

(1991) 09 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 596 of 1986

Bhagat Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 04-09-1991

Acts Referred:

Administrative Tribunals Act, 1985 — Section 29, 29A
Constitution of India, 1950 — Article 311(2)

Citation : (1992) 101 PLR 280

Hon'ble Judges : H.S. Bedi, J;A.L. Bahri, J

Bench : Division Bench

Advocate : J.C. Verma, Danesh Kumar and Harinder Sharma, for the Appellant;
A.S. Tewatia, for the Respondent

Final Decision : Allowed

Judgement

A.L. Bahri, J.—This second appeal has been filed by Bhagat Singh, Plaintiff against the judgment and decree of Additional District Judge, Chandigarh dated August 12, 1985, whereby the appeal filed by him was dismissed and judgment and decree of the trial court was affirmed. The trial court had dismissed the suit filed by him for declaration and for the grant of permanent injunction, on August 29, 1983. The appeal was transferred to the Central Administrative Tribunal in view of the provisions the Administrative Tribunal Act. Subsequently, the Tribunal returned the same inter alia holding that Tribunal had no jurisdiction to entertain the appeal. In the meantime, Regular First Appeal No. 469 of 1986 had been admitted to D. B. and this appeal was ordered to be heard along with the aforesaid first appeal. That is how the appeal is before this Bench.

2. Bhagat Singh, plaintiff, joined the Ordnance Cable Factory at Chandigarh as a Driver in the factory. In the service-book prepared, his date of birth was recorded as 14-8-1923. Subsequently, when he came to know that his actual date of birth was 10 1-1929, he moved General Manager of the factory for correction of his date of birth. Vide order dated 16-7-1981, the said request was turned down by

the; General Manager. Bhagat Singh has studied upto 7th Class in a School in his village, Shan, District Fatehpur (U.P.) in the year 1944. Thereafter he started helping his father who was running a tailor shop. When he joined service in the factory, no effort was made to obtain School Leaving Certificate to give the correct date of birth. Subsequently, when such a certificate was obtained, the defendant was moved for correction, No opportunity was given to the plaintiff before his request was turned down. If his correct date of birth had been recorded, he would have served in the factory for a period of six more years. Thus, he claimed declaration that order dated 16-7-1981 was illegal, arbitrary and against the principles of natural justice, He also sought , decree for permanent injunction that he should not be retired before the due date of his superannuation and the defendant be directed to correct his date of birth.

3. The suit was contested by the defendant-Union and another inter alia alleging the correct date of birth of the plaintiff was recorded on his own statement in the service-book as 14-8-1923. There was no reason to change it to January 10, 1929. The suit was alleged to be barred by time. The plaintiff was estopped from filing the suit.

The following issues were framed in the suit :-

- (1) Whether the suit is within limitation ? OPP
- (2) Whether the plaintiff is estopped by his acts and conduct to file the present suit ? OPP
- (3) Whether the impugned order dated 16-7-1981 is illegal, arbitrary ? OPP
- (4) Whether the plaintiff is entitled to the declaration prayed for? OPP

4. The trial Court held under issue No. 1 that the suit was within time. Under issues No. 2 to 4, the correct date of birth of the plaintiff was held to be as recorded in the service-book i.e. 14-8-1923 and the plaintiff was estopped from filing the suit. He was not entitled to the declaration prayed for. The order dated 16-7-1981 was held to be valid. This judgment of the trial court was affirmed by the lower Appellate Court.

5. Chapter V of the Administrative Tribunal Act, 1985 deals with the question of jurisdiction of the Tribunal and other Courts to entertain or dispose of cases relating to the employees either by the ordinary Courts or by the Tribunal constituted therein. Section 29 provides for transfer of suits or other provisions before any court or authority pending immediately before the date of establishment of the Tribunal under the Act, to such Tribunal for disposal. However, this provision is not applicable to any appeal pending before the High Court. Section 29A was inserted by Act No. 19 of 1986 with effect from 22-1-1986. It reads as under :-

"Provision for filing of certain appeals.-Where any decree or order has been made or passed by any court (other than a High Court) in any suit or proceeding

before" the establishment of a Tribunal, being a suit or proceeding the cause of action wherein it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal; and no appeal has been preferred against such decree or order before such establishment and the time for preferring such appeal under any law for the time being in force had not expired before such establishment, such appeal shall lie :-

(a) to the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill, 1986, receives the assent of the President, or within ninety days from the date of receipt of the copy of such decree or order, whichever is, later, or

(b) to any other Tribunal, within ninety days from its establishment or within ninety days from the date of receipt of the copy of such decree or order, whichever is later.

