

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 8/2005 A.W. 227/2007

This the 13th day of October, 2011

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Hon'ble Sri S.P.Singh, Member (A)

O.A. No. 8/2005

Date Ram Shukla aged about 48 years son of Sri Kunj Bihari Shukla r/o MOhalla Basin Tola Bazar Ward, Shaurahra District Kheri, GDS MP, Amethi (put off duty), District- Kheri.

Applicant

By Advocate: Sri R.S.Gupta

Versus

1. Union of India through the Secretary, Department of Post, Dak Bhawan, New Delhi.
2. Director Postal Services, Office of Post Master General, Bareilly Region, Bareilly.
3. The Superintendent of Post Offices, Kheri.
4. Sub Divisional Inspector (Postal) Kheri East Sub Division, Kheri.
5. Sri Ved Prakash Trivedi, EDMP, Kukra Towan now Group Kheri Division.
6. Sri Uma Shanker Sharma, Superintendent of Post Offices, Kheri.
7. By Name sub Divisional Inspector (East) Kheri.

Respondents

By Advocate: Sri S.P.Singh for Official respondents
Sri Praveen Kumar for respondent No.5

O.A. No. 227/2007

Date Ram Shukla aged about 50 years son of Sri Kunj Bihari Shukla GDSMP Amethi (Kheri) r/o Mohalla Basin Tola Bazar Ward, Dhaurahra District Kheri, .

Applicant

By Advocate: Sri R.S.Gupta

Versus

1. Union of India through the Secretary, Department of Post, Dak Bhawan, New Delhi.
2. The Superintendent of Post Offices, Kheri.
3. Sub Divisional Inspector (Postal) Kheri East Sub Division, Kheri.
4. Sri Ved Prakash Trivedi, EDMP, Kukra Towan now Group Kheri Division.

Respondents

By Advocate: Sri S.P.Singh for official respondents
Sri Praveen Kumar for respondent No.4

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ORDER**BY HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)**

Both the above OAs are clubbed together and therefore, being decided by a common judgment/ order.

2. First of all, we take O.A. No. 8/2005. The following reliefs have been sought in this O.A.:-

a) That this Hon'ble Tribunal may graciously be pleased to call for selection and appointment order of Sri V.P.Trivedi,G.D.S.M.P., Kukra Town to Group D cadre and quash the same with directions to opposite parties to promote the applicant in Group D cadre from the date Sri V.P.Trivedi Junior to him was promoted to Group D cadre with all consequential benefits including back wages.

b) Any other relief deemed just and proper in the circumstances of the case with cost of O.A.

3. The case of the applicant is that he was appointed as E.D.M.P., Amethi in Kheri Division and opposite party No. 5, Sri Ved Prakash Trivedi was appointed as E.D.M.P., Kukra Town(Kheri). The name of the applicant is at Sl.No. 54 and date of birth is mentioned as 5.1.1956 and joining date as 22.8.70 in The seniority list (Annexure No.1, Annexure RA-2 of Rejoinder Reply). The name of Sri Ved Prakash Trivedi is at Sl. No. 63 and he joined service on 16.4.1971. The seniority list was circulated on 27.3.95 (Annexure 2). Sri Trivedi has been promoted to Group 'D' cadre illegally in the last week of March 2004. When it came to the knowledge of the applicant, he made representations dated 29.3.2004, 5.4.2004 and 20.7.2004 (Annexure - 3,4 and 5).

