

12

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD THIS THE 2nd DAY OF August 2010

HON'BLE MR. D.C. LAKHA, MEMBER- A

ORIGINAL APPLICATION NO. 338 OF 2008
(U/s 19 of the Administrative Tribunal Act 1985)

Harish Narayan Mishra aged about 64 years S/o Sri Raghav Prasad Mishra, R/o Village-Baksenda Post Office: Sikandra, Baharia, Distt-Allahabad.

.....Applicant

VER S U S

1. Union of India through Secretary Communication Sanchar Bhawan, New Delhi.
2. Chief Post Master General, U. P. Circle, Lucknow.
3. The Post Master General, Allahabad
4. Director of Postal Services, Office of Post Master General, Allahabad.
5. The Sr. Superintendent of Post Offices, Allahabad.

.....Respondents

Present for the Applicant:

Sri N. P. Singh

Present for the Respondents:

Sri S. Srivastava

ORDER
(DELIVERED BY HON'BLE MR. D.C. LAKHA A.M.)

This O.A. has been filed seeking the following relief/s:-

- "i. Issue a suitable order or direction in the nature of certiorari quashing the impugned order dated 16.05.2005 and order dated 04.07.2007 (Annexure No. 3 & 6 to the Original Application).
- ii. Issue a suitable order or direction in the nature of mandamus directing the respondents to make the payment of the amount along with interest which has been deducted by the respondents in pursuance of order dated 16.05.2005.



- iii. *In other relief which this Hon'ble Court may deem fit proper under the circumstances of the case.*
- iv. *To award the cost of the application to the applicant."*

2. At the time of filing of this O.A. on 01.04.2008 the 'Interim Relief' was granted in the sense that the recovery from the pension of the applicant was stayed till the next date. This stay has been extended from date to date and the same has been ordered to continue until further orders on 20.03.2009. It is seen from the file that there is no change in this order, thereafter.

The facts of the case in brief as stated in the O.A. as well as in the written submission are as under:-

3. The applicant was engaged as E.D.R. in 1962 and later on she was appointed on the post of male peon in 1965. On being successful in the departmental examination for the post of Postman in the year 1967 he was posted as village Postman on regular basis vide order dated 10.11.1968. Thereafter, he was promoted to the post of Cash Overseer in the year 1990. On completion of service has been superannuated by the Respondents' organization on 31.07.2004 treating his date of birth recorded in the service book as 13.07.1944. He was issued the provisional Pension and gratuity by the Head Office in accordance with the procedure laid down in

Article 91.9 vide letter dated 12.08.2004 (AnnexureA-2) and the Provisional Pension fixed @ Rs.3,578/-. After about one year the Respondents have revised the applicant's Pension vide Memo No. C-592/Harish Narayan Mishra/dated 16.05.2005 (AnnexureA-3). In this memo the applicant's date of birth is treated as 13.07.1934, in place of 13.07.1944 without any show cause notice or without giving any opportunity of hearing to the applicant. After receiving the letter dated 16.05.2005 regarding the revised P.P.O. the applicant submitted representation dated 05.07.2006 addressed to the Respondent No.4 (Annexure-A-4). Applicant has moved a Reminder dated 16.05.2005 addressed to S.S.P., Allahabad, Division (Respondent No.4) dated 02.11.2006 (Annexure-A-6) in which it is stated that the decision has been taken by the Respondents *ex-parte* without any show cause notice or without giving any opportunity of hearing to the applicant treating the date of birth of the applicant as 13.07.1934, in place of 13.07.1944 without any legal and valid reasons. It has been admitted by the Respondents in the order dated 04.07.2007 that the applicant has been appointed as regular Group 'D' employee in the department on 10.11.1968. It is also stated in this order that the applicant employed in the department since 02.12.1965 and change in the date of birth was permissible only upto 5 years i.e. upto 01.12.1970. There is contradiction in the

order as stated by the applicant's counsel in the O.A. that the order has been passed without giving any opportunity of hearing and hence it is illegal, arbitrary and liable to be quashed. The applicant was regularized on 10.11.1968 and within one year applicant moved the application for correction of the date of birth from 13.07.1934 to 13.07.1944. Thereafter, he gave several reminders and the competent authority corrected the date of birth on 06.09.1976. If there was any delay it would be on the part of the Respondent for which the applicant cannot be held responsible.

