(2005) 03 AP CK 0030

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4852 of 2005

Account General and Others APPELLANT

Vs

P.K. Sinha RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Administrative Service (Recruitment) Rules, 1954 — Rule 4
Forest Service (Recruitment) Rules, 1966 — Rule 4(2)
Police Service (Recruitment) Rules, 1954 — Rule 4(1)

Citation : (2005) 3 ALD 106 : (2005) 3 ALT 371

Hon'ble Judges : P.S. Narayana, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : B. Narasimha sarma, for the Appellant; M. Kesava Rao, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Respondents-The Accountant General, Nagpur, Madhya Pradesh and others in O.A. No. 670 of 2004, aggrieved by the order made in the aforesaid OA dated 30.11.2004, had filed the present writ petition.

2. Respondent-applicant in the OA belongs to Indian Revenue Service (IRS) of 1968 batch and entered into service on 11.11.1968 as Income Tax Officer (Group-A) and the respondent-applicant while working as Chief Commissioner of Income Tax, Visakhapatnam submitted a representation dated 22.10.2002 to the Director General, National Academy of Direct Taxes, Nagpur, stating that his Service Book prepared during his training at Nagpur wrongly recorded his date of birth as 15.3.1945 instead of 15.8.1945 and requested for correction. It is further stated that his date of birth i.e., 15.8.1945 is being shown in the civil list of IRS circulated from time to time. The said representation was forwarded to the Central Board of Direct Taxes (hereinafter in short referred to as CBDT), Ministry of Finance, on 26.11.2002. The then Joint Commissioner of Income Tax (Headquarters), Visakhapatnam, by his communication dated 27.11.2002

submitted the Service Book of the respondent-applicant to the CBDT for necessary correction. The then Additional Commissioner of Income Tax (Headquarters) by proceedings dated 10.2.2003 informed that the original papers received from UPSC at the time of appointment are not available in the personal file of the respondent-applicant maintained by the office. The Ministry of Finance by its letter dated 30.4.2003 asked the respondent-applicant as to how he came to know about the wrong entry of his date of birth after so many years. The respondent-applicant by his letter dated 7.5.2003 informed the CBDT that the list of retiring officers received from ZAO, Hyderabad, showing his date of superannuation as 31.3.2005 had prompted him to verify his Service Book and also the Service Card maintained at Nagpur and on verification he had noticed that there is wrong entry in the service card maintained at Nagpur in regard to his date of birth. It was further started that the Civil List circulated in the department correctly noted his date of birth as 15.8.1945 and he also submitted attested copies of SSLC Certificate along with original. The respondent-applicant also submitted Photostat copies of Passport and CGHS Card as collateral evidence in support of his request for correction. The Ministry of Finance, CBDT, vide communication dated 30.4.2004 informed the respondent-applicant that this request for correction of date of birth from 15.3.1945 to 15.8.1945 cannot be agreed and hence the respondent-applicant filed O.A.No. 670 of 2004 before the Central Administrative Tribunal, Hyderabad Bench (in short referred to as the Tribunal hereinafter) questioning the said communication of the Ministry dated 30.4.2004 and consequent direction for correction of his date of birth.

3. The writ petitioners as respondents in the said OA filed a detailed reply statement stating that though he joined service in 1968, his representation for correction of his date of birth was made only in the year 2002. It was further pleaded that in his Service Book at three places the respondent-applicant himself recorded his date of birth as 15.3.1945 at the time of entry into service. The respondent-applicant also filed a Rejoinder before the Tribunal and the Tribunal by its order dated 30.11.2004 allowed the OA with a direction to correct the date of birth of the applicant as 15.8.1945 in the service records notwithstanding the rules of the DOPT in the matter. Hence the writ petitioners, questioning the same, had filed the present writ petition.

