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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI-5.

O.A. No. 164 of 1997.

29-7-1998.
DATE OF DECISION.....

Shri Maljon M. Sangma

(PETITIONER(S))

S/Shri R.P.Sarma, A.K.Roy.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Shri G.Sarma, Addl.C.G.S.C

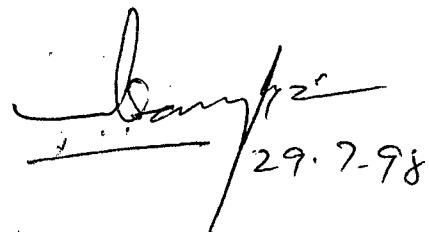
ADVOCATE FOR THE
RESPONDENTS.

THE HON.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member.


29.7.98

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 164 of 1997.

Date of Order : This the 29th Day of July, 1998.

Shri G.L.Sanglyine, Administrative Member.

Shri Maljon M.Sangma,
Senior Accountant (Retd.)
Office of the Accountant General,
Meghalaya, Mizoram etc.,
Shillong-1,
resident of Amzad Ali Road,
Laban, Shillong-4. Applicant

By Advocate S/Shri R.P.Sarma, A.K.Roy.

- Versus -

1. Union of India,
represented by the Comptroller
and Auditor General of India,
New Delhi.
2. Comptroller and Auditor General of India,
New Delhi.
3. The Accountant General,
Meghalaya, Mizoram etc.
Meghalaya, Shillong-1. Respondents

By Advocate Shri G.Sarma, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE,ADMINISTRATIVE MEMBER .

The applicant joined service in the office of the Accountant General, Assam etc. as an Upper Division Clerk (UDC for short) on 16.8.1967. Before that he was a typist in the office of the Controller of Weights and Measures, Government of Assam, Shillong. He had joined the post of Upper Division Clerk through proper channel. According to the Matriculation Certificate issued by the University of Gauhati dated 25.7.1960 he was 20 years 7 months on the first day of March, 1960. After joining service as above, this certificate was corrected on 25.10.1968 showing that the applicant was 16 years 2 months as on 1.3.1960. According to the applicant, immediately after the correction was made

he submitted a representation dated 2.11.1968 to the competent authority requesting for correcting of his age in his service records based on the aforesaid correction of the certificate. According to the age originally recorded in the Matriculation certificate the applicant was due to retire on superannuation on 31.7.1997. He submitted representation dated 29.5.1997 enclosing his "application of 2.11.1968, alongwith the then typed copy of the corrected Matriculation certificate Examination as corrected on 25.10.1968" as Annexure-A to the representation requesting for allowing him to retire after 4 years and not on 31.7.1997. He submitted further representations dated 26.6.1997 and 8.7.1997. The respondents rejected the prayer of the applicant vide impugned order dated 9.7.1997 (Annexure-G). As a result the applicant has submitted this O.A. praying for setting aside the impugned order dated 24.6.1997 (Annexure-D), order dated 9.7.1997 (Annexure-G) and order dated 16.7.1997 (Annexure-H) and further seeking a direction to the respondents to make correction of his date of birth on the basis of the corrected Matriculation certificate and to allow him to retire on the date of superannuation as per his corrected age. The respondents have submitted their written statement contesting the application.

2. Heard learned counsel of both sides. According to the respondents -

- (a) no representation dated 2.11.1968 was received from the applicant ;
- (b) The applicant was an employee of the Government of Assam and thereafter he joined as UDC in the office of the Accountant General, Shillong through proper channel. Therefore, even if the applicant's representation was submitted on 2.11.1968 as claimed by him, he had not requested

for alteration of his date of birth within 5 years from the date of entry in Government service;

(c) He had requested for alteration of his date of birth in 1997 only immediately before his date of superannuation. Such belated request cannot be entertained.

