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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

.....
Original Application No. 730 of 1986

Virendra Pal Applicant

Versus

Union of India through Secretary, Urban
Development Nirman Bhawan, New Delhi.

2. Director of Printing Nirman Bhawan,
New Delhi.


3. Manager Govt. of India Press, Aligarh.

..... Respondents.

Honble Mr. S.N. Prasad, Member (Judicial)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals, Act, 1985 with the prayer that orders communicated by office memo dated 22.8.1986 and 28.10.1986 by set aside and be directed ^{~respondents~} not to retire him w.e.f. 31.12.1986 and to change his date of birth in accordance with the date of birth as recorded in his High School Certificate.

2. The case of the applicant, as mentioned in his application, briefly, stated inter-alia, are that the applicant was appointed as fly boy on 28.12.1947 in the Govt. of India Press Aligarh and from appearance his date of birth was recorded as 15.12.1928 in the service record as he was illiterate then. The elder brother of the applicant was also recruited as clerk in the Press and his date of birth was recorded as 2nd October, 1929 on the basis of his High School Certificate. He is presently working in the office of Supdt. Postal Stores, Forms and Seals, Aligarh after bifurcation. The applicant passed his High School in 1959 and his correct date of birth was recorded there-in as 15.10.1932. The applicant was promoted as ^RReport writer on the basis of the aforesaid certificate but due to some inadvertance on the ^{part} of the official concerned his qualification etc. were not entered in the



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service book, so he moved an application dated 3.2.1972 for the necessary entries. Inspite of that application the date of birth of the applicant could not be corrected in the service record. This fact came to the notice of the applicant on 25.2.1986 when the dealing assistant reminded him of his date of retirement as 31.12.1986. So he moved an application ^{~ on that very date ~} to the Director of Printing forthwith for correction of the same. It has further been stated that in those days Minors were appointed on several posts. This fact has been admitted by the department in the comments on the representation dated 1.9.1986 of the applicant to the Government. The applicant referred his matter to the Ministry by his representation dated 1.9.86. But that representation was rejected on 28.10.1986. The applicant again represented to the Ministry on the ground of discrimination with Shanker Lal Sharma as the similar case in regard to the date of birth of Shanker Lal Sharma was accepted and the date of birth of Shanker Lal Sharma was corrected according to his High School Certificate. But that also remained ineffective, hence the applicant has approached this tribunal. The above application of the applicant dated 25.2.1986 was rejected by the Director on 22.8.1986.

3. Counter-affidavit has been filed by Shri Vishwanathan, Manager, Government of India, Press Aligarh, from the side of the respondents, wherein, inter-alia, it has been stated that the date of birth of the applicant was recorded in his service ^{~ record ~} as 15.12.1928 as told by him at the time of his appointment as [~] "Fly Boy" on 29.10.1947 and it is wrong to say that his date of birth was recorded by his appearance. The applicant has been accepting his date of birth as 15.12.1928 since the very inception till 25.2.1986 and prior to his moving application dated

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^{~ regarding ~}
25.2.1986 changed of his date of birth in accordance with the date of birth as recorded in his High School Certificate. It has further been stated that the ~~ap~~[~] applicant moved an application dated 2/3.2.1972 only for adding his educational qualification in his service book; and not about the change of his date of birth. The applicant never challenged his aforesaid date of birth as recorded in his service record, that is, 15.12.1928 at any time and even no objection was raised by him against the seniority list, which was ^{~ circulated and issued ~} ~~prior~~ in the year 1981. It has further been stated that the applicant became literate after passing the High School Examination in the year 1959; but he never raised any objection about his aforesaid date of birth that is 15.12.1928 as entered in his service record prior to 25.2.1986, and he has been signing the service ^{~ records ~} since 1964 and on-wards and his signatures appearing there ^{~ are ~} ~~are~~ pointers and suggestive of the fact that his date of birth as entered in his ^{~ Book ~} service ^{~ is ~} ~~along~~ with the other particulars ^{~ are ~} correct, and the applicant [~] is not entitled to any relief. The application and representation of the applicant were rejected [~] ~~er~~ properly and validly by the authority concerned. In view of the above circumstances the application of the applicant is liable to be dismissed with costs.

