

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00855/2016

Jabalpur, this Thursday, the 17th day of May, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Praveen Kumar Mathur, IPS, S/o Shri S.N. Mathur, aged about 57 years, R/o EN 2/13, Char Imli, Bhopal (M.P.), currently working as Inspector General, State Crime Records Bureau, Government of Madhya Pradesh
-Applicant

(By Advocate – Shri Siddharth R. Gupta)

V e r s u s

1. State of Madhya Pradesh through its Principal Secretary, Department of Home Affairs, 4th Floor, Vallabh Bhawan, Bhopal (M.P.) 462003.
2. Police Headquarters through Director General of Police, Jahangirabad, Lal Parade Ground, Bhopal (M.P.) 462003.
3. Union of India through Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi 110001.

- Respondents

(By Advocate – Shri Vijay Pandey)

(Date of reserving order : 06.12.2017)

O R D E R

By Ramesh Singh Thakur, JM.

This Original Application has been filed by the applicant challenging the communication dated 15.03.2016 (Annexure A-2),

wherein by cancelling the earlier order dated 16.10.2015, the applicant has been retired from service w.e.f. 31.07.2016.

2. The applicant has sought for the following reliefs:

“8. Relief Sought:

- (i) Issue appropriate order/direction quashing the impugned communication dated 15.03.2016, through which the respondent authorities have decided to retire the applicant w.e.f. 31.07.2016 and further holding/declaring the date of retirement of the petitioner as in July 2019 Annexure A/2.*
- (ii) Issue appropriate order/direction quashing the ex-parte internal enquiry report dated 07.05.2016 in light of the submissions made in the present Original Application.*
- (iii) Issue appropriate order/direction quashing the communication dated 18.07.2016, issued by the respondent authorities in light of the submissions made in the present Original Application Annexure A/2.*
- (iv) Issue appropriate order/direction calling for the entire records from the offices of respondent authorities pertaining to the issuance of the impugned ex-part report dated 07.05.2016 by the respondent authorities in light of the submissions made in the present Original Application Annexure A/3.*
- (v) To pass any other order, direction, relief deemed fit under facts & circumstances of the present case.”*

3. Briefly, the facts of the case are that the applicant was working on the post of Inspector General, State Crime Records Bureau, Madhya Pradesh. In the year 2003, he was inducted in the Indian Police Services (IPS). At the time of entering in police services, the applicant had produced the birth certificate issued by

the Nagar Palik Nigam, Gwalior dated 01.09.1981 (Annexure A-4), in which his date of birth has been recorded as 04.07.1959. The certificate was issued by the Municipal Corporation on the basis of the report forwarded by Judicial Magistrate First Class, as per the applicable procedure at the relevant point of time. However, in some of the forms at the time of entry in service, the applicant had entered his date of birth as 04.07.1956 on the basis of his school certificate.

4. On 28.09.2015 (Annexure A-7), an order was issued by the respondent authorities, at serial number 6 of which the name of applicant was mentioned and his retirement date has been mentioned as 31.07.2016. The applicant, immediately filed his representation (Annexure A-8) along with necessary documents like Passport, PAN Card etc, in which his date of birth has been recorded as 04.07.1959. Acting on the representation of the applicant, the respondent authorities reviewed the entire matter and through their modificatory/corrigendum order dated 16.10.2015 (Annexure A-9), it was directed that the name of the applicant was erroneously mentioned in the previously issued order dated 28.09.2015 and the same is therefore deleted from the

Government order dated 28.09.2015. Subsequently, certificatory letter was issued on 11.01.2016 (Annexure A-10) and the respondent No.2 was informed that the service records of the applicant bear his date of birth as 04.07.1959, which shall be accepted and applicable for all purposes. However, vide impugned communication dated 15.03.2016, an order was issued by the respondent authorities whereby the applicant has been superannuated from service w.e.f. 31.07.2016. The applicant challenged the communication dated 15.03.2016 by filing Writ Petition No.7221/2016 before the Hon'ble High Court of Madhya Pradesh at Jabalpur. The Hon'ble High Court vide interim order dated 08.07.2016 stayed the operation of the communication dated 15.03.2016. In the meantime, the respondent department had initiated departmental proceeding against the applicant under the provisions of All India Services (Discipline & Appeal) Rules, 1969 and issued chargesheet on 25.05.2016 (Annexure A-14), which was also filed along with the additional reply dated 13.06.2016 before the Hon'ble High Court. The applicant had sought for copy of various documents, which were not supplied to him in the departmental proceedings. The IG, PHQ, Bhopal through his communication dated 24.06.2016 (Annexure A-16) had requested

