
(2009) 03 P&H CK 0131
In the Punjab And Haryana At Chandigarh

Gita Kumari

APPELLANT

Vs

The Central Administrative Tribunal and Others

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 2 CivCC 559 : (2009) 154 PLR 219 : (2010) 7 RCR(Civil) 477

Hon'ble Judges : Nirmaljit Kaur, J; Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—The challenge in this writ petition is to the order of the Central Administrative Tribunal (hereinafter referred to as the Tribunal) date 17.07.07 vide which the Original Application (for short "OA") of the petitioner herein was dismissed. Through the said OA the petitioner had sought the quashing of the orders dated 20.10.04 and 30.11.05, whereby the respondents had moved the petitioner from the post of Postal Assistant Department of Posts, Ambala, after conducting a departmental enquiry on the charge that she has concealed her true date of birth and accordingly she has acted in a manner unbecoming of a government servant.

2. Brief facts of the case as revealed by the case file are that on 09.06.94 the respondents issued an advertisement for the post of Postal Assistant against direct recruitment vacancies of Ambala Division. As per the advertisement the candidates belonging to OC (outsider candidate) category should have been between the age bracket of 18-25 years as on 30.06.94 i.e. is the last date fixed for receipt of applications and should have passed 10+2 or 12th class from a recognized University/Board of school education. The candidates were required to furnish a copy matriculation or its equivalent examination certificate in proof of the date of birth. In response to the advertisement the petitioner applied for the said job on 30.06.94 alongwith requisite certificates. The matriculation certificate issued by Board of Adult Education & Training, New Delhi and 10+2

certificate issued by the Bihar Intermediate Education Council, Patna reflected the date of birth of the petitioner as 05.01.70. Accordingly she was selected as Postal Assistant in Ambala Division against OC vacancies on the basis of certificates appended by her to the application viz matriculation certificate and 10+2 certificate. After complying with the requisite procedural requirements the petitioner finally joined the said job on 23.07.95.

3. Some time in the year 1995 itself, respondent No,4 received a complaint wherein it was alleged that the petitioner has concealed her true date of birth by procuring forged/fabricated certificates. It was further alleged that as per the true date of birth she is overage and thus was not eligible for the post of Postal Assistant in view of the conditions enumerated in the advertisement.

4. On the basis of the complaint, the respondent No. 4 enquired into the factum of true date of birth of the petitioner. As part of the enquiry, reference was made to various institutions where the petitioner had studied viz Seva Samiti Girls High School Ambala Cantt., Board of School Education Haryana, Bhiwani, Bihar Intermediate Education Council, Patna, Ram Lakhan Singh Yadav College, Patna. All the said institutions in response to the reference stated the actual date of birth of the petitioner to be 05.01.67.

5. Accordingly a show cause notice dated 05.12.95 was served on the petitioner indicating therein that on receipt of a complaint and consequent enquiry thereon, it has been revealed that her date of birth is 05.01.67 and not 05.01.70 as shown by the certificates submitted by her. In response to the show cause notice the petitioner submitted a reply dated 17.12.95 stating therein that her actual date of birth is 05.01.70. It was further stated that her date of birth was mistakenly recorded as 05.01.67 in records of Seva Samiti Girls High School. Further that the correct date of birth i.e. 05.01.70 was given effect in 9th standard when she changed her school from Seva Samiti Girls High School Ambala to J.S. Netaji Subhash School New Delhi in the year 1983.

6. Therefore the admitted position which emerges is that the petitioner successfully passed her 8th standard examination with the date of birth 05.01.67.

7. On consideration of the reply of the petitioner, to the show cause notice, the respondents terminated her services on 19.11.1996. Appeal against the said order was also dismissed by the higher authorities. Finally the petitioner approached the Tribunal by way of an OA No. 504/HR of 1997 impugning the termination order dated 19.11.1996. The learned Tribunal allowed the said OA holding that the applicant's (petitioner herein) services have been terminated without following the due procedure of law. So the applicant was ordered to be reinstated. However the learned Tribunal held that the respondents are at liberty to conduct a regular departmental enquiry into the factum of true date of birth of the applicant. Accordingly, the petitioner was taken back into the job.

