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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

■ ■ ■
NEW BOMBAY BENCH

O.A. No. 467 of 1988
~~XXX~~

DATE OF DECISION 5.9.1989

Shri D.G.Nagare Petitioner

Shri Avinash Shivade Advocate for the Petitioner(s)

Versus

Union of India & 3 Others Respondent

Shri M.I.Sethna Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. S. Chaudhuri, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?] No
4. Whether it needs to be circulated to other Benches of the Tribunal?] No

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

Original Application No. 467/88.

Shri D.G.Nagare.

... Applicant.

v/s.

Union of India & 3 others.

... Respondents.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:

Mr.Avinash Shivade,
 Advocate for the
 applicant and
 Mr.M.I.Sethna,
 Counsel for the
 respondents.

JUDGMENT:

(Per Shri P.S.Chaudhuri, Member(A))

Dated: 5.9.1989

This application was filed on 27.6.1988 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant's prayers are that D.O. Part (I) dt. 15.4.1988 which states that "OCC(S) Shri D.G.Nagare will be completing 58 years of age on 25th August, 1988 and retire with effect from 31st August, 1988(AN)" be quashed and set aside, that the respondents be directed to continue the applicant in service till 30.11.1989 giving him all the consequential benefits and that he be granted other connected reliefs.

2. The facts may be briefly stated. The applicant joined the service of the respondents on 26.8.1944 as a Messenger Boy. At that time no educational qualification requirement and no specific age limit had been laid down for employment as Messenger Boy, and so recruitment of underaged candidates was not uncommon. His date of birth was recorded as 26.8.1930. On 20.1.1948 he was appointed as a Leading Hand (Non-technical) in Stores. During 1953 the applicant's application supported by school leaving certificate dt. 2.9.1950 showing his date of birth as 22.11.1931 was accepted and recorded while preparing his service documentation in continuation of his earlier service card. This

position was communicated to respondent No.2 (for short, R-2) when the applicant was brought on the Central Roster. This date of birth viz. 22.11.1931 was reflected in all his subsequent service documentation. The service documents of the applicant were audited by the Controller of Defence Accounts (P), Allahabad in 1984 for verifying service for pension. In the audit report it was stated that the spell of service from 26.8.1944 to 21.11.1949 had not been treated as qualifying service for pension because it was 'Boy Service' which did not qualify under the pension rules. In March, 1988 the applicant learnt that he was being asked to retire from service from 31st August, 1988. On 28.3.1988 he submitted a representation to R-3 representing against this decision and submitting that his date of birth was 22.11.1931 and that, accordingly, he was supposed to retire from service only on 30.11.1989. The respondents did not give the applicant any reply to this representation immediately. (However, a reply was sent on 1.6.1988, a copy of which has been filed by the respondents along with their affidavit in reply). On 15.4.1988 the impugned order was published. Being aggrieved with this order the applicant filed this application. On 26.8.1988 this Tribunal passed an interim order directing that ".....no effect should be given to the order dt. 15.4.1988 (Ex.A-5). To be more specific the applicant should not be asked to retire w.e.f. 31.8.1988." On 30.8.1988 a further order was passed that the applicant would continue in service till further orders.

3. The respondents have opposed the application by filing the affidavit of Major M.P.Mastan. I heard Mr.Avinash Shivade, learned Advocate for the applicant and Mr.M.I.Sethna, learned Counsel for the respondents.

4. Mr. Shivade put forward a number of oral arguments in support of the applicant's case. The first was that the applicant was born on 22.11.1931 and that when he joined service on 26.8.1944 he had specifically informed the concerned authorities that he was 13 years old and that he had not given an incorrect date of birth at the time of his enrolment as a Messenger Boy. It is the respondents contention that the applicant has given his age as 14 when he joined service as a Messenger Boy and that in terms of the Government of India's decisions in regard to Article 51 of the Civil Service Regulations, the applicant's date of birth had been recorded as 26.8.1930.

