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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No.
~~XXXXXX~~

449

1987
X198X

DATE OF DECISION 26.8.1987

Shri R.M.More, Applicant/s.

Shri C.B.Kale, Advocate for the Applicant/s.

Versus

Union of India & Ors. Respondent/s.

Shri A.R.Atre Advocate for the Respondent(s).

CORAM:

The Hon'ble Member(A), Shri L.H.A.Rego.
~~The Hon'ble~~

1. Whether Reporters of local newspapers may be allowed Yes to see the Judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether to be circulated to all Benches? Yes

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26.8.87
Member(A) R

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.449/1987.

Shri R.M.More,
C/o.Shri C.B.Kale,
Advocate, Shree Niwas,
Kardal,
Post - Umbarpada,
Tal - Palghar,
Thane Dist.401 102.

... Applicant

V/s.

1. Ministry of Communication through
Director General Posts, Dak Tar
Bhavan, New Delhi.110 001.
2. Postmaster General, Maharashtra
Circle, Bombay.400 001.
3. The Superintendent of Post Offices,
Thane West Division, Thane.

... Respondents.

Coram: Hon'ble Member(A), Shri L.H.A.Rego.

Appearances:

Shri C.B.Kale, Counsel
for the applicant and
Shri S.R.Atre, Counsel
for the respondents.

JUDGMENT:-

(Per Shri L.H.A.Rego, Member(A))

Dated: 26.8.1987

In the application filed under Section 19 of the Administrative Tribunals Act, 1985 the main prayer is to quash the order dt. 2.6.1987 (Annexure 5), passed by Respondent (R) 3, retiring the applicant with effect from 30.6.1987 A.N. on attainment of the age of superannuation, to correct the date of birth (DOB) of the applicant as 15.6.1930 and to retain him in service, till the end of June, 1988, when he would superannuate according to the above corrected DOB.

2. The facts of the case in a nutshell, in so far as they are relevant to the issue to be determined, are as follows. The applicant who had passed the VIIIth

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Standard from a vernacular school, entered service in the year 1948, on a temporary basis, as a Boy Messenger, in the Postal Department, in Palghar Post Office, in Thane District. On 16.8.1950, he was posted as Postman Agashi, in Palghar Postal Sub-Division. He passed the Postman's Examination in 1951 and was promoted as Head Postman in 1977, but at the material time, he was serving as Head Postman, in Palghar Head Post Office, in Thane District.

3. The applicant states, that at the time of his entry in service in the Postal Department, he had furnished the School Leaving Certificate (SLC, for short) as also the Character Certificate, in compliance with his pre-appointment formalities.

4. According to the applicant, he learnt from the Post Master Palghar, some time in January, 1987, that he was required to retire from service, at the end of June that year, according to his DOB, which was entered in his Service Book (SB, for short) as 15.6.1929. He avers, that this was the first time, when he became aware, to his utter surprise, that his DOB was erroneously entered in his SB.

5. In order to correct this error, the applicant states, that he promptly obtained anew, a copy of his SLC, from the concerned school authorities and submitted the same to R-3, through Post Master Palghar, through a written communication dated 29.1.1987, requesting that his DOB, which was ⁱⁿ erroneously entered in his SB as 15.6.1929, be corrected as 15.6.1930, on the strength of the above SLC and that on that basis, he be superannuated, with effect from 30.6.1988. The Postmaster, Palghar, is seen to have forwarded the said letter, on 29.1.1987

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(Annexure 1) from the applicant, to R-3, along with the SLC, for information and necessary action.

6. As there was no response thereto, despite reminders, the applicant sent a savingram (Annexures 2(a) & 2(b)) to R-2, on 28.5.1987, with a copy thereof, to R-1, narrating in brief, the history of his case and requesting him, to continue him in service till 30.6.1988, by adopting his DOB as 15.6.1930, according to the SLC furnished by him as above. By his letter dt. 20.5.1987 (Annexure 3), R-3 informed the applicant, that he should have requested for alteration of his DOB, within a period of 5 years, from the date of his entry in Postal Service, but nevertheless, his case was being referred to the Circle Office.

7. Thereon, by his letter (without date), -vide Annexure 4-, the applicant informed R-3, through the Post Master Palghar, that he was not aware of the above requirement, that this was not brought to his notice by the concerned authorities and that having entered service as a Class. IV employee, he could not have read the complex Post and Telegraphs Manuals and understood the implications of the relevant rules. He further brought to the notice of R-3, that he came to know for the first time, in 1987 January, from the Post Master Palghar, that his DOB was erroneously entered in his SB, whereupon he pursued the matter with the concerned authorities promptly, to correct his DOB. However, on 2.6.1987 (Annexure 5), R-3 issued a memo to the applicant, that he will retire from Government service on 30.6.1987 A.N. on attaining the age of superannuation.

8. On 8.6.1987 (Annexure 6), R-3 communicated to the applicant, the contents of letter ^{dt} ~~to~~ 2.6.1987 from R-2, which are reproduced below:

"I am directed to inform you as follows:

As per note 5 below FR 56, the request for alteration of date of birth should be made within 5 years of entry into Govt. service. In this case this is being requested at the time of retirement.

