

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

D.A. No: 351 of 1992

T.A. No: of 199

DATE OF DECISION: 23.8.1993

Sri Gopal Das PETITIONER.

Sri R.N. Saxena ADVOCATE FOR THE
PETITIONER

VERSUS

Union of India & Ors RESPONDENTS

Sri S.C. Tripathi ADVOCATES FOR THE
RESPONDENTS

CORAM:-

The Hon'ble Mr. A.K. Sinha, Judicial Member (Single)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgement?
4. Whether to be circulated to all other Benches?

JAYANTI/

SIGNATURE

23/8/93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
(ALLAHABAD BENCH.)

Original Application No.351 of 1992.

Shri Gopal Das Applicant.

Versus.

Commandant C.O.D. Agra & others ... Respondants.

Hon'ble Mr. A.K. Sinha, Member (Judicial).

Judgment.

1. The applicant aforesigned, who was initially appointed as class IV employee as 'packer' in the Ordnance Depot, Mathura, and later on promoted to class III cadre as 'store-keeper', has sought by this application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter called the Act), correction of his date of birth, 1.8.1936 alleged to be wrongly recorded in his service record as 10.8.1940 on the basis of the true copy of the Scholar Register and transfer certificate issued to him from the R.K. Kapoor Junior High School, Agra, where he studied upto class VIII ^{and} wherein the date of his birth was recorded as 10.8.1940. He has also prayed for quashing the impugned orders dated 29.4.91 (Annexure A-1) and 2.4.90 (Annexure A-6) whereby his application for correction of birth in service record was refused.

2. The undisputed facts giving rise to this application are that the applicant was initially appointed as casual packer in the year 1956 (his date of appointment being 1.8.1956) at Mathura Ordnance Depot (which has since been disbanded). His age at the time of his appointment as such was assessed by the Medical Officer on his examination

examination as 20 years since the applicant did not produce any documentary evidence of his proof of age. His date of birth was recorded as 1.8.1936 in the service book and in token of its correctness, he had put his signature on it.

3. The case of the applicant is that when he was promoted to class III cadre on 1.2.1966 at that time, he was required to furnish proof of his age as regards date of birth and accordingly, the applicant submitted true copies of Scholar's Register and the transfer certificate of the said R.K. Kapoor, Junior High School, Agra where he had studied upto class VIII. His further case is that at the time of his promotion in the year 1966, he came to know that his date of birth at the time of his initial appointment as 'packer' was recorded in the 'service record' as 1.8.1936.

4. Admittedly, on account of this variance of his age as recorded in his service record and the certificate which the applicant produced at the time of his promotion resulted in a disciplinary action against the applicant and a minor penalty of stoppage of one year increment was awarded to the applicant. But as regards the matter relating to the correction of date of his birth in the official record remain pending with the respondents with whom the applicant made several correspondance when ultimately the Head Quarter Central Command, Lucknow, directed the respondent no.1 to deal with the matter. The applicant was informed by the Personal Office of C.O.D., Agra, vide letter A-2 that in view of Home Affairs Memo no.19017/1 76-Estt.-1-dt 10 Oct.1976 the request for alteration of date of birth will not be entertained and the applicant was accordingly informed.

5. It is further averred that the applicant

moved his department praying for a copy of the Home Affairs Memo no.19017 dt.10.10.76 and was unable to obtain a copy thereof so as to enable him to prefer appeal before the higher authority and that for about 5 years his matter remained pending and after great efforts when he obtained a copy of the said letter, he filed his representation on 6.9.85 to the respondent no.2 (vide Annexure A-5) which was forwarded to the Commissioner of Schedule Caste and Schedule Tribe, New-Delhi, who took up the matter with the respondents no.2. The applicant was thereafter informed vide letter 29.4.90 that alteration in date of birth cannot be acceded as per Min.of Home Affairs D.P. & AAR notification no.19017/7/79-Esst.(A) dt.30.11.79. (vide Annex.A-6) After the representation of the applicant was rejected by respondent no.2 the latter advised him that he may prefer his appeal before the respondent no.3 and accordingly the applicant filed his appeal through proper channel but the same was not forwarded and by the impugned order dt.24.4.91 (Annex.A-1) the applicant was informed that the applicant was interviewed and was explained the rule position by the Administrative Officer on 20.3.91 and was advised that his application was not being forwarded because the same is against the extant rules. Hence this application before this Tribunal.