the State Government to furnish copy of the necessary documents to the applicant. Meaning thereby the Disciplinary Authority was in seisen of the disciplinary inquiry against the applicant. Once the inquiry was instituted, any action or finding could have been taken against the applicant only.

5. It was further submitted by the applicant that the respondent authorities never placed the ex-parte unilateral enquiry report dated 07.05.2016 before the Hon'ble High Court and it was brought on record for the first time on 20.07.2016 by filing application for vacating of interim order dated 20.07.2016. So, the apprehension of the applicant is that the ex-parte internal report dated 07.05.2016 is nothing but a back dated enquiry report, prepared for creating a false case against the applicant. It has been further submitted by the applicant that the report has been prepared in gross violation of the principles of natural justice. The plea of the applicant is that the impugned order dated 15.03.2016 was passed without affording any opportunity of hearing to the applicant.

6. The respondents have filed their reply. It has been submitted by the respondents that since at the time of entering in the service in the year 1981, the applicant himself declared his date of birth as 04.07.1956 and there is an apparent error in recording the date of birth of the applicant in the service book. Considering the same, a preliminary enquiry was conducted and record pertaining to date of birth of the applicant was examined and on the basis of the communication dated 15.03.2016 (Annexure R-1), addressed to the DGP by the under Secretary, Department of Home, a request was made to conduct an enquiry and send the report to the Home Department. It has been further submitted by the respondents that on the basis of communication dated 15.03.2016, the applicant was issued notice on 13.04.2016, wherein it was informed that an enquiry is being conducted with regard to establish his correct date of birth and he may submit his defence or prove his date of birth as 04.07.1959 in place of 04.07.1956.

7. The respondents have further stated that the applicant was inducted in the Indian Police Service on 25.02.2003. The notification issued by the Government of India, Ministry of Home Affair dated 25.02.2003, bears the date of birth of the applicant as

04.07.1956. The applicant did not object to the same and continued in service. Subsequently, considering the records submitted by the applicant at the time of his first appointment as Deputy Superintendent of Police, it was found that in the High School Examination Certificate issued by the Board of Secondary Education, Madhya Pradesh in 1970 and in the Attestation Form, submitted by him at the time of appointment as also in the information letter submitted by the applicant to the Madhya Pradesh Public Service Commission, his date of birth is mentioned as 04.07.1956. Therefore, a detailed enquiry was conducted by the Additional Director General of Police (Training), Bhopal in respect of correctness of date of birth of the applicant. After due examination of the document and providing due opportunity to the applicant, the Inquiry Officer, vide its report dated 07.05.2016 (Annexure R-5) reached to the conclusion that the correct date of birth of the applicant is 04.07.1956 and not 04.07.1959. It was further submitted by the respondents that an FIR is also registered against the applicant on 20.07.2016 (Annexure R-6) under Section 420, 467, 468, 471, 474 & 477 of the IPC by the Police Station, CID, Bhopal.

8. We have heard the learned counsel for the parties and have also gone through the documents annexed with the pleadings.

9. It is an admitted fact that the applicant had joined as DSP, for which the examination was conducted by the MP PSC. The main ground of the applicant is that the respondent department has conducted the ex-parte enquiry and enquiry report dated 07.05.2016 has been cited on the basis of the documents/service record, which are always in the custody/preservation and under maintenance of the employer/department, and the applicant does not have any access to them. So, the report fails to point out as to who were all other officers with whom the applicant conspired or officers of the department who assisted him in the tempering of the service record for changing the date of birth. Therefore, it has been submitted by the applicant that the ex-parte internal report dated 07.05.2016 is bad in law and deserves to be quashed.

