

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 17/8/87

APPLICATION NO 439 /86(F)

~~XXXXXX~~

Applicant

Sadanand Ramachandra Idurkar Vs Secy. UOI, D/o P&T, ND. & ors.

To

1. Sadanand Ramachandra Idurkar,
Head Post Master, Kumta,
Dist. Uttara Kannada,
Karnataka State.
2. Secretary, Union of India,
Department of Posts & Telegraphs,
New Delhi.
3. Post Master General,
Karnataka Circle,
Bangalore.

4. The Superintendent of Post
Office, Karwar Division,
Karwar, Karnataka State.
5. Shri K.J.Shetty, Advocate,
No.115, Sampige Road,
Malleshwaram, Bangalore-3.
6. Shri M.Vasudeva Rao,
Central Govt. Standing Counsel,
High Court Buildings,
Bangalore-1.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~XXXX~~

~~XXXXXX~~ passed by this Tribunal in the above said
application on 14-8-1987.

Encl : as above

B.V. Venkatesh
DEPUTY REGISTRAR
~~XXXXXX~~
(JUDICIAL)

RECEIVED 19/8/87

Diary No. 1042/CR/87

Received Date: 19/8/87

DATED THIS THE 14TH DAY OF AUGUST 1987

Application No.439/86(F)

..... APPLICANT.

..... RESPONDENTS.

This application came up for hearing before this Tribunal on 12.8.1987. The Member made the following :

This is an application made under Section 19 of the Administrative Tribunals Act, 1985 (the Act). The applicant was working as Head Post Master at Kumta in Karnataka. The Superintendent of Post Offices, Karwar Division (R.3) intimated the applicant by letter dated 3.3.1984 (Annexure E) that he was due to retire on 31st March 1986, ~~his date of birth being~~ 05

P. L. G.



date of birth being 24.2.1928 and directed him to send his application for pension in Form 5 along with certain other documents. A point was made on behalf of the applicant about the discrepancy in this letter in so far as the month of birth and month of retirement were different. Having seen the service book of the applicant it is quite clear to me that the date of birth was by mistake mentioned as 24.2.1928 while it should have been 24.3.1928. This seems to be a typographical error and nothing turns on it. Soon after he received the aforesaid letter of 3.3.1984, the applicant wrote to R-3 on 12.4.1984 in which he stated, "I have to inform you that my date of birth is 24.3.1930. In this connection I am enclosing matriculation certificate of the Bombay University and School leaving Certificate (both xerox copies)". However, the respondents, acting on the basis of the correct date of birth being 24.3.1928 proceeded to superannuate the applicant on 31.3.1986. Aggrieved by this action, the applicant filed this application in which he prayed that the Respondents be directed to record the applicant's date of birth as 24.3.1930 and not to give effect to the aforesaid letter of 3.3.1984 (Annexure E). The second prayer was that the respondents be directed not to superannuate the applicant before 31.3.1988, the date on which, according to him, he would attain the age of 58 years. He also prayed for interim relief to stay the operation of the letter dated 3.3.1984 and to continue him in service beyond 31.3.1986. An ex parte interim order to this

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effect was passed by this Tribunal on 13.3.1986, but by virtue of the proviso to Section 24 of the Act, the stay was stood automatically vacated after the expiry of 14 days and the applicant was retired from service on 31.3.1986. The question for determination now is whether the Respondents were right in retiring the applicant on 31.3.1986 in ^{pursuance} ~~presence~~ of the letter dated 3.3.1984. M

2. Shri K.J.Shetty, learned counsel appearing for the applicants strongly contended that the respondents should not have superannuated the applicant on 31.3.1986 because his real date of birth was 24.3.1930 and he was due for superannuation only on 31.3.1988. When the applicant entered service in 1947 as a Postal Clerk he had given his date of birth as 24.3.1930 and in support of this statement he had furnished three documents viz. a school leaving certificate dated 7.6.1946 issued by the Edward High School Ankola, his matriculation certificate dated 1.10.1946 and a domicile certificate said to have been issued by the Magistrate III Class, Ankola in all of which the date of birth was shown as 24.3.1930. According to Shri Shetty, the authorities had wrongly recorded the applicant's date of birth as 24.3.1928 at the time of his entry into service and it was a mistake that should have been rectified.

[Signature]



3. Shri M.V.Rao, learned counsel appearing for the Respondents stoutly denied that the applicant had given his date of birth as 24.3.1930 in 1947 when he entered service and that he had furnished the three documents mentioned by Shri Shetty to the authorities at the time. The personal file of the applicant maintained in the office of the respondents showed that two documents had been furnished at the time the applicant entered ⁶¹into service viz. a domicile certificate dated 28.2.1947 issued by the Chief Presidency Magistrate (CPM), Bombay and an extract of the Births and Deaths Register, in both of which the applicant's date of birth was shown as 24.3.1928. The competent authority had considered these documents and had recorded the applicant's date of birth as 24.3.1928. There was no mistake so far as the original entry in the service book was concerned; it was a deliberate decision of the competent authority taken after considering the documents available before him. Thus there was no question of an error or a clerical mistake being rectified.

