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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 301/2003

This the 22nd day of September, 2004

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)

Shri Tule Ram,
S/o Sh. Mohar Singh,
R/o H.No.39,
Village & P.O. Alipur,
Ambedkar Colony,
Delhi-110036.

(By Advocate: Sh. Krishan Kumar)

Versus

1. The Government of National Capital Territory of Delhi,
Through Chief Secretary,
Delhi Secretariat,
Player's Building,
Behing I.G.Stadium,
New Delhi.
2. The Office of Conservator of Forest,
through Chief Secretary,
Kamla Nehru Ridge,
Delhi-110007.

(By Advocate: Mrs. Jasmine Ahmed)

ORDER (ORAL)

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant was employed as a daily rated labourer in the Office of Conservator of Forest, Kamla Nehru ridge, Delhi in the year 1965. It is alleged that at the time of his first engagement as a casual labour, he had declared his year of birth as 1937. In the year 1996 his casual employment was terminated by the respondents on the suspicion that he was a Tuberculosis patient. Applicant challenged this order by filing OA-3288/2001 which was disposed of by this Tribunal on 28.11.1996. this Tribunal directed constitution of Medical Board for the examination of the applicant for determining whether he was suffering from

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Tuberculosis. In pursuance to that order Medical Board was constituted which examined the applicant and submitted a report dated 26.5.1997 which is Annexure-B at pages 34 and 35 of the file. As per this report the Medical Board certified that the applicant was not having any disease, constitutional weakness or bodily confirmity except moderate hearing loss. In the opinion of the Board that applicant was not suffering any disqualification for employment to the post of labourer. The report added "his age according to his own statement is approximately 55 years and by appearance is 57 years and by bony X-rays is 56-57 years". Upon receiving this medical report the applicant was reinstated as casual labour and subsequently he was regularised in service w.e.f. 23.7.1997. At the time of his entering into service in July 1997 he declared his date of birth in the attestation form in accordance with Note 6 of FR 56, as 1940. It was this declaration which was accepted by the appointing authority. Taking his date of birth of the year 1940 he was superannuated on attaining the age of 60 years on 30.4.2000. He was not paid his retiral benefits. He then filed OA-3288/2001 which was decided by this Tribunal on 31.5.2002. The Tribunal directed the respondents to dispose of the applicant's representation by a reasoned and speaking order. This resulted in the order of Deputy Conservator of Forests (C) dated 26.7.2002 which is impugned in this application.

2. The denial of the pension and other retiral dues to the applicant by the respondent was on the ground that the applicant had declared his date of birth as 1.1.1937 in 1965 when he was engaged as a casual labourer and reckoning from that date he would be deemed to have retired on attaining the age of 60 years on 31.12.1996. It is submitted by wrong declaration of his age as 57 years, he continued to be in service beyond the age of superannuation and retired on 30.4.2000. When his pension papers were sent to Pay and Accounts Officer for fixing the pension and payment of retirement benefits like pay, leave encashment, group insurance, provident fund etc. Deputy controller of Accounts vide letter dated 19.7.2001 observed that the applicant had already declared his date of birth

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as 1.1.1937 and alteration in his date of birth to 1.5.1940 was in contravention of FR 56 which stipulated the time for any alteration in the date of birth. Accordingly, the Pay and Accounts Officer of the Govt. of NCT of Delhi declined to grant pension to the applicant.

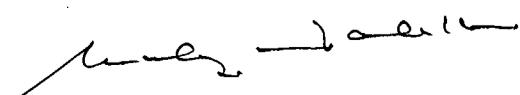
3. Now the question which arises for determination is whether the applicant has forfeited his right to the grant of pension and other retiral benefits for contravention of FR 56 as observed by the Pay and Accounts Office. Counsel for respondents has drawn my attention to Note 6 appended to this FR, which is also relevant, is reproduced below:-

"The date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the Appropriate Authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary School or Secondary School Certificate or extracts from Birth Register. That date of birth so declared by the Government servant and accepted by the Appropriate Authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor General in regard to persons serving in the Indian audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if -

- (a) a request in this regard is made within five years of his entry into Government service;
- (b) it is clearly established that a genuine bona fide mistake has occurred; and

© the date of birth so altered would not make his ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.

