

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 874/2017

Date of C.A.V. : 03.08.2017

Date of Order : 31.10.2018

Between :

Ganesan,S/o Parasuraman,
aged about 57 years, Occ : Telecom Technician,
in the O/o the Sub Divisional Officer (Phones),
Telephone Exchange, Kattamanchi,
Chittoor – 517004.

... Applicant

And

Bharat Sanchar Nigam Ltd., rep by its

1. The Chairman cum Managing Director,
Corporate Office, Bharat Sanchar Bhavan,
4 Janpath, New Delhi.

2. The General Manager, Telecom,
BSNL, Tirupati – 517501.

3. The Dy.General Manager, BSNL,
Telephone Exchange (CFA), Chittoor – 517001. ... Respondents

Counsel for the Applicant	...	Mr.K.Siva Reddy, Advocate
Counsel for the Respondents	...	Mrs.P.Yasaswi, SC for BSNL

CORAM:

<i>Hon'ble Mr.Justice R.Kantha Rao</i>	...	<i>Member (Judl.)</i>
<i>Hon'ble Mrs.Naini Jayaseelan</i>	...	<i>Member(Admn.)</i>

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The brief facts of the case which are essential to consider the issue involved in the instant case may be stated as follows :

The applicant was initially appointed as a casual labourer in the year 1983 in the respondent organization. In course of time, he acquired some promotions and was working as a Telecom Technician on the date when he compulsorily retired from service pursuant to a departmental enquiry initiated against him. According to the respondents at the time of his initial appointment the applicant furnished his date of birth as 01.07.1960 and worked in the department for several years. Complaint was received by the department from 3rd party stating that the applicant's actual date of birth is 05.06.1951, but he submitted false date of birth as 01.07.1960 at the time of his initial appointment. On that there was a preliminary enquiry and the same was closed as the whereabouts of the persons who made the complaint were not known. However, on complaints by some other individuals a regular departmental enquiry was initiated against the applicant on the charge that he furnished a false date of birth at the time of his initial appointment. The applicant filed OA.866/2016 challenging the charge sheet issued against him on the ground of limitation. However, the enquiry was proceeded with as there was no order of stay granted by the Tribunal. The enquiry officer after conducting the enquiry submitted his report to the Disciplinary Authority holding that the charge was proved. The Disciplinary Authority furnished the copy of the enquiry report to the applicant and

called for his objections. The applicant raised several objections, but the Disciplinary Authority rejected those objections and passed the punishment order dated 26.05.2017 which is as follows :

“.....impose Compulsory Retirement on Shri Ganesan, TT (erstwhile T.M.) HR No.198701552, o/o SDOP Chittoor with immediate effect. The period of service rendered after 30.06.2011 (i.e. date of Superannuation as per actual Date of Birth 05.06.1951) shall not count for purpose of promotion, increment and pension. Accordingly any payment made in excess in view of the above orders to be recovered from the Charged Official.”

2. Against the said punishment order the applicant preferred an appeal. While the appeal was pending before the Appellate Authority, the applicant, as he was not getting provisional pension on account of the punishment order passed against him, submitted a letter dated 25.09.2017 to the 2nd respondent stating therein that he had no objection to accept the punishment order and requested the Appellate Authority to give effect to the punishment order from the date of the order but not retrospectively. The Appellate Authority did not pass any order by giving effect to the punishment order from the date of passing of the order but specified that the order would operate retrospectively. Therefore he filed the present OA to declare the order of compulsory retirement dated 26.05.2017 passed against him by giving effect to the said order from 30.06.2011 retrospectively and treating the period from 30.06.2011 till 26.05.2017 could not be counted for promotion, increments, pension and also to recover the payments made to him as arbitrary, illegal and contrary to law and modify the same as it

comes into effect from the date of the order i.e. from 26.05.2017.

3. The contention of the respondents as can be seen from their reply statement was that the preliminary enquiry took place during 2014 and no charges were framed against him at that time. Only after receiving complete information regarding the false date of birth furnished by the applicant from various sources, charge sheet was issued to him and the departmental enquiry was initiated. The applicant after knowing that there were complaints against him, he tried for VRS and as his case was in vigilance purview, his application for VRS was rejected. The applicant at the time of recruitment submitted false information regarding his date of birth as 01.07.1960 instead of 05.06.1951, the enquiry committee made an enquiry with his school records (PNC Municipal High School, Santhapet, Chittoor) and found that his date of birth was 05.06.1951. In response to the charge sheet the applicant denied the charges and a regular departmental enquiry was initiated against him. The inquiry officer found the applicant guilty and submitted the report to the Disciplinary Authority. The punishment order passed by the Disciplinary Authority is in accordance with law. As per Rules governing the service conditions of the applicant when once the actual date of birth of the applicant is considered as 05.06.1951 the period of service rendered by him after 30.06.2011 shall not be counted for the purpose of promotion, increments, pension, etc. Accordingly any payments made in excess there of shall have to be recovered from the applicant.