4. Sri B. Narasimha Sarma, learned Counsel representing the writ petitioners would contend that the very representation was made by the Senior Officer after a long lapse of time. The learned Counsel also would maintain that in the light of the clear statutory provision, Rule 16-A of All India Service (Death-cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as the Rules), wherein it is provided that the date of birth once accepted cannot be altered except in the cases which had been provided for under the Rule. The learned Counsel also would point that it is provided that the date of birth as accepted by the Central Government shall not be subject to alteration except where it is established that a bona fide clerical mistake had been committed in accepting the date of birth and would contend that this is not a case falling under the words or expression

"in accepting the date of birth". The learned Counsel also would contend that the Tribunal had erroneously allowed the OA despite the Rules governing the field. The Counsel also would maintain that unless it is shown that there is a clerical mistake in accepting the date of birth by the Central Government, the date of birth accepted by the Central Government cannot be altered. In the absence of any such mistake in acceptance of the date of birth and on that ground only, the request of respondent-applicant had been rejected and hence no grievance can be made out of it by the respondent-applicant. The learned Counsel also would maintain that in the light of the long lapse of time in making the representation and also in the light of the Rules governing the field and the decision of the Apex Court in this regard, Union of India Vs. C. Rama Swamy and others, , the Tribunal had gone wrong in allowing the OA and hence the said order is liable to be set aside.

5. Per contra, Mr. M. Kesava Rao, learned Counsel representing the respondent-applicant would submit that at no point of time it was within the knowledge of the respondent-applicant and for the first time when he came to know about the same, immediately the representation was made having detected the mistake which had crept in. The learned Counsel also had made elaborate submissions relating to the other aspects in relation to his service records which were being maintained by the Government in this regard and also would point out that even the service records maintained by the Government would not disclose that at any point of time the respondent-applicant was made known about this mistake or at least the respondent-applicant accepting the same had, in authentication thereof, signed the relevant records inclusive of the first page of the Service Register. The Counsel also had pointed out to the relevant columns in the first page in the Service Register and would contend that in the absence of the same, the question of examining the applicability or non-applicability of Rule 16-A of the Rules as contended by the learned Counsel for the writ petitioners would not arise. Even otherwise in the alternative the Counsel would maintain that the decision of the Apex Court referred to supra is definitely distinguishable on facts.

6. Heard both the learned Counsel.

7. The facts in brief had already been narrated supra. The respondent-applicant belongs to Indian Revenue Service of 1968 batch and entered into service on 11.11.1968 as Income Tax Officer (Group A) and according to his Matriculation Certificate and other educational certificates, his date of birth is 15.8.1945 and there is no serious controversy about this aspect since the certificates as such are available on record. The Ministry of Finance and Revenue (CBTD), Government of India, releases I.R.S. civil list periodically and in that Civil List, the respondent-applicant''s date of birth was shown as 15.8.1945 and the specific stand taken by the respondent-applicant is that inasmuch as he had no knowledge about the aforesaid entry he never made any attempt to make any representation to rectify the same all these years. Further the Counsel representing the writ petitioners had taken a stand that the Civil Lists would be

maintained periodically and these documents cannot be said to be authenticated documents in the light of what had been stated in the beginning portion of the said documents. Be that as it may, the fact remains that the respondent in the month of October, 2002 received a list of retiring officers, where his date of superannuation was mentioned as 31.3.2005. Then the respondent-applicant had verified the date of birth for the reason that inasmuch as his date of birth is 15.8.1945, his date of superannuation cannot be fixed earlier as 31.3.2005, as his date of birth being 15.8.1945. The specific stand taken by the respondent-applicant is that his date of birth was wrongly recorded in the Service Register maintained by the Office of the Director General, National Academy of Direct Taxes, Nagpur, where he had undergone training.

