(25)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1097 of 1991

DATE OF JUDGMENT: 20th August, 1992.

BETWEEN:

Mr. Mohd. Jan Khan .. Applicant

AND

Union of India represented by:

1. The Secretary to Government,
   Department of Posts,
   New Delhi.

2. The Postmaster General,
   Hyderabad Region,
   Hyderabad.

3. The Spperintendent of Post Offices,
   Nalgonda Division,
   Nalgonda. .. Respondents

COUNSEL FOR THE APPLICANT: Mr. KSR Anjaneyulu

COUNSEL FOR THE RESPONDENTS: Mr. N.R.Devaraj, Addl.CGSC

CORAM:

Hon'ble Shri C.J.Roy, Member (Judl.)

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(26)

JUDGMENT OF THE SINGLE MEMBER BENCH DELIVERED BY THE HON'BLE SHRI C.J.ROY, MEMBER (JUDL.)

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed by the applicant claiming a relief to quash the order of the Superintendent of Post Offices, Nalgonda in his letter No.C.3-1/24, dated 14.8.1991 informing the applicant that he will retire on superannuation with effect from 31.3.1992 and declare the order of the Superintendent of Post Offices in his letter No.C.3-1/24, dated 16.10.1991 and the order communicated in Superintendent of Post Offices, Nalgonda letter No.C.3-1/24 dated 8.11.1991 rejecting the representations of the applicant as arbitrary, illegal and untenable and to direct the respondents to continue the applicant in service till he attains the age of superannuation on the basis of his correct date of birth i.e., 15.5.1344 Fasli i.e., 17.2.1935 AD till 17.2.1993. The facts in brief are as follows:-

The applicant is working as LSG Postal Assistant in the Head Post Office at Nalgonda HPO. The Superintendent of Post Offices, Nalgonda issued a memo No.C-3-1/24, dated 14.8.1991 stating that the applicant is due to retire on 31.3.1992 on superannuation and required him to submit necessary statements. The applicant noticed the mistake in the memo as his date of birth is 15.5.1344 Fasli (17.2.35) but not 17.3.1934

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and he is due to attain superannuation in February 1993 and not in March 1992. He submitted a representation dated 15.10.1991 along with the School Leaving Certificate issued by the Zilla Parishad High School, Narketpally, Nalgonda District on 15.9.1966 in support of his date of birth as 15.5.1344 Fasli i.e., 17.2.1935 A.D. and intimated that his date of superannuation is 17.2.1993 and the same should be corrected accordingly. The Superintendent of Post Offices vide his memo dated 16.10.1991 replied stating that as per Note under F.R.56, the request for change of date of birth has to be made within five years from the date of entry into service and therefore it is not possible to accede to the request of the applicant. Thereupon, the applicant submitted a representation to the Postmaster General, Hyderabad on 19.10.1991 for correction of his date of birth and the same was rejected vide orders dated 8.11.91 communicated by the Superintendent of Post Offices stating that if there is any discrepency in the date of birth, the applicant should have represented long back and that since the applicant attested the service book entries more than once in service, his claim cannot be conceeded. Hence, the applicant filed the present applica-tion claiming the above said relief.

2. The respondents filed a counter with the following contentions:-

The Superintendent of Post Offices, Nalgonda Division vide his letter dated 14.8.1991 called the applicant

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to submit pension papers as he was due to retire on superannuation on 31.3.1992. The applicant submitted a representation dated 15.10.1991 to the SPO, Nalgonda stating that his actual date of birth is 15.5.1344 Fasli corresponding to 17.2.1935 A.D., as per the T.C. issued by the Zilla Parishad High School, Narkatpalli and requested to correct his date of birth as 17.2.1935 and to allow him to continue in service till 16.2.1993. The SPO, Nalgonda rejected the claim of the applicant under the note below Rule F.R. 56. The applicant represented his case to the Postmaster General, Hyderabad on 19.10.1991 which was rejected as the applicant had attested the service book entries more than once in his service and he should have represented long back if actually there is discrepancy in the date of birth. The respondents stated that the records relating to his E.D. service are not available since the appointment of the applicant as EDDA was stated to have been taken place in the year 1952 and the efforts to trace the same are not fruitful. However, there is no dispute of his working as Class-IV Postman and as Postal Assistant in the Department. There is also no provision in the rules to entertain the request of the applicant after an indefinate time and hence there are no merits in the application and it is liable to be dismissed.

3. Heard the learned counsel for the applicant, Shri K.S.R.Anjeneyulu, and the learned Addl. Standing Counsel for the Respondents, Shri N.R.Devaraj and perused the records produced by the respondents.

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4. The short point involved in this case is whether the date of birth of the applicant is 17.2.1935 or 17.3.1934. I have also perused the service records produced by the respondents and also the original transfer certificate filed by the applicant in which his date of birth has been shown as 15.5.1344 Fasli. The respondents have rejected the claim of the applicant on the ground that after he was asked to submit his pension papers that he made the representation dated 15.10.1991 along with the Transfer Certificate and at this fag end of his service after he was alerted for filing retirement papers, his date of birth cannot be altered. The service book also shows that the applicant had signed 3 times in 1965, 1970 and 1976, accepting his date of birth as 17.3.1934. An objection was taken by the respondents that under Note-5 to F.R. 56 the claim of the applicant is barred by time. Note 5 to F.R. 56 has been brought into force by way of a notification No.19017/79-Estt.A, dated 30.11.1979, published as S.O. 3997 in the Gazette of India dated 15.12.1979 and it comes into prospective effect. Therefore, it will not apply to persons who were already appointed prior to the introduction of Note 5 to F.R. 56. Therefore, the applicant can agitate for change of his date of birth at any time as he was appointed prior to 15.12.1979. Besides, the following decision supports this view.

