

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

CWP No.937 of 2000

Reserved on 10.3.2008

Date of decision 31.3.2008

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Jyoti Lal Sharma

Petitioner

Vs.

H.P. State Elec. Board & anr.

Respondents

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Coram:

The Hon'ble Mr. Justice      Deepak Gupta, Judge

The Hon'ble Mr. Justice      Rajiv Sharma, Judge

Whether approved for reporting?<sup>1</sup> No.

For the Petitioners:              Mr. Anuj Nag, Advocate

For the Respondents :          Mr. Baldev Singh, Advocate.

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**Rajiv Sharma, J.**

A challenge has been laid by way of this petition to the order passed by the Himachal Pradesh State Administrative Tribunal in O.A.(M) No.99 of 1994 on June 19, 2000.

The brief facts necessary for the adjudication of this petition are that the petitioner joined the service on 23.3.1956. A seniority list was circulated on 9.9.1974 of the Assistant Engineers (Electrical) as it stood on 1.8.1974. In this seniority list the name of the petitioner appeared at Serial No.48 and his date of birth was reflected as 25.12.1936. The petitioner made a representation and consequently the Superintending Engineer, Shimla Hydel Circle, HPSEB Shimla revised the seniority list and date of birth of the petitioner was reflected as 15.6.1938. The Executive Engineer, HPSEB, Jogindernagar sent a communication to the Accounts Officer

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<sup>1</sup> Whether reporter of local papers are allowed to see the judgment? No.

giving therein the detail of the service particulars of the petitioner for the purpose of reconstruction of the service record after out break of fire in the Kumar House. The petitioner submitted all the relevant particulars/documents to the Accounts Officer on 14.2.1982. The seniority list of Assistant Engineers (Electrical) was circulated on 19.7.1983. The name of the petitioner was reflected at Serial No.36 and his date of birth was mentioned as 15.6.1938. It appears that necessary entries were made as reflected in column of date of birth on the basis of matriculation certificate furnished by the petitioner. The petitioner came to know in the year 1989 that in the reconstructed service book his date of birth has been reflected again as 25.12.1936. He made a representation to the Chief Accounts Officer, HPSEB, Shimla on 17.2.1989 which was forwarded vide letter dated 17.2.1989 itself. He has also made a representation to the Secretary as well as Chairman of the H.P.S.E.B. for carrying out necessary correction in his date of birth from 25.12.1936 to 15.6.1938. He also brought to the notice of Secretary in the communication dated 19.5.1993 that his date of birth in the tentative seniority list of Executive Engineers (E) dated 12.12.1991 has been mentioned as 25.12.1936 instead of 15.6.1938. The representation made by the petitioner for carrying out necessary correction in the date of birth in the service book and in the tentative seniority list of Executive Engineers (E) dated 12.12.1991 was turned down by the Secretary of the respondent Board on 28.8.1993.

The petitioner preferred an O.A. before the H.P. State Administrative Tribunal for carrying out the necessary corrections in his service book as well as in the seniority list and further praying for therein that he should have been superannuated with effect from 14.6.1996 instead of 31.12.1994. The learned Tribunal dismissed the O.A. preferred by the petitioner after holding that the date of birth of the petitioner could

not be altered from 25.12.1936 to 15.6.1938 and the O.A. was also barred by limitation.

Mr. Anuj Nag, the learned counsel appearing for the petitioner had strenuously argued that the findings recorded by the learned Tribunal are not sustainable. He further contended that the O.A. was within limitation since the case of his client was finally turned down for correction of date of birth in the reconstructed record as well as in the seniority list only on 28.5.1993 and the O.A. was filed on 13.5.1994. Mr. Baldev Singh, the learned counsel for the respondents had supported the order of the learned Tribunal.

We have heard learned counsel for the parties and perused the record.

Firstly, we would like to discuss the second contention made by Mr. Anuj Nag to the effect that the O.A. was within limitation. It is evident from the material placed on record that on the basis of the representation made by the petitioner the date of birth was changed from 25.12.1936 to 15.6.1938 in the seniority list of the Assistant Engineers (Electrical) as it stood on 1.8.1974. The date of birth of the petitioner in the seniority list of the Executive Engineers (E) was changed to 25.12.1936 as it stood in the year 1991. He made a representation and the same was rejected only on 28.8.1993. The Original Application was filed on 13.5.1994. In view of the sequence of events as discussed here in above, the O.A. preferred by the petitioner was within limitation and the finding recorded to the contrary by the learned Tribunal is erroneous. It is held that the O.A. preferred by the petitioner was within limitation.

Now we have to consider the first contention raised by the petitioner that the learned Tribunal has erred in law by coming to conclusion that the date of birth of the petitioner could not be altered from 25.12.1936 to 15.6.1938. In the matriculation certificate furnished by the

petitioner the date of birth of the petitioner is mentioned as 15.6.1938. The petitioner had submitted the matriculation certificate for the consideration of higher authorities as is evident from forwarding letter sent by the authorities even at the stage of reconstruction of the service record. It is evident from the contents of letter dated 6.3.1975 that the Superintending Engineer, Shimla Hydel Circle, HPSEB, Shimla had carried out the necessary correction in the seniority list of Assistant Executive Engineer by specifically reflecting the date of birth of the petitioner as 15.6.1938 instead of 25.12.1936. The same position was reflected in the original seniority list of Assistant Engineer (Electrical) as it stood on 1.1.1983. It is only in the seniority list of Executive Engineer (E) circulated on 12.12.1991 that the date of birth of the petitioner was again mentioned as 25.12.1936 instead of 15.6.1938. The petitioner has placed sufficient material on record to establish that his date of birth is 15.6.1938. The same was required to be carried out in the service record by altering his date of birth. The petitioner has taken all necessary steps within his reach to apprise the authorities of the true facts on the basis of the matriculation certificate. The learned Tribunal has not discussed this aspect of the matter and had only relied upon the fact that the petitioner had signed his service record whereby his date of birth was shown as 25.12.1936. True it may be that in the earlier record the date of birth of the petitioner was recorded as 25.12.1936 but the petitioner had subsequently brought clinching evidence on record before the authorities on the basis of which necessary corrections were required to be made in the service record. The petitioner had made a detailed representation to the Secretary as well as to the Chairman of the respondent Board. The case of the petitioner was also forwarded by his immediate superiors. The representation made by the petitioner has been rejected without a speaking order on 28.8.1993. Though detailed reasons were not required to be furnished to the

petitioner but a short speaking order was required to be passed on the representation made by the petitioner to apprise him of the exact position. It is incumbent upon the authorities even on administrative side to pass short speaking order when the same is likely to be assailed before the competent courts of law. The assigning of reasons is necessary to enable the Court to see whether there is due application of mind or not and the points raised by the employee in the representation have been properly taken into consideration or not.

In view of the above discussion the writ petition is allowed. The order dated 19.6.2000 passed by the learned Tribunal is quashed and set aside. Consequently it is held that the petitioner would be deemed to have retired with effect from 14.6.1996 instead of 31.12.1994 with all consequential benefits. No order as to costs.

March 31 , 2008  
(g)

**(Rajiv Sharma),  
Judge.**

**(Deepak Gupta),  
Judge.**