned counsel for the respondents and have also gone through the pleadings. It is not disputed that the applicant was initially appointed as EDA on 19.7.1960 and his date of birth has been mentioned by himself as 1.3.1941. Later on when he was appointed as Group 'D' on 15.7.1993 he got his date of birth changed from 1.3.1941 to 4.11.1943. If the date of birth of the applicant is taken as 1.3.1943 as on 19.7.1960 he was eligible to be appointed in Government service whereas if the date of birth is taken as 4.11.1943 as suggested by the applicant then he is not eligible to be

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appointed in the Government service as he was 17 years old at that time. Therefore the averment of the applicant that his correct date of birth is 4.11.1943 stands falsify. Even the objections raised by the respondents dated 5.9.2004 also suggests that the date of birth cannot be changed after 5 years from the date of appointment. For ready reference the same is reproduced as under :-

- (i) ***The applicant was appointed as EDA on 19.7.1960 according to which his date of birth should be 01.03.1941 and not 08.11.1943. If the date of birth is 08.11.1943, the applicant had not completed 18 years age on 19.7.1960;***
- (ii) ***Date of birth can be changed within 5 years of appointment by the Competent Authority not below the rank of Joint Secretary;***
- (iii) ***Date of birth has been changed after 32 years by an incompetent officer, which is irregular so date of retirement will be 28.2.2001;***
- (iv) ***Provisional pension may be stopped and over payment of pay and allowances may be adjusted/recovered."***

7. Admittedly, the date of birth of the employee has to be taken when he first time joined the service with the Government. Admittedly, in the case of the applicant at that time the date of birth of the applicant is 1.3.1941 therefore subsequently when he was appointed his date of birth has to be taken as recorded at the time of first entering into the service. Moreover the rule permitted that

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the employee is entitled to get date of birth change within 5 years from his appointment. In the instant case, he has got date of birth changed after 32 years. In the case of **Punjab & Haryana High Court at Chandigarh Vs. Megh Raj Garg and another reported as 2010 (6) SCC 482**, the Hon'ble Apex court after analyzing the judgment on the subject have held that "declaration of age made at time of or for purpose of entry into government service is conclusive and binding on government servant."

"17. This Court has time and again cautioned the civil courts and the High Courts against entertaining and accepting the claim made by the employees long after entering into service for correction of the recorded date of birth. In Union of India Vs. Harnam Singh this court considered the question whether the employer was justified in declining the respondent's request for correction of the date of birth made after thirty-five years of his induction into the service and whether the Central Administrative Tribunal was justified in allowing the original application filed by him. While reversing the order of the Tribunal, this court observed : (SCC pp.167-68, part 7)

"7. A government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his

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date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a government servant can be entertained. A government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence established that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid to those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded good determined his date of superannuation even if it amounts to abridging his right to continue his service on the basis of his actual age. In these, has held by this Court in State of Assam Vs. Daksha Prasad Deka a public servant may dispute the date of birth as entered in the service record and applied for its correction but till the record is corrected he cannot claim to continue in service or the basis of the date of birth claimed by him. This court said (SCC pp. 525-26, para 4)

"4. The date of compulsory retirement under FR.56(a) must in our judgment, be determined on the basis of the service record and not or what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record and may apply for correction of the record. But until the record is corrected he cannot claimed that he has been deprived of the guarantee under Article 311 (2) of the Constitution by being compulsorily retired on attaining

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the age of superannuation on the footing of the date of birth entered in the service record."

18. In *Home Deptt. Vs. R. Kirubakaran* this court considered the question whether the Tamil Nadu Administrative Tribunal had the jurisdiction to entertain an application made by the respondents for correction of his date of birth just before superannuation. While answering the question in the negative, the court observed : (SCC pp. 158-59, para -7)

"7. An application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, blow him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury inasmuch as, because of the correction of the date of birth, the official concerned, continuous in service, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this an important aspect, which cannot be lost cite of by the Court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such

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question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation ion service, unless *prima facie* evidence of *unimpeachable character* is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior."

19. In *Union of India Vs. C. Rama Swamy* this court, after an in-depth analysis of Rule 16-A of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, reserved the order passed by the Hyderabad Bench of the Central Administrative Tribunal which had directed alteration of the date of birth of the respondent and observed (SCC p 659, para 25)

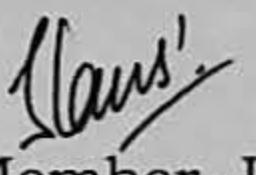
"25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against

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public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability."

20. By applying the ratio of the above noted judgments, we hold that the suit filed by Respondent 1 for correction of the date of birth recorded in his service book after twelve years of his joining the service was clearly misconceived and the trial court committed a serious error by passing a decree in favour of Respondent 1 and the lower appellate court and the High Court repeated the same error by refusing to set aside the decree passed by the trial court."

8. In view of the above I find no reason to interfere in the impugned order passed by the respondents. Hence the OA is dismissed being devoid of merit. No costs.


Member-J

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