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**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 269/2006

Order Reserved on 18.2.2014

Order Pronounced on 13/3/14

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Smt. Nirmalatmika Mishra, wife of Late Shri Satish Narain Mishra
Resident of A-967/17, Indira Nagar Lucknow.

Applicant

By Advocate Sri S. Lavania.

Versus

1. Union of India, through its Secretary Department of Telecommunication, New Delhi.
2. The Chief Accounts Officer Department of Telecommunication (Cell-II) Telecom Account Circle, Bhopal House, Lucknow.
3. The Chief Accounts officer Department of Telecommunication Office of P.G.M.T. Lucknow Telecom District Gandhi Bhawan, M. G. Marg Lucknow-1.
4. A. G. M. (Administration) Department of Telecommunication Office of P.G. M.T. Lucknow Telecom District Gandhi Bhawan, M. G. Marg, Lucknow.
5. D. G. M. (Administration) Bharat Sanchar Nigam Limited, Office of Principal General Manager Lucknow Telecom District, Gandhi Bhawan M. G. Marg, Lucknow.

Respondents

By Advocate Sri Shri Praveen Kumar for Shri G. K. Singh for R-1 to 4/ Shri G. S. Sikarwar for R-5.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (1) *The Hon'ble Tribunal may be pleased to direct the opp. Parties to pay the admitted retiral dues of the applicant relating to the GPF, Insurance, Provisional pension, leave encashment etc. within a specified period of time.*
- (2) *This Hon'ble Tribunal may be pleased to stay further proceedings in pursuance of the charge sheet dated 9.6.2000 Annexure NO. 1 by the opp. Party No.5."*

2. The brief facts of the case are that the applicant was appointed under dying in harness after the said demise of her husband and she

joined the services on 26th March, 1975 where she underwent three months training under respondent on the post of Time Scale Clerk. The applicant being a graduate, she has not passed High School but has passed Vidya Vinodini certificate examination with Advance English held by Prayag Mahila Vidyapeeth which is equivalent to High School. The issue raised in the O.A. is in regard to the date of birth of the applicant. The applicant submits that her date of birth is 1.1.1943, whereas the respondents issued notice to the applicant indicating therein that her date of birth is 1.1.1940 and as such, she is due to retire in the year 2000 as per her recorded date of birth. But the applicant submits that her date of birth 1.1.43, as such, she is due to retire in the year 2003. Not only this, it is also indicated by the applicant that the respondents have issued list of Senior T. O. A. in which the date of birth of the applicant is shown as 1.1.1943 and the said list was issued by the respondents after considering the official records. It is also argued by the applicant that after serving for more than 25 years, the applicant was served with a letter of the respondent No. 4 on 11.3.2000 which requiring her to submit her date of birth certificate. It is also argued that the applicant was issued a charge sheet in 2000 and by means of an order dated 23.5.2006 as contained in Annexure A-16 to the O.A., the inquiry officer closed the proceedings sine die on account of non receipt of listed documents as well as additional documents. The learned counsel for the applicant has also relied upon the decision of the Apex court in the case of CIDCO Vs. Vasudha Gorakhnath Mandevlekar reported in 2009 2 SCC (L&S) 319.

3. The learned counsel appearing on behalf of the respondents i.e. for respondent Nos. 1 to 4 as well as the respondent No. 5 has filed their replies. The reply filed by the respondent No. 1 to 4 indicates that as per the attestation form duly signed by the applicant and PVR form and certificate issued by D.A. V. College, Kanpur, the date of birth of the applicant is 1. 1.1940 and the change of date of birth from 1.1.1940 to 1.1.1943 in the service book is on account of manipulation by the

applicant in connivance with certain officials of the respondents organization and it is also indicated that actual date of birth of the applicant in all valid documents is 1.1.1940 hence the applicant retired on 31.12.1997 on superannuation. It is also submitted by the learned counsel for the respondents that the applicant was served with a notice dated 9.3.2000 asking the applicant to submit proof of her date of birth. But she fail to submit any proof in support thereof. The respondents have also indicated through their reply that as soon as it came to the notice of the administrative authorities that correct date of birth of the applicant is 1.1.1940, letter was issued by the competent authority to intimate her correct date of birth and the authentic document in support of her claim failing which an inquiry would be made from the concerned college. Subsequently, it was revealed that as per the college record, the applicant's date of birth is found to be 1.1.1940. The learned counsel for the respondents has also indicated that the date of birth of the applicant is shown in the first page of service book is 1.1.1943 whereas, other office records such as PVT and attestation form, which was submitted by the applicant, her date of birth is 1.1.1940. Therefore, the applicant was asked to submit the proof of correct date of birth but she failed to submit the same. However, the applicant submitted the Intermediate and Graduation Certificates in which no date of birth is mentioned. As such, the salary of the applicant was stopped from the month of March onwards and charge sheet under Rule 14 was served upon the applicant.

