

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of Order: 7.7.2000

OA 29/2000

Shiv Ram Sharma S/o Shri Rekha Ram aged about 55 years resident of Village & Post Mudia (Nagar), Bharatpur and presently working on the post of Extra Departmental Transit Mail Peon (E.D.T.M.P.) Nagar (Bharatpur) Sub-Post Office.

.... Applicant.

Versus

1. Union of India through its Secretary to the Govt. of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi- 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur - 302007.
3. Superintendent of Post Offices, Bharatpur Postal Division, Bharatpur.
4. Inspector of Post Office, Deeg Sub-Division Deeg (Bharatpur).

.... Respondents

Mr. C.B. Sharma, Counsel for the applicant.
Mr. Hemant Gupta, Proxy counsel for
Mr. M. Rafiq, Counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)

ORDER

(PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL))

In this OA applicant makes a prayer to direct the respondents to quash and set aside orders dated 30.8.99 and 15.12.99 and to direct the respondents not to retire the applicant on 25.1.2000 and allow the applicant to work till 25.4.2010 till he completes the age of 65 years taking into account the date of birth as 26.4.45 instead of 26.1.35.

2. The applicant was initially appointed as Extra Departmental Mail Carrier at Mundia E.D.B.O. on 26.4.63 and in the year 1999 the service of the applicant were transferred to E.D.T.M.P. Nagar due to abolition of post of E.D.M.C. Mundia.

.....2/-


It is stated that at the time of initial appointment, the date of birth of the applicant entered in the official record was 26.4.45 and in the seniority list issued by the Department vide letter dated 4.11.93, the name of the applicant find place at sl. no. 19 and his date of birth was shown as 26.4.45 and date of appointment was shown as 26.4.63. It is stated that suddenly in the year 1999, applicant was informed vide letter dated 30.8.99 that his date of birth is 26.1.35 instead of 26.4.45 and he is to retired on 25.1.2000 on completion of 65 years of age. In pursuance to this, respondent no. 3 also issued an order in respect of retirement of the applicant dated 15.12.99. Applicant made a representation but with no avail. It is stated that correct date of birth is 26.4.45 and applicant is to retire on 25.4.2010 after completing 65 years of age as prescribed in the E.D. Agents (Conduct & Service) rules, 1964 but the respondents are going to retire the applicant on 25.1.2000. Therefore, he filed this application for the reliefs, as mentioned above.

3. The main contention of the applicant in this case is that his date of birth is 26.4.45 and not 26.1.35, The Department suo-motto changed the date of birth of the applicant as 26.1.35 which is arbitrary and not sustainable in law.

3. Reply was filed. In the reply it is stated that applicant failed to submit the date of birth certificate. Therefore, his date of birth was determined as 26.1.35 instead of 26.4.45. It is also stated that applicant in token having accepted the correctness of his service particulars in the gradation list vide Annexure R-10. Applicant submitted a representation against this notice stating that his date of birth is 26.4.45 but applicant was again asked to furnish the certificate in support of his date of birth but he failed to furnish. It is stated that correction of date of birth was accepted by the applicant himself putting his signature in the correction list. Therefore, applicant is not permitted to say that date of birth as corrected by the Department is not correct and action of the respondents in any way cannot be said to be illegal, arbitrary and unjust and in this way on the basis of averments in the reply, respondents have requested to dismiss this OA with costs.

4. Admittedly, the date of birth of the applicant in seniority list as revised upto 30.9.87 as shown as 26.4.45 and educational qualification of the applicant are shown as 8th standard, and in Annexure R-6, seniority list prepared upto 30.10.90, the date of birth of the applicant has been shown as 26.4.45. The date of appointment of the applicant has been shown as 26.4.63 but in the revised list prepared upto 1.7.97, the date of birth of the applicant has been shown as 26.1.35. According to respondents it appears that respondents have corrected the date of birth suo-motto. No basis has been explained in the reply for correction of date of birth of the applicant suo-motto. The date of birth entered into the record can be corrected at the request of the party, if he makes an application within five years of his appointment and Department can correct it when the Department ~~has~~ is of the opinion that incorrect date of birth has entered in the Service record of the applicant but before such a correction made, it was mandatory duty of the respondents to follow principles of natural justice i.e. to give an opportunity of show-cause to the applicant before making such correction. It is settled principle of law that before making any suo-motto correction, respondent Department must have given the opportunity of show-cause to the applicant and after filing show-cause by the applicant, action should have been taken but in this case, it appears that respondent Department has failed to follow the principles of natural justice making suo-motto correction in the date of birth of the applicant.

5. In view of the above, this Original Application is allowed and orders dated 30.8.99 and 15.12.99 are hereby quashed and it is declared that applicant's date of birth is 26.4.45 and not 26.1.35. Respondents are further directed to act according to date of birth of the applicant as 26.4.45. No order as to costs.


(S.K. Agarwal)
Member (J)