The school leaving certificate, produced by the official is dt. 28.1.1987. Therefore this was not the original document on which his Service Book was opened.

Therefore there is no case for taking up the matter with the Ministry. The official concerned may be informed accordingly.

Sd/-

For Post Master General
Maharashtra Circle
Bombay.400 001."

9. On 10.6.1987 (Annexure 7), the applicant again represented to R-2 stating that:

- (i) Note 5 below Fundamental Rule (FR) 56, came to be introduced long after he entered service in the Postal Department and therefore could not be applicable to him retrospectively.
- (ii) the SLC furnished by him afresh, was verified by the Sub-Divisional Inspector of Post Offices, Palghar and
- (iii) his case was within the competence of R-2 for consideration.

10. As there was no reply thereto, the applicant has approached this Tribunal for redress.

11. The applicant was represented by his Counsel Shri C.B.Kale and the respondents by Shri S.R.Atre (for Shri P.M.Pradhan). The respondents have not yet filed a reply to the application, even though Shri Atre pleaded for some time, on 30.7.1987, when the matter was last heard, and prayed, that the case be heard early.

12. Shri Kale, learned counsel for the applicant contended, that the erroneous entry of the DOB of his client, as 15.6.1929, in his SB was a clerical error; that the Appointing Authority, failed to enter the correct DOB faithfully as 15.6.1930, on the basis of his SLC, which has resulted in serious civil consequences to his client, on account of premature retirement, for no fault on his part; that the applicant had as long back as in August, 1951 i.e. barely within a year from the date of his appointment (viz. 16.8.1950) as Postman Agashi, indicated his DOB as 15.6.1930, in the prescribed cyclostyled proforma, subjoined to memo dt. 7.8.1951, from the Inspector of Post Offices Andheri Sub-Division, which inter alia indicated, that the personal files and records of all permanent as well as temporary officials (Postmen and Class IV servants) were sought to be brought up-to-date and complete; that the said proforma, duly filled in by the applicant, was forwarded by the Sub Post Master Agashi, to the concerned authorities, after due scrutiny, along with the requisite certificates, service record and declaration, but no action was taken thereon, to correct the DOB of the applicant as 15.6.1930 in his SB; that the applicant had invariably recorded his DOB as 15.6.1930, in the column provided, in various communications addressed by him to his superiors such as: application for the Postman's examination, application for leave (some of them in printed form) spanning over a period from 1950 to 1966, which are on the Personal File of the applicant maintained by the Department; that the respondents have not indicated the basis on which, the DOB of his client was shown as 15.6.1929 in his SB; that Note 5 below FR 56, was introduced

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in the year 1979 and therefore, could have no retrospective effect on his client, who entered service in the Postal Department much earlier; that though R-2 has not admitted the SLC dt. 28.1.1987 produced anew by the applicant, on the grounds, that it was not the document which was relied upon, for entry of the DOB in his SB, the respondents have not produced the original SLC, said to have been relied upon by them, to substantiate their stand and have overlooked the material fact, that the SLC dt. 28.1.1987 produced afresh by the applicant, was verified by the Sub Divisional Inspector of Post Offices Palghar and was from the same school register, from which the previous copy was obtained and furnished, at the time the applicant entered service.

13. Shri Atre countered the claim of the applicant in regard to change of his DOB, relying primarily on the provisions of Fundamental Rules (FR) 56, particularly Note.5 thereunder, which reads as follows:

"Note 5 - 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 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 bona fide mistake has occurred; and

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(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."

According to him, the applicant should have made the request for change in his DOB with adequate proof, within a period of 5 years of his entry into Government service, as specified in Note.5 ibid, which he failed to do.

Shri Kale repudiated this contention, on the basis of Rule 288(f) of the Financial Handbook (Part I) of the Postal Department which reads as under:

"The descriptive particulars on the first page of a Government servant's service book should be re-attested every five years by the supervising officer concerned.

Note 1:- Officers when re-attesting the descriptive particulars in service books under this rule should write in words the entries relating to dates of birth in cases in which this has not been done."

14. Furthermore, Shri Atre stated, that the applicant had an occasion more than once, to verify his DOB as entered in his SB, as he had attested the first page of his SB in token thereof on 19.1.1950, 28.11.1964 and 30.7.1971. The applicant he said, was not illiterate, but had studied up to the VIIth Standard and had signed and written his name in full, on the first page of his SB in English. His DOB was entered on the first page of his SB, ⁱⁿ ~~was~~ both in words as well as figures, prominently in capital letters, which he could not have overlooked.

15. Shri Kale repudiated this contention stating, that according to Rule.288(f) of the Financial Handbook (Part.I) of the Postal Department, the applicant was not required to attest his SB periodically, as was done in the

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present case. This attestation and re-attestation, according to him, was required to be done, every 5 years, by the Supervising Officer concerned, as is evident from the relevant provisions of the above Handbook extracted above:

16. Shri Kale submitted, that by no stretch of imagination could the provisions of Note.5 under FR.56, which were incorporated in the FR, in 1979, be applied retrospectively to the applicant, who had entered service in the Postal Department, as long back as between 1948 to 1950.

