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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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O.A. No. 275 of 1989.

Date of Judgment: March 16, 1989.

Shri S.K.Dewan Applicant.

Vs.

1. Director General Civil Defence,
Bahadurshah Zafar Marg,
Express Building, New Delhi.
2. Commandant, Mobile Civil Emergency Force,
Malviya Nagar Extension Area,
NEW DELHI. RESPONDENTS.

PRESENT:

Shri G.K.Srivatava Counsel for the Applicant.

Shri M.L.Verma, Counsel for the Respondent.

CORAM:

Hon'ble Shri B.C.Mathur, Vice-Chairman.

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This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri S.K.Dewan against the impugned Order No1445 dated 26-10-1988 passed by the Commandant, Mobile Civil Emergency Force, New Delhi ordering retirement of the applicant on attaining his superannuation on 28-2-1989.

[Signature] The brief facts of the case are:

That the applicant migrated from Pakistan in 1947 and joined the Territorial Army on 20-2-1950 after passing the Matriculation Examination of the East Punjab University under Special Social Service Regulations. The

Matriculation Certificate does not indicate the date of birth of the applicant. According to the applicant he was only 16 years of age when he joined the Territorial Army but as he wanted the job due to financial difficulties, he gave his age as 19 years. According to the memory, the applicant says that his date of birth was 15th November. The applicant says that when he joined the Ministry of Home Affairs, he gave his date of birth as 15-11-1931. According to him he was actually born in 1934 but since he had given his date of birth in the Territorial Army as 19 years, he gave his date of birth as 15-11-1931. When he was asked to prove his date of birth, he filed his Matriculation Certificate and also gave an affidavit stating his date of birth as November 15, 1934. The Authorities have accepted this date of birth and recorded the same in the service record of the applicant. The Applicant's date of birth therefore remains as 15-11-1934 for about 18 years. In 1986, he was asked to explain the circumstances under which he gave false affidavit showing his date of birth as 15-11-1934 when his established date of birth was 15-11-1931, he had stated that he had given that date while joining the Territorial Army on 2-2-1950 (Annexure 'B' to the Application). The Applicant received another Office Memorandum dated 6-10-1988 whereby his date of birth was changed to 20-2-1931 without giving him any opportunity and based on that he was retired on 28-2-1989. The applicant sought a personal hearing before Respondent No.2 but the same was denied.

In support of his date of birth the applicant had filed an affidavit of his mother indicating his date of birth as 15-11-1934. He has, however, no other proof like any School Leaving Certificate, a Register in the Village Panchayat indicating the date of birth or even a Horoscope.

The respondents in their reply have stated that the actual date of birth of the applicant is 20-2-1931. The applicant himself has given his age as 19 years on 20-2-1950

and he wanted to change it illegally as 15-11-1934. The applicant managed to tamper with the date of birth in the official records. The applicant also mentioned his date of birth as 20-2-1931 in his pension papers. A person who enters into service by concealing his correct age and thereby committing a fraud cannot be given any advantage of age at a later stage and therefore the application should be dismissed on this ground alone. Since the applicant gave his date of birth as 19 years as on 20-2-1950, the correct date of birth would be 20-2-1931.

It is admitted by both the parties that the applicant had given a false date of birth at the time of joining of the Territorial Army in order to get into an entry in Government service. The age of 19 years given by the applicant was, however, an approximate age and under normal circumstances, it should have been recorded as 20-2-1931. However, when the applicant applied for service, in the Ministry of Home Affairs, he had given his date of birth as 15-11-1931 which was recorded in the service book and the entry remained as such for a long time. The date of birth 20-2-1931 was not ~~correct~~ ^{recorded} as such in the records of Territorial Army. It only mentions that he was 19 years old on joining the territorial army on 20-2-1950. The Ministry of Home Affairs should have therefore written his date of birth as 20-2-1931 when he joined service ~~but~~ this was not done. Only in 1988, the date of birth was changed to 20-2-1931 from 15-11-1934 presuming that the entry of 15-11-1934 is either forged or otherwise. ~~When the order~~ ^{to explain} ~~order~~ The applicant was called on 29-9-1986 (Annexure 'B' to the Application) why he gave false affidavit stating that his date of birth was 15-11-1934. However, the date of birth of the applicant was changed to 20-2-1931 vide orders dated 6-10-1988. He was not given any opportunity to explain

his case for change of date of birth. His date of birth was changed to 20-2-1931 by the respondents on the ground that he was assessed to be 19 years of age on 20-2-1950 when he entered the Territorial Army service. While it is true, that this date should have been recorded but before changing the date of birth in the official records to the disadvantage of the applicant, an opportunity should have been given to him to explain his case but instead of doing so, according to the orders dated 6-10-1988 (Annexure E to the application) his date of birth was recorded as 20-2-1931 instead of 15-11-1934. As such proper procedure has not been followed.

Since the applicant himself has stated that his age at the time of entering into Territorial Army as 19 years, knowing it well that he had given a false statement, he cannot be allowed the advantage of longer service and therefore his claim that his date of birth should be 15-11-1934 cannot be accepted. Even on merits, there is no convincing evidence to prove his date of birth is 15-11-1934. At the same time, the date of birth as 20-2-1931 would only be on surmise or an approximate age. It is, therefore, held that the date of birth of the applicant should continue to be 15-11-1931 as recorded in the Service Book and he should therefore be retired on 30-11-1989. The respondents are, therefore, directed to record the date of birth of the applicant as 15-11-1931 in the official records and give him all the benefits accordingly. The application is accordingly allowed in part. There will be no order as to costs.

B.C. Mathur
 (B.C. MATHUR) 16.3.89
 Vice-Chairman.