4. It is further contended by the respondents that the applicant was paid full salary up to 29.05.2017, he has to forgo his increments after 30.06.2011. Excess salary paid on increments shall be recovered from his retiral benefits treating his superannuation as on 30.06.2011. He has to forgo his promotion if any given after 30.06.2011. Payments made on promotion if any would be recovered from his retiral benefits. The service pension shall be calculated upto 30.06.2011 only. Since the official worked upto 29.05.2017 and he was paid salary upto 29.05.2017, he is liable to repay the total salary to the department from 30.06.2011 to 29.05.2017 and the same would be adjusted from his total retiral benefits. If the amount is not sufficient the respondents has every right to sue him for recovery. The appeal filed by the applicant was considered and rejected by the Appellate Authority on 11.10.2017.

5. Contending as above the respondents sought to dismiss the OA.

6. Heard Mr.K.Siva Reddy, learned counsel for the applicant and Mrs.P.Yasaswi, learned standing counsel for the respondents.

7. One of the contentions advanced by Sri K.Siva Reddy, learned counsel appearing for the applicant is that the applicant joined the respondents organization in the year 1983, by which time he furnished the date of birth certificate, any enquiry relating to the correctness of the date of birth has to be initiated by the department within a reasonable time, but not after a lapse of

almost 20 years, as in the present case. According to the learned counsel the charge memo issued after a period of 20 years is unsustainable in law and no departmental action pursuant to the said charge memo can be initiated against the applicant.

8. We do not accede to the contention advanced by the learned counsel. At the time of furnishing the certificate showing the date of birth by the applicant, the department was not aware as to the date of birth mentioned in the certificate was correct one or any false certificate was produced. Therefore, unless it comes to the knowledge of the department that the date of birth furnished by the applicant is false, the department would not be in a position to initiate departmental action against the applicant for furnishing false date of birth certificate. The department would be in a position to initiate an enquiry only when furnishing false date of birth comes to the knowledge of the department. In the instant case only when some 3rd parties sent complaints to the department stating that the applicant by suppressing the actual date of birth, furnished a false date of birth, the department conducted preliminary enquiry and thereafter getting all the required information and initiated regular departmental enquiry. Therefore the limitation if any for issuing charge memo alleging that the applicant furnished false date of birth at the time of joining the service would commence from the date on which the department acquired knowledge of the said fact. Therefore, in the instant case it is not open for the applicant to contend that the disciplinary proceedings initiated against him by the department are barred by

limitation. Further more when the appeal filed by the applicant against the order passed by the Disciplinary Authority was pending before the Appellate Authority, submitted to the Appellate Authority that he was no longer interested to pursue the appeal. However, he requested the Appellate Authority to give effect to the punishment order from the date of passing of the order, but not with retrospective effect which was not accepted by the Appellate Authority while passing the order in the appeal.

9. The crucial issue which requires to be considered in the present case is as to whether the order of compulsory retirement passed against the applicant can be given retrospective effect. According to the learned counsel for the applicant in no case the punishment order can be made to operate retrospectively. Whereas it is the contention of the standing counsel for the respondents that since the case relates to furnishing of false date of birth the punishment can operate retrospectively with reference to the date of birth which was found to be real and correct. In the instant case the punishment order of compulsory retirement was passed against the applicant on 26.05.2017 by giving effect to the said order from 30.06.2011 retrospectively.

10. The learned counsel for the applicant relied on judgement of the ***Hon'ble Supreme Court in AIR 1996 SC 953 R.Jeevaratnam Vs. State of Madras***, wherein the Hon'ble Supreme Court took the view that an order dismissing the Government servant from service can be prospective, but cannot be made

effective from a retrospective date. The Hon'ble Supreme Court held as follows :

“Our attention is drawn to similar observations in Sudhir Ranjan Haldar v. State of West Bengal, AIR 1961 Cal 626. With respect, we are unable to agree with this line of reasoning. An order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order with the superadded direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given the fullest effect. The Court cannot pass a new order of dismissal, but surely it can give effect to the valid and severable part of the order.”

