(13)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
NEW BOMBAY BENCH

~~OA/TA/NA~~ 198
T.A. No. 37/88.

DATE OF DECISION 27.7.1989.

Shri Shiv Kumar Divedi Petitioner

Shri M.C. Naik Advocate for the Petitioner(s)

Versus

Ministry of Agriculture Respondent

Shri P.M. Pradhan, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member(J).

The Hon'ble Mr. M.Y. Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
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

MGIPRRND—12 CAT/86—3-12-86—15,000

(14)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Transferred Application No. 37/88.

Shri Shiv Kumar Divedi,
Brahmpure, Maha Mandir,
Jodhpur (Raj). ...Applicant.

V/s

Union of India through
Ministry of Agriculture,
Senior Plant Quarantine,
Pathologist,
Haji Bunder Road, Sewree,
Bombay - 400 015. ...Respondent.

Coram: Hon'ble Member(J) Shri M.B. Mujumdar.
Hon'ble Member(A) Shri M.Y. Priolkar.

Appearance:

Shri M.C. Naik,
the learned Advocate
for the applicant.

Shri P.M. Pradhan (11.7.89) &
Shri S.R. Atre (12.7.89) for
Shri P.M. Pradhan, Advocate
for the respondents.

JUDGMENT Date: 27.7.1989.
(Per: Shri M.Y. Priolkar, Member(A).

The grievance of the applicant in this case is that his correct date of birth is 10.2.1928 but it has been recorded in his service book as 10.2.1926. According to the applicant, who is working since 27. 7.1951 in the Plant Protection, Quarantine and Storage Organisation of the Ministry of Agriculture, he was born in Karachi, Sind (now in Pakistan) on 10.2.1928 but being in a disturbed state of mind at the time of his initial appointment, he wrote his date of birth as 10.2.1926 in his service record, "through oversight and inadvertently".

2. The applicant states that after joining Government service, he studied in a school in Rajasthan and in the

certificate of passing the Matriculation examination in 1964 issued by the Board of Secondary Education, Rajasthan, his date of birth is shown as 10.2.1928. This Matriculation certificate dated 12.6.1964 was accepted by the respondents for the purpose of promoting him as Junior Technical Assistant. However, when he requested on 13.10.1965 on the basis of the same certificate for correction in the date of birth as recorded in the service book, he was asked by the respondents on 18.12.1965 to produce a certified copy of the entry in the birth register from Karachi. The applicant states that he could not succeed in procuring it from Pakistan in spite of his best efforts. His further representations to the respondents dated 15.1.1976, 21.1.1976, 27.4.1976 and 3.7.1976 for correcting the date of birth on the basis of his own affidavit and the certificate of the Board of Secondary Education, Rajasthan were rejected on 27.1.1976, 17.5.1976 and 5.8.1976. The applicant again represented on 15.12.1982 to the head of his department namely, the Plant Protection Advisor, Faridabad and this representation was also rejected on 25.1.1983. Thereafter, he represented to the Ministry of Agriculture on 18.4.1983, 17.9.1983 and 13.10.1983 but there was no reply from the Ministry to any of these representations. Aggrieved by the office order dated 21.11.1983 of the Directorate of Plant Protection, Quarantine and Storage retiring him from Government service on 29.2.1984 on attaining the age of superannuation, the applicant filed a Civil Suit on 30.1.1984 (S.C.Suit No. 739 of 1984) which has been subsequently transferred in 1988 to this Tribunal and numbered as Transferred Application No. 37/88.

3. No interim relief of restraining the respondents from retiring the applicant on 29.2.1984 having been granted

by the City Civil Court, the applicant retired on superannuation on that day.

4. In their written reply, the respondents have submitted that the applicant is not having any evidence which is of unimpeachable nature and which would unmistakably prove that his date of birth was 10th February 1928. In fact, the applicant had informed the respondents by his letter dated 14.1.1966 that it was not possible for him to obtain the birth register certificate from Pakistan and that his date of birth "may be counted according to entry in Government service record" (Exhibit 'D').

5. According to the respondents, the date of birth shown in the Matriculation Certificate dated 12.6.1964 cannot be accepted in the absence of any basis for recording the same, particularly when the applicant himself had mentioned in his own handwriting and under his own signature in the service record at the time of his initial appointment in 1951 that his date of birth was 10th February 1926. Even at the time of joining the higher post of Junior Technical Examiner on 3.8.1965, the applicant had filled up a form in his own handwriting stating that his date of birth was 10.2.1926 and that he had passed the Matriculation examination in 1964.

