

THE GAUHATI HIGH COURT

(The High Court of Assam : Nagaland: Mizoram and Arunachal Pradesh)

ITANAGAR PERMANENT BENCH

WA 15 (AP)/2017

Kunjang Lama,
Head Constable, (Special Branch),
Bordumsa Police Station, Bordumsa,
District-Changlang, Arunachal Pradesh.

.....***Appellant***

-Versus-

1. The State of Arunachal Pradesh, through the Commissioner, Department of Home, Government of Arunachal Pradesh, Itanagar.
2. The Inspector General of Police, Police Head Quarters, Government of Arunachal Pradesh, Itanagar.
3. The Assistant Inspector General of Police, Police Head Quarters, Government of Arunachal Pradesh, Itanagar.
4. The Superintendent of Police, Changlang District, Changlang, Arunachal Pradesh.

.....***Respondents***

BEFORE

**THE HON'BLE MR. JUSTICE SUMAN SHYAM
THE HON'BLE MR. JUSTICE KALYAN RAI SURANA**

For the Appellant : Mr. P.K. Tiwari, Sr. Advocate.
Mr. K. Saxena, Adv.
For the respondents : Dr. D. Soki, GA, AP.
Date of hearing and judgement: 16/05/2017.

JUDGEMENT AND ORDER (ORAL)

Suman Shyam, J

Heard Mr. P.K. Tiwari, learned senior counsel assisted by Mr. K. Saxena, learned counsel for the appellant. Also heard Mr. D. Soki, learned Additional Senior Government Advocate, Arunachal Pradesh, appearing for the State respondents.

1. This writ appeal is directed against the judgement and order dated 23/08/2016 passed in WP(C) 431(AP)/2016, whereby the learned Single Judge had dismissed the writ petition filed by the appellant, rejecting his claim for correction of date of birth entered in the service book.

2. The brief factual matrix of the case giving rise to the filing of the present appeal is that the appellant had joined the Arunachal Pradesh Police Service as a Constable in the year 1981. His Service Sheet (Service Book) was prepared by the department wherein the date of birth of the appellant had been recorded as 04/08/1958. On 01/09/1997, the appellant was asked to submit his Verification Roll and accordingly the same was submitted by him on 19/11/1997. In the Verification Roll, the appellant had furnished the detail particulars about his family, educational qualification, as well as his date of birth mentioning the same as 11/03/1962. In support of the claim of his date of birth, the appellant had also submitted a certificate dated 05/05/1980 issued by the Head Master of Government Secondary School, Tuting. Since the appellant did not receive any communication from the authorities, hence, he took it for granted that the particulars submitted in the Verification Roll including the date of birth had been duly noted and accepted by the departmental authorities. However, the appellant was surprised to receive a communication dated 01/06/2016, issued by the Deputy Superintendent of Police, Changlang District (AP), whereby it was mentioned that the appellant was due for

retirement on attaining the age of retirement i.e. 58 years with effect from 31/08/2016. On receipt of the said communication, the appellant preferred an appeal before the Assistant Inspector General of Police (E) on 13/06/2016, inter-alia, stating that his correct date of birth was 11/03/1962 and as such, his actual date of retirement would be 31/03/2020. But, the appeal preferred by the appellant was rejected by the authority by the Office Memorandum dated 20/06/2016 on the ground that his request for correction of date of birth was grossly time-barred. Aggrieved by the communication dated 01/06/2016 as well as the subsequent order dated 20/06/2016, the appellant, as writ petitioner, had approached this Court by filing WP(C) 431(AP)/2016, which was dismissed by the learned Single Judge by the impugned judgement and order dated 23/08/2016. Hence, this writ appeal.

3. By referring to the impugned judgement and order dated 23/08/2016, Mr. Tiwari, learned senior counsel for the appellant submits that the learned Single Judge had failed to appreciate that this is not a case where the appellant had sought correction of age at the fag end of his career, inasmuch as, the correct date of birth of the appellant was informed to the authorities together with supporting documents way back in the year 1997. Since the Service Book (Service sheet) of an employee is a confidential document, hence, there was no occasion for the appellant to examine the service record during the period he was in service. Under such circumstances, submits Mr. Tiwari, the appellant did not have any reason to believe that the information furnished by him to the authorities in the prescribed format on 19/11/1997 (Verification Roll) would not be accepted since no such decision was ever communicated to the appellant at any point of time. The learned senior counsel submits that this is a clear case where the respondent authorities have failed to correct the service record on the basis of proper and authentic

information furnished by the appellant regarding his date of birth in the year 1997 and, therefore, the learned Single Judge was not right in rejecting the prayer made by the appellant.