8. It is no doubt true that the alteration of date of birth normally cannot be resorted to at the fag-end of the service career, but equally so when the respondent-applicant was put in darkness for all these years and it was brought to his notice for the first time that his date of superannuation is 31.3.2005, the same had prompted the respondent-applicant to verify his date of birth and the same had been detected to be a wrong entry. Be that as it may, it is pertinent to have a look at the first page of the Service Register of the respondent-applicant, P.K. Sinha, IRS, which is as hereunder:

1. Name in Full : Shri P.K. Sinha

12. Permanent Home address (in full)

3. Father''s name (and also husband''s name in the case of a woman Government servant) and resident:

4. Nationality (if not a citizen of India number and date of the certificate of eligibility granted by the Government of India :

5. If a member of Scheduled Caste, Scheduled Tribe, particulars of Caste/Tribe:

6. Date of Birth by Christian Era as nearly as can be ascertained.

7. Educational Qualification :

8. Exact height by measurement (without shoes):

9. Personal marks for identification :

10. Left hand thumb or finger impression of non-Gazetted Officer i.e., He/she is not literate enough to sign His/Her name in English, Hindi or other regional language.

(Little finger) (Ring finger) (Thumbs) (Fore finger) 11. Signature of Government Servant :

12. Signature and designation of the Head of Office or other attesting officer.

9. The relevant entries in the columns clearly go to show that several particulars

have been furnished and the signatures of the specified Government Servant also may have to be obtained. To the surprise of this Court, on verification, it is seen that the whole page of the Service Register of the respondent-applicant is blank unfilled except the name of the respondent-applicant. There is no signature and hence it can be taken that the date of birth as entered had never been authenticated by the respondent-applicant inasmuch he had not signed the first page which is left unfilled for the reasons best known to the department. Hence in the light of this, the question of applicability or non-applicability of Rule 16-A of 1971 Rules or 1978 Rules would fall into insignificance.

10. It is no doubt true that the Apex Court in the judgment referred to in Union of India v. C. Rama Swamy and Ors. (supra) while dealing with Rule 16-A of 1971 Rules regarding date of birth and Rule 16-A of 1978 Rules regarding acceptance of date of birth, came to the conclusion that when a representation is made subsequent to 1978 Rules coming into force, the same may have to be dealt with in accordance with the later Rules i.e., 1978 Rules. Rule 16-A of 1978 Rules dealing with acceptance of the date of birth reads as hereunder:

"1978 Rules: Acceptance of date of birth

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 to a person appointed, after the commencement of the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1971 to:

(a) The Indian Administrative Service under Clause (a) or Clause (aa) of Sub-rule (a) of Rule 4 of the Indian Administrative Service (Recruitment) Rules, 1954; or

(b) The Indian Police Service under Clause (a) or Clause (aa) of Sub-rule (1) of Rule 4 of the Indian Police Service (Recruitment) Rules, 1954; or

(c) The Indian Forest Service under Clause (a) or Clause (aa) of Sub-rule (2) of Rule 4 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 the 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 birth 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)".

11. Stress was made on Sub-rule (4), which specifies that 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). The words ''in accepting the date of birth'' under Sub-rule (2) or Sub-rule (3), no doubt, had been interpreted by the Apex Court in the aforesaid decision. Here is a case where the signature of the respondent-applicant was never obtained in the Service Register and the first page of the said Service Register where the signature of the concerned Officer is expected to be there, the said page is kept blank. The learned Counsel representing the writ petitioners would no doubt contend that the burden to establish the same is on the respondent-applicant and hence he cannot succeed. This contention cannot be accepted for the reason that the records produced by the Department are self-explanatory. It is clear that the officer in question, the respondent-applicant, was put in darkness relating to this aspect and even in the periodical civil lists inasmuch as his correct date of birth was being repeated, it is but natural the respondent-applicant, being a Senior Officer, would have been under the impression that his correct date of birth is being maintained and for the first time when his date of superannuation was communicated, having entertained a suspicion about the wrong entry on verification and having detected the wrong entry made, bona fide made the representation and hence it cannot be said that there is long lapse of time or delay in making such a representation. As already observed supra, it is no doubt true that the Apex Court repeatedly had deprecated the practice of the Government Servants approaching the Courts for correction of date of births at a belated stage just before the age of superannuation. But here is a case where the respondent-applicant was put in total darkness till the date of superannuation was communicated to him and even the records especially first page of his Service Register would establish the same. The situation could have been avoided if the Department had taken proper steps at proper point of time either to intimate or to afford opportunity to the respective Officers to look into and verify the same, evidently this occasion never arose. In view of the same, there are some lapses even on the part of the Department also and hence the concerned Officer, respondent-applicant, alone cannot be found fault with.