6. The respondents have also submitted that the applicant's request for change in date of birth as 10.2.1928 is time barred as it was made for the first time on 13th October 1965, i.e. almost 14 years after his inital appointment, when he had himself written his date of birth as 10.2.1926. After his request was rejected on 23.11.1965, the applicant waited for about 11 years more before submitting a further representation on 27.4.1976 which was also rejected on 7.5.1976. The applicant reopened the subject once again after 9 years on 17.10.1985

after 6 years on 15.12.1982 which was ended with the final reply of the respondents on 25.1.1983.

7. We have heard on 11.7.1989 and 12.7.1989 Shri M.C. Naik, the learned Advocate for the applicant and Shri P.M. Pradhan (11.7.1989) and Shri S.R. Atre (12.7.1989) for Shri P.M. Pradhan on behalf of the respondents. After hearing the arguments on both sides and after perusing the relevant record, we do not propose to go into the question of limitation, as the application can be disposed of on merits.

8. It is the applicant's case that being in a disturbed state of mind due to certain tragic events on account of migration at the time of partition, he had given through oversight and inadvertence a wrong date of birth, viz. 10.2.1926 at the time of his initial appointment in Government Service on 27.7.1951. Subsequently, he passed the Matriculation examination in 1964 and in the Matriculation certificate issued by the Board of Secondary Education, Rajasthan, the date of birth has been shown as 10.2.1928. The respondents, having accepted this Matriculation Certificate for the purpose of his promotion as Junior Technical Assistant, the applicant contends that they should have also accepted it as authentic documentary evidence of his correct date of birth. The respondents strongly contest this and state that the applicant himself gave this concocted date of birth while filling the form for Matriculation examination and submitting it to the Board, with the ulterior motive of securing an extension in Government service.

9. We find it difficult to accept the applicant's contention that he was in a disturbed state of mind when he gave his date of birth as 10.2.1926, due to tragedies

suffered at the time of migration following partition. Admittedly, the applicant along with the other members of his family migrated to India in 1948 whereas his entry into Government service when he wrote his date of birth as 10.2.1926 was in 1951. We are not inclined to accept that he continued to be in a disturbed state of mind even three years after his migration. It is difficult to believe that while he could recollect correctly the exact day and month of his birth, he could not remember his year of birth, because of the alleged disturbed state of mind.

10. The applicant admitted during hearing that he had appeared for Matriculation Examination of the Rajasthan Board of Secondary Education in 1964 as an external candidate. As external candidate, it was possible for him to fill up in the required examination form his date of birth without any documentary proof. The applicant claims that the date of birth he had given in his examination form was based on his horoscope prepared at the time of his birth. But he could produce only a xerox copy of the horoscope and not the original. On these facts, we have to reject the applicant's contention that the date of birth given in the Matriculation certificate o of 1964 would constitute satisfactory documentary evidence for a change in the date of birth recorded by himself in the service book almost 14 years earlier.

11. Further, the applicant had stated in his letter dated 14.1.1966 that his date of birth may be counted according to entry in Government service record. Even after passing the Matriculation examination, at the time of joining the higher post of Junior Technical Assistant on 3.8.1965, the applicant had filled up a form in his own handwriting

stating his date of birth as 10.2.1926. Again, when the seniority list of Junior Technical Assistants was circulated on 31.1.1966, the applicant by his letter dated 25.9.1967 asked for correction of the date of his entry into Government service shown therein but not of the date of birth. Even when the seniority list of Junior Technical Assistants as on 30.9.1969 was circulated on 2.3.1970 the applicant did not ask for correction in the date of birth shown therein as 10.2.1926.

12. In these circumstances, in the absence of any reliable basis for the recording of the date of birth in the Rajasthan Board's Certificate of 12.6.1964, we are of the opinion that the decision of the competent authority not to accept the Matriculation Certificate issued by the Board of Secondary Education, Rajasthan, as authentic documentary proof for effecting a change in the date of birth already recorded in the service book, cannot be considered as arbitrary, illegal or malafide. Nor can we find fault with the respondents for relying upon the Matriculation Certificate merely for the purpose of qualification and not for the purpose of age, for which the service records alone were relied upon by the respondents. The question of age was not relevant for promotion of departmental candidates, as no minimum or maximum age limits are prescribed for their promotion, which is considered on the basis of qualifications alone. We do not, therefore, think that this is a fit case for interference by the Tribunal.

13. On the basis of the foregoing discussion, the application fails and is accordingly dismissed, but with no order as to costs.

(M.Y. Priolkar)
Member(A).

(M.B. Mujumdar)
Member(J).