4. I have carefully considered the contentions urged by rival counsel. On perusing the personal file of the applicant maintained by the respondents, I find, in addition to the copy of the domicile certificate said to have been issued by the CPM, BOMBAY, and an extract of the entries from ^{the} birth and death ~~register~~ register, there is also a hand written copy of

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the applicant's matriculation certificate; while the former two mention the applicant's date of birth as 24.3.1928 the last mentioned hand written copy of the matriculation certificate mentions the date as 24.3.1930. Since the matriculation certificate has been kept in the personal file it may be presumed that the applicant would, at the time of entry into service, have also submitted his School Leaving Certificate and the domicile certificate of the Magistrate 3rd Class, Ankola, referred to by Shri Shetty since they would have been with him then. The next question is: ^{by} how did the domicile certificate said to have been issued by the CPM Bombay and the extract of the birth and death register, both showing the applicant's date of birth as 24.3.1928 ^H come to be kept in his [?] personal file? Shri Shetty contended that these were not given by the applicant. It is difficult to accept that the domicile certificate said to have been issued by the CPM was not produced by the applicant. Such a certificate is always sought for and obtained by the person whose domicile is in question. Moreover the said domicile certificate is dated 28.2.1947 while the applicant entered service on 20.11.1947 and it only stands to reason that the respondents could not have obtained the said domicile certificate themselves, before the applicant entered service. I am, therefore, led to the conclusion that the copy of the domicile certificate said to have been issued by the CPM,

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Bombay was furnished by the applicant. So far as the extract from the birth and death register is concerned, its evidentiary value is the same whether the authorities themselves obtained it or the applicant furnished it. In any case it is clear that the authorities took a deliberate decision on the basis of the documents available with them at the time, including those not found in the personal file in respect of which I am prepared to go along with Shri Shetty's contention that they were furnished by the applicant to the authorities when he entered service, that the date of birth of the applicant was 24.3.1928. The entry in this regard in the service book contains no overwriting and no correction. I am, therefore, convinced that there was no clerical mistake or a patent error in the entry of the applicant's date of birth as 24.3.1928 in the service book. In view of this the application has to be considered as one for change of date of birth recorded in the service book of the applicant by the competent authority after proper deliberation and not as one seeking a correction of a clerical error committed at the time of original entry.

5. Explaining why the applicant did not seek a change in the date of birth till he received the impugned letter dated 3.3.1984 from Respondent 3 intimating

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him that he would superannuate on 31.3.1986, Shri Shetty explained that the applicant had made several representations in the past, but unfortunately did not preserve copies of the same to prove it. When the service book of the applicant was shown to Shri Shetty in which the applicant had signed on the first page which contains the date of birth on at least seven occasions viz. from 1948 to 1983, Shri Shetty insisted that on every such occasion the applicant sent in a representation for correction of date of birth but the respondents had ignored his representation.

6. On the other hand, Shri M.V.Rao for the respondents vehemently denied that the applicant had made any representation in the past and submitted that the personal file of the applicant which is a record maintained in the ordinary course of business did not show that the applicant had made any such representation. He, therefore, contended that the applicant having signed the service book confirming the date of birth recorded therein on so many occasions cannot now be allowed to complain that the date of birth had been wrongly entered. The application should, therefore, be rejected on this ground itself.

7. Having considered the matter very carefully, I am unable to accept the contention of Shri Shetty that the applicant represented to the authorities regularly right from the beginning that the entry relating to the date of birth should be rectified in his service

P. J. Rao



book, because the claim in this regard is unsupported by any evidence whatsoever, either from the side of the applicant or from the personal file of the applicant maintained by the Respondents. Normally entries relating to date of birth^y should not be allowed to be changed many years after they are made, particularly when they are made on the basis of some documentary evidence available with the authorities at the time. In this case the applicant raised the question of his ~~date~~ of birth nearly 37 years after the relevant entry was made in the service book and that itself militates against his claim being accepted. However, in order to do justice to the case, I proceed to examine the evidence produced by both sides regarding the correctness of the entry of the applicant's date of birth in his service register.

