

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 186 OF 1996

Present : Hon'ble Mr. B.N.Som, Vice-Chairman
Hon'ble Mr. B.V.Rao, Member (J)

Amal Chowdhury,
S/o Late D.N.Choudhury,
Worked as Lower Division Clerk,
Under Collector of Customs, Customs House,
Calcutta-1,
R/o 20, Baruipara Lane, Calcutta-35.

VS

1. Union of India through the
Secretary, M/o Finance, Deptt. of Revenue,
New Delhi
2. Central Board of Excise & Customs,
Govt. of India, through Chairman,
Bitta Bhavan, New Delhi
3. Collector of Customs, Custom House,
Strand Road, Calcutta-1
4. Addl. Collector of Customs (Personnel & Vigilance),
Customs House, Calcutta-1
5. Dy. Collector of customs for Vigilance,
Customs House, Calcutta
6. Ass.t Collector of Customs for Vigilance Unit,
Customs House, Calcutta
7. Shri B.P.Banerjee, Asst. Collector of Customs,
Customs House, Calcutta-1, Enquiry Officer

For the applicant : Mr. S.K.Dutta, Counsel

For the respondents : Mrs. K.Banerjee, Counsel

Heard on 22.6.06 Order on 28.9.06

ORDER

B.N.Som, VC:

Shri Amal Chowdhury, formerly Lower Division Clerk in the office of the respondents, has filed this OA being aggrieved by the order dt. 7.6.95 issued by the Dy. Collector of Customs, Calcutta, dismissing him from service. He has in this OA sought for the following relief :-

- i) To direct the respondents to cancel, withdraw and/or rescind the purported charge sheet and the corrigendum, the enquiry report and the order of dismissal contained in Annexure-A, F and H respectively hereof.
- ii) To direct the respondents to reinstate the applicant in no time
- iii) To direct the respondents to produce all records of the case for conscionable justice.

2. The facts of the case are not in dispute. The applicant was charge-sheeted under rule 14 of the CCS(CCA) Rules vide Memo No. S24-3/91 Vig. dt. 7th August, 1991 by the Addl. Collector of Customs (Personnel & Vigilance) (Annexure-A) on the allegation that he had committed gross misconduct by suppressing his actual date of birth which was 25.3.1942 as per record of School Final Examination, 1962 Certificate issued by the West Bengal Board of Secondary Education, Kolkata and declared his date of birth to be 25.10.1954 for obtaining appointment as Sepoy under the respondents w.e.f. 12.7.76 when he was grossly over-aged. The applicant has assailed the charge-sheet as well as the decision of the disciplinary authority on the ground that the latter had acted in an arbitrary, illegal and whimsical manner which was not only bad in law but was without jurisdiction. His main plea is that the School Leaving Certificate containing the date of birth being an undisputable document to prove the date of birth of a person, the allegations and/or charges contained in the charge-sheet (Annexure-A) are bound to be held to be without any basis and have no legs to stand upon either in law or in fact and on this ground alone the same ought to be struck down in limine. His further grievance is that the respondents had acted merely on the basis of a complaint which was without any basis and they also did not bring in evidence to lead either documentary or otherwise as contained in Annexure-A and the disciplinary action was only aimed at victimizing and harassing the applicant. His further allegation is that the original document like the School Leaving Certificate having not been produced at the enquiry to substantiate the charges, the same could not said to have been proved conclusively. He also alleges that the punishment order was passed on the basis of vitiated enquiry proceedings and the enquiry report was also a product of colourable exercise of power. The disciplinary



authority had also failed to consider the issues raised in his representation against the enquiry report, and, therefore, his decision could not be called to be a fair decision.

3. The respondents have opposed the application on all counts. They have submitted that an enquiry was conducted in the matter and the applicant was given all reasonable opportunity to defend his case. He was given opportunity of personal hearing on 2.2.95, 16.2.95, 8.5.95 and 12.5.95 but the applicant did not appear for personal hearing. They have further submitted that prior to issuing the charge-sheet, a preliminary enquiry was carried out wherefrom it revealed that the applicant had produced his transfer certificate from a school named Ashokgarh Adarsha Vidyalaya but in the records of that school his name did not appear as a student. They have stated that the West Bengal Board of Secondary Education vide their letter No. EX-EQ/12 dt. 22.11.89/5.1.90 had certified that the charged official first appeared in 1962 School Final Examination and his date of birth was recorded as 25.3.1942. He could not pass in that year and again appeared in the said examination held in the years 1963 and 1964 when his date of birth was shown as the same as was recorded in the year 1962 i.e. 25.3.1942. However, he again appeared in the Higher Secondary Examination for the years 1974 and 1975 when his date of birth was recorded as 25.10.1954. They have further submitted that the authorities of West Bengal Board of Secondary Education had given clarification by their letter dt. 22.2.91 that "the date of birth recorded at the first enrolment is accepted as final". It is under those circumstances, the respondents came to the conclusion that the applicant's claiming his date of birth as 25.10.54 was fictitious when his actual date of birth was 25.3.42. The respondents have further clarified that they had produced the attested copies of the documents issued by the W.B.Board of Secondary Education as the original had been misplaced at the succeeding stage of hearing. They have taken another position that it was applicant's younger brother -one Shri Sadananda Chowdhury- while giving evidence before the enquiry officer had produced his school final examination certificate wherefrom it was found that his date of birth was 25.8.46. In that view of the matter, the date of birth of the elder brother i.e. the applicant could not be 25.3.42.

