

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.94/2001

Date of order: 19/10/2003

J.P.Bairawa, S/o Sh.Hatila Ram, R/o Gangapur City,
working as Assistant Post Master (SB) Gangapur City.

...Applicant.

Vs.

1. Union of India through its Secretary, Govt of India,
Dept. of Posts, Mini. of Communication, Dak Bhawan,
New Delhi.
2. Chief Post Master General Rajasthan Circle, Jaipur.
3. Supdt.of Post Offices, Sawaimadhopur Postal Division
Sawaimadhopur.
4. Post Master Gangapur City Head Post Office, Gangapur
City.

...Respondents.

Mr.C.B.Sharma : Counsel for applicant

Mr.N.C.Goyal : for respondents.

CORAM:

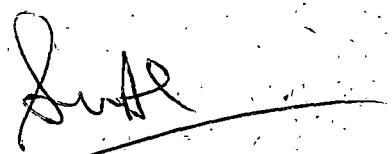
Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.A.P.Nagrath, Administrative Member.

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

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to quash the letter dated 1.8.96 (Annx.Al) and to treat the date of birth of the applicant as 5.8.1948 in place of 5.8.1941 with all consequential benefits.

2. Facts of the case as stated by the applicant are that he was initially appointed as Clerk on 28.4.68. He was promoted in Lower Selection Grade in 1984 and Higher Selection Grade in 1993 and continuously working with full satisfaction of the Department. It is stated that at the



time of his initial appointment he was furnished the certificate of 10th standard passed in the year 1966 with the date of birth as 5.8.1948. The respondents after due formalities appointed the applicant as Clerk on 28.4.68 in Pali Division and thereafter, the applicant is working in Sawaimadhopur Postal Division. It is stated by the applicant that his correct date of birth is 5.8.1948 but respondent No.3 without any basis, recorded his date of birth as 5.8.1941. It is also stated that the correct date of birth of the applicant was inserted in the seniority list as 5.8.1948. The applicant made request for an enquiry in the matter but without conducting any enquiry the respondents' department arbitrarily informed the applicant vide letter dated 1.8.96 that his date of birth is 5.8.1941. It is also stated that recording the date of birth of the applicant as 5.8.1941 without any basis is against the provisions of Articles 14, 16 and 21 of the Constitution of India. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. In the reply, it is stated that when the applicant initially appointed as Postal Assistant in Pali Division in the year 1968, his Service Book was prepared and the date of birth of the applicant was entered in the Service Book as 5.8.1941 by the authority concerned on the basis of educational documents and the applicant signed the first page of the Service Book in token of having checked the correctness of the entries. It is stated that the applicant submitted an application on 24.8.96 requesting to make enquiry in respect of his date of birth. During the course of enquiry, the applicant failed to produce any proof



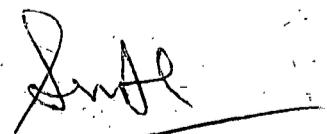
in respect of his date of birth as 5.8.1948. It is also stated that the applicant did not make any objection till he filed his first representation, therefore, after a period of 5 years, as per departmental instructions, the applicant could not challenge the recording of his date of birth. It is stated that the action of the respondents is perfectly legal and valid and no infrence is required. Therefore, the applicant has no case for interference by this Tribunal and the O.A devoid of any merit is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

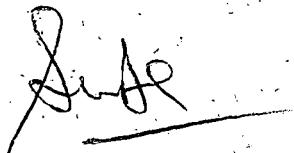
5. The learned counsel for the applicant vehmently argued that in the Service record prepared by the department the date of birth of the applicant was wrongly entered as 5.8.1941 whereas it should have been 5.8.1948 on the basis of evidence produced by the applicant. On the other hand, the learned counsel for the respondents argued that on the basis of Service record, the applicant's date of birth is 5.8.1941 which has been written both in words and figures at the time of his initial appointment and the same was verified by the competent authority. He also argued that every year, the applicant was allowed to inspect the Service Book but he never raised any objection before 1996, therefore, at the fag end of his career, he is not allowed to raise such objection and the applicant has no case.

6. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

7. In the High School Certificate produced before us, the date of birth recorded as 5.8.1948. In the seniority



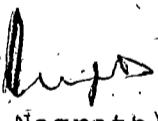
list prepared by the department, the date of birth of the applicant has been shown as 5.8.1948. On a perusal of Service record, it becomes abundantly clear that in the attestation form submitted by the applicant before he was initially appointed, the applicant has shown his date of birth as 5.8.1948 and in his educational qualification's column he has mentioned himself as High School Pass with first division. The original certificate produced before us corroborates the fact that the applicant was initially appointed on the basis of the High School Certificate in which his date of birth has been shown as 5.8.1948. It is also pertinent to mention here that while filling up the column of date of birth by the office in the Confidential Report, the applicant's date of birth has been shown as 5.8.1948. The respondents failed to establish any basis on which the date of birth of the applicant was recorded as 5.8.1941 in the service record. It appears to be a clerical error on the face of the record and in case of such clerical error, the applicant is entitled to correction. The department should have corrected it when a representation was filed by the applicant but the department did not choose to pass any order for correcting the same. We can only say that the department has intentionally did not like to pass an order to correct such clerical error made by the department itself and it is against the principles of natural justice that on the mistake committed by the department, the employee should suffer. The plea of the respondents is that the date of birth as recorded as 5.8.1941 has been acknowledged by the applicant by putting his own signature in that case we can only observe that the



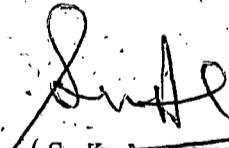
applicant had been rather negligent but this being a substantive right cannot vanish because of such negligence.

8. Our attention was drawn towards the fact that as per FR 56, after five years, the case of the applicant for correction of his date of birth is not maintainable. In this connection, the counsel for the applicant has referred 1999(3) ATJ 173, Shri Manohar Dutt Vs. Secretary, Mini. of Defence, New Delhi & Ors, the Principal Bench of the Tribunal held that limitation of 5 years under note 6 of FR 56 is not applicable to a case of rectification of a mistake apparent from the record. We are, therefore, of the opinion that it is a fit case in which direction can be issued to the respondents to correct the date of birth of the applicant and treat the date of birth of the applicant as 5.8.1948 in place of 5.8.1941.

9. We, therefore, allow this O.A and quash the letter dated 1.8.96 (Annex. Al) and direct the respondents to treat the date of birth of the applicant as 5.8.1948 in place of 5.8.1941. The applicant shall be entitled to all consequential benefits including treating the period after 31.8.2001 till he is taken on duty as the period spent on duty. No order as to costs.


(A.P.Nagrath)

Member (A).


(S.K. Agarwal)

Member (J).