

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3322/2013

Order reserved on 29th September 2016

Order pronounced on 4th October 2016

Hon'ble Mr. K.N. Shrivastava, Member (A)

Mahabir Prasad

Resident of
House No.145, Village Jhinjoli
Tehsil Kharkhoda
District Sonapat, Haryana

Retired as:

Casual Labour with temporary status
From office of the Executive Engineer
Mechanical Division No.III
F.C. Wing L M Bund Office Complex
Krishan Kunj, Delhi - 92

..Applicant

(Mr. H.K. Gangwani and Mr. Amit Chawla, Advocates)

Versus

1. Union of India
through
The Principal Secretary
Irrigation and Flood Control Department
Govt. of NCT of Delhi
5/9 Under Hill Road
Delhi – 54

2. The Executive Engineer
Mechanical Division No.III
Govt. of NCT of Delhi
FC Wing, L M Bund Office Complex
Krishan Kunj
Delhi - 92

..Respondents

(Ms. Alka Sharma, Advocate)

O R D E R

This instant O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“(a) Impugned 3-3-1999 (Annexure A-1) may be quashed as arbitrary, unreasonable, illegal and unconstitutional.

(b) Consequent to (a) above, the applicant may be deemed to have continued in service up to 31-5-2013 as a regular employee, and deemed to have retired on superannuation on 1-6-2013;

(c) Applicant’s retirement benefits, including monthly pension, DCRG, leave encashment, etc. may be determined on the basis of applicant’s notional pay and qualifying service as on 31-5-2013 as a regular employee;

(d) Arrears of pay along with bank rate of interest may also be granted to the applicant from 1-6-1999 to 31-5-2013.”

2. Brief facts of the case are as under:-

2.1 The applicant was engaged as a casual worker on 10.09.1986 in the office of respondent No.2 and was granted temporary status of Khalasi / Chowkidar w.e.f. 01.06.1989 vide Annexure A-5 order dated 07.02.1997.

2.2 According to the applicant, as directed by his office, he furnished an affidavit dated 16.10.1989 duly sworn before a Magistrate declaring therein that his date of birth (DOB) was 20.05.1953 (Annexure A-6).

2.3 Respondent No.2, vide his Annexure A-7 letter dated 30.03.1994, wrote to the Staff Surgeon, GTB Hospital, Shahadara, Delhi for opinion on the age of the applicant. The said letter reads as under:-

“Under mentioned employees are proposed to be regularised in service of this division. They have not submitted any proper authentic

proof of age. They have merely submitted their Affidavits ___ by general appearance they appears to be much older than the age as mentioned in the affidavit. The particulars of the official are below:-

Sl. No.	Name of the Employee	Date of birth as per affidavit.
1.	Sh. Mahabir Prasad, S/o Sh. Ram Sawroop (Photo attached)	20-05-1953

You are hereby requested to get him examined by a board experts and intimate about his status of age.”

2.4 The physician of GTB Hospital, vide his Annexure A-8 certificate dated 22.08.1994, certified that by “appearance” the applicant seems to be 55 years old. He, however, clarified that the said certificate was not valid for medico legal purpose.

2.5 The respondent No.2, in his Annexure A-5 order dated 07.02.1997, whereby the applicant was granted temporary status, stated that the DOB of the applicant is 20.05.1939.

2.6 Based on the DOB of the applicant being 20.05.1939, as entered in the records of respondent No.2, the applicant, vide impugned Annexure A-1 order dated 03.03.1999, was retired from the service w.e.f. 31.05.1989.

The applicant claims that he has been pre-maturely retired by respondent No.2 even before he could reach the age of superannuation, i.e., 60 years. Accordingly, he has filed the instant O.A. for the redressal of his grievances.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the

completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties. Mr. H.K. Gangwani, learned counsel for applicant and Ms. Alka Sharma, learned counsel for respondents were heard on 07.09.2016 and thereafter on 29.09.2016.

4. Mr. H.K. Gangwani, learned counsel for the applicant submitted that in the year 1990 while the applicant was still working as casual labour in the office of respondent No.2, he was asked to submit document regarding his DOB, which was required for considering his case for regularization in service. The applicant was not having any document. He, however, furnished an affidavit dated 16.10.1989 duly sworn before a Magistrate declaring therein that his date of birth (DOB) was 20.05.1953 (Annexure A-6), which is in the records of respondent No.2. It was further submitted that Annexure A-8 certificate of GTB Hospital, Shahadara, New Delhi dated 22.08.1994, wherein it is stated that the applicant's "appears to be 55 years old", cannot be relied upon for the purpose of determination of his DOB. The said certificate has been issued by the physician merely at looking at the applicant and no credible test was done on his body for the purpose.

Concluding his arguments, the learned counsel for applicant stated that respondent No.2 ought to have relied upon the applicant's affidavit dated 16.10.1989 regarding his DOB.

5. *Per contra*, Ms. Alka Sharma, learned counsel for the respondents submitted that the applicant had filed a suit, being Civil Suit No.349 of 2006, for the declaration of his DOB before the Civil Judge, Delhi, which, however, was withdrawn by him. In this regard, the learned counsel

drew my attention to the order dated 27.09.2012 passed by the Civil Court (page 33 of the paper book).