5. The applicant's second contention is that ever since his name was born on the Central Roster from 1950 his date of birth has been accepted and recorded as 22.11.1931, this was the date of birth shown in various seniority lists from that time and this was the date of birth that had been accepted during audit. This position has not been contradicted by the respondents. In fact they fairly produced a Centralised Seniority Roll of Store Keepers dt. 4.6.1973 in which the applicant's date of birth is recorded as 22.11.1931.

6. The applicant's third contention was that he had submitted a school leaving certificate dated 2.9.1950 which stated that his date of birth was 22.11.1931. It was his contention that this certificate having been accepted and acted upon as far back as 1953, it was no longer open to the respondents to challenge it. It was his further contention that even assuming that the certificate could still be challenged, the respondents had neither given any valid reasons for choosing not to follow this certificate nor given him any opportunity for being heard in regard to these reasons.

7. The applicant's fourth contention was that it was not as if he was obtaining any benefit by virtue of his date of birth being taken as 22.11.1931. as his spell of service between 26.8.1944 and 21.11.1949 had not been taken into account for pension as it was 'Boy Service'. Had his date of birth been 26.8.1930 as contended by the respondents, only the spell of service between 26.8.1944 and 25.8.1948 would be treated as not qualifying under the pension rules being 'Boy Service'.

8. The applicant's final contention was that his claim in this application did not arise out of a request made by him for alteration of his recorded date of birth. It was his contention that it was the respondents who had changed his recorded date of birth after almost 40 years. It was his case that they were precluded from doing so by their own instructions.

9. It is the case of the respondents that the oral statement of the applicant regarding his age was accepted at the time of his appointment as 'Messenger Boy' on 26.8.1944. On that basis, he was assigned a date of birth as 26.8.1930. It is their submission that his service records have been amended in 1953 when his recorded date of birth was changed from 26.8.1930 to 22.11.1931 and that the basis on which this was done is not recorded anywhere. It is their contention that in terms of Army Instruction No.200/1955 it was incumbent upon the local authorities to obtain the permission of the competent authority at the Army Headquarter and no such approval was obtained. But this has only to be said to be negated because this Instruction was issued only on 23.7.1955 and thus was not in force in 1953 when admittedly the change was made.

10. In any case, this Instruction does not authorise the respondents to take the course of action that they have. The relevant portion of this Instruction is:-

"..... The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall be permitted except where prima facie evidence is produced that the date of birth recorded in service records is incorrect. Where alterations become necessary due to a clerical error, it shall be open to the Head of the Service in the case of a Gazetted Officer and the Senior Officer of an Installation, or any other duly empowered officer, in the case of non-gazetted employees to cause the date of birth to be altered. All other cases, for the change of the date of birth shall be decided by the Ministry of Defence in the case of Gazetted Officers and by authorities specified in Column 3 of Schedule IV of the Civilians in Defence Services (Classification Control & Appeal) Rules, 1952, in the case of non-gazetted staff..."

A plain reading of this Instruction makes it clear that if the respondents had any doubt about the recorded date of birth of the applicant and wanted to alter it, they should have adduced prima facie evidence that the date of birth recorded in the Service Book was incorrect. No such evidence has been adduced to warrant a change in recorded date of birth that has stood for over 35 years.

11. The respondents next contention was that the applicant had himself tampered with his birth date in his service records. The relevant records were shown to me, but from this it is not clear as to who altered the date of birth. On the other hand, one of the prescribed documents to be kept with the service book of employees such as the applicant's declaration regarding date of birth. Such a declaration was obtained from the applicant on 15.3.1960 and has been kept in his service book. This declaration states that his date of birth is 22.11.1931.

12. There is no doubt that the recorded date of birth of the applicant that has been in force from 1953 is 22.11.1931 and that it is this date which has been used in all subsequent documentation. Thus it is this date which is the recorded date of birth of the applicant. Adoption of any other date now would amount to a change in the recorded date of birth.