11. Learned counsel also relied on the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) in C.A.No.11527 of 2014 (Arising out of SLP (C) No.11684 of 2012)*** wherein the Hon'ble Supreme Court decided on a bunch of cases in which monetary benefits were given to the employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities in determining the emoluments payable to them. The Hon'ble Supreme Court summarized certain situations wherein recovery from the employees would be impermissible in law.

12. The situation in the instant case cannot be equated with the situations summarized by the Hon'ble Supreme Court. In the case before the Hon'ble Supreme Court the employees were not guilty of furnishing any incorrect

information / misrepresentation / fraud which led the concerned competent authorities to commit mistakes of making higher payment to the employees. The employees therein were innocent. In the instant case the applicant was found guilty of furnishing false date of birth at the time of joining the service. The departmental enquiry was held against him for the said charge and the charge was proved. While the appeal filed by the applicant was pending before the Appellate Authority the applicant submitted to the Appellate Authority that he was willing to accept the punishment order but the same can be modified by making it prospective i.e. to come into operation from the date of passing of the order. The Appellate Authority however did not accept the request of the applicant and confirmed the order passed by the Disciplinary Authority wherein the order was directed to be operated retrospectively. Since the applicant did not pursue the appeal and accepted the punishment, it is deemed that he is guilty of the charge levelled against him. More over in the instant case the applicant did not challenge the punishment order, he only challenged the legality of the order to the extent that the order cannot be retrospective in operation, but can only be prospective.

13. The contention of the respondents is that the applicant at the time of recruitment submitted false information regarding his date of birth as 01.07.1960 instead of 05.06.1951. In the enquiry it was found that the actual date of birth of the applicant is 05.06.1951. Therefore, the penalty order was rightly passed by the Disciplinary Authority. Since the applicant agreed to receive the punishment it

is not open for him to contend that the date of birth furnished by him is correct. Therefore for all purposes his date of birth can be considered as 05.06.1951 only but not 01.07.1960. If that is so his date of superannuation would have been 30.06.2011. On furnishing false date of birth he continued beyond the actual date of birth. Therefore there is any amount of force of the contention of the respondents that the period of service rendered by the applicant after 30.06.2011 shall not be counted for the purpose of promotion, increment, etc and any payment made in excess shall be recovered from the applicant.

14. In this context it is necessary to refer to the judgement in **(1997) 9 SCC 239 Radha Kishun Vs. Union of India and others**, wherein the Hon'ble Supreme Court held as follows :

“3. The learned counsel for the petitioner contends that since the petitioner has worked during the period, he is entitled to the payment of the pay and allowances from 1-6-1991 to 26-6-1994 and that he is also entitled to the payment of provisional pension, death-cum-retirement gratuity, leave encashment, commutation of pension amount, GPF money and the amount deposited under CGHS on the plea that he retired from service on 31-5-1994. We are aghast to notice the boldness with which it is claimed that he is entitled to all the benefits with effect from the above said date when admittedly he was to retire on 31-5-1991. It would be an obvious case of absolute irresponsibility on the part of the officer concerned in the establishment in the section concerned for not taking any action to have the petitioner retired from service on his attaining superannuation. It is true that the petitioner worked during that period, but when he is not to continue to be in service as per law, he has no right to claim the salary etc. It is not the case that he was re-employed in the public

interest, after attaining superannuation. Under these circumstances, we do not find any illegality in the action taken by the authorities in refusing to grant the benefits.

4. It is then contended that the petitioner would have conveniently secured gainful employment elsewhere and having worked, he cannot be denied of the legitimate salary to which he is entitled. Though the argument is alluring, we cannot accept the contention and given legitimacy to the illegal action taken by the authorities. If the contention is given acceptance, it would be filed day for manipulation with impunity and one would get away on the plea of equity and misplaced sympathy. It cannot and should not be given countenance.”

15. The above referred decision was rendered exactly on facts identical to the facts of the case in hand. Though in the instant case the applicant discharged his duties beyond his age of actual superannuation, it is not open for him to contend that the order of compulsory retirement passed against him shall only be prospective.

16. For the reasons what all stated herein before, the order of compulsory retirement, which is impugned in the present OA is perfectly legal and needs no interference. Consequently the OA is dismissed. There shall be no order as to costs.

(NAINI JAYASEELAN)
MEMBER(ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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