6. The learned counsel for respondents further submitted that the medical certificate issued by the physician of GTB Hospital vide Annexure A-8 certificate dated 22.08.1994 clearly indicates that the applicant, at that time, was of 55 years of age and as such the respondents were fairly in order to record his DOB as 20.05.1939. She stated that the applicant apparently withdrew the said suit from the Civil Court knowing fully well that he would not get any success there in terms of declaration of his DOB, according to his desire. This fact has been concealed by the applicant in the O.A.

7. The learned counsel further submitted that the onus of proving the DOB was on the applicant in which he has miserably failed. In this regard, she placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Secretary and Commissioner, Home Department & others v. R. Kirubakaran** [1994 Supp (1) SCC 155], in which it has been observed as under:-

“8.... This Court has repeatedly pointed out that correction of the date of birth of public servant is permissible, but that should not be done in a casual manner. Any such order must be passed on materials produced by the public servant from which the irresistible conclusion follows that the date of birth recorded in the service book was incorrect. While disposing of any such application, the court or the tribunal, has first to examine, whether the application has been made within the prescribed period under some rule or administrative order. If there is no rule or order prescribing any period, then the court or tribunal has to examine, why such application was not made within a reasonable time after joining the service.

9..... 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. In the facts and circumstances of the case, it is not possible to uphold the finding recorded by the Tribunal.”

Concluding her arguments, Ms. Sharma submitted that the O.A. is without any substance and deserves to be dismissed.

8. Replying to the arguments of learned counsel for respondents, Mr. H.K. Gangwani, learned counsel for applicant stated that the applicant has not concealed any fact. In this connection, he drew my attention to the averments made in paragraphs 1 (second part) and 4.12 of the O.A., wherein it has been stated that the applicant had approached the Civil Court earlier in suit which he later withdrew. He further stated that Annexure A-8 medical certificate issued by the physician of GTB Hospital cannot be relied as a credible document, as no proper medical test was done on the body of the applicant to arrive at the conclusion that the applicant, at that time, was of 55 years age. He stated that ossification test should have been done on the body of the applicant by the GTB Hospital to determine the probable age of the applicant. In this regard, the learned counsel relied on the judgment of Hon’ble High Court of Calcutta in the case of **Anima Saha v. Steel Authority of India Ltd.**, [1992 SCC OnLine Cal 252.

9. I have considered the arguments of the learned counsel for the parties and perused the documents and pleadings annexed thereto. Admittedly, the affidavit dated 16.10.1989 of the applicant declaring therein that his DOB is 20.05.1953, is in the records of the respondent No.2. It was submitted by the applicant to respondent No.2 in the same year. Obviously there must have been some reasons, which required the applicant to submit such an affidavit. According to the learned counsel for applicant, this affidavit was

necessitated on the direction of respondent No.2 that his case for regularization in service was being considered for which documentary proof with regard to his DOB was required. There appears to be some force in this argument. The learned counsel for respondents agreed that such an affidavit was indeed filed by the applicant and the same is in the office records of respondent No.2. Thus the said affidavit has remained on the records of respondent No.2 from the year 1989 onwards. The respondent No.2 has never questioned the authenticity or correctness of the affidavit. No document has been produced by respondent No.2 stating that he did not rely on this affidavit and decided to seek the opinion of GTB Hospital for assessing the age of the applicant.

10. From the medical certificate issued by the physician of GTB Hospital, it is crystal clear that no medical test was conducted on the body of the applicant for determining his approximate age. The Annexure A-8 certificate has been issued by the Hospital merely looking at the applicant. As such, I am of the opinion that such a certificate cannot be acted upon. Further, the said certificate has only indicated approximate age of the applicant. It is amazing as to how respondent No.2 has been able to extrapolate the said certificate and come to the conclusion that the DOB of the applicant was 20.05.1939.

11. I am in agreement with the learned counsel for applicant that the right course to be adopted by the Hospital was to conduct ossification test on the body of the applicant to determine his approximate age. This test alone could have given the requisite information. In the absence of any credible document to the contrary, the respondent No.2 was duty bound to

act on the affidavit of the applicant dated 16.10.1989, which admittedly was submitted more than about 10 years ago to respondent No.2, i.e., much prior to the passing of Annexure A-1 order by him.

12. In this view of the matter, I am of the firm opinion that respondent No.2 was duty bound to consider the DOB of the applicant as 20.05.1953 as declared in the affidavit. Hence, I hold that the applicant has been retired pre-maturely. The applicant would have superannuated on 31.05.2013 had the respondent No.2 considered his DOB as 20.05.1953.

13. In the conspectus of the discussions in the previous paragraphs, I pass the following order:

- i) Respondent No.2 is directed to consider the DOB of the applicant as 20.05.1953 as declared by him in his affidavit dated 16.10.1989.
- ii) Respondent No.2 shall pay the salary for the period from 01.06.1999 to 31.05.2013 to the applicant in view of (i) supra.
- iii) Respondent No.2 shall grant to the applicant all the retiral benefits in terms of (i) and (ii) supra.

14. The O.A. is allowed in the above terms. No order as to costs.

(K.N. Shrivastava)
Member (A)

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