13. This view finds support in the case of Smt. Amala Roy and others v. Union of India and others (ATR 1988(2) CAT 87). In that case the original applicant (whose legal representatives were subsequently substituted in his place) was appointed temporarily as a Clerk at Sorbhog at Assam on the then Bengal and Assam Railway. According to him his date of birth was entered in his service sheet on the basis of his matriculation certificate produced by him. Subsequently, in or about 1946 the applicant was selected and posted as a Crewman under the District Traffic Inspector, Katihar. When he was posted there he came to know for the first time that his date of birth was incorrectly recorded as 13.5.1922 in place of 1.8.1928 which was his date of birth according to his matriculation certificate. On a prayer made by him the District Traffic Inspector, Katihar scrutinized his matriculation certificate and corrected his date of birth from 13.5.1922 to 1.8.1928. By a letter dt. 14.8.1975 the Divisional Superintendent, N.F. Railway directed him to submit his matriculation certificate in original in order to verify his age. In reply to that letter the original applicant expressed his inability to do so because he had to leave behind many of his belongings including his matriculation certificate at Dacca at the time of partition. Afterwards by a letter dt. 24.11.1975 the Divisional Superintendent, Alipurduar intimated the applicant that according to the decision taken by the Deputy Chief Personnel Officer, Pandu his date of birth was corrected as 13.5.1922. In that

judgment it has been held:

"Now, it is his further contention that on the basis of his matriculation certificate the District Traffic Inspector, Katihar had corrected his date of birth from 13.5.1922 to 1.8.1928. Actually, we find from his service sheet that such a correction was done by that officer. In this case we are not called upon to decide whether the District Traffic Inspector had the authority to correct the original applicant's date of birth or not. The fact remains that his date of birth was entered in his service sheet as 1.8.1928. In this case all with which we are more concerned is whether the alteration of his date of birth from 1.8.1928, which was in his service sheet, to 13.5.1922 as had been done by the Deputy Chief Personnel Officer was lawful.

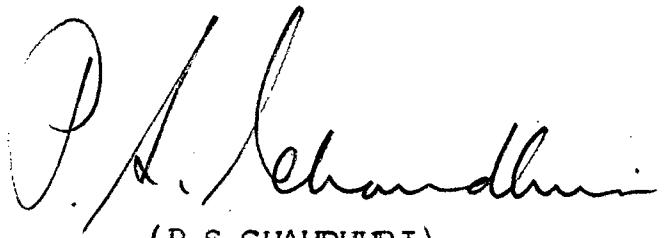
It is significant to note that the present claim does not arise out of a prayer made by a railway servant for alteration of his date of birth. In such a case the onus to prove by some authoritative documents would lie on him. This case arises out of an alteration of date of birth done by the administration of its own and not at the instance of the railway servant..... It is not understood as to why after so many years of the original applicant's entry into railway service it struck the respondents to verify his date of birth. The original applicant entered railway service in 1944 and in 1975, i.e. 31 years thereafter the respondents started the process of verifying his date of birth. Be that as it may, what we find is that when the original applicant had not made a prayer himself and when the respondents had no cogent material before them the date of birth from 1.8.1928 should not have been altered to 13.5.1922."

14. It is also now well settled (see Malcom Lawrence Cecil D'souza v. Union of India & Ors, AIR 1975 S.C.1269 at 1272, para 9) that administrative matters should not be liable to be reopened after a lapse of many years. In this view, too, it would not be appropriate to start the process of verifying the applicant's date of birth after so long a lapse of time.

15. In the result, the application succeeds. D.O. Part-I dated 15.4.1988 is set aside. The respondents are directed to take action including continuing the



applicant in service on the basis that his recorded date of birth is 22.11.1931 and to give him all the consequential benefits he is entitled to thereby. In the circumstances of the case there will be no order as to costs.



(P.S.CHAUDHURI)
MEMBER(A).