The Tribunal has consistently held the view that correction of age in the Matriculation Certificate obtained by an employee from an University after entering service without making the employer party to such alteration/correction is not binding on the employer. The contract of service was on the basis of the age of an applicant for a post as recorded at the time he was given an appointment. Unless this age so recorded is altered by due process after he entered service his date of superannuation will have to be governed by the date of birth as recorded at the time of his entry in the service. In this case it is not disputed that the employer was not a party to the correction of the age originally recorded in the Matriculation Certificate. Now it has to be seen whether the applicant had initiated the process for alteration of his date of birth after joining the service. According to the applicant he had initiated the process by submitting representation dated 2.11.1968 addressed to the Accountant General, Assam, Nagaland, Arunachal Pradesh etc. Hqrs., Shillong-1. The respondents have denied the claim of the applicant that the representation dated 2.11.1968 was submitted by him to the competent authority and have pointed out faults in the claim of the applicant. According to them a copy of the application dated 2.11.1968 was enclosed with the representation dated 29.5.1997. In the said enclosed application dated 2.11.1968 the applicant stated his designation as 'Accountant' whereas the designation shown in the copy

of the application dated 2.11.1968 enclosed as Annexure-A to the O.A. now under consideration the designation has been shown as Upper Division Clerk. They state that the designation Accountant came into force with effect from 1.3.1984 only. In the circumstances it will have to be determined whether the applicant submitted the representation dated 2.11.1968 Annexure-A to the present O.A. According to the contention of the respondents as above it means that this Annexure-A is not genuine. It is the contention of the respondents that alongwith the representation dated 29.5.1997 mentioned hereinabove, the applicant enclosed a copy of alleged representation dated 2.11.1968 as Annexure-A thereto and that Annexure is now annexed with the written statement. It is seen in that annexure that the applicant had typed below his name as "Accountant, Meghalaya Section-G.P.F.Section". The applicant has not submitted any rejoinder to the written statement to contest that such application or representation dated 2.11.1968 as shown by the respondents was not submitted by him alongwith the representation dated 29.5.1997 and, further, that the respondents are wrong in stating that the designation "Accountant" was not in existence as on 2.11.1968 but came into force with effect from 1.3.1984 only. It may be noted that the representation dated 29.5.1997 was submitted earlier than the O.A. which was submitted on 30.7.1997. In the absence of any rejoinder submitted by the applicant to the contentions of the respondents as stated above it has to be held that the applicant has not proved that he had actually submitted the representation or application dated 2.11.1968 on or near about that date. Consequently, it follows ~~that~~ that the applicant had submitted his request for alteration of his date of birth only in 1997 immediately before his date of superannuation. It is settled law that such

belated representation may not be entertained. In *Secretary and Commissioner, Home Department and others vs. R.Kirubakaran*, 1994 S.C.C (L&S) 449, the Hon'ble Supreme Court had held :

" whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier."

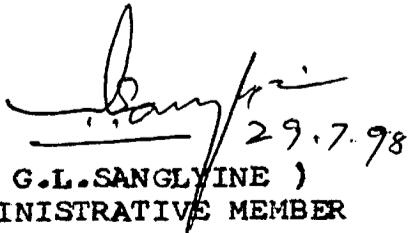
Further, in *State of Tamil Nadu vs. T.V.Venugopalan*, (1994) 6 SCC 302, the Hon'ble Supreme Court had held :

"This Court has, repeatedly, been holding that the inordinate delay in making the application is itself a ground for rejecting the correction of date of birth."

In the case presently under consideration there is however no claim that he had submitted his prayer for correction of his date of birth in 1997. The claim of the applicant on the other hand is that he had submitted the representation in 1968. This claim is found to be unsupported as narrated hereinabove. In view of the findings above it is not necessary to consider the contention of the learned counsel for the applicant that the respondents had wrongly rejected the prayer of the applicant by counting the period of 5 years from the date of entry of service under the State Government. According to him the period of 5 years should be counted only from the date the applicant became the Central Government employee.

3. In the light of the above findings I am of the view that there is no merit in this application and therefore it is hereby dismissed.

No order as to costs.


29.7.98
(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER