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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.885/2003

New Delhi this the 30th day of April, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Smt. Krishna Singh,
Member Secretary,
National Commission on Population,
Planning Commission,
R/o C-41, Bapa Nagar,
New Delhi.

-Applicant

(By Advocate Shri Vikas Singh)

-Versus-

Union of India
through Secretary,
Ministry of Personnel,
Public Grievances & Pension,
Department of Personnel & Training,
North Block, New Delhi-110 001.

-Respondent

(By Advocate Shri V.S.R. Krishna)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 27.3.2003, whereby on re-consideration of decision dated 13.8.2002 wherein the date of birth of applicant has been accepted by the Central Government as 4.4.1944 has been unilaterally altered on suo moto review to 23.4.1943. She has sought quashment of the aforesaid order.

2. A little factual matrix is relevant to be highlighted. Applicant in the year 1959 appeared in Senior Secondary School Examination from Patna where the date of birth mentioned in the school register was 4.4.1944. While getting admission in I.P. College for Women at Delhi on 16.7.1960 aforesaid date of birth has been reflected in the college record.

3. In the application form to the UPSC by applicant for IAS in 1996 4.4.1944 was reflected as date of

birth by applicant. She was selected as an Indian Administrative Service Officer and was allocated to Bihar cadre. Upon appointment date of birth recorded in the service book was 23.4.1944. In the UPSC application form while applicant was still a candidate in the IAS examination based on Cambridge school certificate date of birth has been changed from 4.4.1944 to 23.4.1943. In the civil list prepared for the year 2002 date of birth recorded was 24.3.1943.

4. As there was some discrepancy regarding date of birth in service book of applicant as well as civil list one K.K. Chhabra, Under Secretary to the Government of India wrote a letter to the Chief Secretary, Government of Bihar for seeking clarification, by letter dated 3.1.2002.

5. Applicant wrote to the Principal St. Michael's School where she has passed her senior secondary examination seeking clarification of her date of birth which has been responded to by a letter dated 29.1.2002 wherein it is certified that applicant's date of birth according to the admission register was 4.4.1944..

6. Applicant wrote to the Secretary, DEPT attaching the certificate issued by the school regarding her correct date of birth on 30.1.2002 to correct the date of birth in civil list which has been responded by concerned authority, intimating applicant through OM dated 20.2.2002 that her request for change of date of birth is under examination.

7. By a correspondence dated 3.5.2002 as 23.4.1943 has been accepted as correct date of birth applicant has been requested to make available matriculation or equivalent certificate, failing which date of birth would be altered.

8. In response thereof, by a letter dated 3.6.2002 applicant wrote to the Joint Secretary, DOPT intimating that service book of applicant maintained by the State Government to correctly record the date of birth as in April, 1994 though there was some dispute whether it is 23rd or 24th April and also dossiers maintained by UPSC.

9. Subsequently, I.P. College for Women through its Principal by a letter dated 5.6.2002 certified as per the records available 4.4.1944 as correct date of birth of applicant.

10. Director, DOPT by letter dated 20.6.2002 asked applicant to furnish the matriculation/equivalent certificate.

11. Council for the Indian School Certificate Examinations by a letter dated 2.7.2002 certified applicant's examination result where date of birth as certified by the Principal of the School was reflected as 4.4.1944. Aforesaid document was forwarded to the competent authority.

12. By letter dated 12.8.2002 it has been informed to applicant that 4.4.1944 has been accepted by the Central Government as her correct date of birth and a

copy of which has been sent to Government of Bihar. Government of Bihar by its communication dated 1.10.2002 communicated the aforesaid decision to applicant as well.

13. Respondents with the approval of the competent authority accepted the date of birth of applicant as 4.4.1944 superseding their own letter dated 25.1.2002 with letter dated 13.8.2002 and in the civil list for the year 2003 applicant's date of birth was reflected as 4.4.1944.

14. By an order dated 27.3.2003 exercising suo moto power of review unilaterally without affording an opportunity to show cause to applicant revised the date of birth of applicant to 23.4.1943 and a correction to this effect has been made in her service book, giving rise to the present OA.

15. Learned counsel for applicant Sh. Vikas Singh assailed the impugned order on the ground that earlier in her application to UPSC applicant has declared her date of birth as 4.4.1944 and has annexed supporting document, which included proof of age whereas Senior Cambridge School certificate has been scored of. In this view of the matter it has been stated that unilaterally her date of birth was altered to 23.4.1943 from 4.4.1944 unauthorisedly without jurisdiction and affording an opportunity to her.