8. However on the charge of furnishing a wrong date of birth to procure a job and that such an act is unbecoming of a government servant, a regular

departmental enquiry was initiated against the petitioner. The enquiry officer on appraisal of the evidence concluded that the charge has not been proved: It was observed that, though the charged official, i.e. the petitioner herein did change her date of birth from 05.01.1967 to 05.01.1970 in the year 1984 while taking her matriculation examination under the Board of Adult Education and Training, New Delhi but that was done to rectify a past bona fide mistake. Further it was concluded that advertisement for the job of Postal Assistant was published on 09.06.1994 after about 10 years from the date when the petitioner changed her date of birth. So it can not be expected that a person would change date of his/her birth in the year 1984 to procure a job in the year 1994. Therefore in the light of these observations the enquiry officer exonerated the petitioner of the charges. On perusal of the enquiry report the punishing authority differed with the conclusions arrived at by the enquiry officer and recorded a disagreement note.

9. Admittedly, the disagreement note was served upon the petitioner by letter dated 02.08.04, to which she filed a representation dated 08.09.04. Ultimately, the punishing authority imposed a punishment of removal from service on the petitioner on 20.10.04. Appeal against the said order was rejected by the higher authorities, by order dated 30.11.05. Aggrieved by the said orders dated 20.10.04 and 30.11.05, the petitioner preferred an OA No 41 /PB of 2006 before the Tribunal seeking their quashing. In the OA it was alleged that the punishing authority has imposed the punishment of removal from service without considering the reply to the disagreement note and without properly appreciating the findings of the enquiry officer. It was further alleged that the appellate authority has also rejected the appeal without affording an opportunity of personal hearing.

10. The learned Tribunal dismissed the OA by impugned order dated 17.07.07, holding:

10. From a perusal of the case file, we are convinced that the respondents have held a thorough investigation in the matter and finding that the applicant had submitted a false certificate indicating her date of birth as 05.01. 70, instead of 05.01.67, they came to the conclusion that she was overage (27 years) at the time of the applications for the post. Though in his report, the inquiry officer has held the charge is not proved, but the disciplinary authority can disagree with him and record a dissenting note. He has recorded a dissenting note, copy of which was also supplied to the applicant and then got the matter inquired into independently. There are documents on record, which we can not disbelieve. We are thus of the considered view that the disciplinary authority as also the appellate authority have applied their mind to the matter and no interference is called for by this Court.

11. It is relevant to point out here that the Ministry of Personnel, P.G. & Pension (Deptt. of Personnel & Training), New Delhi have dealt with the issue of action against Govt. servants to be taken if they are later found ineligible or unqualified

for their initial recruitment vide their memorandum no 11012/7/91 Estt. (A) dated 19.5.93. They have placed reliance on the judgment of the Apex Court in the case of District Collector Vizianagram v. M. Tripura Sundari Dev (1990)4 S.L.R. 237 and taken a decision as under:

10. The matter has been examined in consultation with the Ministry of Law and Justice and it has now been decided that wherever it is found that a Government Servant ,who was not qualified or eligible in terms of the recruitment rule etc., for initial recruitment in serviced or had furnished false information or produced a false certificate in order to secure appointment, he should be discharged or his services should be terminated. If he has become a permanent Govt. servant an enquiry as prescribed in Rule 14 of CCS(CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed.

12. In the instant case before us, the applicant has not been able to prove to the satisfaction of this Court that her actual date of birth was 5.1.1970 as shown in A-5, which was ultimately found to be fictitious on investigation. In view of the above mentioned instructions of Ministry of Personnel, PG & Pension, we find no infirmity in the orders A-I and A-2. Consequently, the OA is held to be without any merit and accordingly dismissed. No costs." 11. On notice of the petition the respondent No. 2 to 4 appeared through counsel and filed a detailed reply, reiterating the stand taken by them before the Tribunal.

