

(3)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~

NEW BOMBAY BENCH

O.A. No. 177/88

198

~~T.A. No.~~

DATE OF DECISION 6.6.1988

Shri R G Dharwatkar Petitioner

Shri D V Gangal Advocate for the Petitioner(s)

Versus

Union of India & Another Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C. Gadgil, Vice Chairman

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

yes

no

Bel

(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

O.A.NO.177/88

Shri R G Dharwatkar
Mason Gr.II
Central Water and Power Research Station
PO.Khadakwasla Research Station
Pune 411024

Applicant

V/s.

1. Union of India
through Secretary
Ministry of Water Resources
New Delhi-110001

2. The Director
Central Water and Power Research Station
PO.Khadakwasla Research Station
Pune 411024

Respondents

Coram : Hon'ble Vice Chairman B C Gadgil

Appearance:

Shri D V Gangal
Advocate
for the applicant

ORAL JUDGMENT
(PER: B C GADGIL, VICE CHAIRMAN)

DATE : 6.6.1988

A short question in this matter is about the question of the correct date of birth of the applicant. The applicant joined service as a Mason Mate on 1.3.1962. He was regularised in that service in 1965. At the time of entry in the service he has given his age as 34. The department then passed an order dated 6.4.1967 (vide page 11) fixing the birth date as 1.3.1928. The applicant is a Class-IV employee and under the rules the superannuation is 60. The department, therefore, has retired the applicant on 28.2.1988. The applicant has made an application sometime in January 1988 contending that his birth date would be 12th October 1935 or in the alternative 13th April 1933. The department rejected this claim and hence the applicant has filed the present application challenging the said retirement on the ground that his birth date should be determined as 12.10.1935 or 13.4.1933.

Bee

2. The respondents resisted the application by filing their written reply. They contended that at the time when the applicant entered the service in 1962 he has given his age as 34. His service record was prepared and the applicant has signed it showing that the date of birth of the applicant as 1.3.1928. He was also communicated on 6.4.1967 that the department has determined his date of birth as 1.3.1928, a copy of that order is at page 11 of the compilation. It was, therefore, submitted that the department has correctly assessed the birth date as 1.3.1928 and that the applicant will not be entitled to any change in the birth date.

3. I have heard Mr. D V Gangal, Advocate for the applicant and Mr. S.L. Jain, Senior Administrative Officer of the concerned department. Mr. Gangal is frank in informing the Tribunal that there is no record like a birth extract, school leaving certificate etc., showing the birth date of the applicant. He however contended that the service record (which is Exhibit 1 to the respondent's reply) may be interpreted in favour of the applicant. It may be noted that the said service record gives the name of the employee, place of his residence and his date of birth, personal identification marks etc. In one of these columns viz., in the column of date of birth it is stated that the age is about 34 years. This has been signed by the applicant. Thereafter there are details of the service of the applicant for example he was shown to be employed on 1.3.1962 at the pay of Rs. 55, thereafter from 1.3.1963 his pay was Rs.56 and similar other entries are there. On the top of the service record there is an entry dated 13.4.1967 with an asterisk to show that it pertains to the birth date. The remark states that the birth date is 1.3.1928.

4. Mr. Gangal submits that this 1.3.1928 is an error and that no reliance should be placed upon it. He wanted to urge that the service record was prepared in two

Bel

parts viz., the details of history was written initially and that the name, the place of residence and date of birth are written in about 1967. In my opinion this submission of Mr. Gangal cannot be accepted in as much as the service record shows that he entered service in 1962. If the name and other particulars are not to be written when the service record was prepared (on the date on which a particular person enters the service) it would be very difficult to trace the name, date of birth etc., of the person. For obvious reasons such entries such as name, date of birth etc., are to be written first and thereafter the details of service are required to be made. As far as the endorsement dated 13.4.1967 is concerned it shows that the department fixed the date of birth as 1.3.1928. Not only that, there is an order to that effect, a copy of which is produced at page 11. It will not be possible to accept the contention of Mr. Gangal that the 34 years mentioned in the service record should be treated to be the age on 13.4.1967 (i.e., the date on which the endorsement is made that the birth date of the applicant is 1.3.1928).

5. Another submission of Mr. Gangal is that on 12.10.1965 the applicant was medically examined and at that time he has given his age as 30 years and the Doctor has certified that the applicant appeared to be of that age. Mr. Gangal submitted that according to this estimation the date of birth of the applicant should be 1933. It is however material to note that the medical examination was held when the applicant was regularised in service and the primary purpose of that examination was to determine whether he was medically fit or not. The mention of age in such loose terms without giving the exact date of birth would not be of any importance for determining the date of birth.

6. Thus in the absence of any evidence it will not be possible for the Tribunal to entertain the dispute which was for the first time raised after 26 years of service and that too just a month prior to retirement.

Bees

7. Mr. Gangal has relied upon the decision of Delhi Bench of the Tribunal in the case of Hira Lal V. Union of India, reported in ATR 87 (1) CAT 414. In that it is held that mere signing of service record on a number of occasions does not operate as an estoppel to get an erroneous entry as to the date of birth corrected. There cannot be any quarrel about this principle, but what is to be seen is whether there is any evidence worth the name for determining whether there was any mistake about birth date that was entered in the service record. As mentioned above the applicant has no cogent evidence. He wants me to draw certain inferences as mentioned above. In my opinion this would not be permissible and hence it will not be possible for me to interfere in the date of birth of the applicant which is determined by the department as 1.3.1928.

8. The application, therefore, fails and is dismissed. However, there would be no order as to costs.

B. C. Gagil

(B C Gagil)
Vice Chairman