4. It is also averred in the O.A. that after superannuation if any correction/modification or deduction is required in employ's pension a suitable action might have been taken by the respondents under Rule 9 of the C.C.S. (Pension) rules 1972. But the decision taken in the order dated 04.07.2007 is against the spirit of Rule 9 B sub Rule 2 of C.C.S. Pension Rule, 1972. The Relevant extract of the aforesaid rule is quoted below:-

"Provided that where the departmental proceeding are instituted by an authority subordinate to the President, that authority shall submit a report recording its finding to the President:-

- (b) *The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment:-*
- (i) *Shall not be instituted save with the sanction of the President,*



- (ii) *Shall not be in respect of any event which took place more than four years before such institution, and*
- (iii). *Shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental in which an order of dismissal from service could be made in relation the Government servant during his service."*

5. On receipt of the impugned order dated 04.07.2007 the applicant applied for the first page of his service book under RTI Act on 03.12.2007 (Annexure-A-7). The same has been provided by the Respondents vide letter dated 02.01.2008 (Annexure-A-8).

6. The applicant goes on to add that a certificate has been issued by the Block Development Officer, Block Bahariya dated 19.09.2003 showing his date of birth as 13.07.1944 in the Kutumb Register (Family Register) (Annexure-A-9). A letter has been issued by Basic Shiksha Adhikari, Allahabad, addressed to the Pravar Adhikshak Dak Ghar, Allahabad on 17.05.2007 indicating that the date of birth of the applicant is 13.04.1944 (Annexure-A-10). The Respondents have not followed the Rule 8, Sub rule 3 of CCS Pension Rule 1972 while issuing the rejection order against the applicant vide letter dated 16.05.2005 treating the date of birth of the applicant as 13.07.1934. The Rule 8, Sub rule 3 of CCS Pension Rule 1972 is quoted below:-

"(3) In a case not falling under sub-rule



(2), if the authority referred to in sub-rule(1) considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order sub-rule (1),

(a) Serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the appointing authority such representation as he may wish to make against the proposal ; and

(b) take into consideration the representation, if any, submitted by the pensioner under Clause (a)."

7. Circular dated 08.05.1959 issued by Government of India reads as under:-

"(1) Stoppage or reduction of pension for reasons other than misconduct not permissible:-

Pensions are not in the nature of reward but there is a binding obligation of Government which can be claimed as a right. Their forfeiture is only resignation, removal or dismissal from service. After a pension is sanctioned, its continuance depends on future good conduct vide Article 351, CSR [rule 8, CCS (Pension) rules, 1972] but it cannot be stopped or reduced for other reasons."

The legal grounds taken in the O.A. are as under:-

(a). Correction in the date of birth from 13.07.1934 to 13.07.1944 was incorporated by the competent authority.

Representation of applicant dated 06.09.1976 is within time.

(b). After superannuation, if any, correction/modification/deduction is required in applicant's pension a suitable action

may be taken by the respondents under rule 9 of C.C.S. (Pension) Rule 1972 only. No opportunity of hearing has been provided to the applicant before passing the revised P.P.O. and the order dated 04.07.2007. The relevant extract of Rule 9 sub rule 2 is already quoted above.

(c). The Respondents have not followed the Rule 8, of Sub rule 3 of CCS Pension Rule 1972, while passing the rejection order against the applicant vide order dated 16.05.2005. Relevant extract of Rule 8, Sub rule 3 of CCS Pension Rule 1972 is already quoted above.

8. On notice learned counsel for the Respondents have filed their Counter Reply. The factual position of the applicant i.e. his posting/appointment is that he is posted as Village Postman, promotion as cash overseer, correction of date of birth in service book as 13.07.1944, retirement on 31.07.2004 and issuance of Provisional P.P.O. in favour of the applicant are not disputed. It is stated in the Counter Reply that Director Postal Accounts (DAP) Lucknow vide letter No. AE/Pen-1/P-III/PC 138/04-05/D 280 dated 25.02.2005, clarified that the correction in date of birth by SDI (P) is not permissible and contrary to the provision of the

instruction contained in the Rule 6 below Rule 56 (M) of FR part I. Accordingly, DPA revised the LPC treating the date of birth of the applicant as 13.07.1934 instead of 13.07.1944. Change in date of birth could have been got approved by the Chief Post Master General, U.P. circle, Lucknow up to 01.12.1970 only. It is admitted in the Counter Reply that the revised P.P.O. was issued as per instruction of the Director Postal Accounts, Lucknow vide letter dated 25.02.2005 and the revised pension order was issued on 16.05.2005.

