

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 975 of 1993

THIS THE ... 7th DAY OF DECEMBER, 1994

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAS GUPTA, MEMBER (A)

1. Rameshwar Nath son of late Ganga
Prasad, resident of C 27/197,
Jagatganj, Varanasi. Applicant

BY SHRI G.D. MUKHERJI ADVOCATE

Versus

1. Collector, Central Excise, Allahabad
2. Administrative Officer, Central
Excise, Division Varanasi
3. Union of India through Secretary
Ministry of Finance, New Delhi
4. Asstt. Collector, Central Excise,
Varanasi.

.... Respondents

BY KM. SADHANA SRIVASTAVA ADVOCATE

ORDER

JUSTICE B.C. SAKSENA, V.C.

Through this O.A the applicant challenges an order dated 29.6.93 by which the applicant on the basis of his date of birth as 3.3.1934 as originally recorded in his service record was ordered to be retired from service w.e.f. 31.3.92. The period of his stay from 1.4.92 till the date of actual relieve was ordered to be treated as re-employment subject to the expost facto approval of the Competent Authority.

2. The brief facts giving rise to the O.A are that the applicant was initially appointed in the year 1953 as Lower Division Clerk. He gained the promotion from time and was last working as Supdt. Central Excise at Varanasi

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It is stated that the applicant passed his High school examination in the year 1951 ^{and a certificate was issued for} in which his date of birth is stated to be shown as 3.3.1938. At the time of his appointment, the applicant states that due to some mistake, he declared his date of birth as 3.3.1934. It is stated that a seniority list was issued in the year 1987 in which the date of birth was shown as 1934. The applicant thereafter made a representation followed by various other representations, the last on 18.4.90, in which the applicant requested that his date of birth was wrongly shown as 1934 in the seniority list, whereas it should be 1938. In support of his claim he filed the High School certificate. The applicant further states that subsequently by letter dated 2.4.92 he was asked to furnish the High school certificate. In reply thereto the applicant stated that the original High school certificate had already been filed in the department in compliance of the letter dated 9.3.83. He, however, filed a photostat copy of the High school certificate alongwith his representation dated 6.9.90. Subsequently, it is stated that in the seniority list dated 2.12.92 the applicant's date of birth was shown as 3.3.1938 and his name was shown at sl. no. 165 of the said seniority list. He continued in service for almost above a year when he served with the impugned order.

3. The respondents in their counter affidavit have taken up the stand that at the time of his joining the department the applicant declared his date of birth as 3.3.1934 and this date and factum of his declaration was admitted by him in his statement dated 23.7.92 given before

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the Deputy Collector (P&V) Central Excise, Allahabad. The Asstt. Collector gave his report and recorded his findings that if the date of birth of the applicant is taken as 3.3.1938, he would have been only of 15 years and 18 months of age and could not have secured his appointment, as the minimum age for entrance in government service is 18 years. It has also been indicated that there is no entry for age relaxation if any in his service record. The seniority lists issued in August 1974 as on 1.6.74 showed the applicant's date of birth as 3.3.74. His name was shown at sl. no. 75. ^{In his} It is the statement before the Asstt. Collector, the applicant stated that ~~as~~ his deceased elder brother late Shri K.N. Vidyarthi who was working as Deputy Supdt. (Ministerial) at Nagpur Collectorate had given the applicant's date of birth as 3.3.34 on the application for appointment. It has further ^{been} stated in the counter that the Administrative officer, Central Excise, Varanasi through a letter dated 9.3.83, addressed to the applicant had informed that in the service book his date of birth was not duly verified and for that reason an audit objection has been raised. In the counter it has also been indicated that in the first ACR of 1953 when the applicant was working in Nagpur collectorate his date of birth was shown as 3.3.34 and the applicant has put his initial in column no. 9(i) of the said first page of the ACR endorsing the correctness of the entry which has been made. In the subsequent ACR ^{for} reporting period of 1.1.87 to 31.12.87 the date of birth of the applicant continued to be shown as 3.3.34 in column No.2 under personal data. It has been stated in the

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counter affidavit that for the first time in the ACR from 1.1.88 to 31.3.88 his date of birth was shown as 3.3.38.

It has further stated that the interpolation in the date of birth from 3.3.34 to 3.3.38 seems to have been carried out without obtaining orders of the competent authority for relaxation of provisions laid down in Note 6 of F.R. 56. A report of the Ministry dated 15.6.93 have been filed as Annexure CA-12 on the basis of which the impugned order was passed.

4. We have heard the learned counsel for the parties.

5. The learned counsel for the applicant strenuously urged that the respondents having once accepted the claim of the applicant and corrected his date of birth and the corrected date of birth has been shown in the seniority list dated 2.12.92, they cannot go back and pass the impugned order treating his date of birth as 3.3.34 and not 3.3.38. The learned counsel also submitted that the impugned order suffers from violation of principles of natural justice as no opportunity had been given to the applicant. The learned counsel in support of his submissions referred ~~before us~~ to the decision of the Hon'ble Supreme Court reported in ^{Bob} J.T. 1993(3) S.C 711 'Union of India Vs. Harnam Singh.

6. The learned counsel on the basis of the said decision urged that since the applicant had applied for correction of date of birth within 5 years of the amendment made to F.R.56(M) he would be covered by the said decision and his claim for correction of the date of birth cannot be said to be barred by laches or a stale claim.

