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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 1762 of 1993

Allahabad this the 10/11 day of Sep 1995

Hon'ble Dr. R.K. Saxena, Member (J)

Jagannath Chaubey, s/o Shri Ram Sumer Chaubey,
E.D.B.P.M. Vinevapuri, Azamgarh.

APPLICANT

By Advocate Shri V.N. Dhawalikar.

Versus

1. Union of India through Secretary Posts and Telegraphs Department at New Delhi.
2. Chief Post Master General, Lucknow.
3. Senior Superintendent of Post Office, Division Azamgarh.

RESPONDENTS.

By Advocate Km. S. Srivastava

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J)

This application has been brought by Shri Jagannath Chaubey challenging the order dated 10.11.1993 whereby it was notified, that the applicant whose date of birth was 01.1.1929 would retire after completing the age of 60 years on 31.12.1993.

2. The case of the applicant is that he was posted under the respondents in the year 1950

and he had been discharging his duties as E.D.B.P.M. Vinevapuri in Azamgarh Division. He had studied and in the Primary school, his date of birth was written as 29.1.1932. It is also averred that at the time of joining the service, he had submitted the School Leaving certificate but, his date of birth was wrongly recorded and he came to know about his retirement on 31.12.1993 only through the impugned order. He further contends that he would be completing 65 years of age on 31.1.1997. He, therefore, seeks relief of quashment of the order dated 10.11.1993 (Annexure-1) and direction to the respondents to treat the applicant in actual service till that date.

3. The respondents contested the case on the grounds that applicant was working as E.D.B.P.M. and he joined the service and at the joining of service, no Transfer Certificate indicating the date of birth was furnished. On the other hand, it is contended on behalf of the respondent that the applicant had written his age of 35 years of birth in Annexure C.A.-1. On that basis his date was recorded as 01.1.1929 in the Service Book which was signed by the applicant and also put thumb impressions. It is also pointed out that the applicant had furnished the transfer certificate of Primary School only in the year 1992 and when the verification of the certificate was sought



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from Phoolpur of District Azamgarh, a letter (Annexure C.A.-3) was received, showing inability to verify, ^{the same} because the record was not available.

It is also the case of the respondents that the date of birth which was entered in the Service Book at the time of joining the service by the applicant, was found correct and on that basis he was made to retire on 31.12.1993 on completing 65 years of age.

4. Counsel for the applicant and the respondents were heard and the record is perused.

5. The question arises if the applicant can seek correction in the date of birth at the fag end of service. It has been decided in several cases, particularly in the cases 'Kapil Deo Sharma Vs. Union of India and Others (1993) 24 A.T.C. 655, 'Secretary and Commissioner Home Department and Others Vs. K. Kirubakaran 1994 S.C.C. (L&S) 449' and 'Burn Standard Co.Ltd. and Ors. Vs. Shri Dinabandhu Majumdar & Anr. J.T.1995(4)S.C. 23'. In all these cases, it has been held that the correction in the date of birth cannot be sought at the fag end of the career.

6. The contention of the applicant is that he had studied in the Primary school, Phoolpur and

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the copy of the certificate of that primary school, which has ~~also~~ ^{now} been brought on record, shows the date of birth as 29.1.1932. The contention of the respondents on the other hand is that no certificate was ever produced by the applicant. The photostat copy of the application (Annexure C.A.-1) has been brought on record. The application was in the name of the applicant in which he had simply written that he was of 35 years. There is no denial of this application either by way of rejoinder or during arguments. As a matter of fact no rejoinder at all has been filed. The matter does not end here. The applicant had also filled in a form for the preparation of the service record in which the date of birth was shown as 01.1.1929. The thumb impressions of the applicant were put on this paper which also goes uncontested. The respondents have come with the case that the applicant had submitted the leaving certificate of Lower Primary School, Basahi, District Azamgarh which was sent to the Sub-Divisional-Inspector of Phoolpur, who obtained the report of the Head Master of the Primary school, Basahi, Bhujwal. It was clearly mentioned that the record was not available and thus, verification of the certificate filed by the applicant, was not possible. Thus, there is no supporting evidence in favour of the applicant that his date of birth was 29.1.1932 and he had produced the said leaving certificate at the time of entry in service.

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7. What is available with the respondents at the time of entry in service, is an application in which the applicant disclosed his age as 35 years. No date of birth has been given. No certificate or copy thereof was attached with this application. Also, there is no explanation as to why the copy of the certificate which was with him, could not be attached or atleast the date of birth which could have been written, was not written. Also, there is no explanation as to why the date of birth which was written as 01.1.1929 in the Service Book, which had his thumb impressions and impressions of the fingers, could not be objected to by him. There is sufficient truth in the reply of the respondents brought on record that the copy of School leaving certificate was actually filed by the applicant with the respondents only in the year 1992 which was definitely the fag end of his service. Their Lordships of Supreme Court in Burn Standard Co. Ltd. and Ors. Vs. Shri Dinabandhu Majumdar and Anr. (supra) observed, that when a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality, there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age, he is required to disclose his date of birth. The date of birth is verified

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and if found to be correct, is entered in the service record. It is ordinarily presumed that the birth-date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement, cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. It was further observed by their Lordships that it must be remembered that sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date, there would be an upward movement in the hierarchy. Their Lordships, therefore, deplored the change or correction in date of birth at the fag end of the career.

8. In view of the facts and circumstances of the case and also the case law on the point, I am of the view that the applicant could not succeed in establishing the case for correction of his date of birth. There is no merit in his contention and, therefore, the O.A. is dismissed. No order as to costs.


Member (J)