

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 477/99

Wednesday, the 23rd day of June 1999.

CORAM

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

C.Hamza
S/o Late Usman
working as Deputy Surveyor
Kadamat Island
Union Territory of Lakshadweep
R/o Cheriyapura House
Agathi Island
Union Territory of Lakshadweep.

...Applicant.

(By advocate Mr Shafik M.A.)

Versus

1. The Administrator
Union Territory of Lakshadweep
Kavaratti.
2. The Collector cum Development Commissioner
Union Territory of Lakshadweep.
Kavaratti.
3. Union of India represented by the Secretary
Ministry of Home Affairs, New Delhi. ...Respondents.

(By advocate Mr P.R.Ramachandra Menon)

The application having been heard on 23rd June 1999,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant while studying in the 9th standard at Amini High School was selected by the Administrator, Union Territory of Lakshadweep by his proceedings dated 24.2.61 for survey training class. After completion of the training, the applicant was appointed as Deputy Surveyor by order dated 2.8.1962. His date of birth which was shown in the school leaving certificate was 3.1.1943 which was accepted and entered in his service records. While so, after several years, in the year 1997, the applicant was served with Annexure A-4 office memorandum dated 14.7.97 alleging that while in the service register of the applicant his date of birth was recorded as 3.1.1943 and the verification was done with

reference to the transfer certificate No.32/65-66 issued by the Headmaster Govt. High School, Amini, on enquiry it was found that there had been a tampering in the date of birth and that the applicant's real date of birth was 3.1.1937 and directing him to show cause why action should not be taken against him for abetting the criminal offence of falsification and tampering of school admission register in order to get personal favour and why action should not be taken to terminate his service immediately after recovering of salary and other financial benefits drawn by him from 1.2.95 onwards i.e. after actual date of retirement on superannuation. In response to the above memorandum, the applicant submitted A-5 explanation wherein he denied the allegation that he connived with the falsification of the school records and pleaded that no action be taken against him.

Ultimately, after a lapse of about two years, the first respondent issued the impugned order Annexure A-1 dated 8.4.99 holding that he was of the considered opinion that the correct date of birth of the applicant was 3.1.1937 and not 3.1.1943 and superannuating him w.e.f. 31.1.1995 the date on which he actually attained the age of 58 years, ordering inter-alia that services rendered by him beyond 31.1.95 would not be counted for pensionary benefits.

2. The applicant assails this order on the ground that the decision is arbitrary, irrational and based on no proof and discrimination on political consideration. The applicant has, therefore, filed this application seeking to have the impugned order A-1 set aside, declaring that he is entitled and eligible to continue in service on the basis of the date of birth recorded in his service book and to direct the respondents to permit him to continue till 2003 on which date he would superannuate on attaining the age of 60 years.

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3. The respondents contend that the first respondent is empowered by the provisions contained in G.F.R. 79 and Note 6 under F.R. 56 to alter the date of birth of an employee under him and that on verification of school records relating to the applicant, it was noticed that there had been an alteration and double entry as 3.1.1937 and 3.1.1943 in the admission register of the Amini High School, that the date of birth of the younger brother of the applicant who is also an employee under the Administration was 10.1.1942 and that, therefore, there is no doubt of the fact that the applicant's date of birth cannot be 3.1.1943 but can only be 3.1.1937 and, therefore, the action taken by the first respondent is unexceptionable. The respondents, contend that the application may be dismissed.

4. The applicant, in his rejoinder, has stated that the date of birth entered in the school admission registers in those days was without reference to any records, that mistakes used to occur in the school admission registers which used to be rectified later, that there has been instances under the Lakshadweep Administration where there are persons whose date of birth entered in the school admission register is one while that is entered in the service record is another date and that without any proof as to whether the date of birth of the applicant has not been correctly recorded in the service record, the action taken by the first respondent is wholly unjustified.

5. The respondents have filed an additional reply statement reiterating the contention that the applicant's younger brother's date of birth was 10.1.1942 and producing Annexure R-5, the extract from the service book of the younger brother of the applicant.