4. The O.A. has been contested by the official respondents by filing a counter reply on the ground that one of the eligibility criteria for promotion to Group 'D' cadre is the age of 50 years for general community, 53 years for OBC and 55 years for S.C. /ST. As on the cut of date of 1.7.2003, the applicant (general candidate) was over age and

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therefore, his case was not considered. The next to the applicant in the seniority of consideration was Sri Ved Prakash Trivedi, G.D.S., Kukra Town (respondent No.5) who was selected in G.C. quota for promotion to Group D cadre. The date of birth and date of appointment of Sri Trivedi are 15.1.1954 and 16.1.1972 respectively. The photo copy of the special report showing the aforesaid dates is Annexure CR-8. As per gradation list of GDS of Kheri Division issued on 1.1.1991 (CR-3), the name of the applicant appears at Sl.No.133 showing incorrect date of birth and date of entry in service as 5.1.1955 and 29.7.1971. If the aforesaid date of birth i.e. 5.1.1955 is taken to be correct then his age at the time of appointment would come to 16 years 6 months and 24 days, whereas the minimum age prescribed for appointment on the post of GDS was 18 years. As per register of GDS staff employment maintained in the office of SDI (East) Kheri, the correct date of birth is 10.3.1952, which has been over figured by showing his wrong date of birth as 5.1.1956. But in the "Naksha Hulia" and declaration dated 26.10.71, the applicant's date of birth has been correctly shown as 10.3.1952 and educational qualification as class VII, This document was maintained at the time of appointment of the applicant and the entries made therein were verified and attested by the applicant himself by putting his thumb impression. The photo copy of GDS Staff employment register, Nuksha Hulia and declaration of the applicant are annexed as Annexures No.CR-4, CR-5 and CR-6. The correct date of birth being 10.3.1952, he was 18 years, 5 months and 12 days on the date of appointment on 22.8.70. Thus he became over age (more than 50 years) on the cut of date of 1.7.2003 fixed for deciding the eligibility for promotion to Group 'D' cadre. In respect of GDS, any service book is not maintained. The relevant rules have been annexed as CR-7. In respect of the matter pertaining to the alleged manipulation in his age etc., an enquiry was conducted and his correct date of birth was found to be 10.3.1952. The photo copy of the enquiry report dated 19.7.2004

is annexed as CR-11. According to this report, with a view to get departmental promotion, the applicant obtained false date of birth in Transfer certificate submitted by him vide Annexure 13 to the O.A. On account of disciplinary proceedings initiated against him, he was put off duty vide Annexure -6 to the O.A. However, after service of charge sheet, he was put back on duty on 14.12.2004.

5. Another C.A. was also filed by the official respondents by another counsel in which the same pleadings are contained.

6. Respondent No. 5 have filed separate C.A. almost taking the same pleadings as contained in the C.A. filed by the official respondents. Against this C.A., no R.A. has been filed by the applicant.

7. The applicant filed a Rejoinder Reply on 24.8.2005, reiterating his pleadings. In this R.A., it has been said for the first time that date of birth of respondent No. 5 being 15.1.1954 and his date of joining in service being 16.4.1971, he was also minor at the time of entry in service i.e. 17 years 5 months. Further, it has also been contended for the first time that applicant has passed Junior High school in the year 2000 (VIII Class) and his date of birth was recorded as 5.1.1956 in his mark sheet of Junior High school (Annexure 1 of RA) and on this basis, his date of birth has been correctly recorded in the seniority list. In respect of "Naksha Hulia", it has been said that it does not contain his thumb impression and there are several over writings and corrections every where and therefore, it is not a genuine documents. About the enquiry report, it has been said that it was not correctly conducted.

8. The aforesaid averments have been controverted in the Supplementary C.A. dated 8.5.2006.

9. The applicant filed another Rejoinder Reply dated 13.7.2006. However, its copy was not given to private respondent No. 5 as pointed out during arguments. On the back of the page of this reply, there is signature of Sri G.K.Singh, Advocate for receiving copies, whereas the private respondent is being represented by another Counsel i.e. Sri

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Praveen Kumar, Advocate. In this R.A., almost similar averments have been made as in the earlier R.A. of the applicant.

