

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.319 of 1987

Behari Lal Petitioner

Versus

Union of India & Others Respondents

Hon.Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

The petitioner in this case has filed the application against the proposed premature retirement. The application has been received under Section 19 of the Administrative Tribunals Act XIII of 1985. The petitioner was appointed in 1961 as a Tailor in the Ordnance Clothing Factory at Shahjahanpur. He alleges that since he was illiterate his date of birth was wrongly recorded as 8.7.1927 by the Medical Officer of the Factory. When he came to know of the same he strongly protested to the Medical Officer who assured him that the same would be corrected but he has not corrected it. According to the petitioner his correct date of birth is 27.8.35 which was to be recorded as assured by the Medical Officer. However it is only now that he has come to know that he

would reach his age of superannuation on 31.7.87 on the basis of the recorded date of birth of 8.7.27. The petitioner got himself medically examined by the Chief Medical Officer Shahjahanpur who also got the X-rays done in the District Hospital and submitted a report on 19.7.85. A copy of this report is placed at Annexure-I of the application. According to this report the age of the petitioner is about 50 years. The petitioner has further alleged that he got an extract from the Birth and Death Register in which his date of birth is mentioned as 27.8.35. On getting the extract as well as the medical report he made a representation on 20.7.85 but no ~~heed~~³¹ was paid to his representation. According to him he still has eight years of service but due to the arbitrary action on the part of the General Manager he is going to be retired on 31.7.87. He has therefore sought relief that the premature retirement of the petitioner from the post of Tailor be declared illegal, arbitrary and against rules and he has prayed for issue of appropriate orders or direction to the General Manager to record correct date of birth i.e. 27.8.35 in the service record of the petitioner.

2. In their counter affidavit the respondents have said that while being appointed as Tailor in the Factory the petitioner did not submit any documentary evidence in support of his age and date of birth. His date of birth has been taken into

account as per assessment of medical officer at the time of the medical examination before the appointment was made and on the statement made by the petitioner that his age was 34 years on 8.7.61. The petitioner has signed the service book as a token of having accepted his date of birth. In August, 1984 he applied for being referred to Chief Medical Officer Shahjahanpur for medical examination for assessment of his age. His request was not accepted and he was suitably informed. He again requested in August, 1985 for a change in his recorded date of birth from 8.7.27 to 27.8.35 and submitted a photo copy of the Chief Medical Officer's report and an extract from his Birth Register but these were not accepted and he was informed on 21.8.86 of the same. They have emphatically denied the averments made by the petitioner that the Medical Officer assured him that the date of birth would be corrected as stated by him in para 3 of the application. It is only ~~is~~ after ³² about 26 years of service, when he is due to retire, that the petitioner has submitted the documents and therefore there is a doubt ³² about ~~is~~ their genuineness and they are not acceptable at this later stage.

3. I have heard the learned counsel for both sides. The learned counsel for the petitioner

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relied on the medical examination report ~~by~~ the Chief Medical Officer and the extract of the Birth Register and the fact that at the time of joining service the petitioner could not have joined if he was 34 years of age at that time. The learned counsel for the respondents produced the Service Book of the petitioner and reiterated that at the time of appointment the petitioner himself had given his age as 34 years which was assessed as correct by the Medical Officer and which was entered in the service record. He further repelled the contentions of the learned counsel for the applicant on the plea that the petitioner had signed the service record as a token of his having seen the entries and he had not challenged the same. He also brought out another aspect that originally the petitioner had given his home address at Shahjahanpur but in 1966 he changed it to Bareilly.

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4. I have perused the service record of the applicant. His permanent home address was originally at Shahjahanpur. His date of birth as recorded is also 8.7.27. There is no over writing or mutilation and he has signed below the date of birth. In the medical examination report his age has been shown from statement as 34 years and from appearance as 34 years and the same has been

entered by the Doctor in the date of birth column in figures and subsequently written in words. Thus there is no doubt that at the time of entry into service the date of birth of the petitioner was recorded as 8.7.27.