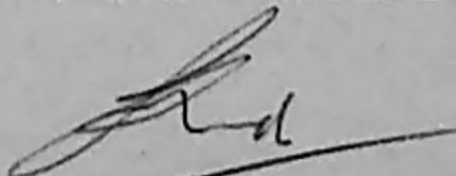
4. The applicant has filed rejoinder-affidavit and has also filed supplementary rejoinder-affidavit wherein he has ^{~ reiterated ~} ~~repeated~~ almost ^{~ those ~ very ~} ~~although~~ from point, and as set out in his application. ~~F. he~~

5. I have heard learned counsel for the parties at length and have thoroughly and carefully gone through

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the records of the case.


6. The learned counsel for the applicant while drawing my attention to the contents of the application and papers annexed thereto and to the contents of the counter-affidavit, rejoinder-affidavit of the applicant and supplementary affidavit of the applicant has argued that the applicant's date of birth was recorded in his service book only by appearance at the time of his appointment and actual date of birth of the applicant is 15.10.1932 as recorded in his High School Certificate as would be obvious from the perusal of the annexure-1 to the application and has further argued that the applicant after passing the High School and Intermediate examination had moved application dated 2/3.2.1972 copy whereof is annexed ^{~ II ~} to the application ^{~ and ~} he had requested the authority concerned to make amendment in his service book according to the educational qualification in accordance with the Certificate, in regard to his date of birth as well according to the High School Certificate, but due to inadvertence of the ^{~ official ~} office of the department concerned date of birth could not be changed, and has further argued that when the applicant came to know about his date of birth as 15.12.1928 as entered in his service record on 25.12.1986 and so he moved an application for correcting the date of birth on that ~~from~~ dated, that is, 25.2.1986 (copy whereof is annexure-III to the application) but that application was rejected and illegally and arbitrarily and the representation of the applicant dated 1.9.1986 was also rejected illegally; though ~~an~~ identical matter, the application of Shri Shanker Lal Sharma was allowed and his date of birth was changed according to his High School Certificate; and has further

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argued while drawing my attention to para 12 of the counter-affidavit of the respondents which clearly makes ~~men~~^{tion} " that the contents of the paragraph 1 to 5 of the application are matters of records and need no comments", and has further argued that keeping in view the facts ~~has~~^{as} mentioned in paragraph 12 of the counter-affidavit of the respondents there appears to be no dispute from the side of the respondents regarding the date of birth of the applicant as 15.10.1932; and has further argued that the applicant was promoted as Reporter on his furnishing his High School Certificate in the year 1960 and has further argued that the date of birth of elder brother of the applicant is 2.10.1929 and as such the date of birth of the applicant can not ~~be~~ⁱⁿ any way be as 15.12.1928; and as such his date of birth recorded in his High School Certificate ~~shall~~^{should} be deemed to be correct by the respondents and the service records should be corrected accordingly; and the plaintiff's application be allowed with the relief sought for, and in support of his argument, he has placed reliance on the following rulings:

1. 1985 U.P.L.B.E.C. (Lucknow Bench) (K.C. Kappor (Petitioner) Vs. Union of India ~~One of them~~^{Opposite parties} at page 801 wherein it has been enunciated " Service-Date of birth-Dispute with regard to-Two certificates giving two different date of birth-One certificate was transfer certificate and other was matriculation certificate-Held-Matriculation certificate should be given much weight."
2. 1986 L.A.B.I.C. (Allahabad High Court) Baijnath (Petitioner) Vs. General Manager N.E. Railway, Gorakhpur and others (Respondents) at page 178, wherein

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it has been enunciated " Constitution of India, Art. 311 Service record-Correction of date of birth-Railway employee producing certificates as to his true date of birth-His request for correction of record refused by Railway Authority without assigning reason-Refusing is illegal-Considering that petitioner was poor Class IV employee and that the date entered in record was obviously wrong in view of Recruitment Rules direction to correct service record was issued to Railway Authority."