17. Shri Kale relied on the Judgment of the Central Administrative Tribunal, Principal Bench, New Delhi in ATR 1987 (1) CAT 414 (HIRA LAL V. UNION OF INDIA), to show, that the applicant could approach the competent authority any time before his retirement, to correct his DOB, if he had adequate reasons and proof therefor and that periodical attestation of his service particulars in his SB prior thereto, could not be held against him, as having acquiesced in the DOB, which he sought to correct later. In this case, it was held, that an employee was entitled to correction of his DOB in his service record and that mere signing of service record on a number of occasions, did not operate as an estoppel to get an erroneous entry as to the DOB corrected, that Note 5, under FR 56, could not have retrospective effect and that Rule.79(2) of the General Financial Rules, could not stand in the way of the applicant, in getting his DOB corrected in the service record.

18. I have carefully examined the averments and contentions of both sides, as also the documentary evidence,

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and other material placed before me in this case. The facts and circumstances of the aforementioned case relating to HIRA LAL, are more or less similar to the instant case and therefore the ratio of the judgment in the above case of HIRA LAL is, in my opinion, applicable to the present case, as would be evident from the following.

19. The provisions of Note 5 under FR.56 incorporated in 1979 in the Fundamental Rules, could not have applied retrospectively to the applicant, who had entered service in the Postal Department much earlier. Besides, the Inspector of Post Offices, Andheri Post Office, had under his Memo dt. 7.8.1951, elicited from the Postal employees (among whom the applicant was one), certain service particulars inclusive of DOB, in the prescribed cyclostyled proforma, in order to help bring their personal file and record up-to-date and complete. The applicant had promptly furnished in the said proforma these particulars, inclusive of his DOB, which was indicated by him as 15.6.1930. This proforma duly filled in, was submitted by the applicant through the Sub-Post Master, Agashi in August, 1981 for further needful. Shri Atre could not however enlighten, as to the further action taken thereon by the respondents, particularly in regard to the correction of the DOB of the applicant, who had specifically indicated the same, as 15.6.1930.

20. It is apparent, that the applicant had bestirred himself well in time i.e. barely within a period of one year of his having been appointed as Postman, to bring to the notice of the respondents, that his correct DOB was 15.6.1930. But the respondents do not seem to have taken further action thereon. In the light of these facts it

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ill-behaves the respondents, to state, that the applicant did not make a request to correct, his DOB, within a period of 5 years, from the date of his entry in regular service as Postman. This apart, it is noticed, that the applicant had from time to time, over a period spanning from 1950 to 1966, indicated his DOB uniformly as 15.6.1930 in various communications (some of which were in the prescribed cyclostyled form) such as; application for the Postman's Examination, for leave etc. in regard to which, the respondents ^{do do} not seem to have taken any action.

21. Having come to know for the first time in 1987, that he would be required to retire shortly, as a result of his DOB having been entered erroneously as 15.6.1929 in his SB, the applicant took prompt steps, to furnish evidence in support of his correct DOB, by producing anew, to the concerned authorities, a copy of his SLC dt. 28.1.1987 from the same register of the school, from which he had passed his VIIth Standard but the same was however not accepted by the respondents, on the premise, that it was not the same certificate, on the basis of which, his DOB was originally recorded as 15.6.1929 in his SB, at the time of his entry into service in the Postal Department. The respondents however, could not produce in the Court the original SLC furnished by the applicant, when he entered service, on the basis of which, his DOB is said to have been recorded as 15.6.1929 in his SB, to rebut effectively, that the SLC dt. 28.1.1977 furnished by the applicant, in regard to his DOB, was spurious, particularly when the Sub Divisional Inspector of Post Offices, Palghar, had verified the same. Here is a pointer to the administration, as to the imperative need, to preserve the important service record and documents of its employees with the utmost care, so as to guard against service disputes of the like.

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21. In the result, the applicant succeeds and the following orders are passed in this case.

O R D E R

- i) The date of birth of the applicant shown as 15.6.1929 in his Service Book, shall be corrected as 15.6.1930.
- ii) Consequently, the impugned order dt. 2.6.1987 (Annexure 5) passed by R-3, retiring the applicant w.e.f. 30.6.1987 is hereby quashed.
- iii) The applicant will as a result, retire on 30.6.1988 A.N. i.e. on attaining his age of superannuation, according to his date of birth, corrected as 15.6.1930.
- iv) The interim relief granted to the applicant, by the order dt. 29.6.1987 of this Tribunal, staying his retirement according to his earlier date of birth viz. 15.6.1929, will extend upto 26.8.1987 i.e. the date of the Order in this judgment.
- v) No order as to costs.


26.5.1987
(L.H.A. REGO)
MEMBER(A).