2

4. We have heard the Id. Counsel for the rival parties and have perused the records placed before us.

5. The applicant has raised two issues in challenging the order of the disciplinary authority dismissing him from service. Firstly that the enquiry officer submitted his report without insisting on the prosecution to produce the original documents. As the prosecution had sought to prove the allegation on the basis of attested copies of the documents, the charges could not be stated to have been legally proved. His further point is that for determining the date of birth of a person, the undisputed document to be relied upon is the School Leaving Certificate.

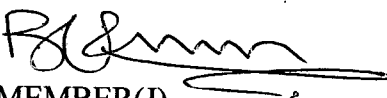
6. With regard to his first objection, the respondents have admitted that the document like the letter dt. 22.11.89/5.1.90 issued by WB Board of Secondary Education was lost in course of hearing, and, therefore, they had depended on the attested true copies of the documents. The Id. Counsel for the respondents during the oral argument submitted that the original documents as listed in annexure to the charge-sheet had actually been inspected by the applicant before the enquiry and he had also given acknowledgement dt. 29.12.92 to the effect that he had "inspected the original documents against which charges had been framed in Annexure-III of charge-sheet and received the Xerox copies of those documents". In the circumstances, she submitted that the applicant is trying to mislead the Tribunal when he had in fact inspected the original documents before the enquiry. It is true that the original documents were misplaced during the enquiry but that could not give him an opportunity to say that the proceedings were vitiated on that account because he had already taken Xerox copies of those documents after comparing those with the originals. Further, the Xerox copies had already been authenticated by the authorities of the WB Board of Secondary Education subsequently and, therefore, this objection is merely technical in nature without prejudicing the applicant.

7. With regard to his other objection that he had produced the certificate issued by the WB Board of Higher Secondary Education certifying that he passed the Higher Secondary Examination in the year 1975 wherein his date of birth recorded was 25.10.54,

2

the respondents have submitted that from the records of WB Board of Secondary Education, it has been clearly brought out that he had appeared several times in the school final examination, firstly in the year 1962, then in the year 1963 and again in 1965, and also in the Higher Secondary Examination in the years 1974 and 1975. For the first 3 years he had maintained his date of birth as 25.3.42 and for the two subsequent years when he appeared in the Higher Secondary Examination and he was declared successful in the 1975 examination, he had declared his date of birth as 25.10.54. Having faced with two dates of birth in the school records/certificates, the respondents had referred the matter to the Board authorities who gave clarification on 22.2.91 to the effect that the "date of birth recorded at the first enrolment is accepted as final". When the applicant in para 5(II) of his application submits that the school leaving certificate containing the date of birth is an undisputable document to show the correct date of birth of a person, we fully agree with this proposition that the date of birth recorded in the school records or in the school leaving certificate is the only document to prove the correct date of birth when there is no birth certificate available. By the same logic, his defence is wholly defeated. It is the W.B. Board of Secondary Education, which, on examination of the entire case history from 1962 to 1975, had upheld that as he having recorded more than one date of birth for his enrolment as a candidate in the school leaving examination, the date of birth that he had recorded in the first enrolment had been accepted by them as the date that would finally hold the ground. In other words, as the Board of Secondary Education by their letter dt. 22.2.91 have declared that the correct date of birth of the applicant is to be taken as 25.3.42, we have no hesitation to declare that that is the only correct date of birth of the applicant in this case.

8. In the said premises, we hold that the applicant has miserably failed to assail either the charge-sheet dt. 7.8.91 served on him by the respondent No. 4 or the order of the disciplinary authority dt. 7.6.95 dismissing him from service and accordingly the OA is dismissed being devoid of merit. No costs.


MEMBER(J)


VICE CHAIRMAN