

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.4651/2015

**Reserved On:30.07.2018
Pronounced on:19.09.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

Mahendri W/o Shri Om Prakash
H/No. 416, Block No.36, Trilok Puri,
East Delhi-91
Delhi.

...Applicant

(By Advocate: Shri Shankar Divate)

Versus

1. Union of India
Through Director General,
Archaeological Survey of India,
Jan Path,
New Delhi-110011.

2. Superintending Archaeologist,
Sub Circle Archaeological
Survey of India,
Puratatva Bhavan,
CPO Complex, Block D,
3rd Floor, INA,
New Delhi.

...Respondents

(By Advocate: Shri Ashok Kumar)

ORDER

By Mr. V. Ajay Kumar, Member (J)

The applicant, a Multi Tasking Employee of the respondent-Archaeological Survey of India, filed the OA, aggrieved by the action of the respondents in retiring her from service with effect from 30.11.2015, though her date of birth, as recorded in her Service Register is 12.01.1962 and she can be retired only on

12/31.01.2022, on completion of the age of superannuation of 60 years, basing on the said recorded date of birth.

2. The seminal facts of the case are that the applicant was appointed as a casual labour on 16.07.1988. At that time, she submitted her birth certificate showing her date of birth as 12.01.1962. On 01.09.1993, the applicant was granted temporary status. Later, the services of the applicant were regularised, along with a batch of persons, in the post of Multi Tasking Staff with effect from 31.08.2015. In the Service Register of the applicant, her date of birth was recorded as 12.01.1962, basing on the birth certificate submitted by the applicant.

3. Even before the services of the applicant were regularised, the respondents, vide their Office Order dated 02.08.2010, directed the applicant and other similarly situated casual labourers to produce the original documents pertaining to their date of birth and to clarify their position on 04.08.2010 before the Committee constituted for verification of date of births. As the applicant neither appeared before the Committee nor produced any documents, she was directed to appear for medical test before the Safdarjung Hospital, New Delhi on 09.11.2010 and accordingly, she appeared and on conducting Ossification Test, the hospital certified that the applicant is above 50 years and below 60 years of age, as estimated by the radiological method, vide their certificate dated 18.11.2010.

4. Vide letter dated 02.11.2015, the respondents issued a notice stating that as per the Ossification Report, the applicant will retire from service w.e.f. 30.11.2015 and accordingly sought for her representation. The applicant submitted a representation on 05.11.2015 stating that her date of birth is 12.01.1962 as per the certificate issued by the Nagar Palika and other documents, but the respondents, vide the impugned Office Order dated 27.11.2015, while stating that as per the Ossification Report, the applicant attained the age of 60 years on 30.11.2015, retired the applicant with effect from the said date, i.e. 30.11.2015.

5. Heard Shri Shankar Divate, learned counsel for the applicant and Shri Ashok Kumar, learned counsel for the respondents and perused the pleadings on record.

6. The learned counsel for the applicant, Shri Shankar Divate, though submitted that the respondents should take into account the birth certificate issued by the Nagar Palika and the certificate issued by the Vice President of the Nagar Palika Syana, District Bulandshahar stating that the date of birth of the applicant is 12.01.1962, however, mainly stressed that in identical circumstances, 2 other similarly placed Multi Tasking Staff, namely, Smt. Chameli and Smt. Jagwati were given benefit of accepting their date of birth as submitted by them at the time of appointment, but in case of applicant, the respondents have discriminated and retired the applicant illegally.

7. On the other hand, Shri Ashok Kumar, learned counsel for the respondents would submit that in all the cases of the Multi Tasking Staff, whose services were regularised, in the absence of any authenticated proof of date of birth, as most of them were uneducated, their date of birth was determined, basing on the Ossification Test conducted by a competent hospital only. Similarly, the applicant and Smt. Chameli and Smt. Jagwati were also subjected to Ossification Test.

7.01. The learned counsel further submits that in case of Smt. Chameli, her original recorded date of birth was 20.04.1958 and as per the medical examination report, her age was recorded as 55 years on 06.10.2010. As per the Ossification Report, her age range was given as 50 to 60 years as on 06.10.2010 and hence her date of birth comes to be between 06.10.1950 to 06.10.1960. As the claim of the applicant that her date of birth is 20.04.1958, which falls within the range of date of birth arrived through Ossification Report, her date of birth was accepted as 20.04.1958, i.e., as recorded in her Service Register.

7.02. In case of Smt. Jagwati, the date of birth recorded in the Service Register at the time of her appointment was 12.03.1960. As per the medical examination report, her age is recorded as 55 years as on 15.10.2010. Based on the Ossification Report, her age range was given as 50 to 60 years as on 15.10.2010, so her date of birth comes to be between 15.10.1950 to 15.10.1960. As per the claim of

the applicant that her date of birth was 12.03.1960, which falls within the range of date of birth arrived through Ossification Test. Therefore, her date of birth as recorded in the Service Register was accepted.

7.03. It is also submitted that whereas in case of the applicant, the date of birth recorded in her Service Register originally was 12.01.1962. As per the Ossification Report, her age range was given as above 50 years and below 60 years as on 09.11.2010 and accordingly her date of birth comes to be between 09.11.1950 to 09.11.1960. As the date of birth, as claimed by the applicant was 12.01.1962 which does not fall within the range of date of birth arrived through Ossification Report, her claim was not accepted and considering that even as per the outer range of her date of birth as given in the Ossification Report, she would have attained 60 years of age as on 30.11.2015, she was retired from service on 30.11.2015.

7.04. Accordingly, the learned counsel for the respondents would submit that the applicant was not discriminated in any manner in determining her date of birth and the consequential date of retirement and the same was done in accordance with the Ossification Report and as per the established norms and hence, there is no illegality in their action.

8. The Hon'ble Apex Court in **Mukarrab Etc. Vs. State of U.P., (2017) 2 SCC 210**, while considering the appellants, juveniles on

the date of the occurrence and the question of admissibility and reliability of medical opinion in age determination under the Juvenile Justice (Care and Protection of Children) Act, 2000, vis-a-vis juvenility of the accused at the time of committing the offences, held as under:-

“22. It is well-accepted fact that age determination using ossification test does not yield accurate and precise conclusions after the examinee crosses the age of 30 years, which is true in the present case. After referring to Bhola Bhagat's case and other decisions, in Babloo Pasi's case, this Court held as under:-

"18. Nevertheless, in Jitendra Ram v. State of Jharkhand, 2006(3) R.C.R.(Criminal) 165 : (2006) 9 SCC 428 the Court sounded a note of caution that the aforestated observations in Bhola Bhagat 1998(1) R.C.R.(Criminal) 21 : (1997) 8 SCC 720 would not mean that a person who is not entitled to the benefit of the said Act would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit and each case has to be considered on the basis of the materials brought on record.

22. It is well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.”.

And accordingly, further held that “in the facts and circumstances of the case, the opinion of the medical board in determining the age of the appellants cannot be relied upon so as to give benefit under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000”. Though **Mukarrab Etc.** (supra) was under Juvenile Justice (Care and Protection of Children) Act, 2000, but the view expressed on the principle that Ossification/medical test does not

yield accurate and precise conclusion of the age after examinee crosses the age of 30 years, and since the applicant in the instant OA was also examined by conducting the Ossification Test, after she crossed the age of 30 years, the principle decided therein is applicable in the present case also. Hence, once it is opined by the respondents, basing on the Ossification Report that the date of birth of the applicant may fall between 09.11.1950 to 09.11.1960, the claim of the applicant with regard to her date of birth as 12.01.1962, which is with less than 2 years difference, can be accepted.

9. Further, the respondents themselves in the impugned order stated that, considering that even as per the outer range of the date of birth given in the Ossification Report, the applicant would have attained 60 years of age on 30.11.2015, but if the outer range of the date of birth of the applicant, i.e. 09.11.1960 is taken into consideration, she will attain the age of 60 years only on 09/30.11.2020 but not on 30.11.2015, as stated by the respondents. In view of the said fact, we are of the view that the outer date given by the Ossification Report, i.e., 09.11.1960 shall be taken as the date of birth of the applicant and accordingly she should be continued in service till she attains the age of 60 years, i.e., till 09/30.11.2020.

10. Out of the aforesaid two situations, in our considered view, the second one, i.e. to accept 09.11.1960 as the date of birth of the applicant would be more reasonable, in the circumstances of the case.

11. In the totality of the facts and circumstances of the case and for the aforesaid reasons, the OA is allowed and the impugned order is quashed. The respondents are directed to treat the date of birth of the applicant as 09.11.1960 and shall continue the applicant in service till 30.11.2020, with all consequential benefits. However, the applicant is entitled for 50% of back wages only, in the peculiar circumstances of the case. The respondents shall pass appropriate orders for reinstatement of the applicant in service, immediately on receipt of the certified copy of this order. No costs.

(PRADEEP KUMAR)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS