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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 1155 of 1993

Allahabad this the 24/6/95 day of May 1995

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

Ganga Saran Bhatt S/o Shiva Murli, R/o Village
Kithauri, Post Munderwa, District Basti.

Applicant.

By Advocate Shri K.B. Sinha

Versus

1. Post Master General, U.P. Lucknow.
2. Superintendent of Post Offices, Basti Division, Basti.

Respondents.

By Advocate Km. S. Srivastava

O R D E R

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

This O.A. has been filed challenging the letter dated 30.6.1993 written by the Superintendent Post Offices to Employment Officer, Basti calling for the names on the vacant post of Postmaster.

2. The brief facts of the case are that the applicant was appointed as Branch Post Master Changeramangera in District Basti on 31.7.1957. He

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worked with devotion till the year 1993. When the circular dated 30.6.1993 Annexure -1 was issued in the name of the Employment Officer Basti, he came to know that he was being retired from service although he was to retire at the completion of 65 years of age. It is also his case that his date of birth was 11.7.1931 (although in para 6 of the O.A. this date has been shown as 11.7.1937 and learned counsel for the applicant during argument, pointed out as typographical mistake) but it was wrongly recorded as 11.7.1928; and without making correction of the same, he was made to retire on 10.7.1993 on completion of 62 years age only. He is, therefore, seeking relief to quash the circular dated 30.6.1993 and further seeks direction that the applicant should not be retired before he completes 65 years of age.

3. The respondents contested the case on the grounds that the date of birth of the applicant was recorded in the service record as 11.7, 1928 and accordingly he was to retire on 10.7.1993 and not on 30.6.1993. It is also averred that since the applicant was going to retire on 10.7.1993, the letter dated 30.6.1993 ^{call for the names to} was sent to employment officer to fill up the vacancy to be caused on retirement of the applicant.

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It is also the case of the respondents that the applicant had not submitted any documentary evidence regarding his date of birth at the time ~~of~~ ^{of} his appointment but, the statement in which the date of birth was recorded as 11.7.1928 and was signed by the applicant besides his thumb impressions ~~given by the applicant and was~~ thereon, was accepted by the department as proof of date of birth. It is denied that the applicant had ever approached the respondents for correction of date of birth by moving representations. It is also pointed out in the counter-reply of the respondents that the applicant was already retired on 10.7.1993. It is, therefore, emphasised that the application be rejected.

4. The applicant filed rejoinder-application in which it was mentioned that the actual date of birth of the applicant was 11.7.1931 ^{mentioned in} and it was ~~passed on~~ School Leaving Certificate (Annexure-2). It was further averred that yearly inspection report, copy of which is filed as Annexure R-1) was prepared by the Inspecting authority and in that report the date of birth and of appointment were shown. According to that citation, the date of birth of the applicant was shown as 11.7.1931. It is contended that this fact is an admission of the respondents and, therefore, the date of birth as shown by the applicant cannot be denied.

5. I have heard the learned counsel for the applicant and respondent and perused the record.

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6. The main question in this case is as to what is the correct date of birth of the applicant. The only document which was filed alongwith the O.A. was school leaving certificate (Annexure-2). It is the photostat copy of the certificate and the date of birth written in Hindi as "Eleventh July Nineteen Hundred". In figures it reads as "11.7.193". Thus, it is not possible to conclude as to what the actual date of birth was written in the school leaving certificate. The other documents on which reliance has been placed by the applicant is the inspection-note in which date of birth of the applicant is shown as 11.7.1931. In the inspection note, it does not appear necessary that date of birth and the date of joining should be disclosed. Moreover, it is not written by a competent authority and cannot be taken into consideration. There appears confusion in the mind of the applicant himself because in para 6 of the O.A., this date was shown as 11.7.1937. The learned counsel to the applicant, no doubt, argues that it was a typographical mistake but this argument does not stand to a reason on the simple ground that the date of birth was main and basic issue and if, that too was incorrectly written in the O.A., It is bound to create confusion and no benefit can be gained by the applicant himself.

7. The respondents, on the other hand, has filed the photostat copy of a statement giving

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all necessary details including date of birth. According to this statement, date of birth is shown as 11.7.1928. This statement was signed by the applicant on 31.7.1957 - the date on which he came in service. This statement further bears the marks of thumb and figure impressions in order to establish the identify of a person. The learned counsel to the applicant tried to make out a case that it was not a genuine document because the signatures of the applicant are in English besides being Hindi on one side and it also bore thumb and figure impressions. His contention is that the applicant who knows Hindi alone, could not have signed this document in English; and there was no necessity of putting thumb and figure impressions. He is forgetting rule of taking thumb impression and figure impression at the time when one enters into service for preparation of service record. So far as the question of the documents having been signed in Hindi and English both, the argument that the applicant could not have signed in English, does not carry weight because according to column 6, the educational qualification of the applicant was shown as a person who failed in Junior High School. A student of Junior High School is expected to learn English and, therefore, it is not unlikely if, the applicant had signed this statement both in Hindi as well as in English. The arguments of the learned counsel denying the authenticity of the statement can also not be expected because this document was prepared in the year 1957 and till the filing of this O.A.,

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it was not challenged. Anyway, the contention of the applicant is not supported by any material evidence on record. Their Lordships of Supreme Court in the case of 'National Airport Authority Vs. M.A. Wahab 1994 S.C.C.(L & S)896' observed that when there is no material on record about the ~~alteration~~ ^{alteration} in the date of birth, the plea was unsustainable.

8. The question as to when the employee should get the date of birth corrected, was raised in the case Union of India Vs. Harnam Singh (1993)2 SCC 162 and it was held that correction in date of birth should be applied at the earliest and in that case relying on the official memorandum, limit of 5 years from the date of entry in service, was fixed. In this case, the applicant entered in service in the year 1957 and did not move before the letter to employment officer calling names of the eligible persons to fill up the vacancy, was issued on 30.6.1993. The practice of challenging the date of birth at the fag end of retirement, has been depriated by their Lordships in several cases particularly in the case of State of Tamilnadu Vs. T.V. Venugopalan 1994 S.C.C. (L & S) 1385. In a recent case 'Burn Standard Co. Ltd. & Ors. Shri Dinabandhu Majumdar and Anr. J.T.1995(4) S.C. 23', their Lordships again reiterated the earlier decisions and emphasised that the date of birth disclosed at the time of entry in the service, should not

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be under estimated ^{the} by Court :

" The importance of the date of birth of an employee given to his employer and accepted as correct by the latter and entered in the 'Service and Leave Record' of the former, cannot be underestimated. That is so for the reason that the employee's service with the employer has to be necessarily regulated according to such date of birth. Therefore, when a person is taken into service on appointment, he would be required by his employer to declare his correct date of birth and support the same by production of appropriate certificates or documents, if any. Even where the persons so appointed fail to produce the certificates or documents in proof of their date of birth, they would be required to affix their thumb impression or signature in authentication of their declared ages or date of birth. When on the basis of such declaration made or certificates produced by the employee an entry is made of his date of birth in his 'Service and Leave Record' to be opened, that will amount to acceptance by the employer of such date of birth, as correct, be it the Government or its instrumentality."

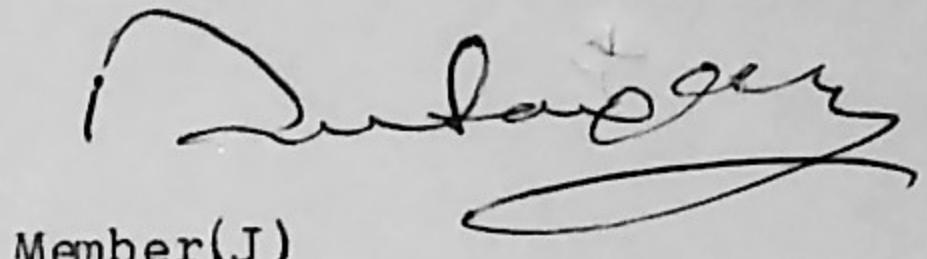
9. Keeping this view in mind, I am of the view that the applicant has failed to establish by material evidence that his date of birth was 11.7.1931. On the other hand, the document produced by the respondents which was prepared at the time of entry in service of the applicant, speaks that the applicant had given his date of

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birth as 11.7.1928. The applicant did not challenge the ⁱⁿ correctness or otherwise of the recorded date of birth. The case law on the point is also not in his support. As such, there is no merit in the application and it is hereby rejected. No order as to costs.



Member(J)

/M.M./