It is the interpretation of the aforesaid provision and its applicability to the case in hand that require consideration in this case. The Additional District Judge decided the appeal on 12-8-1985. The Central Administrative Tribunal was constituted under the aforesaid Act on 1-11-1985. Application for obtaining certified copies of judgment and decree of the lower Appellate Court was filed on 14-8-1985, and the same were ready for delivery on 30-9-1985. In this court appeal was filed on 6-1-1986. Limitation for filing appeal in the High Court is 90 days. On 1-11-1985 when the Tribunal was constituted under the Act, limitation for filing the appeal had not expired and the appeal had not been filed by then. Section 29A also had not come into force as Act No. 19 of 1986 came into force on 22-1-1986. The appeal was rightly filed in the High Court and on 6-1-1986 it was not to be filed before the Tribunal. The provision of Section 29A of the Act aforesaid is not attracted to the case in hand. As already stated above, this appeal was not pending on 1-11-1985 when the Tribunal was established and the appeal was not to be transferred to the Tribunal. This court has jurisdiction to dispose of the appeal.

6. Learned counsel for the appellant has argued that the appellant had a civil right to put in service upto the date of superannuation. His correct date of birth being 10-1-1929, he could not be removed from service prior to the date of superannuation treating his date of birth as recorded in the service book on the basis of some medical examination as August 14, 1929. There is force in this connection. Such a right has been recognised by several judicial pronouncement. In *Brigadier Prithvi Raj v. The Union of India* 1986 (1) S. L.R. 754 D. V. Sehgal, J , observed while relying upon the decision in *Sohan Singh Bawa v. State of Haryana* 1967 S. L. R. 934 that correct date of birth gives a right to Government servant to continue in service till his attaining the age of superannuation provided he is otherwise fit to continue in service. This is an important legal right which cannot be brushed aside on the basis of administrative instructions. Similar view was taken by M. S. Liberhan, J. *State of Haryana v. Kehar* 1986 (6) S.L. R. 21 and S. D. Bajaj, J. in "*Chamba Singh, Lascar v. Punjab State* 1988 (3)

S. L. R. 530 . We are also of the same view. Every person has a right to serve upto the date of superannuation of course under the terms and conditions as provided in the relevant rules. If such a right is denied and the person is removed from service, straight way the provisions of Article 311 of the Constitution would be attracted. That being the position and the principles of natural justice also require that as and when such a dispute arises with respect to the recording of correct date of birth in the service record, the decision should be made on the material available and supported by reasons. Of course, when the State Government on its own decides to change the date of birth as recorded in the service book, an opportunity of hearing is to be given to the person going to be affected. When such a person himself approaches the department for making correction of the date of birth, though regular enquiry need not be made but he could be afforded an opportunity of producing evidence regarding his correct date of birth. The Supreme Court in *State of Assam and Another Vs. Daksha Prasad Deka and Others*, observed as under:-

"Where the application for rectification of service record as filed by Government servant concerned was itself not entertainable by reason of having been filed with three years prior to his date of actual superannuation as entered in service record in view of S. R. 8 Note and such Government servant was compulsorily retired on such date of his actual superannuation without giving him opportunity, to prove his true age as claimed by him the guarantee of Article 311(2) could not be claimed to have been infringed."

It was further held that unless and until the service record is corrected as claimed by the Government servant, order passed for his retirement on superannuation on the basis of date of birth as mentioned in the service record will not attract the provisions of Article 311(2) of the Constitution. The ratio of the aforesaid decision cannot be applied to the case in hand as the plaintiff moved for correction of the service record much before his retirement. His representation was required to be disposed of on merit and not merely on the ground that service record already prepared was to the contrary and he was estopped from claiming correction.

