

(9)

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

O.A.No.

T.A.No. 72/1986

198

198

DATE OF DECISION 17<sup>th</sup> JUNE 1987

Mr. Govind Narayan Satam Applicant/s.

Mr. S.R. Atre Advocate for the Applicant/s.

Versus

Flag Off. Com.-in-Chief Respondent/s.

Naval H.Q., Western Naval Command, Bombay

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

CORAM:

The Hon'ble Member(A) S.P. Mukerjee

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

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? No
3. Whether to be circulated to all Benches? No

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

TRANSFERRED APPLICATION No.72/1986

Mr. Govind Nayayan Satam  
Sumati Nivas, Tirandaj Gaothan,  
Opp. ITI Mission Gate, Pawai,  
Bombay 400076

Applicant

V/s.

1. Flag Officer Commanding-in-Chief  
Naval Headquarters, Western Naval  
Command, Bombay
2. Chief of the Naval Staff,  
Naval Headquarters, New Delhi
3. Union of India  
through Ministry of Defence  
Kendriya Sachivalaya Building  
New Delhi
4. Union of India  
through Ministry of Finance  
Naval Branch, New Delhi

Respondents

Coram: Hon'ble Member(A) S.P. Mukerjee  
Hon'ble Member(J) M.B. Mujumdar

Appearance:

1. Mr. S.R. Atre  
advocate  
for the applicant
2. Mr. M.I. Sethna  
advocate  
for the respondents

JUDGMENT

DATED: 17<sup>th</sup> JUNE 1987

(PER: M.B. Mujumdar, Member(J))

The applicant had filed Writ Petition No.3087/80 in the High Court of Judicature at Bombay and it is transferred to this Tribunal under section 29 of the Administrative Tribunals Act 1985 and is numbered as Transferred Application No. 72/1986.

2. The applicant was appointed as Lower Division Clerk in the office of the Superintendent, in the Indian Navy at Bombay in 1943. On 1.9.1944 he was promoted as Grade 'B' Clerk. On 1.4.1947, his services were loaned to Royal Navy

along with some other persons. On 1.3.1948 he was retrenched along with some of his colleagues. On 17th June 1948 or there about he was reinstated and appointed as a fresh <sup>entrant</sup> entry as 'Book Corrector', a post which was equivalent to a Lower Division Clerk. In due course that post was upgraded and was made equivalent to Upper Division Clerk. On his representation he was given three increments of Rs. 3 each treating him to be on war service previously i.e., before his retrenchment. However, neither his break in service was ~~considered~~ <sup>condoned</sup> nor he was given his due seniority by ignoring the break. In January 1976 he was appointed as Office Superintendent (Gr.II) on an officiating and ad hoc basis. It was mentioned in the order that he will be liable for reversion to the post of Upper Division Clerk without any notice. According to the applicant due to some adverse remarks passed against him regarding his performance in 1975 he was reverted to the post of Senior Upper Division Clerk with effect from 20th May 1976. According to the respondents he was reverted as the purpose of his ad hoc appointment was over. The applicant made a representation against the adverse remarks but the same was rejected. It appears that he did not make any specific representation against his reversion.

3. In the service book of the applicant, the date of birth was mentioned as 15.2.1921. It appears that the record regarding his service prior to his retrenchment was destroyed. Hence his record was reconstructed sometime in 1951-52. About a year before his retirement he made a representation for correcting his birth date as ~~18.1.1923~~ 18.1.1923. He did not produce any evidence in support of that birth date. Hence the respondents asked him to produce a school leaving certificate in support of that birth date. He could not do so prior to his retirement i.e.,

before 1st March 1979. On 22nd October 1980 he filed the Writ Petition in the High Court challenging the retrenchment in 1948 and <sup>for</sup> placing him in the Grade of Upper Division Clerk from January 1947. He has also challenged his reversion in May 1976. Lastly he has requested for correcting the birth date as 18.1.1923 <sup>and consequently</sup> for setting aside the retirement with effect from 1.3.1979 and to treat him to be in continuous service till 17.1.1981.

4. The respondents have filed their affidavit in reply to the case when the case was in the High Court itself. They have admitted that the old record as regards retrenchment of the applicant and his previous service is not available. However, the record was reconstructed in the year 1952. The duplicate service book previous to retrenchment was also reconstructed. It is pointed out that by the letter dated 9.4.1981, which is annexed as Exhibit 'A' to the affidavit, ~~that~~ the applicant is given protection with regard to his pay as prayed by him and hence the application has become ineffective to that extent. The letter does show that as a special case the President has granted sanction to refixation of the pay of the applicant on his reappointment as Book Collector with effect from 19.7.1948 at Rs. 78 + Rs. 1 as special pay, which was to be absorbed in future increments. The period of break from 1 March 1948 to 18 July 1948 was directed to be counted for next increment in the pay scale of the post, but no arrears were to be paid for the period of break. He was also to get his increments in the normal manner. Then it is pointed out that the post to which the applicant was reappointed was not the post of Upper Division Clerk, though he became Upper Division Clerk with effect from 7.9.1961. Regarding his reversion it is pointed out that the applicant was

appointed as officiating Office Superintendent (Gr.II) from 5.1.1976 to 6.3.1976 and the same was on ad hoc basis. The appointment was continued on the same basis till 19.5.76. In the appointment letter it was mentioned that the applicant was liable for reversion without any notice. The petitioner was accordingly reverted to the post of Upper Division Clerk on 20.5.1976, the post which he was holding on permanent basis from 9.3.1969. It is submitted that the reversion was made only after the necessity of the adhoc appointment was over.

5. It is denied that the applicant's date of birth is 18.1.1923. The birth date according to the service book is 15.2.1921. The applicant has signed <sup>α</sup>the declaration on 21 November 1962, certified <sup>ing</sup> that he has gone through the Service Book and he was satisfied with his date of birth and other particulars recorded therein were correct. He has further certified that his birth date was 15.2.1921. We have seen this declaration and the applicant admitted before us that the birth date is written by him in his own hand writing. The declaration is signed by him in the presence of two witnesses.

6. The respondents have pointed out that the applicant made a complaint regarding his wrong date of birth recorded in the Service Book for the first time in February 1978 while he was on the verge of retirement. It is the policy of the Government that alterations of the birth date should not be permitted after the employee has been declared permanent or when he is on the verge of retirement.

7. We have heard Mr. Atre, the Learned Advocate, ~~α~~ for the applicant and Mr. Sethna, the Learned Counsel for the respondents. Mr. Sethna ~~has~~ submitted that the petition is filed after lapse of many years which does not deserve to be enquired into. That is why we ~~have~~ heard Mr. Atre at

length on the point of delay and latches. We had also asked him to file written arguments which he has done.

8. After considering the facts on record there can not be any doubt that the applicant's prayer for setting aside his retrenchment order by which he was retrenched from 1.3.1948 cannot be enquired into as it is made more than 38 years after the cause of action arose. Mr. Atre stated before us that the applicant did make representations regarding his retrenchment, and the last representation was made in 1960. But admittedly the applicant did not approach any court within a reasonable period thereafter.

9. He has filed the Writ Petition in October 1980 i.e., about one year and ten months after his retirement. We feel that the applicant has no justification whatsoever for waiting for such a long time for approaching the High Court.

10. We may point out here that as a special case the President MR has given sanction for re-fixing the pay of the applicant by counting the break in service from 1.3.1948 to 18.7.1948 for the purpose of increment in the pay scale. This letter is dated 9.4.1981 and it is attached to the reply of the respondents. Obviously this action was taken on compassionate grounds after the Writ Application was filed. The applicant cannot claim any more relief in respect of his retrenchment other than what is given to him by the letter dated 9.4.1981.

11. Again the applicant's prayer for setting aside his reversion in May 1976 is also belated. We find that no representation was made by the applicant against that reversion. According to the applicant the reversion was effected because of some adverse remarks in 1975 in the

Confidential Reports. But his representation against his adverse remarks was also rejected long back. If he was aggrieved by that reversion order he should have approached some court within a reasonable time.

12. Apart from this we find that the promotion of the applicant at the beginning of 1976 was on an ad hoc and officiating basis. According to the respondents, his reversion to his permanent post had become inevitable after the necessity of his ad hoc appointment was exhausted. We, therefore, find nothing wrong in his reversion.

13. Regarding birth date the applicant is not having a good case. Admittedly the service record prior to the retrenchment of the applicant is not available. The service book and other record was reconstructed some time in 1952. The service book does show that the applicant's birth date was first recorded in it as 15.2.1923 but subsequently it <sup>was</sup> ~~is~~ corrected as 15.2.1921. How this correction came to be made is not known. The respondents have produced a declaration signed by the applicant on 21<sup>st</sup> November 1962 stating that he had gone through his service book and was satisfied that his birth date and other entries as recorded therein were correct. He ~~has~~ also signed the certificate stating that "my date of birth is 15.2.1921". This certificate ~~is~~ signed by two officers as witnesses. The applicant is not an illiterate person. He is a non-metric. He admitted that the hand written contents ~~is~~ regarding birth date are written by him in this certificate. He did not challenge this birth date at any time till 1978. Still the respondents asked him to produce School Leaving Certificate which he did not do till his retirement. Subsequently, he did produce a certificate from Culaba Municipal Primary School No. 1 showing

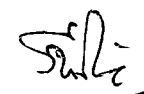
14


that his birth date was 18.1.1923. But he produced this certificate after his retirement. A copy of that certificate was produced before us. Its genuineness was doubted on behalf of the respondents. Apart from this, <sup>the fact that</sup> when the applicant himself had certified in 1962 that his birth date was 15.2.1921, which he did not challenge for about sixteen years, induces us to take a view that, that <sup>the</sup> birth date must be correct and he has rightly <sup>been</sup> retired from service with effect from 1.3.1979.

14. The powers under Article 226 of the Constitution of India are not meant for going into demands which are made after a lapse of <sup>an unconscionably</sup> a long period. Of course the rule that the court is not meant to enquire the belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion. The question of violation of any fundamental right does not arise in this case because when the applicant was retrenched, the Constitution of India was not in force at all. We have also gone through the documents on record carefully and we do not find that the applicant is having a good case with respect to any of his claims.

ORDER

We, therefore, dismiss the application with no order as to costs.

  
( S.P. Mukerjee )  
Member (A) 17.6.87

  
( M.B. Mujumdar )  
Member (J) 17-6-1987