6. The respondents have appeared on notices and repudiated the assertion of the applicant as regards the correction of his date of birth. While not disputing the facts, it has been alleged inter-alia that at the time of his initial appointment on 1.8.56, his age was assessed at 20yrs by the Medical Officer and his date of birth was recorded in the service record as 1.8.36 and the applicant in token of its correctness put his signature thereon. The applicant at that time did not produce any certificate of proof of his date of birth. It is averred that even subse-

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subsequently he had occasion to see his service book in the year 1963 prior to his promotion and he had put his signature on the service book on 1.10.63 in token of the correctness of his date of birth and he never disputed it at that time. But when he was promoted on 1.2.66 in grade III, at that time he submitted his school leaving certificate showing his date of birth as 10.8.40 for which, on account of making false statement regarding age, a disciplinary proceeding was drawn up against the applicant resulting in stoppage of one year increment by way of punishment was given to him.

7. The contention of the learned counsel for the respondent is that as per notification of the Home Affairs Ministry dt.30.11.79, the applicant could have applied for correction of his date of birth within five years of his service and that having not been done, the applicant cannot be allowed to get the correction of his date of birth in service book done. It has further been submitted that if the age as shown in his school leaving certificate is assumed to be true, then in that case, at the time of his initial appointment in the year 1956, the applicant would have been only 16 years of age and was not even eligible for appointment being a minor. It is further submitted that having taken advantage of appointment in the year 1956 stating his age to be 20 years, he cannot now be allowed to change it after a lapse of more than a decade. In other words, the submission is that the applicant cannot approbate and reprobate at the same time for his own advantage.

8. Having heard the learned counsels of the parties and considering their respective submissions and after going through the pleadings of the parties and the relevant documents annexed therewith, it is obviously clear that at the time of his initial appointment the

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the age of the applicant was recorded as 1.8.1936 on the assessment of the Medical Officer who had examined the applicant and formed his opinion about his age and accordingly it was recorded in his service book over which the applicant put his signature in token of its correctness. Again after a period of about seven years of his appointment, the applicant had opportunity to see his service book and again he did not object to his date of birth recorded therein and he signed his service book on 1.10.1963. In between these period the applicant never sought for any change or correction of his date of birth as recorded in the service book. When the applicant got promotion in the year 1966, he produced his school leaving certificate wherein his date of birth was recorded as 10.4.40 and on that basis, he sought for correction in his service record. It appears that on account of this variance of date of birth ~~on account by~~ the applicant, he was departmentally proceeded and was even punished with stoppage of one year increment for his misconduct for not furnishing the proof of date of birth at the time of his initial appointment.

9. Where, therefore, the applicant at the time of his initial appointment did not produce the school leaving certificate in proof of his age although he was supposed to have produced the same which he did at the time of his promotion and where he accepted the age as assessed by the doctor who had examined him at the time of his initial appointment as 'packer' in the year 1956 and assessed his age to be 20yrs then and whereas again the applicant had an opportunity to get his date of birth corrected within a period of five years from the date of his appointment which he did not do and as a matter of fact, had several occasions to see his service book inasmuch as he signed his service book on 1.10.63 and approved of his

his age as recorded therein and did not dispute it even then, and thereby represented to the respondents and the world at large that his date of birth recorded therein was correct, ~~it must be held~~, in the foregoing facts, that the parties proceeded on the basis of an underlying assumption either of fact or of law whether due to misrepresentation or mistake that makes no difference and conducted themselves ^{therefore} and in such a situation ⁱⁿ neither of them shall be allowed to go back from that position which was accepted for the last more than a decade and if it is so allowed, it would be unfair and unjust and in such a circumstances, the court will estop him in doing so on the principle of estoppel and acquiescence.

10. In similar circumstances, the Supreme Court in Harnam Singh's case reported in A.I.R. 1993 S.C. page 1367 held that inordinate and unexplained delay or latches on the part of the respondent (in the instant case on the part of the applicant) to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent, it was further observed, had sought correction of the date of birth within 5 years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of note 5 to FR 56 in 1979 either. His inaction, it was held, for all this period about 35 yrs from the date of joining service, therefore, precludes him from showing that the entry of his date of birth in service record was not correct'.

11. In that view of the matter and for the foregoing reasons, I do not see any reason to interfere in the impugned orders as regards the refusal to correct the date of birth of the applicant passed by the respondents contained in Annexures A-1 dt. 29.4.91 and Annexure A-6 dt. 2.4.90., and the result, therefore, is that the applica-

application has got no merit and is, accordingly, dismissed.
But in the circumstances, the parties shall bear their own
costs.

Arbaul Karim Faruq

Member (Judicial).

23-8-1993.

Allahabad:

Dated 23rd day of August, 1993.