8. As mentioned above, the evidence to be considered consists of three documents on which Shri Shetty placed reliance for the applicant and two documents which are found in the personal file of the applicant maintained by the Respondents. The documents relied upon by Shri Shetty consists of the School Leaving Certificate, matriculation certificate and the domicile certificate said to have been issued by the Magistrate 3rd Class, Ankola all showing the date of birth as 24.3.1930. The documents relied on on behalf of the respondents is the domicile certificate said to have been issued by the CPM, Bombay, and the extract of the birth and death register showing

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the date of birth as 24.3.1928. Before dealing with these, I would like to dispose of another contention of Shri Shetty based on a gradation list brought out by the respondents in 1957 in which the applicant's date of birth was shown as 24.3.1930. This was countered by Shri Rao by pointing out that in three subsequent gradation lists brought out in 1966, 1969 and 1975 the applicant's date of birth was shown as 24.3.1928. According to Shri Rao, the entry in the 1957 gradation list showing the applicant as having been born on 24.3.1930 was a mistake and the applicant cannot rely on this. Shri Rao also pointed out that in the gradation lists brought out as on 1.4.1966 and 30.6.1975, the applicant had signed against his name, showing thereby that he had acknowledged the date of birth recorded there, i.e., 24.3.1928, as the correct one. Shri Rao also pointed out that objections to entries in a gradation list had to be made within six months of its publication, but the applicant had raised no objection against the gradation lists of 1966, 1969 and 1975. I am of the view that Shri Shetty's reliance on the gradation list of 1957 is of little help to him in view of what appears in the three subsequent gradation lists. Moreover, a gradation list is prepared with reference to primary documents like the service book and cannot be given greater weight in the matter of date of birth than the service book itself. I leave the matter at that and disregard the gradation lists relied upon by both sides.

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9. I now return to the two documents found in the applicant's personal file and the three documents which the applicant contends ~~he~~ produced before the authorities when he entered service. Shri Shetty pointed out that the copy of the domicile certificate said to have been issued by the CPM, Bombay, as well as the extract of the birth and death register found in the applicant's personal file were not certified copies and, therefore, should not be relied upon. I cannot accept this contention. No doubt these are not certified copies. They however show that the originals were seen and the copies were certified by the Head Clerk to the Superintendent of the Post Offices, Dharwar. They are to be found in the personal file of the applicant maintained in the normal course of business in the office of the respondents. For that matter I also find a hand written copy of the applicant's matriculation certificate in the same personal file along with ^{the} other two documents and this hand written copy is also not a certified copy but on a comparison ^{with} with the original certificate produced by the applicant, I find the hand written copy is a true reproduction of the original. I am, therefore, satisfied that the copy of the domicile certificate said to have been issued by the CPM, Bombay, and of the extract from the birth and death register are genuine copies

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of the originals. Now the domicile certificate produced by the applicant said to have been issued by the Magistrate 3rd Class, Ankloa, as well as the domicile certificate found in his personal file said to have been issued by the CPM, Bombay, constitute only secondary evidence of the applicant's date of birth. I notice that the domicile certificate said to have been issued by the CPM, Bombay was based on the certificate of the birth and death register while the Magistrate 3rd Class, Ankola, whose certificate is relied upon by the applicant was based on the applicant's school leaving certificate. The primary purpose of a domicile certificate is to certify the domicile of a person and not his date of birth. Similarly the purpose of the School leaving certificate and the matriculation certificate produced by the applicant is to show that the applicant had studied in the School and had passed the matriculation examination in different subjects. The date of birth recorded in these certificates cannot, therefore, be taken as conclusive evidence of the date of birth. That leaves only the extract from the births and death register. There can be no two opinions that the births and deaths register is primarily meant to record the dates of birth and the dates of death. Therefore, among all the documents produced before me I am inclined to believe the extract from the register of births and deaths as ^{the} only ~~the~~ conclusive piece of

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evidence. This extract clearly shows the applicant's date of birth as 24.3.1928 and that has to be taken as the correct date. I would, therefore, reject the contention of the applicant that the entry of date of birth in his service book was incorrect and that he should not have been retired on 31.3.1986. *6.01*

10. Before parting with this case I must mention a few other points made by both sides. Shri Vasudeva Rao on behalf of the respondents pointed out that the applicant had himself noted his date of birth as 24.3.1928 in ~~two~~ leave applications made in July 1959 and February 1960. Shri Shetty countered that the applicant had to put down his date of birth in the leave applications in conformity with the entry in the service book, for, otherwise, he would not get leave. This was, according to Shri Shetty, no evidence of acceptance of the date of birth by the applicant. In the view I have taken above it is not necessary to consider this aspect of the matter further. Another contention urged on behalf of the respondents was that if the applicant's date of birth was 24.3.1930 as claimed by the applicant, he would have been ineligible to join service on 24.11.1947 as he would have been less than 18 years of age on that date. The applicant thus having derived an advantage when entering service by having his date of birth recorded as 24.3.1928 he cannot now be allowed to take advantage of a different date to extend his period of service by two years. Shri Shetty

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countered this by pointing out that there was no minimum age for appointment as Postal Clerk in 1947. According to Shri Shetty, another person, a certain Shri R.K.Amambal who was born on 2.4.1930 was also appointed as Postal Clerk on 24.8.1947, i.e., before he had attained the age of 18 years. Since the respondents could not produce the rules on the subject as they existed in 1947, I refrain from expressing any opinion on this aspect of the matter.

11. In the result the application is dismissed.
Parties to bear their own costs.



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P. SRINIVASAN
(MEMBER)

14/8/10

"True copy"

R. V. Subash
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE
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