4. The counter reply filed on behalf of the respondent No. 1 that was also taken on record and through the said counter reply, it is indicated by the respondent No. 1 that the applicant was due to retire in 1997, and she manipulated her date of birth in the service book which came into notice in the year 2000. Therefore, a charge sheet under Rule 14 of CCS (CCA) Rules 1965 was issued upon the applicant. The applicant was also asked to submit the relevant documents showing her date of birth as 1.1.1943. It is also mentioned by the learned counsel for the respondents, who is appearing on behalf of respondent No. 1 that

the date of birth of the applicant which is shown as 1.1.1940 has written by the applicant herself in the attestation form which was signed by the applicant on 24.3.1975 at the time of joining the respondents on compassionate ground. It is vehemently argued by the learned counsel for the respondents that the date of birth was manipulated by the applicant in the service record. Therefore, the charge sheet was issued to the applicant. As there was a discrepancy in the office record of the respondents in regard to a date of birth of the applicant, therefore, the applicant was asked to submit the authentic documents. Instead of cooperating with the respondents and giving proof regarding date of birth, she started alleging the mala fide against respondents and submitted that all relevant original documents were given to the respondents at the time of her appointment and the respondents have not returned any document and subsequently, she submitted attested copies of the Intermediate Certificate, B.A. Degree, Ration Card and Election Card, which does not contain her date of birth and the applicant avoided to produce any age proof and an inquiry was made with the Principal DAV College Kanpur who reported that date of birth of the applicant as per college record is 1.1.1940. As such considering the cheating and dishonesty of the applicant disbursement of her salary from March 2000 and onwards was stopped by the respondents and she was told by the controlling authority not to attend the office further. The learned counsel for the respondents has also pointed out that till date GPF amounting to Rs. 19471/-, Leave Encashment amounting to Rs. 49639/- and arrears of pension amounting to Rs. 2,77,041/- have already been paid to the applicant and since there is no valid ground regarding extension of service, as the applicant has already rendered service w.e.f. 1.1.1998 to 29.2.2000, therefore, the respondents are entitled to regularize the period of the applicant from 1.1.1998 to 29.2.2000 as casual skilled labour.

5. No rejoinder is filed by the learned counsel for the applicant.
6. Heard the learned counsel for the parties and perused the record.

7. The applicant was initially appointed under dying in harness on account of death of her husband and she joined the services on 26th March, 1975. It is settled proposition that before joining, the delinquent is required to fill up certain documents. The learned counsel for the respondent No. 1 to 4 produced the original certificates in regard to the applicant. The attestation form duly filled in by the applicant on 24.3.1975 shows the date of birth of the applicant as 1.1.1940 and the place of birth is shown as Kanpur. The High School examination as shown to be passed by the applicant from MG College, Kanpur in the year 1953 and intermediate from Surendra Nath Sen Balika Vidyalaya 1956 and Graduation (BA) from D.A. V. College Kanpur in the year 1960. The certificate given by the DAV College dated 1.5.2000 also shows that as per college record, the date of birth of the applicant is 1.1.1940. Undisputedly, the respondents have also submitted the original Service Book and in the said Service Book, the original certificate from Prayag Mahila Vidyapeeth and examination certificate of Vidya Vinodni is available and as per the said certificate, the date of birth of the applicant is shown as 1.1.1940. But in the service record, the date of birth of the applicant is shown as 1.1.1943. But the said date of birth 1.1.1943 is entered on 2.12.1975 i.e. after date of attestation form submitted by the applicant. On the basis of the said date of birth i.e. 1.1.1943, the applicant continued to work and when it was revealed by the authorities that actual the date of birth is 1.1.1940, notice was issued and the salary was stopped.

8. The learned counsel for the respondents appearing on behalf of respondent No. 1 to 4 were directed to submit the original records which was done by the applicant and the original records were also perused.

9. Now the question which requires to be determination is whether the applicant's date of birth is 1.1.1940 or 1.1.1943. If, we look into the attestation form submitted by the applicant, it is mentioned by the applicant herself that she passed the High School in 1953 from MG

College Kanpur, and if the date of birth is taken 1.1.1943 then the applicant has passed the High School in just 10 years of her age, which cannot be accepted by way of any imagination and if we take 1.1.1940 then the applicant has passed the High School at age of 13 years which can be accepted. Apart from this, the original certificate of Vidya Vinodani available on the service book issued on 1.1.1952 also shows that the date of birth of the applicant is 1.1.1940. Only the service book shows the date of birth of the applicant is 1.1.1943 which also appears to be an over writing as per the perusal of the original service record.

10. Since the attestation form, which was filled at the time of entering into the service shows the date of birth as 1.1.1940 whereas in the certificate of the Vidya Vinodani also shows the date of birth of the applicant is 1.1.1940 and the certificate given by the DAV College, Kanpur also the date of birth of the applicant is 1.1.1940, as such, we do not find any reason to interfere in the present original application. As such, the O.A. is liable to be dismissed.

11. Accordingly, the O.A. is dismissed. No orders as to costs.

J Chandra
(Ms. Jayati Chandra)
Member (A)

U.P. Agarwal
(Navneet Kumar)
Member (J)

Vidya