6. We have carefully gone through the entire pleadings and materials and have heard at considerable length the arguments advanced by Shri Shafik M.A., learned counsel of the applicant and Shri P.R.Ramachandra Menon, learned counsel for the respondents. While considering the case, we have to visualise the situation which prevailed in the Lakshadweep Island about 35 years back. We are informed that for the first time a high school established in the Island was in the year 1960 and that in those days, even mechanised vessels were not plying between the main land and Lakshadweep Islands. We are also informed that in primary schools, a person who had studied only upto third standard was Teacher in charge of the school. The correctness, accuracy and possible mistake etc. in maintaining school admission registers during such a time can very well be visualised from the above backdrop. It is not disputed that the applicant's date of birth as entered in his school leaving certificate issued from Amini High School showing it as 3.1.1943 was accepted and recorded in the service record of the applicant. Note 6 under F.R.56 relied on by the respondents to justify the correctness of the date of birth of the applicant thirty five years after he entered service reads as follows:

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 alteration 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 Departments, 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 bonafide mistake has occurred; and
- (c) the date of birth so altered would not make him ineligible 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 at such examination or on the date on which he entered Government service."

A close reading of the above said note would clearly show that it would be permissible to alter the date of birth of a Government servant only under the circumstances enumerated thereunder. The applicant has not made any request for alteration of his date of birth. It has not been established that a genuine bonafide mistake has occurred in recording the date of birth of the applicant and the third condition does not apply to the facts of the case. Erasure and re-writing alleged to have been made in the admission register of the Amini High School though may at least create a suspicion as to whether it was properly maintained or not, but would not prove that there had been a wilful dishonest alteration of the date of birth of the applicant in the register from 3.1.1937 to 3.1.1943. In any case there is no allegation in the show-cause notice Annexure A-4 that it was the applicant who made the falsification in the register, though it is alleged that he connived for such falsification which the applicant has denied. It is well settled now that suspicion however strong it may be will not be a substitute for legal proof. The Constitution guarantees to holder of a civil post under Article 311 a right to continue in service till the age of superannuation unless he is removed after holding an enquiry as specified in the service rules. The applicant, going by the recorded date of his birth, is to continue in service till 3.1.2003. He was superannuated and retired w.e.f. 31.1.95 by the impugned order of the first respondent on the basis of a unilateral decision taken without holding an

enquiry with which the applicant was associated. The unilateral decision taken on the basis of details collected in an investigation alleged to have been held behind the back of the applicant is opposed to all canons of justice and fairplay. We have perused the admission register of the Amini High School which was produced for our perusal by the learned counsel for the respondents. We find that there are ever so many corrections in the Register which are not initialled. Whether they are bonafide corrections or not cannot be decided unless the person who made the corrections is asked to explain. It is not seen from the impugned order A-1 that the person who made the entries has been questioned by anybody. In any case, as the investigation alleged to have been made is one in which the applicant was not associated, we are of the considered view that the impugned order which has resulted in adverse civil consequences on the applicant should not have been passed by the first respondent.

7. In the light of what is stated above, we allow the application, set aside the impugned order, direct the respondents to reinstate the applicant forthwith, treating that he continued in service despite the passing of the impugned order and to allow him to continue till the date of his normal retirement as per his recorded date of birth as 3.1.1943 unless he is otherwise dismissed or removed from service in a proceedings held in accordance with law. There is no order as to costs.

Dated 23rd June 1999.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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Annexures referred to in this order:

A-1: True copy of the order No.1/2/97-CR dated 8th April 1999 issued by the first respondent.

A-4: True copy of the OM No.1/2/97-LR dated 14.7.97 issued by the first respondent.

A-5: Copy of letter No.nil dated 24.7.97 submitted by the applicant before the second respondent.

R-5: True copy of the relevant entries in the service Register of the applicant's brother namely Sri C.Aboobaker.