9. The learned counsel for the applicant in the Rejoinder Affidavit has quoted the relevant extract of note 6 of Rule 56 (M) of FR part-I as under:-

"A Government servant in Class III service or post who is not governed by any pension rules, may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has completed thirty year's service.

NOTE 6- *The date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alternation of date of birth of a Government Servant can be made, with the sanction of a Ministry or department of the Central Government, or the comptroller and Auditor-General in*

regard to persons serving in the Indian /Audit and Accounts Department, or an administrator of a Union Territory under which the Government servant is serving, if-

- (a) a request in this regard is made within five years of his entry into Government service;
- (b) It is clearly established that a genuine bona fide mistake has occurred; and
- (c) the date of birth so altered would not make him eligible to appear in any school or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared as such examination or on the date on which he entered Government service."


10. I have heard the learned counsels of both the parties and have perused the pleadings and the documents available on file. I have also gone through the written submission. Factual position has been reiterated by both the learned counsels as stated in the O.A., Counter Reply and in the Rejoinder Affidavit.

11. In support of his averments and pleadings taken in the O.A. the learned counsel for the applicant has placed reliance on the following judgments of Hon'ble High Court and Hon'ble Supreme Court,

1. District Inspector of Schools, Varanasi Vs. Pradumn Kumar Gaur, Spl. A. No. 1093 of 2001 decided on 2nd September, 2009, reported in 2010 (1) AWC, 50.
2. Mohd. Yusuf Khan Vs. U. P. Power Corporation Ltd. & Ors. Civil appeal No. 6191 of 2008 decided on 22.10.2008, SCC 2008 (7) 625.


(21)

12. The learned counsel for the applicant has vehemently argued that the request for change of date of birth was made by the applicant within time and the same was allowed by the competent authority and thereafter, the applicant remained in service from, 1976 to 2004 (after the correction in date of birth) and accordingly, treating date of birth as 13.07.1944 he was superannuated on 31.07.2004 and the Provisional P.P.O. on 12.08.2004 was issued by the Respondent No. 4 fixing provisional pension of the applicant @ of Rs.3,578/-. Thereafter, no stoppage or deduction in the pension is permissible as per Rules without any show cause notice and opportunity of hearing to the retiree. In the instance case the order dated 13.07.2005 (for reducing the pension of the applicant) and the order dated 04.07.2007 about the date of birth of the applicant i.e. 13.07.1934 instead of 13.07.1944 are arbitrary and illegal as they have been issued without any opportunity of hearing to the applicant. And these orders have been passed against the principle of natural justice. The learned counsel for the Respondents only reiterated that the change in date of birth was possible only upto 01.12.1970 as the applicant entered into the department in 1965. He has taken support of Note 6 below the Rule 56 (M) of FR part-I on this point. He has not controverted the submission of the applicant's counsel that the applicant was appointed on regular



basis in 1968 after he was selected in the departmental examination. So the period for limitation to make the request to change in the date of birth can be reckoned from 1968 only.

13. After hearing the learned counsel for both the parties I have given my thoughtful consideration to their averment and contention. It is apparent that the correction/change in the date of birth from 13.07.1934 to 13.07.1944 so effected in the service book by the postal authority in 1976 and the applicant remained in service and accordingly superannuated on 31.07.2004. The P.P.O. dated 12.08.2004 was issued for provisional pension. While issuing the P.P.O. dated 12.08.2004 the date of birth as recorded in the service book must have been taken into cognizance by Respondents i.e. the authority issuing the P.P.O.. After having issued the P.P.O. for provisional pension on 12.08.2004 by the Respondents no change to the detriment of the applicant could have been issued in the revised P.P.O. and date of birth without hearing the applicant. But the impugned order has been issued in contravention of this principle of natural justice. So I have no hesitation or doubt to agree with the plea and contention of the applicant in the O.A. as supported by the Judgments relied upon by the applicant's counsel (supra).



14. In view of the above facts and analysis, I observe that the matter needs reconsideration. The matter is remitted back to the respondents to reconsider the same and decide as per rules and procedure established by law. The impugned orders dated 16.05.2005 and order dated 04.07.2007 (Annexure No. 3 & 6) are quashed and set aside. The amount of provisional pension, if deducted, shall be restored as per the situation before passing of the impugned orders. The respondents shall decide the matter of pension etc. after giving an opportunity of hearing to the applicant. No order as to Costs.



Member-A

/Dev/