10. We have heard learned counsel for the parties and perused the material on record.

11. The nomenclature of Extra Departmental Agents has now been changed to Gramin Dak Sewak (GDS). They do not get any salary. Instead they got Time Related Continuity Allowance (TRCA). Concededly, there is no appointment letter available with the applicant. But that is not very relevant because it is an admitted case that he joined service w.e.f. 22.8.70 as Extra Departmental Agent.

12. There is no dispute that in respect of GDS no service book is maintained, according to the rules. At the time of entry in the GDS, a "Naksha Hulia" and declaration are taken. The official respondents have filed both these documents (Annexure CR-4, CR-5 and CR-6). In these documents, the date of birth of the applicant is mentioned as 10.3.1952 and in front thereof 22.8.70, is mentioned as date of entry in service (Annexure CR-4). In another paper Naksha Hulia (Annexure CR-5), the date of birth is mentioned as 10.3.1952 and it contains thumb impression and also impressions of four fingers. The only contention of the applicant in respect of these documents is that it does not contain his thumb impression. But he has not said anything in respect of his impression of four fingers. It is true that in Annexure CR-4, just below the date of birth 10.3.1952 is mentioned another date of birth as 5.1.1956 in different ink. It is said on behalf of the applicant that this is the correct date of birth which is the same as mentioned in his mark sheet of Junior High School. Then he appeared and passed class VIII (Junior High School in the year 2000) and in the mark sheet/ Transfer certificate, the date of birth is shown as 5.1.1956. According to official respondents, according to date of birth mentioned in the aforesaid original record, when he was found to be over age, then he manipulated the mark sheet of junior High School showing date of birth according to his choice. It

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was also pointed out that the matter of promotion was considered in March 2004 and when he came to know that he was found to be over age, then he manipulated the aforesaid mark sheet. The perusal of this mark sheet would show that there is attestation of Principal of the School dated 9.7.2004 and another attestation at the bottom on 20.1.2005 i.e. after filing of this O.A. on 4.1.2005. It was therefore an after thought. In the main pleadings contained in the O.A., he did not say any clear thing in this regard and also not annexed the aforesaid mark sheet. For the first time, it saw the light of the date in August, 2005 when the applicant filed a Rejoinder Reply. The applicant was put off duty and enquiry was instituted in which the charges of manipulation in the date of birth were found proved and appropriate punishment was given, which has been separately challenged in the connected O.A. If the date of birth as suggested by the applicant as 5.1.56 is taken to be correct, then on the date of joining as EDA on 22.8.70, his age would come to about 14 years, whereas there is no quarrel on the point that the age of entry in EDA is 18 years. In the absence of any plausible and satisfactory explanation, we are bound to believe the "Naksha Hulia" and declaration (Annexure CR-4, CR-5 and CR-6), in which date of birth is mentioned as 10.3.1952. Besides, thumb impression, it also contains impression of his four fingers and the impression of fingers have not been denied by the applicant. He may not have signed it but impression of his all four fingers are contained in it, which he could not dare to controvert. He has only denied his thumb impression on the declaration. In the absence of specific denial, there is no reason to disbelieve that these impressions of four fingers were of the applicant himself. Preparation of an official documents that too about 40 years before is presumed to have been correctly drawn and maintained unless anything otherwise is proved. Moreover, from the perusal of the pleadings and documents contained in the connected O.A. and also from the enquiry report etc., which has been brought in this OA. also, it

