

(OA No. 335/2013)

24/04/2014

Mr. M. S. Garg, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned Counsel for the parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar

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Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 335/2013

DATE OF ORDER : 24.04.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Madan Lal Sharma son of Late Shri Mangtu Ram Sharma, aged 65 years, resident of Village and Post, Jakhora, Tehsil Chirawa, District Jhunjhunu (Rajasthan).

... Applicant

(By Advocate: Mr. M.S. Gurjar)

Versus

1. Union of India through its Director of Accounts (Postal), Department of Posts, Jaipur (Rajasthan).
2. Regional Post Master General, Department of Post of India, Regional Office, Jodhpur (Rajasthan).
3. Account Officer, Director of Accounts (Pension), Jaipur (Rajasthan).
4. Superintendent of Post Offices, Department of Post India, Jhunjhunu Division, Jhunjhunu (Rajasthan).

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

"In view of the above facts and grounds mentioned in the body of the application, it is humbly prayed that looking to the over all facts and circumstances of this case, this Hon'ble Court be pleased to allow this original application and to quash and set aside the impugned order cum letter dated 11/12.12.2012 (Annexure A/1) changing the date of birth of the applicant 1942 instead of 13.12.1947 and retiring on 06.10.2012 and the respondents be directed to maintain his date of birth 13.12.1947 and be declared retired on 12.12.2012 and in consequence terminal benefits along with the salary of two months six days also released with interest of 18% per annum.

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Any other appropriate order or direction, thereby subserving the cause of justice and in the interest of appellant be also granted in favour of the appellant. Cost of the petition may also be awarded in favour of the appellant."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially appointed as Gramin Dak Sevak on 12.02.1965 in the Department of Posts. At the time of appointment, the applicant submitted a horoscope in respect of date of birth and on the basis of the aforesaid document, the date of birth of the applicant was recorded as 13.12.1947 at the time of entry into service book.

3. That the office of respondent no. 4 issued various seniority lists from 31.03.2003 to 01.03.2012 (Annexure A/4) wherein the date of birth of the applicant was shown as 13.12.1947. His date of joining has been shown as 12.02.1965. The respondents department never objected to this date of birth of the applicant till his retirement.

4. An inspection was carried out on 15.12.2011 by the Inspector of Post Chirawa. In this inspection report also, the date of birth of the applicant has been shown as 13.12.1947 (Annexure A/5).

5. Subsequently, the office of respondent no. 4 issued a list of Gramin Dak Sevaks who were to retire between 01.01.2012 and 31.12.2012 on attaining the age of 65 years. In this list

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also, the date of retirement of the applicant has been shown as 12.12.2012 (Annexure A/6). This shows that the Department treated the date of birth of the applicant as 13.12.1947.

6. The learned counsel for the applicant submitted that all of a sudden on 06.10.2012, Post Master, Jakhora called the applicant and instructed him to be relieved immediately after attaining the age of 65 years by virtue of Inspectors order dated 06.10.2012. The applicant has been retired from service on 06.10.2012 instead on 12.12.2012. Before relieving on 06.10.2012, the applicant was neither issued a show cause notice nor provided an opportunity of hearing in respect of premature retirement or change of date of birth in the service record. A copy of the charge report dated 06.10.2012 is annexed at Annexure A/7.

7. That after retirement, the respondents did not release terminal benefits to the applicant. The respondents have informed that the applicant has been retired from service on 06.10.2012 because he did not submit any document in respect of his date of birth at the time of appointment and according to his statement recorded on 06.10.2012, he started work in the year 1960 and on that day, his age was 18-19 years and his date of birth is 1942 and he has served more than five years three months and six days and should have retired in the year 2007 accordingly. A bare perusal of the aforesaid letter shows that the date of birth of the applicant has been changed by the Department without conducting an inquiry and making objection

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earlier by the respondents, even no opportunity for hearing was granted to him before changing of date of birth. It is further submitted that once the document in respect of date of birth i.e. horoscope was on record then where was the necessity to record the statement of the applicant at the verge of his retirement.