16. Learned counsel contended that as per the amended Rule 16-A of All India Services (Death-cum-Retirement Benefits) Rules, 1958 even for a

pre-1971 entrant to All India Service as held by the Apex Court in Union of India v. C. Rama Swamy, 1997 (4) SCC 647 the date of birth as recorded in the service book is to be treated as correct date of birth and in case the same is to be altered to any disadvantage it is to be established that the same was entered on account of bonafide clerical mistake. By referring to the decision of the Apex Court in Hari Singh v. State of Bihar and Others (2000) 10 SCC 284 that date of birth other than what has been entered in the service book cannot be accepted by the Government without putting employee concerned to notice and apprising him that the date of birth entered is incorrect. Further resorting to the decision of Apex Court in Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur and Others, (1987) 4 SCC 525 it is contended that even in administrative action which has all the ingredients to exercise quasi judicial powers a review cannot be undertaken in absence of express statutory power to the effect. As no such express power has been available to the respondents once the decision has been taken by the Government where 4.4.1944 has been accepted as date of birth this cannot be reviewed suo moto or otherwise de hors the rules.

17. Shri Vikas Singh relying upon the decision of the Apex Court in State of Punjab v. Iqbal Singh, 1976 (2) SCC 1 contended that even in administrative law principles of natural justice are to be followed and opportunity to be heard must be afforded where the rights of the parties are likely to be affected. On review the

date of birth already accepted has been altered, the same visits applicant with civil consequences which cannot be done without following the due process of law.

18. While referring to the certificate issued by the Council for Indian School Examination it is stated that the same is admissible and the date of birth certified by the Principal of the School at the time of entry is the authentic proof of correct date of birth and by quoting the example of one Narender Singh where the same certificate was held good for date of birth, it is contended that the same is admissible and reliance of respondents upon a communication sent by University of Cambridge Local Examination indicates by letter dated 6.3.2003 where the date of birth as per Syndicate record is 24.3.1943 has been done without putting the aforesaid certificate to applicant and further contended that the aforesaid certificate cannot be a proof of date of birth. Further Sh. Singh stated that there is no concept of service card as reflected from the respondents as the only authentic document to ascertain the date of birth is the service book. ;

19. On the other hand, respondents' counsel Sh. V.S.R. Krishna contested the OA and vehemently opposed the contentions put-forth by applicant and stated that as the alteration has been done to rectify the mistake as respondents have altered the date of birth of applicant on her misrepresentation whereas despite being directed she has failed to produce the original certificate on the pretext of its being lost but from the UPSC form it shows that the date of birth has been rightly entered when applicant was still in examination stage. Moreover, it is

stated that from 1966-2002 the date of birth has been reflected and communicated to her as 24.4.1943. She was very much aware of the same but had not objected to the same. In so far as the certification of date of birth by the Principal is concerned, it is stated that the authority is not competent to certify. The only authentic proof is the Cambridge School certificate and on enquiry the date of birth has been found to be 23.4.1943. In so far as adhering to the principles of natural justice is concerned, it is contended that mere technicality would not bestow upon applicant a lease of service beyond her retirement age. In this backdrop it is stated that a wrong already committed would not vest applicant with an indefeasible right. By referring to the decision of the Apex Court in P & H Elec. Board v. Baldev Singh, 1998 (5) SCC 450 it is contended that non-issuance of show cause notice is a irregularity and pre-decisional hearing in such a case would be an empty formality. It is however stated that review undertaken has been cleared by the highest office of Government and does not suffer from any legal infirmity. Learned counsel further stated that service book attached is not a service book but continuation sheet whereas in the service book date of birth has been shown to be 23.4.1943.

20. Taking me to the factual matrix it is contended that date of birth indicated by applicant in the application form was not accepted by the UPSC which was changed. The service card issued by Government of Bihar at the time applicant was transferred to Delhi also indicates the same date of birth. Applicant right from 1962 to 2002 for long 30 years used the same date of birth, including descriptive roll submitted to the National Academy of

(8)

Administration ACRs of the years, application for diplomatic passport and allotment of government accommodation. Moreover, civil list issued from time to time has reflected the date of birth as 24.3.1943 and applicant has not sought any change and at this belated stage it would not be in the interest of administration as well as public interest to change the date of birth.

21. Sh. Krishna stated that while preparing the continuous service book of applicant the date of birth was wrongly recorded as 23.4.1944 which was subsequently corrected by the Planning Commission on verification of the original record. Since applicant had availed LTC a strong presumption of knowledge of date of birth is to be construed.

22. As date of birth of applicant was accepted by the Government as 4.4.1944 on the basis of certifying statement of examination result but on pointing out by the Planning Commission as to non-compliance with Government of India's instructions which envisage under FR 56 and OM dated 10.10.2002 as the request for change of date of birth has not been made within five years of entry to government service the matter was reviewed and ultimately it was found that date of birth as 23.4.1944 was recorded on account of a clerical error and as the correct service record reflected 23.4.1943 as date of birth which was ascertained from Council for the Indian School Certificate Examinations and failure of applicant to produce original certificate showing date of birth a reference has been sent to the University of Cambridge, a Syndicate Body and on verification and confirmation that the record shows date of

birth as 23.4.1943, no doubt left about the authenticity of the date of birth as corrected by UPSC and reflected in service record. As the request for change of date of birth has been found erroneous decision dated 13.8.2002 was cancelled and the original date of birth as recorded in service record was restored as 23.4.1943. The learned counsel for respondents further relied on the following decisions:

i) Secretary & Commissioner, Home Department v. R. Kirubakaram, 1994 Suppl (1) SCC 155.

ii) EE, Bhadrak v. Rangadhar, 1993 Suppl. (1) SCC 763.

iii) Union of India v. Harnam Singh, (1993) 2 SCC 162.

iv) Orissa Vs. Brahamarbar Senapathi, (1994) 2 SCC 491.

v) G.M. BCCL v. Shib Kumar Dushad, (2000) 8 SCC 696.

vi) Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, (1997) 11 SCC 121.

vii) Canara Bank v. Shri Debasis Das & Ors. (2003) 2 SCALE 220.

viii) Dharmarthmakare RARM Educ. Inst. v. Edu. App. Trib. (1999) 7 SCC 332.;

23. In the rejoinder applicant has reiterated his pleas taken in the OA and denied the contentions of respondents.

24. I have carefully considered the rival contentions of the parties and perused the material on record. Amended Rule 16-A of All India Services (Death-Cum-Retirement Benefits) Rules, 1958, which deals with acceptance of date of birth is reproduced as under:

"(1) 16-A. Acceptance of date of Birth - For the purpose of determination of the date of superannuation of a member of the service, such date shall be calculated with reference to the date of his birth as accepted by the Central Government under this rule.

(2) In relation of a person appointed, after the commencement of the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1971;

(a) the India Administrative Service under clause (a) or clause (aa) of sub-rule (1) or Rule 4 of the Indian Administrative Service (Recruitment) Rules, 1954;

(b) the India Police Service under clause (a) or clause (aa) of sub-rule (1) or Rule 4 of the Indian Police Service (Recruitment) Rules, 1954;

(c) the Indian Forest Service under clause (a) or clause (aa) of sub-rule (2) or Rule 6 of the Indian Forest Service (Recruitment) Rules, 1966, the date of birth as declared by such person in the application for recruitment to the service shall be accepted by the Central Government as date of birth of such person.

(3) In relation to a person to whom sub-rule (2) does not apply, the date of birth as recorded in the service book or other similar official document maintained by the concerned Government shall be accepted by the Central Government, as the date of such person.

(4) The date of birth as accepted by the Central Government shall not be subject to any alteration except where it is established that a bona fide clerical mistake has been committed in accepting the date of birth under sub-rule(2) or (3).

25. Justice Kirpal, speaking for the Bench in Rama Swamy's case (supra) while dealing with the controversy relating to correction of date of birth to a pre-appointee of 4.12.1971 in All India Services as to the applicability of the amended rules of 1978 observed as under:

"16. The effect of a rule being substituted by a new rule clearly is that the old rule, which stands substituted, can under no circumstances have any application at least from the date when it created to exist. With effect from 7.7.1978 a new Rule 16-A having been incorporated in the Rules it was this rule alone which was applicable when the respondent represented for alteration in the date of birth by his first representation of 4.9.1982. Reading Rule 16-A as a whole it is clear to us that it applies to all persons belonging to the All India Services who were in service and the said rule does not exclude pre-4.12.1971 direct recruits from its application, as has been held by the Tribunal.

17. Rule 16-A is a composite rule which was intended to and does apply to all persons of the All India Services to whom the principal rules of 1958 are applicable.

18. Sub-rule(1) of Rule 16-A states that for the determination of the date of superannuation of the date is to be calculated with reference to the date of birth as accepted by the Central Government under this Rule. The use of the word "accepted" in sub-rule (1) is indicative of the fact that except in a case where there may be a correction on account of bona fide clerical mistake having occurred the Central Government accepts, and does not determine, Sub-rule) 2 is applicable to a person appointed after commencement of the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1971. According to this the date of birth of the appointees as declared in their applications for recruitment shall be accepted by the Central Government as the date of birth of such persons. The effect of this is that atleast as far as post-4.12.1971 appointees are concerned the question of the Central

Government accepting any date of birth other than that indicated in the application for recruitment to the service does not arise. The implication of this clearly is that with the insertion of new Rule 16-A(2) there would be no occasion for the Central Government to even entertain an application for alteration in the date of birth, as the Government is enjoined to accept only. This of course is subject to the limited circumstances under which correction can be effected under sub-rule (4) of Rule 16-A, namely, in cases where a bona fide clerical mistake had occurred in accepting the date of birth under sub-rule (2) or sub-rule(3).

19. The opening words of sub-rule (3) of Rule 16-A state that the said sub-rule applies in relation to a person appointed to the All India Services after 4.12.1971 it is obvious that sub-rule (3) would be applicable to all other officers to whom All India Services Rules apply which would necessarily include the direct recruits who were appointed prior to 4.12.1971. There are no words of restriction in sub-rule (3)(a) which can persuade us to take a different view. With Rule 16-A as incorporated in 1971 having been superseded by the new Rule 16-A, if the contention of the respondent is accepted the effect would be that an incongruous situation would arise whereby there would be no rule in existence dealing with cases of persons other than those who were appointed after 4.12.1971. Neither the plain language of Rule 16-A, and sub-rule(3) in particular, nor the intent of the said rule suggests that an artificially restricted meaning should be given to the opening words of sub-rule (3) of Rule 16-A so as to exclude pre-1971 direct recruits from its operation. In our opinion, direct recruits like the respondent who had joined Service before 4.12.1971 would be covered by sub-rule (3) of Rule 16-A. Sub-rule (3) of Rule 16-A requires the Central Government to accept that date of birth as has been recorded in the service-book or other similar other official documents as maintained by the Government concerned in respect of an officer. Admittedly the date of birth of 17.6.1939 was recorded in the service-book of the respondent. Under Rule 16-A of 1978 it is the date of birth which was required to be accepted by the Government.

20. Reading sub-rules(2) and (3) together it is clear that whereas in the case of sub-rule (2) the date of birth has to be accepted which is indicated in the application for recruitment but in the case covered by sub-rule (3) if the date of birth as recorded in the service-book is different from the one which was contained in the application, possibly because of an alteration having been

made at the instance of the officer concerned, then that is the date which has to be accepted by the Central Government.

21. The date of birth as recorded in the service-book, in the case of pre-4.12.1971 entrants, and the date as declared by an officer in the application for recruitment, in the case of post-4.12.1971 entrants, has to be accepted as correct by the Central Government and, as already indicated, this can be altered only if under sub-rule (4) it is established that a bona fide clerical mistake had been committed in accepting the date of birth. It is for this reason we find that in the order rejecting the representation of the respondent the Central Government has stated that there was no bona fide clerical mistake which had been committed."

26. If one has regard to the aforesaid ruling and the ratio arrived at an irresistible conclusion which is to be derived is that date of birth recorded in service book of a pre-4.12.1971 entrant and any alteration after 1978 would be covered by the amended rules and in that event the date of birth recorded in service book has to be accepted as correct by the Central Government and can be altered only if it is established under sub rule (4) *ibid* that a bonafide clerical mistake has been committed in accepting the date of birth.

27. Having regard to the aforesaid ratio and applying it to the conspectus of the present case it is on discrepancy in the date of birth recorded in the service book as well as in civil list and on production of school leaving certificate Government on the basis of date of birth certified by the Principal of the School as 4.4.1944 after much deliberations and after verifying the same accepted the plea of applicant and accordingly changed the date of birth as 4.4.1944. This has been done with the approval of the competent authority and with reference to Rule 16-A of the Rules *ibid*.