7. Present is a case where the plaintiff produced School Leaving Certificate before the authorities giving his date of birth. If the department was to reject the same, it was expected of the department to give reasons. In this respect reference was made to the decision of the Allahabad High Court in *Baijnath v. The General Manager, N. E. Railway, Gorakhpur*, 1986 Lab. & Ind. Cases 178. The request of Class IV employees for correction of his date of birth was declined without assigning any reason. A direction was given to the Railway authorities to correct the service record. When the civil rights of a citizen are going to be affected by passing any order by the authorities, it is necessary that speaking order should be passed supported by reasons. In *Gurbax Singh, Assistant Executive Engineer v. State of Punjab* 1989 (2) S. L. R. 78 a Division Bench held that it was necessary for the Corporation to go into the merits of the petitioner's

representation and since the Corporation" did not record any finding about the correctness of the date of birth, the action the Corporation in retiring the petitioner could not be sustained . The Corporation was directed to find out the exact date of birth of the petitioner.

8. P. W. 1 Krishan Bihari Vajpai who was earlier Head Master in the Junior School at Village Shah was produced to prove Ex. P-1, an entry from the School's register relating to the plaintiff where his date of birth was given as January 10, 1929. He also proved the School Leaving Certificate incorporating the aforesaid date of copy Ex. P-2. A reply Ex. P-4 was sent to the letter of General Manager, O.C.P C. which is Ex. P-3 verifying the aforesaid date of birth of the plaintiff. In order to establish that January 10 , 1929 was the date of birth of plaintiff as recorded in the School's register (document referred to above) the plaintiff himself appeared as P.W 3 and deposed to the aforesaid facts that he had studied in the aforesaid School. P.W. 2 Hari Bant Singh supported him in this respect .Hari Bant Singh was a teacher in that School. He also belongs to village Shah. He knew the plaintiff and his father. The aforesaid evidence was not relied upon by the courts below on the ground that the plaintiff did not produce his elder brother Gurbachan Singh who was residing in Fatehpur as admitted by P W. 2 Hari Bant Singh. This is not a valid ground to discard the evidence produced by the plaintiff. It is nobody's case that Gurbachan Singh has taken the plaintiff for admission to the School. Even at that time Gurbachan Singh might have been a child and his evidence would not have been material that any presumption could be raised adverse to the plaintiff. The evidence produced by the defendant was only to the effect that in the service record the date of birth was recorded which entry was (signed by the plaintiff. D. W. 1 O. P. Chug also referred to the motion examination of the plaintiff at the time of entry into service and tentative date of birth confirmed. The medical evidence with respect to determination of age of a person can never be certain as held by Madhya Pradesh High Court in Bhanwar Singh Bhup Singh Rajput Vs. State of M.P., .

9. The entry with respect to recording date of birth in the school registers may not be conclusive evidence but it has evidenciary value and in a given set of circumstances the same can be relied upon. In the present case as per evidence of the plaintiff produced it has been established that the entry in the School's register related to the plaintiff and should have been relied upon by the respondent.

10. The question of limitation was also raised on behalf on the the respondent that the application for correction of date of birth was filed at a belated stage and not within the specified Period of three years mentioned in the instructions. The contention again cannot be accepted The plaintiff who had studied only upto same classes at the initial stage was not certain about the date of birth when he was inducted into service. The plaintiff filed the suit within three years of the order rejecting his application. The said order was passed on 16-7-1981 and the trial court under issue No. 1 held the suit to be within time. This finding was not

challenged in the appeal. Now it is too late in this appeal to urge that the suit was barred by time, Even otherwise the finding of the trial court seems to be correct. It was the order aforesaid which gave cause of action for filing the suit. If the respondent had accepted the application of the plaintiff and corrected the date of birth in the service record, probably there was no necessity of filing the suit.

11. For the reasons recorded above, this appeal is allowed with costs. Judgment and decree of the courts below are set aside and the suit filed by the plaintiff stands decreed for declaration that the order dated 16-7-1981 was illegal, arbitrary and against the principles of natural justice. The respondents are directed by way of injunction to retire the plaintiff taking his correct date of birth as January 10, 1929 and if the plaintiff had already been made to retire, taking his date of birth as August 14, 1923, the benefit of the declaration granted above would be given.