8. Therefore, the respondents be directed to treat the date of birth of the applicant as 13.12.1947 and release his salary from 06.10.2012 to 12.12.2012 and also terminal benefits.

9. In support of his arguments, the learned counsel for the applicant referred to the judgment of the Hon'ble Supreme Court in the case of **Hari Singh vs. State of Bihar & Others, 2000 SCC (L&S) 832.**

10. The respondents have filed their reply. In their reply, the respondents have stated that the applicant, Shri Madan Lal Sharma, was engaged as EDMC, Jakhora on 19.02.1960 when the Branch Post Office Jakhora was opened. At the time of engagement, the applicant was engaged without completing the formalities of appointment. The applicant worked as EDMC now called GDSMC, Jakhora continuously till his relieve from the post of GDSMC, JDSMC, Jakhora. Appointment orders of Shri Madan Lal Sharma were not issued upto March, 1988 as the applicant, Shri Madan Lal Sharma, was temporarily engaged on 19.02.1960. In 1984, instructions were issued to all concerned to ensure that no ED Agent is working without proper appointment order (Annexure R/1).

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11. In compliance of these orders, all the cases were reviewed. The Inspector of Posts, Jhujhunu vide letter dated 28.04.1988 directed the applicant to submit duly filled form along with document of date of birth and other required documents for issuance of appointment order (Annexure R/2).

12. In compliance of the said order dated 28.04.1988, the applicant submitted the following documents to obtain his appointment order:-

- (i) Certificate issued by Sarpanch Gram Panchayat, Bajawa (Annexure R/3)
- (ii) Charge report for assuming charge of GDSMC Jakhora on 12.02.1965 in which date have been corrected from 13.05.1988 to 12.02.1965 (Annexure R/4)
- (iii) Janm Pattri in which date of birth of Shri Madan Lal Sharma was mentioned 13.12.1947 (Annexure R/4).

13. That as per the documents produced by Shri Madan Lal Sharma, the Inspector Post Jhunjhunu appointed the applicant vide Memo dated 30.05.1988 (Annexure R/5) w.e.f. 12.02.1965 and in that order, his date of birth was mentioned as 13.12.1947 on the basis of Janm Pattri submitted by him without any verification because he was working since long. The official record like seniority list, personal file was maintained according to the dates provided by the applicant.

14. According to the learned counsel for the respondents as per the letter dated January, 1981 (Annexure R/6), the minimum

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age limit for GDSMC was 18 years and maximum 65 years and qualification was that he should have sufficient working knowledge of the regional language and simple arithmetic. The Inspector of Posts, Jhunjhunu did not notice or verify the documents produced by the applicant at the time of appointment like Janm Patri produced by the applicant in support of his date of birth which can be obtained anyhow and cannot be treated as an authentic documents.

15. The Inspector of Post Chirawa prepared the papers of the retirement benefits who was due to retire on 12.12.2012 as per the record maintained. On receipt of the papers, the Inspector of Post, Chirawa noticed the following irregularities:-

- (i) The applicant, Shri Madan Lal, was working as GDSMC, Jakhora since 19.02.1960 the date when the Post Office was opened.
- (ii) As the applicant was engaged from 19.02.1960 and minimum age was required 18 years for engagement hence his date of birth may be prior to 19.02.1942 because as per Janam Patri, date of birth i.e. 13.12.1947, he was only about 12/13 years.
- (iii) Charge report of assuming the charge of GDSMC, Jakhora was prepared on 13.05.1988 as per date stamp of Jakhora Post Office but it was altered from 13.05.1988 to 12.02.1965 while he was working since 09.02.1960.
- (iv) Sarpanch Gram Panchayat Bajawa had also issued a certificate in which it was certified that the applicant was working since 1960.
- (v) In the Janm Patri, date of birth was mentioned 13.12.1947 but no where mentioned the date of issue and complete address of issuing person. As per date of birth mentioned in the Janm Pattri, the applicant had not attained the age of 18 years on the date of appointment 12.02.1965.

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16. The Inspector of Post Chirawa visited the Jakhora B.O. on 06.10.2012 and obtained the statement of the applicant and his brother, Shri Mangi Lal Sharma on 06.10.2012 which are marked as Annexure R/7 and R/8 respectively. In his statement, Shri Madan Lal Sharma accepted that he was engaged in Jakhora Post Office in 1960 and at that time his age was 18-19 years. On the basis of these statements, it was very clear that the date of birth of Shri Madan Lal Sharma i.e. the applicant was prior to 19.02.1942 but he submitted false information about his date of birth and also about his engagement. Therefore, as on 06.10.2012, the applicant was over 70 years of age. Therefore, he was got discharge from the employment of GDSCMC on 06.10.2012.

17. Since the applicant has worked even after attaining the age of 65 years and power of regularization of over retention in employment have been confirmed to Directorate, New Delhi, hence after discharge of the applicant, the case has been submitted to the competent authority through proper channel on 27.11.2012, which is still in process. Therefore, the OA has no merit and it should be dismissed with costs.

18. Heard the rival submissions of the parties, perused the documents on record and the case law referred to by the learned counsel for the applicant.

19. The applicant was engaged either in 1965, as claimed by the applicant, or in the year 1960, as claimed by the

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respondents. However, no document regarding the educational qualification or the date of birth or character certificate etc. were called for from the applicant at that point of time. It is admitted that he continued to work without any formalities being completed with regard to his engagement till 1988. This means that if the applicant was engaged in 1960 then he continued for 28 years with the respondent department without any formal order of engagement and without verification of any documents.

20. Subsequently in 1988 for the first time, the applicant was required to fill a form and produce the documents concerning his date of birth etc. The applicant filled up the form and also submitted Janm Pattri in support of his date of birth. Even at the time of issuance of engagement letter, the respondents did not question the validity of the Janm Pattri as proof of age of the applicant nor did they object to the date of engagement of the applicant as 12.02.1965.

21. The applicant has produced several seniority lists issued by the respondent department in which his date of birth has been shown as 13.12.1947 and his date of joining as 12.02.1965. Even in the notice issued for retirement of the officials between 01.01.2012 and 31.12.2012, the date of retirement of the applicant is 12.12.2012. However, all of a sudden the Inspector of Posts noticed some irregularities and on the same day, after recording the statement of the applicant and his brother, discharged the applicant on 06.10.2012 believing that the date of birth of the applicant was prior to 19.02.1942. It may be

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mentioned here that there is no official record with the respondents or the applicant that he was working as GDSMC from 19.02.1960 when the Post office was opened.

22. Even if for the sake of arguments, it is accepted that date of birth of the applicant was prior to 19.02.1942, as claimed by the respondents and not 13.12.1947, as claimed by the applicant, even then following the principles of natural justice, the applicant should have been given an opportunity to make a representation with regard to the change of date of birth by the respondents when the date of birth of the applicant was being changed to his disadvantage. In this particular case, the respondents have also being quite careless in not checking the record of the applicant at any point of time during his entire service of more than 35 years.

23. I have carefully gone through the judgment of the Hon'ble Supreme Court, referred to by the learned counsel for the applicant in the case of **Hari Singh vs. State of Bihar & Others, 2000 SCC (L&S) 832** and I am of the opinion that the ratio decided by the Hon'ble Supreme Court in this case is squarely applicable under the facts & circumstances of the present OA. The respondents ought to have issued notice to the applicant before discharging him from the service. However, the applicant has already been discharged/retired from service on 06.10.2012. According to the applicant, he was to retire on 12.12.2012, therefore, at this stage no positive directions can be given to the respondents to pay salary to the applicant for the

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period from 06.10.2012 to 12.12.2012 since the applicant has not actually worked on that post for that period i.e. from 06.10.2012 to 12.12.2012.

24. However, the respondents are directed to decide the case of the applicant for payment of retiral benefits according to the provisions of law treating the date of retirement as 12.12.2012 within a period of three months from the date of receipt of a copy of this order.

25. With these directions, the OA is disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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