

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH
ALLAHABAD

DATED : THE 5th DAY OF ^{May} APRIL 1997

CORAM : HON'BLE MR. D.S. BAWEJA, A.M.

ORIGINAL APPLICATION NO. 581 of 1995

Harakhoo Ram Maurya, son of late Kalicharan-Koiri, at present posted as Extra Department Runner (E.D.R.) a Mohant, Mizamabad, District Azamgarh.

.... Applicant

C/A Shri Bajrangi Mishra

Versus

1. Union of India, through Secretary, Post and Telegraph Department, New Delhi.
2. Sub Divisional Inspector, Phulpur, Azamgarh.
3. Director, Postal Service, Gorakhpur.
4. Senior Superintendent of Post Office, Azamgarh.

C/R Km. Sadhana Srivastava

ORDER

BY HON'BLE MR. D.S. BAWEJA, A.M.-

This application has been filed with a prayer to quash the order dated 1.6.1995 retiring the applicant prematurely from the post of Extra Department Runner, Post Office Mohant, Nizamabad, Azamgarh.

2. The applicant was appointed as Extra Department Runner at Post Office Mohant, Nizamabad, Azamgarh on 12.10.1961. The applicant gave his date of birth at the time of appointment as 12.10.1943. The date of birth as given at the time of appointment was not disputed at any time by the appointing authority. However, the applicant received a letter dated 23.1.1991 asking the applicant to submit certificate of date of birth, date of joining the service and certificate regarding Scheduled-cast/Scheduled Tribe. The applicant submitted these documents vide his application dated 15.3.1991. Thereafter he did not hear anything from the appointing authority and presumed that there was no dispute with regard to his date of birth. However all of a sudden vide order dated 1.6.1995 respondent no.2 Sub Divisional Inspector, Phulpur, Azamgarh, ~~he~~ was advised that the applicant will be retiring from service on 30.6.95. The applicant made a representation dated 8.6.1995 followed by another representation dated 21.6.1995. The applicant also personally approached Director, Postal Services, Gorakhpur and made representation on 22.6.1995. However, no action was taken to correct his date of birth as 12.10.1943. Being aggrieved, this application has been filed on 27.6.1995.

3. The applicant contends that his date of birth was 12.10.1943 which was indicated at the time of appointment and this date of birth was never disputed at any time during his service ~~and~~, Therefore, ^{the} action taken by the respondents to retire him based on date of birth as 1.7. ~~30.6.1930~~ is arbitrary, unjust and without jurisdiction.

4. The respondents have contested the application by filing the counter affidavit. The respondents contend that at the time of appointment, the applicant had given a

certificate issued by Shri Mithai Lal, the then Chairman Town Area, Nizamabad on 8.7.1961 indicating the age of the applicant as 31 years. Accordingly his date was admitted and the applicant has been correctly retired on 30.6.1995 after attaining the age of superannuation of 65 years. The respondents denied that any letter dated 23.1.1991 was written to the applicant to furnish the birth certificate and the document at Annexure-3 is a concocted document and, therefore, claiming the date of birth of 12.10.1943 based on this document is not tenable. The applicant never replied for change of the date of birth in case of his date of birth was not correctly recorded and the certificate dated 11.10.1991 said to have been issued with regard to the date of birth was never submitted to the office making request or change in date of birth. The respondents further submit that gradation list was issued on 22.11.1993 in which the name of the applicant is at serial no. 127 and his date of birth has been indicated as 1.7.1930. This gradation was circulated to all concerned and the applicant never represented with regard to his date of birth. In view of these facts, the respondents' plea is that the applicant is wholly devoid of merit and deserves to be dismissed.

5. The applicant has filed the *counter* *rejoinder* *Q*. The applicant has contested the document brought on record at C.A.-1 stating that the letter at C.A.1 is said to have been written by his brother and he has no knowledge that such a letter was written by his brother. He had given his date of birth as 12.10.1943 and the letter at C.A.1 is forged and fictitious. The applicant while controverting the pleadings of the respondents reiterated the grounds taken in the original application. *Q*

6. I have heard Shri Bajrangi Misra and Km. Sadhana Srivastava learned counsels for the applicant and ^{the} respondents respectively. The arguments advanced during the hearing have been carefully evaluated and the material placed on record has been also gone into.