5. In "Hiralal Vs. Union of India (ATR 1987(1) CAT 414", the Hon'ble Division Bench of the Central Administrative

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Tribunal, Principal Bench, New Delhi, held as follows:-

"The age of a Government servant as of any one else has to be counted with reference to the date on which the person was born. Any error in the service record as regard the date of birth in the service record cannot alter the date of birth. Ofcourse there has to be some record or proof as to what the correct date of birth is. If there is any error in the service record in that entry, that has to be corrected, unless some service rule prohibits correction or ordains that irrespective of what the date of birth of a Government servant may be he shall be deemed to attain the age of superannuation based on the date of birth as entered in the service record and once entered that entry cannot be altered. In the absence of any such rule, a Government servant cannot be precluded from showing that the entry in the service record is not correct. Whenever a question arises whether the entry of the date of birth in the service record is correct or not, that has to be enquired into and that has been done in this case in accordance with law. Note 5 to Fundamental Rule 56 governing correction of date of birth in the service record, substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No.19017/79-Estt.-A, dated 30th November, 1979, published as S.O.3997 in the Gazette of India dated the 15th December, 1979, takes effect from that date. It lays down that a request for the correction of the date of birth in the service record shall

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be made within five years of entry into Government service. But obviously the five years period of limitation prescribed for the first time under the said S.O.3997 cannot apply to those Government servants who were in service by that day for more than 5 years. In issuing the said S.O. it could never have been the intention of the Government that there should be two classes of Government employees - those employees who had entered Govt. service prior to 15.12.1979 whose date of birth could not be corrected, however erroneous that entry may be and other who entered the service within five years of the said S.O. are thereafter entitled to get the entry as to date of birth in the service record corrected. That would be an invidious discrimination unsustainable in law. It is, therefore, reasonable to infer that that period of limitation prescribed under the said S.O. would be applicable to those who entered service after 15.12.1979."

6. That apart, in "Shri Manak Chand Vaidya Vs. State of Himachal Pradesh and others (SLR 1976(1) Himachal Pradesh High Court, [redacted] page-402)", the Hon'ble Judges of the High Court of Himachal Pradesh, held that -

"A Government servant is entitled to show that the entry made in his service record does not represent his true date of birth. That is a right which flows from his right to continue in service until he reaches the age of superannuation. He is entitled to show

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that the recorded entry, which determines the date on which he attains the age of superannuation, does not reflect the true position and that on its misleading basis he is liable to be retired before he in fact attains the age of superannuation. Shortly put, the erroneous entry will abridge the period during which he is entitled to continue in service. Therefore, involved in his right to continue in service is his right to show that the recorded entry of his date of birth is erroneous. If on application made by the Government servant, the Government finds that there is substance in the claim, it is bound to give effect to the claim and alter the relevant entry in the service record. If the entry is found to be erroneous it must, in all fairness to the Government servant, be corrected. When such application should be entertained is a matter relating to procedure. A provision determining when the application should be entertained has the effect of limiting the exercise of the right of the Government servant to show that the recorded entry is erroneous. Such limit can be imposed only by a provision having the force of law."

7. In "Jagannath Sharma Vs. Union of India (SLR 1987(1) CAT 410)", the Hon'ble Members of the Central Administrative Tribunal, Chandigarh Bench, observed-

"correction of date of birth is an important legal right and it cannot be denied merely on the basis of administrative instructions."

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Copy to:-

1. The Secretary to Government, Department of Posts, New Delhi.
2. The Postmaster General, Hyderabad Region, Hyderabad.
3. The Superintendent of Post Offices, Nalgonda Division, Nalgonda.
4. One copy to Sri. K.S.R.Anjaneyulu, advocate, 1-1-365/A, Jawaharnagar, Bakaram, Hyd.
5. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
6. One spare copy.
7. one copy to D.R(J)
8. one copy to Hon. C.J Reg. M(J)

16th Jan 1995 Pasted 31/1

Rsm/-

8. Besides, the applicant has failed to agitate his claim for change of his date of birth within the time, keeping the information of his date of birth as 15.5.1344 Fasli in his possession. However, if this could be corrected, the applicant cannot be denied the benefit of it. 15.5.1344 Fasli is calculated according to the sheet filed by Shri K.S.R.Anjaneyulu, learned counsel for the applicant according to which the correct date of birth works out to 15.3.1935 and he claims the correct date of birth of the applicant is only 15.3.1935 but not 17.3.1934. There is a difference of 28 days according to the calculation sheet.

9. Following the principles laid down in the above cited decisions, we direct the respondents to consider the case of the applicant for change of his date of birth on merits taking into consideration the material produced by the applicant, within a period of four months from the date of receipt of this order. The respondents shall also consider additional papers, if the applicant chooses to produce in support of his claim and the applicant shall be given an opportunity of personal hearing, if he so chooses.

10. With the above directions, the application is disposed of with no order as to costs.

(C.J.ROY)
Member(Judl.)

Dated: 20th August, 1992.

Dy. Registrar (Judl.)

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CHECKED BY APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.

AND

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY:
MEMBER(J)

AND

THE HON'BLE MR.C.J. ROY : MEMBER(J)

Dated: 26/8 - 1992

~~ORDER~~ / JUDGMENT

~~R.A./C.A./M.A.No~~

~~in~~

O.A.No. 1097/91

~~T.A.No.~~ (~~W.P.No~~)

Admitted and interim directions issued

Allowed.

~~Disposed of with directions~~

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A.Ordered / Rejected

~~No~~ orders as to costs.

pvm.

27/8/92

Central Administrative Tribunal
DESPATCH
18 SEP 1992
HYDERABAD BENCH.