7. The learned counsel for the respondents while drawing my attention to contents of the petition, counter-affidavit, rejoinder-affidavit and supplementary affidavit of the applicant and papers annexed thereto, has argued that the date of birth of the applicant has recorded in his service book as 15.12.1928 is quite correct and the applicant has been accepting the same without any objection even after the receipt of the seniority list by him on 19.9.1981 wherein the date of birth of the applicant was shown as 15.12.1928 in accordance with the service records as would be obvious from the perusal of annexure-1 and 2 to the counter-affidavit of the respondents, and has further argued while drawing my attention to annexure 2 to the application which is the copy of the application of the applicant 2/3.2.1972 whereby he had requested for amendment of his educational qualification according to his High School and Intermediate Examination Certificate but he had not made any request for change of his date of birth as would be evident from the perusal of this application itself as ^{no} mentioned or indication ^{has} been made by him in this application about the correction or the change

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of his date of birth in accordance with High School Certificate; and has further argued while drawing my attention to annexure 3 to the counter-affidavit that at the time of his transfer from Aligarh to Shimla in the year 1985 he had accepted his date of birth as 15.12.1928, with a view to get his transfer cancelled as only 18 months were left for his reaching the date of retirement according to his date of birth as 15.12.1928 entered in his service-book, and has further argued that the change of date of birth from 15.12.1928 to 15.10.32 is after thought and as such the application of the applicant should be dismissed with cost.

8 I have perused the above rulings.

9. This is worthwhile making mention of this fact that a perusal of Annexure-II which is copy of the application of the applicant dated 2/3.2.1972 clearly shows that through this application request was made by the applicant to the effect that his qualification be entered in his service-Book and other records as he had passed Intermediate Examination in the year 1969 from Allahabad U.P. Board; ^{but} in this application no prayer was made by the applicant for change of the date of birth according to the date birth as recorded in High School Certificate for the reasons best known to him. So, this circumstance hits hard the version of the applicant regarding his date of birth as 15.10.1932.

10. This fact should also not be lost sight of that the copy of the seniority list showing his date of birth as 15.12.1928 against the S.No. 48 was received by him on 19.9.1981 as would be obvious from the perusal of

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Annexure I and Annexure 2 to the counter-affidavit of the respondents; but for the reasons best known to the applicant, he did not raise any objection.

11. This is also important to point out that the applicant accepted his date of birth as recorded in his Service-Book as 15.12.1928 even upto May, 1985 as would be obvious from the perusal of Annexure III to the C.A. of the respondents, which reveals that for getting his transfer from Aligarh to Simla, cancelled or stayed, he had taken the plea of his retirement in near future after 18 months.

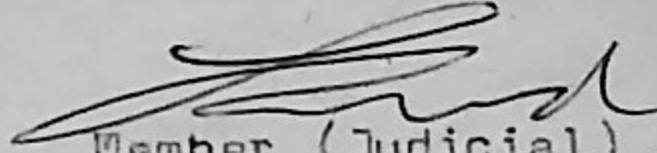
12. Even assuming the date of birth of the elder brother of the applicant as 2.10.1929 as argued by the learned counsel for the applicant, there would be no impossibility about the date of birth of the applicant as as 15.12.1928 as entered in his Service-Book as there is difference of nine months and 17 days, and as there is strong presumption about any woman to give birth to another child after 287 days of the birth of the previous child.

13. This is also important to point out that a perusal of Annexure 1 to the application (which is copy of the High School Examination Certificate shows that the applicant passed the High School Examination in the year 1959 as a Private Candidate and had appeared at the High School Examination from the Centre, Paliwal Brahaman Intermediate College Aligarh and not as a regular candidate of any school.

14. This, from the foregoing discussions and after scrutinizing the entire material and documentary evidence on record and Keeping in view the circumstances of the case and having regard to the above rulings, I

find that the above rulings relied upon by the learned counsel for the applicant are found to be of no avail to the applicant as the facts of the present case are found to be different and distinct from the facts of the above rulings, and the above arguments of the learned counsel for the applicant are found to be devoid of weight and force; whereas the above arguments of the learned counsel for the respondents appear to be sound and tenable.

15. In the result, I find no merit in the application of the applicant and as such the application of the applicant is dismissed with no order as to costs.


Member (Judicial)

Allahabad Dated 10th January, 1992.

(RKA)

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