10. As per Annexure R-1 with the reply filed by the respondent department, vide order dated 15.03.2016, a decision was taken by the Government to conduct an internal enquiry with respect to the date of birth of the applicant. It has been indicated in the report

that the applicant was appointed on 21.04.1982 through MP PSC and as per the documents, i.e. High School Certificate, verification form and the medical certificate submitted by him at the time of selection, the date of birth of the applicant is shown as 04.07.1956. But, later on, in his Service Book after being inducted as IPS, the date of birth of the applicant has been shown as 04.07.1959, which is suspicious. On the basis of this communication, a show cause notice was issued to the applicant on 13.04.2016, wherein he was informed that enquiry is being conducted with regard to establish the correct date birth of the applicant.

11. The Additional DGP (Trainee), Bhopal has submitted the enquiry report to DGP (Administration), Bhopal on 07.05.2016 (Annexure R-4). In the enquiry report, it was concluded that there is interpolation in the service book in recording the applicant's date of birth as 04.07.1959 and the applicant has failed to prove his date of birth as 04.07.1959, therefore, the benefit of Rule 84, 85 of the Madhya Pradesh Financial Code, cannot be extended to him. On perusal of the said enquiry report, it is clear that the applicant was associated with the inquiry and was present in the proceedings, which can be seen as per Para 11 of the enquiry report at Annexure R-4. Therefore, the main ground of the

applicant that he was not associated in the enquiry, is without any merit.

12. The applicant has submitted that as per Rule 84 of MP Financial Code, the date of birth, once recorded at the time of appointment, must be deemed to be absolutely conclusive and no revision of such a declaration shall be allowed to be made at a later period for any purpose whatever. The relevant portion of the MP Financial Code, reads as under:

“Rule 84. Every person newly appointed to a service or a post under the Government should at the time of the appointment declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as a matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under Rule 85 should be recorded in the history of service; Service book or any other record that may be kept in respect of the Government servant’s service under the Government. The date of birth, once recorded in this manner, must be deemed to be absolutely conclusive, and except in the case of a clerical error no revision of such a declaration shall be allowed to be made at a later period for any purpose whatever”.

13. It has already been observed in the enquiry report (Annexure A-3/R-4) dated 07.05.2016 that the benefit of Rule 84 and 85 of the MP Financial Code, cannot be extended to the applicant as there is interpolation regarding his date of birth. Furthermore, there is different date of birth while submitting the documents to

the MP PSC and after the applicant's induction in Indian Police Services. It is pertinent to mention that as per Annexure R-1, which is the High School Certificate, issued by the Board of Secondary Education, Madhya Pradesh in 1970, the date of birth of the applicant is shown as 04.07.1956 and as per Annexure R-2, which is the verification form submitted by the applicant after his selection in MP PSC, the same date of birth has been entered by the applicant. Further, as per Annexure R-3 dated 25.02.1982, which is the medical report submitted by the President, Divisional Medical Board & Joint Director of Health Services, Gwalior to the respondent department, the date of birth of the applicant has been mentioned as 04.07.1956, which is in the hands of the applicant himself. When the certificate as per Annexure R-1, has been issued by the Secretary, Board of Education, Madhya Pradesh in the year of 1970 regarding date of birth of the applicant, which was also submitted to the MP PSC while applying for the concerned post were available with the applicant then there was no occasion for further procuring the documents regarding the date of birth from the Gwalior Municipal Corporation, which has been issued on 01.09.1981 (Annexure A-4). If this document is minutely seen, it has been issued on 01.09.1981 and the date of registration is

29.08.1981, which makes it clear that this document has been prepared in 1981. Without observing further, we feel that there is substance in the reply filed by the respondents. Now, it is clear vide Annexure R-6, an FIR is also registered against the applicant on 20.07.2016 under Section 420, 467, 468, 471, 474 & 477 of the IPC by the Police Station, CID, Bhopal.

14. In view of the above, we are of the view that there is no merit in the Original Application filed by the applicant. Resultantly, the O.A is dismissed, being devoid of any merit. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
am/-

(Navin Tandon)
Administrative Member