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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 961 of 1994

Allahabad this the 28/5 day of May 1998

Hon'ble Mr. S.K. Agarwal, Member (J)

Anil Kumar Shukla S/o Late G.D. Shukla, R/o Village
and Post Kanail, Distt. Gorakhpur

Applicant

(Substituted by the order dated 02.10.96)

By Advocate Shri B. Tiwari,
Shri A. Tripathi

Versus

1. Union of India through the Secretary, Department of Posts, Government of India in the Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Senior Superintendent, Post Offices, Gorakhpur Division, Gorakhpur-273001.
3. Director Postal Services, Gorakhpur Region, Gorakhpur.

Respondents

By Advocate Shri N.B. Singh

Shri N.B. Singh
SFT/RS

ORDER

By Hon'ble Mr. S.K. Agarwal, Member (J)

In this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that this Tribunal to quash the impugned order dated 26.3.94 of respondent no.2 and declare the date of birth as 01.7.1939 in place of 01.7.1929.

(a)

2. The brief facts of the case as stated by the applicant are that the applicant has passed Class IV from Basti Primary Pathshala, Kanail. His date of birth as recorded in the School record is 01.7.1939 and Transfer Certificate was obtained on 31.5.1951. In 1969, the applicant applied for the post of E.D.B.P.M., Kanail enclosing attested copy of the Transfer Certificate and the applicant was selected and directed to appear before the Medical Officer, District Hospital, Gorakhpur. The applicant appeared before the Medical Officer who examined the applicant and forwarded his report in the sealed cover to the department and after verification of character and antecedent, the respondent no.2 appoint the applicant to the post of E. D.B.P.M., Kanail and applicant took over the charge of the post on 24.10.69. It is stated that in order to keep upto date record of E.D.A. and to ensure their date of superannuation, the respondent no.2 through S.D.I. Kauriram Sub Division asked the applicant to submit the Transfer Certificate duly countersigned by the Basic Shiksha Adhikari, Gorakhpur and applicant produced an attested true copy of the Transfer Certificate countersigned by the Basic Shiksha Adhikari through the S.D.I., Kauriram. It is submitted that a gradation list was circulated for the first time by the respondent no.2 vide letter no.B-11/E.D.Gradation list/Corr dated 31.3.92 in which the applicant's name appears at serial no.156 which is annexure A-3 and after release of this gradation list, the applicant could know about the incorrect date of his birth recorded in the Government record. The submitted applicant immediately representation on 09.4.92 against the incorrect date of his birth. Copy of representation is annexure-4. Thereafter, the applicant sent reminders. The respondent no.2 issued badly belated decision vide

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impugned order dated 29.3.94 (annexure A-1), stating that his date of birth as on 01.7.1929 is only acceptable. The applicant submitted an appeal against the impugned order but with no consequence. It is submitted that the respondents have admitted that in the absence of descriptive particulars, the date of birth on the basis of health certificate is not acceptable but School Leaving Certificate ought to have been relied upon and the correct date of birth as 01.7.39 should have been recorded but by the impugned order the claim of the applicant was arbitrarily rejected and applicant has been superannuated as on 30.6.1994 according to the date of birth as 01.7.29. Therefore, it is requested that impugned order dated 26.3.94 issued by the respondent no.2 be quashed and applicant's date of birth be declared as 01.7.39 which is to be recorded in the service book.

3. A counter has been filed on behalf of the respondents. It is stated in the counter-affidavit that the petitioner has already retired w.e.f. afternoon of 30.6.94 after completing 65 years of age on the basis of date recorded in the E.D.A. Register and the gradation list maintained by the respondents and on the basis of health certificate produced by the applicant at the time of his appointment, therefore, now at this stage the petitioner has no right for the change of his date of birth. The petitioner has not approached the department within the period of 5 years from the ^{date of} appointment, therefore, this original application is not maintainable and liable to be rejected only on account of this fact alone. It is submitted that on inquiry, the Head Master of the concerned School stated that record is not available, therefore, the same cannot be verified which shows that

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the said certificate is not supported by any record. In the counter-affidavit, it is stated that this certificate is forged and cannot be relied upon, thus representation could not be considered in favour of the applicant. The applicant did not approach the department for change of date of birth within 5 years from the date of his appointment as provided in the Ministry of Personnel Public Grievances and Pension (Department of Personnel and Training) New Delhi communication dated 19.5.93 which was circulated vide the Chief Post Master General U.P. Circle, Lucknow letter dated 24.9.93, and the applicant was also informed vide letter dated 29.3.94 that his date of birth is 01.7.29 and against this he has filed the present claim petition. The transfer certificate produced by the applicant after a lapse of 25 years contains a over writing in different handwriting, which cannot be relied upon. In the health certificate issued by the Medical Officer, Gorakhpur on 01.11.1969, the age of 40 years has been shown which has been accepted by the applicant by signing the same before the Medical Officer. Therefore, on the basis of the averments made in the counter-affidavit, it is requested that the original application filed by the applicant should be rejected with cost.