12. We have heard the Id. counsel for the parties and have perused the record. Learned Counsel for the petitioner vehemently argued that the records of the Seva Samiti Girls High School Ambala wherein petitioner's the date of birth was mistakenly recorded as 05.01.1967 can not be made the basis to conclude that 05.01.1967 is the actual date of birth, more so when firstly the petitioner studied in the said school only upto 8th standard and secondly when the matriculation certificate which is the best evidence of a person's date of birth is reflecting her birth date to be 05.01.1970. It was also argued that the said matriculation certificate is neither forged nor fabricated, rather it has been issued by the Board of Adult Education and Training, New Delhi. Further, that the concerned authorities have failed to pay heed to the documents on record and that it would be a far fetched imagination to conclude that petitioner would tamper with her birth date 10 years prior in the year 1984 ,to obtain a job on its basis in the year 1995. Per contra the Id counsel for the respondents contended that there is overwhelming evidence which goes to clear the mist created by the matriculation certificate issued by the Board and consequently to show that the actual date of birth of the petitioner is 05.01.1967.

13. On thoughtful consideration of the rival contentions of the learned Counsel for the parties, we are of the view that the arguments advanced on behalf of the petitioner lack force. Admittedly, the petitioner's date of birth upto 8th standard, as per the records of Seva Samiti High School is 05.01.1967, though as per her version the same is the outcome of some mistake. However the matriculation

certificate issued by the aforementioned Board shows the birth date to be 05.01.1970. To our minds this certificate is the breeding ground from where the entire controversy has sprouted. On conjoint reading of para 5 of the writ petition and Annexure R/12 the inevitable conclusion which can be arrived at is that on change of school from Seva Samiti Girls High Ambala to J.S. Netaji Subhash School New Delhi in the year 1983 the petitioner changed her date of birth from 05.01.1967 to 05.01.1970 by making a declaration to that effect and without corroborating the same by any other document. Therefore the birth date 05.01.1970 was recorded on the basis of information so supplied by the petitioner and not on the basis of some certificate or other document which in the year 1983 showed or reflected petitioner's date of birth to be 05.01.1970.

14. Accordingly, when the records of the new school, i.e. J.S. Netaji Subhash School, New Delhi showed the birth date of the petitioner to be 05.01.70, so it was natural for the Board also to show the same in the matriculation certificate, more so when it has been made clear in Annexure R-1/2 dated 23.03.1996 that it is not mandatory for the women candidates to produce any educational certificate while taking matriculation examination from any Board. Therefore the necessary corollary would be that, if the said Board had mandatorily required the production of an educational qualification certificate before taking the matriculation examination under its aegis ,then the birth date of 05.01.67 would have been recorded even in the matriculation certificate, as the same was already there on 8th standard certificate issued by the Board of School Education Haryana, Bhiwani and other than the word of mouth the petitioner had no evidence/document to show that she was born on 05.01.1970.

15. Moreover, it cannot be said that a document is forged and fabricated only when there are cuttings, over-writings interpolation or that when it has been unilaterally redrafted to resemble the original by altering its contents. A document is equally forged and fabricated when it incorporates a false information furnished by the person in whose favour it has been issued.

16. It would be fallacious to accept the birth date contained in the matriculation certificate merely on the ground that correction regarding the date was made at a time when it could not have been anticipated by the petitioner that the same would be used by her for securing a job with the respondents in the year 1994. Even if she could not have so anticipated} , the fact remains that her date of birth is 05.01.1967 . In the facts of the case, mere fact that the petitioner could not have so anticipated, can not at all work to her advantage so as to perpetuate a birth date which is without any basis or at the most which is based only on her bald declaration to that effect.

17. Accordingly, we do not find any infirmity in the order of the learned Tribunal which calls for our interference under the writ jurisdiction u/a 226/227 of the Constitution of India. Therefore the present petition is dismissed.