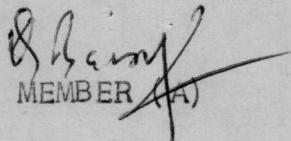
7. From the averments made by the applicant, his case is that he had given his date of birth as 1.10.1943 at the time of appointment. The applicant was further asked vide letter dated 23.1.1991 to submit some documents including the date of birth certificate for preparation of the gradation list and the applicant had submitted the date of birth certificate issued by the Chairman, Town Area, Nizamabad in which the date of birth is shown as 1.10.1943, i.e. the same date of birth as given by him at the time of appointment. The applicant also further contends that since he did not receive any further communication of his submission of his documents, ^{he} presumed that there was no dispute with regard to his date of birth. In view of these averments of the applicant, the letter dated 23.1.1991 becomes crucial. The respondents have totally denied the issue of ~~any~~ such letter and have alleged that this is a concocted document. During the hearing the counsel for the applicant was asked to show the original of the letter it was noted that along with the original application, the applicant had only given the xerox copy of the front side of the letter and only with ^{the} ~~the~~ ^{re}foinder reply. On the reverse side of the letter which carries the stamp of the Post Office, as well as the address of the applicant has been furnished. Though the reverse of the letter carries the stamp of the Post Office with a date of 23.1.1996 and also indicating that it was a registered letter but ^{on} ~~the~~ close scrutiny of the letter I have reasons to doubt the ⁹ ~~the~~ genuineness of the letter.

The letter is not addressed to the applicant nor it carries any signature of the authority who has issued this letter. It does not carry any file no. and the date of the letter. The letter is written in Hindi while the reverse of the letter carries the address of the applicant in English. The date of issue of letter is only established by the Post Office Stamp. This perception is further corroborated by the fact that the applicant has not stated as to how the document was submitted and whether any acknowledgement of the letter dated 15.3.1991 (A-4) obtained for the same. No averment has been made whether the applicant had submitted the documents registered post. From the contents of the letter, it appears that the documents listed were called for preparation of the gradation list. The applicant has not made any averment to the effect that whether he checked up the issue of the gradation list subsequently and his date of birth had been indicated as 2.10.1943. During the hearing, the learned counsel for the applicant was asked to elaborate the basis on which the date of birth was given as 1.10.1943 at the time of appointment. He was at pains to repeat that he had submitted that he has submitted certificate similar to the one issued by the Chairman, Town area, Nizamabad Azamgarh dated 11.3.1991 (A-4). However, neither this fact has been averred in the Original Application wherein he has simply stated that he gave his date of birth as 1.10.1943 without indicating the supporting evidence which was furnished by him nor the copy of the certificate furnished at the time of appointment has been brought on record. Keeping in view these observations made on the submissions of the applicant and the documentary evidence brought on record, I am ^{not} persuaded to find any substance in the case made out by him. On the

On the other hand, the documentary evidence brought on record ~~tells~~ ^{the people in the favour of the respondents} the respondents have brought on record the letter issued by the Chairman, Town Area, Nizamabad, Azamgarh dated 7.7.1961 (C.A.1) indicating the age of the applicant as 31 years at the time of appointment and the date of birth has been recorded on this basis. This letter is written by the brother of the applicant on which the Chairman, Town Area, Nizamabad has endorsed the age of the applicant. The applicant has doubted the genuineness of the document. If it is so, the applicant could have got the document verified from the Chairman, Town Area. He could have also filed an affidavit from his brother ~~that~~ ^{has he} denying/never gave such a letter in the office at the time of ^{his} the appointment. This has not been done. Therefore, I have no reason to disbelieve the genuineness of this document. Further gradation list was issued on 12.11.1991 wherein his date of birth ^{is} indicated as 1.7.1930 at serial no.127. The applicant has not denied specifically in para 14 of the rejoinder in reply to para 16 of the counter reply that he was not aware of the gradation list issued on 21.11.1991. He has, in fact, on one hand ~~he~~ has averred that the gradation list was prepared on the basis of the certificate sent by the applicant in 1991 and on the other hand also alleges that the gradation list is fictitious and forged document. It is difficult to appreciate the argument of the applicant that the gradation list is fictitious. The list covers 1228 staff with full details and cannot be regarded as a fictitious document. In fact, ^{his} ~~his~~ averment contradicted his own stand and it is quite apparent that he was aware of this gradation list. The gradation list gives the date of birth as 1.7.1930.

8. Considering the facts and circumstances as detailed above, I am unable to persuade myself to subscribe the arguments of the applicant. I hold that that date of birth 1.7.1930 as claimed by the respondents is borne by the documentary evidence brought on record and the applicant has been correctly retired on the due date of super-annuation.

9. In the premises of the above discussion, I do not find any merit in the application and the same is dismissed accordingly. No order as to costs.


B. Ramakrishna
MEMBER (A)

Gcs