4. The State respondents did not file any affidavit in the matter. However, the records including the Service Sheet of the appellant has been produced for perusal by this Court.

5. Referring to the Service Sheet of the appellant, Mr. D. Soki, learned Additional Senior Government Advocate, Arunachal Pradesh submits that the date of birth of the appellant was entered as 04/08/1958 in his Service Sheet and the appellant never made any request for correction of the same. Even thereafter, the appellant had submitted "Form – 3" under his signature, wherein the date of birth has again been shown as 04/08/1958. Therefore, the authorities have taken note of such entry in the Service Sheet and thereafter, issued the communication dated 01/06/2016, after correct calculation of his date of retirement. Mr. Soki submits that law is well settled that on the eve of retirement, a Government employee cannot be permitted to seek correction of his date of birth so as to extend his service tenure. He further submits that as per the Government circular dated 24/03/2014, a request for alteration of date of birth made within a year or two of the date of superannuation is not acceptable. Even in case of a request made within the permissible time for correction of age, submits Mr. Soki, correction can be made only if the same is supported by satisfactory documentary evidence together with explanation as regards the circumstances under which the incorrect date came to be entered into the Service Record. The learned State Counsel submits that since the departmental appeal of the appellant was submitted only on 13/06/2016 i.e. barely 2 (two) months prior to his date of retirement, the same has been rightly

rejected by the competent authority by relying upon the Office Memorandum dated 24/03/2014, issued by the Government of Arunachal Pradesh.

6. We have considered the rival submissions made at the bar and have also perused the records.

7. At the out-set, it requires to be mentioned that in the Service Sheet of the appellant, his date of birth has been mentioned as "4th August 1958". The round seal in the cover page of the Service Sheet goes to show that the same was prepared on 01/09/1986. But we have also noticed that the Service Sheet does not bear any certification by a competent authority that the information recorded therein are correct and have been done so after due verification. There is also no indication to the effect that the said date was furnished by the appellant.

8. On 23/08/1997, the appellant appears to have submitted "Form-3" as per Rule 54(12) wherein also, his date of birth has been mentioned as "4th August 1958". What would, however, be significant to note herein that on 19/11/1997, the appellant had submitted a Verification Roll indicating his correct date of birth which was supported by a certificate issued by the Head Master of the Government Secondary School, Tuting. The original Verification Roll is available on record.

9. Noticing that there were two sets of contradictory information apparently furnished by the appellant regarding his date of birth in the form of "Form-3" and the "Verification Roll" within a span of only a few months, this Court had made a query with the learned counsel for the appellant to explain the aforesaid anomaly. Responding to the said query, Mr. Tiwari has invited the attention of this Court to the additional affidavit dated 03/02/2017 filed by the appellant, whereby explanation has been brought on record as to the circumstances under which "Form-3" came to be placed on his Service Record. According to the statement

made in the affidavit, the appellant was asked to put his signature on several blank forms which were apparently filled up later on by the authorities. According to Mr. Tiwari, it is possible that "Form-3" was also filled up by the departmental authorities by referring to the earlier entries made in the Service Sheet. The learned senior counsel for the appellant has, however, steadfastly denied that the appellant had ever stated his date of birth to be 4th August 1958 before the authorities.

10. The respondents have neither disputed the school certificate dated 05/05/1980 nor have they denied the fact that the appellant had, in fact, submitted Verification Roll on 19/11/1997 enclosing a copy of the school certificate. The respondents have also not filed any rejoinder affidavit disputing the statements made in the affidavit dated 03/02/2017 filed by the appellant in the present proceeding.

11. From a scrutiny of the verification roll dated 19/11/1997, we find that on the rear part of the said form, there is a Police report to the effect that the particulars were verified and found no adverse record against the appellant. The aforesaid report appears to have been given by the Officer-in-Charge, Tuting Police Station on 03/06/1998.

12. From the above, it is established beyond doubt that the respondent authorities had not only received the Verification Roll submitted by the appellant on 19/11/1997 but the same was also acted upon by carrying out necessary Police verification. Since it is not in dispute that the respondent authorities had never rejected the entries made in the Verification Roll by the appellant including the particulars about his date of birth, hence, it logically follows that the said verification was accepted to be correct by the departmental authorities.

13. There can be hardly any doubt about the fact that in the service sheet, the date of birth of the appellant has been recorded as 4th August 1958. But, we do not find anything on record to suggest as to on what basis, such an entry was made in the service book. Even assuming that it was the appellant who had furnished the said information, even then, there is nothing in the Rules precluding him from furnishing proper and better information regarding the date of birth, seeking correction of the same, provided such application is made within the prescribed time limit.