4. FR 56 has provided that a Government servant shall retire from his service on the afternoon of the last day of the month in which he attains the age of 60 years. The date on which he has attained the age of 60 years, therefore, is material. But the question is from which date this 60 years age is to be calculated. Counsel for respondents has strongly argued that at the time of first employment he himself had declared his date of birth as 1.1.1937. When his service was regularised and entered the regular service in July 1997, he declared his year of



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birth as 1940. She also submitted that the appointing authority was misled in believing this declared year of birth by the medical report which is at page 34 and 35. She contended that the applicant was referred to the medical examination by the Medical Board constituted under the directions of this Tribunal for determining whether he was suffering from the disease of Tuberculosis. He was not referred for determining his age but the Medical Board of its own determined his bony age as 56-57 years at the time of the medical examination. She, however, did not dispute that the date of birth which the applicant disclosed in his application for employment as casual labour was not a declaration of the date of birth within the ambit of Note 6 appended to Rule FR 56. She also did not deny that the date of birth which is declared by the Government servant at the time of his appointment in a service should determine his date of superannuation from service and which is accepted by the appointing and other competent authority.

5. In the instant case, it is not disputed that the applicant had entered into the Government service for the first time in July 1997 and at that time he made a declaration of his year of birth as 1940. He is an illiterate person. He has not filed any document and in fact did not have in his possession documents like High School, Higher Secondary or Secondary School certificates as a proof of his date of birth. He did not submit the extract from the Birth Register either. In fact he was not required to file any proof of his date of birth by the respondent at the time of submission of attestation form. The declaration made by the applicant about his date of birth was accepted by the appropriate authority. The medical report may have also been used by the appointing and other appropriate authority in accepting the declaration of date of birth made by the applicant. Applicant was not referred to the Medical Board for determining his bony age but for the purposes of medical examination the Medical Board was also required to have the age of the applicant recorded for giving its opinion. The medical report which is at page 34 and 35 of the paper book show that at the time of the medical

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examination the applicant declared his age to be of 55 years age and in the opinion of the Doctors by appearance he looks 57 years of age and his bony age determined from the X-rays of the applicant was 56-57 years. This document was very much before the appropriate authority when the declaration made by the applicant was accepted. It is not the case of the respondents that the applicant when he was first engaged as a casual labour had filed some documentary evidence or even an extract of the Birth Register in support of the declaration of his age as 1.1.1937. Admittedly, the applicant is an illiterate person. The declaration which he made in 1997 and which he was required to do at the time of entering into the Government service was at least supported by the opinions of the Doctors which had examined him and his X-ray. The declaration was accepted by the appropriate authority. Not only this declaration but the first declaration, when he was appointed as casual labour for the first time, must be before the appropriate authority at that time. The said authority accepted the declaration made by the applicant presumably in view of the medical report which has stated that his bony age was 56-57 years. Disclosure of his year birth as 1937 at the time of his employment as casual labourer in 1977 cannot by any stretch of reasoning can be considered as a declaration of date of birth within the purview of FR 56. Declaration of date of birth by applicant in 1965 at the time of his employment as a casual labourer does not attract Note 6 to FR 56.

6. There is another aspect. The date of birth, as declared at the time of the applicant's appointment in Government service in the year 1997, was not only accepted by the appropriate authority but it was acted upon. The applicant continued to serve the Government up to his attaining the age of superannuation of 60 years reckoned from the date of birth which was declared at the time of entering into the Government service which was duly accepted by the appropriate authority. He worked as a casual labourer for years but this casual employment was discontinued in 1996 on flimsy ground. It is only at the intervention of the Tribunal and after the clearance given by the Medical Board that he was reinstated

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and later on was given regular employment in accordance with law. Withholding of his pension and other retiral benefits in old age is a sheer injustice to him. In fact the appropriate authority has not raised any objection. It is the objection of the Accounts Department which had prevented the appropriate authority from releasing the pension and other retiral dues of the applicant.

7. For the aforesaid reasons, I do not find any force in the reasons given by the respondents for denial of pensionary and other retirement dues of the applicant. Accordingly, the application is allowed. Respondents are directed to determine and fix the pension and other retirement benefits which have become due, if any, in accordance with law, to the applicant and also pay it within a period of three months from the date on which the copy of the order is served on it. However, the parties are left to bear their own cost.

M.A. Khan
(M.A. KHAN)
Vice Chairman (J)

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