

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application No. 138/95  
~~Transfer Application no.~~

Date of Decision 27-11-97

Kareem

Applicant(s)

Sh. P. Mishra  
Counsel for the applicant

Counsel for the  
Applicant(s)

V E R S U S

Union of India & Ors

Respondent(s)

Sh. N.B. Singh

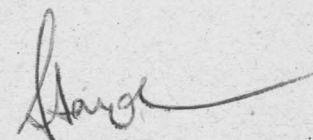
Counsel for the  
Respondent(s)

C O R A M

Hon'ble Mr. S. Dayal AM

Hon'ble Mr. \_\_\_\_\_

- 1.
1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether their Lordship wish to see the fair copy of the judgment ?
6. Whether to be circulated to all Benches ?

  
(SIGNATURE)

PIYUSH/

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 27<sup>th</sup> day of November 1997.

Hon'ble Mr. S. Dayal, Administrative Member

Original Application no. 138 of 1995.

Karedin, S/o Shri Shivharsh, C.P. Chaukidar, Sub-Post Office, Derwa, District-Pratapgarh, Resident of 82 Muir Road, Sadar, Bazar, Crossing Allahabad.

... Applicant.

C/A Shri Prashant Mishra

versus

1. Union of India through the **Secretary** to the Government of India, Ministry of Post and Telegram, New Delhi.
2. The Chief Post Master **General**, Lucknow.
3. Senior Superintendent of post Office, Pratapgarh, Division Pratapgarh.
4. Sub-Divisional Inspector, post Office Kunda, District-Pratapgarh.

.... Respondents.

C/R Shri N.B. Singh.

ORDER

Hon'ble Mr. S. Dayal, Member-A .

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant has sought the relief of setting aside of order of retirement passed on 08.05.93 and the appellate order passed on 21.09.94 and a direction to the respondents to re-instate him in service. The applicant also seeks the relief of being treated as permanent employee and payment of arrears of salary on the basis of equal pay for equal work from the date of appointment.

3. The facts mentioned by the applicant in his application are that he was appointed as Contingency paid Chaukidar in casual post in February 1963 on a substantive post of class IV employee. The applicant also claims that he performed 16 hrs of duty per day. He was granted temporary status w.e.f. 23.11.89 by letter dated 17.07.91 issued by respondent no. 3. He was asked to produce certificate regarding date of birth by Sub-Divisional Inspector, Kunda, Pratapgarh on 08.10.91 and he produced a copy of Kutumb Register on 10.10.91 in which his date of birth is recorded as 1940, his younger brothers were shown as born on 1943 and 1946. The respondents by order dated 19.04.93 retired the applicant w.e.f. 19.05.93 on the presumption that his date of birth was 05.07.31. He alleges that respondent no. 4 did not ask for a certificate of Chief Medical Officer, Pratapgarh regarding the applicant's age and took measurements of his body at Kunda and obtained signature of the applicant on blank papers in Kunda. The appeal dated 05.07.93 was not considered by the respondents. The applicant, therefore, filed original application no. 481 of 1993 before the Tribunal and the Tribunal directed the respondents to decide the representation of the applicant with a reasoned order within two months from the date of communication of the order of the Tribunal. The respondents decided the

appeal on 21.09.94 only after the applicant filed contempt petition and the respondents were directed to appear on 26.09.94. The appellate order shows that the respondents placed reliance upon documents prepared at the time of appointment as also on the medical certificate in which the date of birth of the applicant is recorded as 05.07.31. The applicant has mentioned that he was never asked before 08.10.91 to produce any documents regarding his date of birth. He has also mentioned that he made no signatures during his service except on 19.05.93 at the time of handing over charge. The applicant has also mentioned that he could not be appointed as Chaukidar in the department because the maximum age of appointment was 25 years. Besides the applicant on the basis of his date of birth as 05.07.31 should have been retired on 05.07.91 but he actually retired on 19.05.93.

4. Arguments of Shri Prashant Mishra, learned counsel for the applicant and Km. Sadhana Srivastava learned counsel for the respondents, have been heard. Pleadings on record have been taken into consideration.

5. The case of the respondents as given in their counter affidavit is that the applicant was given temporary status but did not produce any evidence regarding his date of birth at that time and his date of birth had to be ascertained from the head office where the applicant had declared his date of birth as 05.07.31 at the time of entry into service. Copy of the Descriptive Particulars produced by the respondents vide their Misc. Appl. dated 14.08.97 shows that the date of birth recorded against item no. 5 of the descriptive particulars was



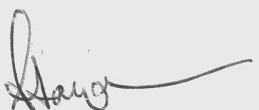
05.07.31. The applicant has given his thumb and fingers impressions against item no. 12 and signature against item no. 13. The signature of the applicant and attestation are dated 11.04.62. The health certificate granted by the medical officer of district hospital, Pratapgarh on 01.07.62 showed his age as 30 years on 01.07.62. The appellate order produced by the applicant as annexure A-1 relies on these two documents in preference to copy of Kutumb Register produced by the applicant. The service book which was produced by the learned counsel for the respondents on the date of hearing was made only in the month of May 1993 in which the applicant retired although it shows the date of birth as 05.07.31 against item no. 6 of Bio-data. It is only the document of secondary nature in which the date of birth has been recorded on the basis of descriptive particulars recorded on 11.04.62.

6. Learned counsel for the applicant has cited the judgments of the Allahabad High Court in Shree Nath Vs. Executive Engineer, Head Quarter, Electrical Distribution Circle, Allahabad (1991) 2 UPLBEC 1187 and the judgment of Apex Court in A.P. Srivastava Vs. Union of India and others (1995) 3 UPLBEC 1842. The only judgment cited by learned counsel for the applicant regarding date of birth is first one. The judgment of the apex court cited is on the issue of pension and not date of birth. The facts of the first case cited are different from the case before us because in that case the applicant had joined an electrical company which was subsequently taken over by U.P.S.E.B. and the basis of his date of birth as recorded by the company was not clear. The State Electricity Board, has subsequently prepared the service record on the basis of record of the

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company. Later the applicant produced school leaving certificate which showed his date of birth as 05.01.46. It has been held in this case that the circumstances warranted issuing of show cause notice to the applicant for change in his date of birth before rejection of representations made by the application. It has been held that the application should have been associated before representation was decided. The question regarding date of birth has subsequently been settled by the Apex Court in Union of India Vs. Harnam Singh, 1993, SCC (L&S) 375 and in Burn Standard Co. Ltd. & Ors Vs. Shri Deshbandhu Majumdar and ors JT 1995 (4) SC 23. It has been held that undue delay in making representation regarding date of birth would bar the applicant from claiming any relief. Here the applicant declared his date of birth at the time of his induction in 1962. He made a representation, therefore, the representation made in 1994 was highly belated besides the grounds on which the representation has been rejected by the respondents are quite valid. Therefore, this application is dismissed as lacking merits.

7. There shall be no order as to costs.

  
Member-A

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