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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 18th day of October 1996

District : Allahabad

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

I. Original Application No. 147 of 1992.

B.K. Ghosh son of Late D.N. Ghosh
Resident of 120, Darbhanga Colony,
Allahabad.

(By Sri S.K. Dey & Sri G.D. Mukherjee, Advocates)
Vs. Applicant

1. The Union of India through Engineer-in-Chief,
Military Engineering Service, Kashmir House, New Delhi.
2. The Zonal Chief Engineer, Lucknow Zone, Lucknow.
3. The Commander works Engineer, Allahabad.
4. Garrison Engineer(west), Allahabad.

(By Sri C.S. Singh & Sri N.B. Singh)
. Respondents

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II. Civil Misc. Contempt Application No. 154 of 1993

B.K. Ghosh, son of Late D.N. Ghosh, R/o 120, Darbhanga Colony,
Allahabad.

(By Sri G.D. Mukherjee, Advocate)
. Applicant

Versus

Shri S.K. Jain, Garrison Engineer, Military
Engineering Service, Allahabad

(By Sri C.S. Singh, Advocate)
. Opposite Party.

O R D E R

By Hon'ble Mr. S. Das Gupta, A.M.

This application was filed under Section 19 of the Administrative Tribunals Act, 1985, seeking a direction to the respondents to pay to the applicant his retirement benefits like Group Insurance, General Provident Fund and leave encashment etc. and also for a correction in the date of birth of the applicant in the service record. The applicant has also sought a direction for payment of his salary upto 31-7-1992.

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2. The case of the applicant is that at the time of his recruitment, he was medically examined and his date of birth was assessed as July, 1932, which was accordingly entered in ~~to~~ his service record. However, the recorded date of birth of the applicant was subsequently changed from July, 1932 to July, 1930 as a result of which he was prematurely retired in July, 1990 instead of July, 1992. He had represented to the respondent no.4 on 13.3.1991 followed by several reminders but no action was taken by respondent no.4 on these representations. Apart from changing the date of birth the respondents have also denied the applicant the retirement benefits and the ~~payment~~ ^{payment} of Group Insurance, General Provident Fund and leave encashment has been withheld.

3. The applicant has alleged that the respondent no.4 had deliberately changed his date of birth from July, 1932 to July, 1930. He has stated that this was because he had caught one Sri S.N. Sawhney, who was working as Grade I ^{under} ~~Branch~~ ^{Branch} Training Store Officer attached to the respondent no.4 while the said Sri Sawhney was trying to sell certain furniture in the market. He has alleged that the department did not ~~release~~ ^{refuse to} complaint made by the applicant and this has resulted in making less payment to the applicant despite various representations and also changing the date of his birth.

4. The respondents have filed a counter affidavit in which it has been brought out that the applicant himself certified on 13-6-1959 and 23-5-1960 that his date of birth is 31-7-1930. The photocopies of the certificates in this regard are annexed as Annexures-CA-1 and 2 to the counter affidavit. As regards withholding of terminal benefits, it has been stayed that the payment of General Provident Fund has already been made on 23-5-1991 whereas

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the applicant is to pay an amount of Rs.904/- after adjustment of Group Insurance amount against the sum of Rs.2028/- outstanding against the applicant on account of 69 days' half pay leave.

5. The applicant has filed a rejoinder affidavit in which he has stated Annexures-CA-1 and 2 are manufactured documents and these do not bear his signatures. He has further stated that he is a refugee from Bangladesh and he had in his possession a certificate of educational qualification upto ^{7th} ~~2nd~~ Class in which the applicants year of birth has been mentioned as 1338 which is equivalent to 1932 in Christian Era. He has also stated that when he came to know about the irregularity regarding his date of birth, he filed a representation on 7-7-1988 before the respondent no.4 seeking correction of the date of birth but no heed was paid to the representations despite a reminder.

6. We have heard learned counsel for both the parties and perused the record carefully.

7. Learned counsel for the applicant has cited the following decisions in support of his contention that the applicant's date of birth should have been corrected as 31-7-1932 :-

- (a) A.T.R. 1990(1) C.A.T. 316- D.G. Nagare Vs. Union of India.
- (b) (1992) 21 A.T.C. 245 - Madan Lal Vs. Union of India and another.
- (c) (1991) 16 A.T.C. 801 - R.Sankaranarayanan Vs. Union of India and Others.
- (d) (1992) 20 A.T.C. 469 - Nirapada Mondal Vs. Union of India and Others.
- (e) (1990) 12 A.T.C. 29 - V.J. Antony Vs. Union of India and Others.

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(f) (1987) 4 A.T.C. 337 - R.R. Yadav Vs. Union of India and Others.

8. It would be clear from the facts of the case before us that the applicant did not produce any proof of his date of birth at the time of initial entry in service and, therefore, his date of birth is recorded on the basis of medical assistance.

9. We have perused the first page of the Service Book in which the applicant's date of birth was initially recorded as 31-7-1938 and this was later on corrected to 31-7-1930. It appears that this correction was carried out many years back. Since then thirty years have passed ^{before} ~~when~~ the applicant pointed out that his date of birth was wrongly recorded. Moreover, we ^{are} ~~would~~ not ~~be~~ able to believe the applicant's contention that he was not aware that his date of birth was recorded as 31-7-1930, ~~since~~ we cannot disbelieve the authenticity of Annexures-CA-1 and CA-2 which clearly indicate that the applicant has certified as correct his date of birth recorded as 31-7-1930. We compared the signatures in these photocopies and they appear to tally with the signatures of the Applicant in the OA. The applicant's allegation of malafide is absolutely vague and moreover he has not impleaded the respondent no.4 by name so as to enable him to controvert the allegations of malafide. As far as the question of the payment of terminal benefits are concerned, the data in the pleadings are not sufficient to come to a conclusion that any amount has been withheld from the applicant.

10. We have also considered the various decisions cited by the learned counsel for the applicant. None of these decisions are applicable to the facts of the

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present case. These decisions, therefore, do not advance the applicant's case.

11. In view of the foregoing, we find no merit in this application and the same is dismissed accordingly. The parties shall, however, bear their own costs.

C.C.A. No. 154 of 1993

B.K. Ghosh. Applicant

Vs.

Shri S.K. Jain, Garrison Engineer,
Military Engineering Service, Allahabad.. Opp. Party

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12. This contempt application was filed alleging non-compliance with the interim order passed by the Bench of the Tribunal directing the respondents to pay Provident Fund, Gratuity etc. at the rate calculated by them within a specified period.

13. The respondents have filed a counter affidavit stating that the retirement benefits have already been paid to the applicant much before the interim order was passed by the Tribunal on 14-10-1992 which was actually received by the respondents on 11-11-1992. It has been further stated that this fact has also been stated in the counter affidavit. The applicant has filed a rejoinder affidavit in which there is a bald denial of the averments in the counter affidavit.


14. As stated earlier, the data in the pleadings are not sufficient to come to the conclusion as to what was the payment due to the applicant and whether any ^{future} payments ~~further~~ are to be made. In view of this we cannot hold

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that there has been any deliberate non-compliance with the Tribunal's direction by the respondents.

15. In view of the foregoing, the contempt application fails. The contempt proceedings initiated are dropped. The notices issued are discharged.


Member (J)


Member (A) /

Dube/