is to be noticed that during enquiry, when he was confronted that if the date of birth as told by him is taken to be correct then at the time of entry into the service he was of the age of 14 years, 7 months and 17 days while minimum prescribed age for EDA is 18 years. Then he took a plea that in the event of his being minor, his appointment was made as Boy Messenger as mentioned in the Appellate Order dated 14.5.2007. But he did not plead in his O.A. or bring on record any such documents to substantiate this contention. Further, it transpires from record that according to exhibit K-4, Sri Babu Ram Pandey, Principal, Prathamik Vidyalaya, Dharuhara, from where the applicant claims to have passed VIII class in the year 2000 gave a certificate to the effect that on account of floods, the documents relating to date of birth of the applicant are not available in the school. On the other hand, according to exhibit Kh-1, another principle of the same school has mentioned his date of birth as 5.1.56 in the T.C. etc. Thus, the applicant could not prove his case in respect of alleged date of birth and there is no reason for us to disbelieve the official documents maintained by the Department, containing impression of his four fingers which the applicant has not denied anywhere. It has also come during enquiry that he did not seek any prior permission or take any leave for appearing in the alleged examination of Junior High School (VIII Class) which also raises strong doubts about his claim of appearing and passing the said examination. In any case, his date of birth mentioned in the T.C./ mark sheet of Junior High School could not be proved to be genuine in the absence of any record of the school which is said to have been destroyed during floods as stated by the principle of the school itself. In fact, the applicant has not come before this Tribunal with clean hand and therefore, this OA. deserves to be dismissed on this ground alone.

13. In view of the above, he has no vested right in respect of the impugned promotion to Group 'D' of respondent No. 5 because

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according to the provision, only such persons were eligible who have not crossed the age of 50 years as on the cut of date of 1.7.2003. The cut of date was notified by letter dated 13.1.2004 as mentioned in the minutes of the DPC dated 22.3.2004 (Annexure CR-1). ON 1.7.2003, he had attained the age of 51 years and therefore, he was rightly not considered for promotion. On the other hand, the date of birth of respondent No. 5, being 15.1.54, he was below 50 years and was therefore, promoted being the next senior as pleaded.

14. No other arguments were placed before us. We also do not find any other points worth adjudicating in this O.A.. Finally, therefore, in view of the above discussion, this O.A. deserves to be dismissed.

15. In O.A. No. 227/2007, the following reliefs have been sought:-

a) That this Hon'ble Tribunal may kindly be pleased to quash the order dated 27.6.2005 and 14.5.2007 about debarring and changing date of birth of applicant as contained in Annexure No. 1A and IB with all consequential benefits.

b) Any other order as may be found just in the circumstances of the case with cost of O.A.

16. The applicant has said that during the enquiry proper opportunity for defence was not given to him. The punishment order dated 27.6.2005 Annexure 1A has been challenged on the ground that the penalties have been imposed outside the ambit of GDS (Conduct and Employment) Rules, 2001, i.e. debarring from appearing in the Postman examination for one year and directing for change of date of birth from 5.1.56 to 10.3.52. Similarly, the appellate order has been challenged saying that it was passed after keeping it pending for more than 1 year 9 months and it is a non speaking and unreasoned order.

17. The O.A. has been contested by filing a detailed Counter reply. In respect of enquiry, it has been said that he was given full opportunity of defence and the notices were issued by the Enquiry Officer to the Defence Assistant nominated by the applicant but he failed to attend

the enquiry. In support of this the photo copies of memo dated 14.1.2005, 18.2.2005 and 25.2.2005 have been annexed as R-4,R-5 and R-6. In respect of order passed by the disciplinary authority, it has been said that the punishment of debarring from appearing in Postman examination for a period of one year was passed correctly in accordance with relevant rules. As far as the order for changing the date of birth is concerned, it was not in the shape of punishment. It was merely for necessary correction in the relevant record. In respect of appellate order, it has been pleaded that the appeal itself is not in order and it was left unsigned. Then it was confirmed from the applicant as to whether he has preferred the appeal or not. After confirmation, it was decided. Some delay was caused on account of changing of appellate authority frequently.

18. Respondent No. 4 has also filed a separate C.A. almost reiterating the same pleadings as contained in the C.A. filed by the official respondents.