4. Vide civil misc. application no. 2079/97 the amendment was sought by the applicant which was allowed and the applicant was permitted to amend the original application and this amendment has been carried out.

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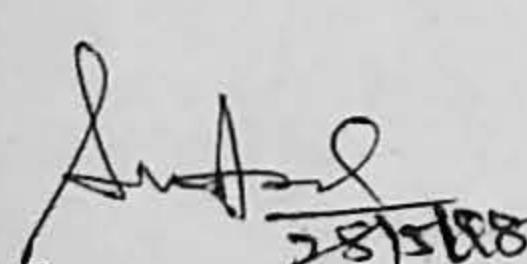
5. Heard, the learned lawyer for the applicant and learned lawyer for the respondents and perused the record.

6. Learned lawyer for the applicant has submitted that the date of birth of the applicant is 01.7.39 and in support of this copy of the transfer certificate was submitted to the departmental authorities but the departmental authorities reject the request of the applicant and retired the applicant on 30.6.94 on the basis of date of birth as 01.7.29. It is submitted that the retirement of the applicant on the basis of said date of birth is arbitrary and against the law.

7. On the other hand, learned lawyer for the the respondents has submitted that at the time of filing the application for appointment i.e. 21.4.69, the applicant has admitted his age as 40 years and original transfer certificate also shows the date of birth of the applicant as 01.7.29. It is further submitted that on this basis the gradation list was prepared and the date of birth of the applicant in the gradation list was inserted as 01.7.29 therefore, there was no question of alteration that the date of birth of the applicant in the official record.

8. I have given thoughtful consideration to the rival contention of both the parties and perused the whole record with reference to.

9. In the instant case, it appears that at the time of his appointment, the applicant has submitted an application for appointment dated 21.4.69 in which he has specifically mentioned his age 40 years. The applicant


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has also produced the Transfer Certificate dated 10/7/45. In that certificate the date of birth of the applicant has been shown as 01.7.29, and transfer certificate was issued after the applicant has passed Class IV in the year 1945 but later on the applicant has submitted photostat copy of the transfer certificate granted to him on 31.5.51 in which his date of birth is shown as 01.7.39 and date of passing the Class IVth is shown as 30.5.51. This transfer certificate on verification was not found genuine. The gradation list appears to have been prepared on the basis of original transfer certificate submitted by the applicant. Therefore, arguments of the learned lawyer of the applicant are devoid of any merits. The representation of the applicant and his appeal was considered by the departmental authorities and since there was no merit, therefore, rejected and the applicant was communicated the results. In the gradation list only typical error appears to have been corrected and in no stage of imagination, this can be said to be an alteration in the date of birth. Therefore, the applicant has utterly failed to establish the fact that date of birth of the applicant has been altered by the departmental authorities in any way.

10. In a leading case 'Union of India and Ors. Vs. Harnam Singh 1993 S.C.C.(L&S) 375,' the Hon'ble Apex Court has held that Court or Tribunal at the belated stage cannot entertain the claim for correction of date of birth duly entered in the service record.

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11. Admittedly the applicant in this case entered into the service in the year 1969 and he woke up in the year 1992 after 23 years. Not only this, whatever basis he has submitted that is not based on

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sound footings. In the original application filed by him, he himself has submitted that at the time of appointment he is 40 years of age and a transfer certificate which has been submitted to the departmental authorities in original, the date of birth of the applicant is inserted as 01.7.29 and it also appears that on the same basis, the gradation list has been prepared. Merely that a typographical error was corrected in the gradation list, does not mean that it is a case of alteration of date of birth and applicant has failed to establish this fact that departmental authorities/respondents have altered the date of birth of the applicant so as to retire him.

12. I am, therefore, of the opinion that the applicant has failed to make out any case for correction of date of birth, therefore, this O.A. is dismissed with no order as to costs.


Member (J) 28/5/78

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