14. In the case in hand, we find that at the time of entry in the service, the appellant was Class-VII passed and aged about 19 years. Therefore, he did meet the eligibility norms for entering the service, both in terms of qualification and age. Since the purpose of the verification roll was to gather updated and authentic information regarding the personal details of the employees, it is difficult to comprehend that the respondent authorities did not take note of the date of birth furnished in the verification roll submitted by the appellant.

15. The learned Single Judge had relied upon the decision of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh and others Vs. Premlal Srivas* reported in (2011) 9 SCC 664 as well as in the case of *State of Tamil Nadu Vs. T.V. Venugopalan* reported in (1994) 6 SCC 302 to dismiss the writ petition. In the case of *State of Madhya Pradesh Vs. Premlal Srivas* (Supra), the date of birth was originally recorded in the service book on the basis of information furnished by the applicant himself. In *State of Tamil Nadu Vs. T.V. Venugopalan* (Supra), the application for correction was made only a year before the date of superannuation. What needs to be noted herein that in both the aforementioned decisions, the Hon'ble Supreme Court has deprecated the practice of seeking correction of date of

birth at the fag end of the service career of an employee by observing that permitting such correction at the fag end of the service tenure at the intervention of the Courts and Tribunals, would give impetus to resort to fabrication of records.

16. From the facts noted hereinabove, it would be evident that in the present case, the appellant has not made a claim for correction of date of birth at the fag end of his career and by fabricating documents. The claim of the appellant is based on information furnished by him way back on 19/11/1997 which information was apparently not acted upon properly by the authorities. Rather, the silence of the authorities over the years would indicate that the information furnished in the Verification Roll was actually accepted by the respondents. Having failed to dispute the claim of the appellant made in the verification roll pertaining to his correct date of birth, the respondents would be clearly estopped from taking a contrary stand in the matter after the expiry of nearly 20 years since the receipt of the verification roll. In view of the observations made above, we are of the opinion that the ratio laid down in the case of State of Madhya Pradesh and others Vs. Premlal Srivas and State of Tamil Nadu Vs. T.V. Venugopalan (supra), relied upon by the learned Single Judge would not be applicable in the facts and circumstances of the present case. Even under the OM dated 24/03/2014, the claim of the appellant can not be held to be time-barred since the foundation of the claim was laid way back on 19/11/1997.

17. There is no law applicable in this case that puts an absolute bar on the correction of date of birth entered in the appellant's service book. Therefore, each claim for correction of date of birth will have to dealt with on its own merit. Every Government employee has a legitimate right to continue in service until he attains the actual age of superannuation and hence, he would be entitled to lodge a claim

for correction of date of birth by following proper procedure and within the permissible time.

18. In the present case, the appellant had submitted the documentary evidence of his actual date of birth to be 11/03/1962 in the form of School Certificate issued on 05/05/1980. The authenticity of the school certificate has not been disputed by the respondent. The aforesaid evidence was available before the respondents on 19/11/1997. The respondents have admittedly not rejected the claim made by the appellant based on the school certificate. Therefore, in the absence of any contrary material available on record, the correct date of birth of the appellant will have to be accepted as 11/02/1962. It is accordingly held so.

19. The department is the custodian of the service book and, therefore, maintenance and up keep of the said record, by entering the correct particulars therein is the sole responsibility of the employer. The said responsibility can never be shifted to the employee. Once the appellant had furnished the correct particulars of date of birth, backed by documentary evidence well within the prescribed time, he was entitled to a proper consideration of the same by the department which has not been done in the present case. From the materials on record we also do not find any valid ground to doubt the bonafide of the appellant's claim. Under the circumstances, denying the appellant his full tenure as per the correct date of birth merely on the ground that the same was time barred, in our view, would lead to injustice being caused to the appellant in the facts of the present case.

20. For the reasons stated hereinabove, we are of the view that the learned Single Judge was not correct in dismissing the writ petition filed by the appellant by holding it to be time-barred. We, therefore, allow the writ petition filed by the appellant by making the following directions :-

- i) The appellant would be reinstated back in service within a period of 15 (fifteen) days from the date of receipt of a copy of this order and allowed to retire on attaining the age of superannuation treating his date of birth as 11/03/1962;
- ii) The period from 31/08/2016 till the date of reinstatement pursuant to this order shall be notionally treated as "in service" for the purpose of computing the appellant's pensionary benefits;
- iii) In the event of failure on the part of the respondents to reinstate the appellant within 15 days from the receipt of certified copy of the order, the respondents would be liable to pay interest @ 12% per annum on the salary and allowances payable to the petitioner for the remaining period of his service with effect from today till realisation of the amount.

Records be returned back

There would be no order as to costs.

JUDGE

JUDGE

Sukhamay