19. The applicant has also filed a Rejoinder Reply, reiterating his pleadings contained in the O.A.

20. We have heard the learned counsel for the parties and perused the material on record.

21. As far as the enquiry report is concerned, it comes out from record that written information/ memos dated 14.1.2005, 18.2.2005 and 25.2.2005 (Annexure R-4,R-5 and R-6) were given to the Defence Assistant nominated by the applicant, he did not turn up. Therefore, there is no merit in the contention that proper opportunity was not given. In para 4.3 of the O.A., it has been said that Sri R.D. Tiwari, retired SPOs, Basti was nominated by the applicant as his Defence Assistant and then Sri B.P. Yadav, P.A. Sitapur but they were never informed about the dates of enquiry and the enquiry was conducted without assistance of Defence Assistant. But in para 6 of the CA., this pleading has been specifically controverted and the aforesaid written

information/ memos (Annexure CR-4, CR-5 and CR-6) have been brought on record to show that proper information was sent. The copies of Annexures R-5 and R-6 have been specifically endorsed to Superintendent of Post Offices, Sitapur with request that it may be sent to the aforesaid Bachan Prasad Yadav, the Defence Assistant. In para 6 of R.A., there is a simple denial of the pleadings contained in the aforesaid para 6 of counter reply. There is no specific denial that the notices were not served upon Sri B.P. Yadav, Defence Assistant nominated by the applicant. Therefore, we come to the conclusion that sufficient opportunity was given during the enquiry and no prescribed procedure has been violated. No relief has been sought in respect of enquiry report.

22. In respect of punishment order, suffice is to mention that under recruitment rules of GDS (Conduct and Employment) Rules, 2001, the punishment of debarring from appearing in the Postman examination for one year could have been very well passed because it is one of the punishments which are provided under the relevant rules. As far as passing a direction in respect of correction of date of birth is concerned, the same is not in the nature of punishment as pleaded in the C.A. Applicant has not pleaded any other point against this punishment order. Therefore, it is found to be in order.

23. Similarly, in respect of the order passed by the appellate authority (Annexure 1B), its perusal shows that all the nine points raised by the applicant in his appeal have been discussed in detail and thereafter a reasoned and speaking order has been passed. On behalf of the applicant nothing could be shown otherwise.

24. From the perusal of the appellate order, it also appears that the point of date of birth has been specifically dealt with in detail. The

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appellate authority has observed in his order that with a view to achieve the departmental promotion, the applicant made an unsuccessful attempt to get his date of birth changed from 10.3.52 to 5.1.56. He also referred to exhibit K-4 of the enquiry wherein the principal of the school Dharura, Sri Babu Ram Pandey has given a certificate that during floods, the original record in respect of date of birth of the applicant has been destroyed and no such record was available in the school. As against this, the exhibit Kh-1 has been issued by another principal of the same school showing the date of birth of the applicant as 5.1.56, which is not believable in the absence of original basic record of the school. Similarly, it was also noted in the appellate order that during the enquiry, applicant could not produce any document to show that he was appointed on 22.8.70 as Boy Messenger. Because, if 5.1.56 is taken to be date of birth of the applicant as is now being claimed by the applicant, then his age at the time of entry in the service would come only 14 years 7 months and 17 days. The applicant claimed that in that condition, his appointment may be treated as Boy Messenger but this condition could not be substantiated by him during enquiry as has been mentioned in the order of the appellate authority. Thus the appellate authority has considered all the aspects of the matter and passed a well reasoned order. We do not find any flaw in this order to justify any interference in the matter. In such matters, the judicial court or Tribunal is not supposed to enter deep into the enquiry report or in the order of punishment or appellate order passed thereon. We have only a limited scope to see as to whether or not proper opportunity was given and whether or not the authorities concerned i.e. the Inquiry Officer, Disciplinary authority and Appellate Authority have arrived to their respective conclusions in accordance with law and prescribed procedure. In this regard, we do not find any embellishment. Finally, therefore, this O.A. is also liable to be dismissed.

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25. In view of the discussions made hereinabove, both the OAs are accordingly dismissed. No order as to costs.

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(S.P. Singh)
Member (A)

Alok Kumar Singh
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(Justice Alok Kumar Singh)
Member (J)

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