5. The petitioner is claiming his change of date of birth to 27.8.35 on the basis of extract from the Death and Birth Register at Bareilly as also the medical certificate given by the Chief Medical Officer. This medical certificate is placed as Annexure-I of the application and concludes that " from the above data and report and general appearance I am of opinion that the age of Shri Behari Lal is about 50 years. The data given are the height, weight, teeth, colour, hair and the report of the X-ray. In the extract of the Death and Birth Register his father's name has been shown as Shiv Charan while in the service record it is shown as Shiv Charan Lal, though the village has been shown as Kishanpur. There is no other record or documents or evidence which has been produced to support the revision in his date of birth.

6. The petitioner has stated that he had requested the Medical Officer who had examined him at the time of appointment to correct his date of

birth but this has not been supported by any proof. On the other hand the respondents have denied that anysuch assurance was given by the Medical Officer. The medical officer has clearly recorded that by his statement the petitioner had indicated that he was 34 years old and he looked so by appearance also. Thus the entry in the Service Book was made on the basis of the Medical Examination which itself was based on a declaration by the applicant. It will not be correct therefore to say that the assessment of the Doctor was only a surmize. The actual fact was that the petitioner did not produce any material to indicate his date of birth and therefore the only mode of determining his date of birth or age could be by ascertaining the estimated age during the medical examination ² ~~3~~ ³ on his own statement. ³

7. Legally also the position remains that note 5 below F.R. 56 says that request for a change of date of birth can be entertained if the request is made within five years of entry in the service and it is clearly established that a genuine bonafide mistake has occurred and the date of birth so altered would not make a person ⁱⁿ eligible to appear in any School or Service Commission examination in which he had appeared or for entry into Govt. service on the date on which he entered in Govt. service. We find that the petitioner has agitated the matter only a

few months before his retirement and if he had any knowledge of a wrong entry having been made by the Doctor at the time of his appointment as averred by him in his application his action to agitate the matter after nearly 26 years of service is against the rules laid down for making changes in the date of birth. The entries in the Birth Register are no doubt public documents and it may not be necessary to prove who made the entries and what was the source of information but the presumption is as regards the genuineness of the entries only and not as regards the identity of the person concerned. The father's name in the service record and the Birth Register differ. The name of the child is also not shown. Therefore it will not be possible to say as to who was born on 27.8.35 to Shiv Charan whether it was the petitioner whose father was Shiv Charan Lal and not Shiv Charan or there was some other child who was born in 1935 and not the petitioner. Since the identity cannot be established it will be difficult to rely on this document at this stage and in the absence of any ^{other} reliable documents the only document that can be relied on is the service record. I will not like to place much reliance on the medical report because the appearance of a person can be deceptive. He may have all dark ~~hair~~ ^{3/4 hair} and he may still to be 60 years old. On the other hand

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a younger person who may be a 30 years of age may become grey at that age. In view of the above I do not think the petitioner has a case for change of his date of birth from what has been recorded in his service record at the time of his joining service and which entries has been witnessed by him and as a token of their correctness by affixing his signatures on the service record, and are based on his own declaration at that time.

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8. Again the petitioner had declared his date of birth as 34 years. The doctor's assessment at that time agreed with his declaration. It was a doctor's assessment and opinion and is the only piece of evidence available in the absence of any other documentary proof produced by the petitioner. It cannot be considered as irrelevant. Evidently the petitioner had no objection against the same then. The petitioner has now produced a medical certificate from the Chief Medical Officer, in an attempt to take its support on the basis that it is a scientific determination by Chief Medical Officer. Such a certificate cannot be given more weightage than the petitioner's own statement at the time of his employment. He had ample opportunity to take recourse to such an action if he was convinced that the entries made were wrong and the statement which he made was erroneous and when he made alleged vehement protests

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to the Medical Officer who examined him at the time of his entry into service. Therefore, this certificate does not improve his case.

9. On the above consideration the petition is dismissed. Parties will bear their own costs.

DR. R. K. M.

Member (A)

Dated the 29 th July, 1987

RKM