12. The Tribunal observed at Paras 7 to 9 as hereunder:

"In this case, except the entries in the Service Book, the basis of which were challenged, no other proof was produced by the respondents for the entry in the Service Register mentioning the date of birth of the applicant as 15.3.1945. Supportive proof or relied upon basis for such a documentation was produced before this Tribunal; or that it was ever shown to the applicant before he received the list of retiring officers from ZAO, Hyderabad, wherein his due date of superannuation has been mentioned as 31.3.2005. The basic and authentic document on which he has to rely for ascertaining the date of birth of the individual or Government employee would be the Matriculation Certificate. Every other record is based on such documentation for proof of date of birth given in the Matriculation Certificate. This Tribunal is unable to know as to how 15.3.1945 has been entered in the Service Register when the original of Matriculation Certificate produced by the applicant before this Tribunal showed the date of birth of the applicant as 15.8.1945. His brother, who the applicant averred is a twin, and who is General Manager in SBI, is also certified to have been born on 15.8.1945. Entries in the Civil list have shown his date of birth as 15.8.1945. So is the date mentioned in Passport and CGHS Card.

The learned Counsel for the respondents failed to produce any evidence to show that the entries in the Service Register with respect to date of birth of the applicant i.e., 15.3.1945, were ever brought to the notice of the applicant so that he could have represented against it within the period of 5 years. It was never brought to his notice or acknowledged by the applicant earlier. Therefore, the compliance with the DOP&T instructions was practically ruled out in this case, since the obvious wrong entries in the Service Book were never brought to the notice of the applicant before October, 2002.

In view of preponderance of evidence produced before this Tribunal that the correct date of birth of the applicant was 15.8.1945 as mentioned in the Matriculation Certificate issued by Bihar Vidhyalaya Pariksha Samithi, it is decided by this Tribunal as being the correct one, and the respondents are obliged to correct the date of birth as shown in their Service Register by correcting the date of birth of the applicant as 15.8.1945, which has been mentioned in the Civil List as also other documents produced by the applicant like Passport, CGHS Card etc.

This Tribunal is, therefore, constrained to accept the contentions of the applicant in view of the preponderance of the evidence put forth by him that his date of birth is 15.8.1945; and therefore direct the respondents to carry out the necessary corrections in their Service Register (and any other relevant document) as per the date indicated in the Matriculation Certificate of the applicant, the original of which was produced before this Tribunal by the applicant. The date of birth of the applicant as indicated in the Matriculation Certificate as 15.8.1945. Therefore, the legitimate date of retirement of the applicant would be 31.8.2005, being the last date of the month when the applicant completes 60 years of age. This correction in the Service Book showing correct date of birth of the applicant being 15.8.1945, has to be carried out in the interest of justice and fair play, notwithstanding the rules of DOP&T in the matter. This has to be treated as an exception keeping in view the preponderance of proof, which has been adduced by the applicant in the present OA".

Especially in the light of the convincing reasons recorded by the Tribunal in this regard, both in law and equity, this Court is of the considered opinion that the findings do not suffer from any illegality and the same are hereby confirmed. Inasmuch as this Court is satisfied that both in law and equity that the Tribunal had arrived at a correct conclusion, this is not a case which deserves to be interfered with at the hands of this Court while exercising certiorari jurisdiction.

13. Accordingly the writ petition is bound to fail and the same shall stand dismissed. No costs.