27. Subsequently without putting applicant to notice on a suo moto review and the fact that applicant consistently accepted the date of birth as 23.4.1943 and has entered in the service book of applicant. The date of birth was not based on service card received from Government of Bihar which has not come to light earlier as service book was not examined, a decision was taken to review the earlier order and to verify the date of birth as recorded in the Indian School Certificate Examination result produced by applicant. As per this certificate which is indicative of only result the date of birth is to be ascertained from the Syndicate, i.e., University of Cambridge Local Examinations Syndicate, the body conducted Indian School Certificate Examination where applicant appeared in 1959 and on the information supplied by the Syndicate the date of birth which the Ministry accepted was found incorrect. In my considered view as per the Rules which are discussed by the Apex Court in Rama Swamy's case (supra) and which is applicable in the present case, date of birth which has already been recorded in the service book and the fact that respondents' contention that service book annexed by applicant is not a service book but a continuation sheet which is belied by respondents where the aforesaid document has been admitted to be the service book the only eventuality when the date of birth can be altered is a bona fide clerical mistake, whereas the aforesaid review has been undertaken not on the basis of a bona fide clerical mistake but a mistake of Government earlier to rely upon the certificate produced by applicant to alter the date of birth and on the ground of action not

as per the instructions issued by Government as well as FR-56. The aforesaid decision by no stretch of imagination can be observed as a clerical mistake.

28. However, having regard to the latest decision of Apex Court in Hari Singh's case (supra) as the date of birth already accepted and entered and recorded in the service book of applicant cannot be altered without notice to government servant and affording him a reasonable opportunity. In Iqbal Singh's case (supra) in the order passed on administrative side in exercise of quasi judicial power it is incumbent upon the authorities in the event civil consequences ensue to government servant to comply minimum of the principles of natural justice which require as fair hearing an opportunity to be heard. Moreover, as per rules for maintaining service book the alteration in the service book cannot be resorted to without putting the concerned employee to notice. Admittedly, neither any show cause notice was issued to applicant before altering on review the date of birth already accepted by Government nor she has been allowed an opportunity to confront the verification sent by the Syndicate. She has been deprived of a reasonable opportunity which is not in consonance with the principles of natural justice and fair play. As applicant's rights have been affected and she has been visited with civil consequences, causing her grave prejudice, the opportunity to be heard was obligatory. This view of mine is fortified by the following observation of the Apex Court in D.K. Yadav v. J.M.A. Industries Ltd., 1993 SCC (L&S) 723:

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"The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets their requirements of natural justice. It is not so much to act judicially but is to act fairly. The rule of procedure laid down by law come as much within the purview of Article 14 of the Constitution as any rule of substantive law. The substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual."

29. However, there is no denial from the fact that when the date of birth entered in the service record is questioned before the Tribunal the burden lies heavily on government servant to establish by production of acceptable evidence of clinching nature. This court cannot pass an order for continuance of such employee beyond the date of superannuation, more particularly when the date of birth is disputed. The following observations have been made by the Apex Court in G.M. Bharat Coking Coal Ltd. v. Shib Kumar Dushad, (2000) 8 SCC 696:

"17. The date of birth of an employee is not only important for the employee for the employer also. On the length of the service put in by the employee depends the quantum of retiral benefits he would be entitled to.

Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service particularly when the employee is due to retire shortly, will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth in service record maintained by the employer is untrue and incorrect. The burden can be discharge only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of entered in the service record and courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialise, on account of which the junior is denied promotion which he has all along been led to believe will be his due on the retirement of the senior."

30. In the above circumstances and having regard to the reasons recorded, impugned order cannot be sustained in law. The OA is partly allowed. Respondents are directed to afford to applicant an opportunity to show cause against their action of alteration of date of birth and in that process she would be afforded an opportunity to rebut the material relied upon to arrive at a decision to alter the date of birth including production of document and material in her possession. Thereafter respondents on receipt of the material and response of applicant pass suitable orders in accordance with law. In so far as continuance of applicant beyond 30.4.2003 in service is concerned, I am of the considered view that at the date of

birth is still in dispute and the matter is allowed on denial of reasonable opportunity, further continuance of applicant shall be subject to the orders passed by respondents and if applicant's date of birth is maintained as corrected by ^{an} order dated 12.8.2002 she would be compensated as per law. Aforesaid exercise shall be undertaken by respondents within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju) ;
Member (J)

'San.'