7. As observed by the Hon'ble Supreme court in a

case reported in 1987 S.C 1073 'Ambika Quarry Works etc Vs. State of Gujarat and Ors,' the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a court is only an authority for what it actually decides and not what logically flows from it." The facts and circumstances and consequently the question that arises before us is not in any manner similar to the question which came up for consideration before the Apex court in the case of Union of India Vs. Harnam Singh (Supra).

8. The learned counsel next cited a decision of the Division Bench of the Allahabad High court in 'Roop Singh Yadava Vs. State of U.P. and Ors reported in 1987 U.P.L.B.E.C 607. In the said case the petitioner's date of birth was recorded as 20.3.29. He made a representation for its correction as the date of birth in the High school certificate as recorded ^{as} 10.11.29. From the facts it appears that the applicant therein had passed the High school examination in the year 1947 and had entered into service in 1948. Before the D.B the U.P. Recruitment Services (determination) of the date of birth rules, and Rule II specifically thereof were analysed and it was held that in the rule and the Govt. order dated August 1971 ^{com} ~~are~~ read together, It left no ^{rule} ~~rule~~ for ^{for} doubt that such ~~errors~~ in service book may be corrected which are apparent. On the basis of this decision by the learned counsel for the applicant submitted that the date of birth entered in the service record ^{at} ~~and~~ the time of entering into service being contrary to the date of birth recorded in the High school certificate, the High school certificate would prevail and the applicant's date of birth is wrongly being

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treated as 3.3.34. In the facts and circumstances of this case ~~wherein~~ it has been shown that the applicant on the basis of the date of birth indicated in his High school certificate would have been under age at the time of his appointment to the service. Further the applicant passed the High school examination but declared a date of birth convenient to obtain an appointment. In view of these distinguishing facts and other such facts in our opinion, the applicant cannot derive any benefit from the decision in 'Roop Singh Yadav's case (Supra).

9. The learned counsel for the applicant next cited a decision reported in 1985 U.P.L.B.E.C 801 'K.C. Kapoor Vs. Union of India and Ors. The transfer certificate and the matriculation certificate indicated two different date of births. In the circumstances, it was held that the matriculation certificate should be given ~~such~~ ^{due} weight.. In this case also the distinguishing facts indicated above of this O.A are not to be found in the facts of the case of K.C. Kapoor (Supra) the same is therefore not be of any help to the applicant. The learned counsel for the applicant has noted hereinabove had also raised a plea of violation of principles of natural justice and he referred to the celebrated decision of the Supreme court in State of Orissa Vs. Dr. (Miss) Bina Pani Dei reported in 1967 S.C 1269. We have already adverted to the pleadings in the counter affidavit which go to show that on the whole question, the applicant's statement was recorded and he was given opportunity of hearing by the Asstt. Collector. After analysing the facts and the statement made by the applicant a report was submitted which in its turn was also analysed by the Ministry and the letter dated 15.6.93 Annexure CA12

was issued, on the basis of the same the impugned order was passed. We are, therefore, not satisfied that there has been violation of the principles of natural justice.

10. Km. Sadhana Srivastava, learned counsel for the respondents has cited 2 decisions which to our mind are more apposite. The first decision is reported in 1989 (2) (CAT) SLJ page 154. In the facts of the said case the applicant's date of birth was recorded as 7.11.30 and the same was also shown in the seniority list published in 1967. The applicant made a representation for its correction later ^{to} 7.11.31 as per matriculation certificate. It was held that the claim for correction was apparently inconsistent ^{with} his earlier representation as well as service book entry. If the plea of change was now to be accepted it will confer unlawful benefit.

11. In the said case it was observed that "if a Govt. servant deliberately and by design declares a wrong date of birth at the time of entering into service in order to obtain an undue benefit or unlawful gain such as procuring appointment to which he was otherwise not entitled, he cannot be allowed to resile from that date, later and claim that in fact he was younger than what he had declared to be at the time of his appointment. If such a claim is accepted it would mean not only the Govt. servant obtained undue benefit in the first instance in the matter of securing an initial appointment but it would also result in postponement of his date of retirement and prolonging his tenure of services, thus giving him a second benefit.

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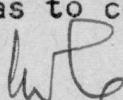
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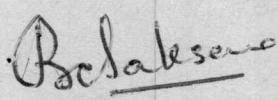
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That would be putting a premium on dishonest and deceitful conduct".

12. The other decision is reported in (1989) 11 ATC 792 'R.K. Sharma Vs. Union of India. The facts in the said case are in-pqrimerateria with the facts of the case in hand. The applicant declared his date of birth as 7.11.31 at the time of his appointment and thus obtained employment. In the middle examination certificate his date of birth was shown as 7.11.33 & on that basis he would have been less than 17 years of age and not eligible to be appointed. The rule of estoppel was applied and it was held that the applicant was estopped from putting ~~power on~~ ^{forward} ~~for~~ such a claim because relying on his assertion and declaration that his date of birth as 7.11.31, the respondents have acted and given appointment to him. The principle of estoppel is based on equity, justice and good conscious and therefore, the applicant cannot take advantage of his own fraud by seeking a change of his date of birth and thereby increasing the length of his service.

13. In view of the discussion hereinabove, we find no merit in the O.A. and the same is accordingly dismissed with no order as to costs.


(S.DAS GUPTA)
MEMBER(A)


(B.C. SAKSENA)
VICE CHAIRMAN

Dated: Dec..... 1994

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