

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00018/2019

With

Misc. Application No. 040/00017/2021

Date of Order: This, the 29th Day of January, 2021

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)



Smti Chinu Rupa Dutta
MES No. 239227
Wife of Gulap Chandra Dutta
Working as Duftry (Now MTS)
Office of G.E (Air Force)
MES Jorhat, Pin – 900661, C/O – 99 APO.

-Versus-

1. The Union of India
Represented by Secretary to the
Govt. of India, Ministry of Defence
New Delhi.
2. Headquarters
Chief Engineer
Eastern Command
Engineers Branch, Fort William
C/O 99 A0, Pin – 908542.
3. The Garrison Engineer (Air Force)
MES Jorhat, Pin – 900661
C/O – 99 APO.

...Respondents.

For the Applicant : Sri M. Chanda, Smt. U. Dutta &
Sri J. Tikam

For the Respondents : Sri S.K. Ghosh, Addl. CGSC

ORDER (ORAL)

MANJULA DAS (JUDICIAL MEMBER):

Being aggrieved with the impugned order dated 24.12.2012 by which the applicant's date of birth was recorded as 01.02.1961 instead of 01.11.1964 as well as communication letter dated 26.05.2018 by which intimated that HQ CEEC, Kolkata has confirmed that the date of birth and date of retirement is 01.02.1961 and 31.01.2021, the applicant approached before this Tribunal under section 19 of the Administrative Tribunal, Act 1985 seeking the following reliefs:

“8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned letter No. PF/CRD/Duftry/66/E1R dated 26.05.2018 (Annexure-A2) and impugned Part II order dated 24.12.2012 (Annexure-A1)

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to treat the date of birth of the applicant as on 01.11.1964 in all service record.

8.3 Costs of the application.

8.4 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper”

2. Brief facts as narrated by the applicant are that- the applicant is working as Duftry (now MTS) in the office of Garrison Engineer (Air Force), MES Jorhat. She initially joined as Peon on 31.10.1995 in the department of MES.



The applicant stated that as per school certificate issued on 17.02.1988 the date of birth of the applicant is 01.11.1964. She submitted school certificate at the time of her joining and on the basis of her school certificate, date of birth has been entered in the service book as 30.11.1964. All of a sudden the impugned Part II order dated 24.12.2012 was issued and the date of birth of the applicant in service book has been altered. The applicant submitted representations along with her school certificate, PAN card and Birth Certificate. However, the respondents ignored the school certificate, Birth Certificate and vide impugned letter dated 26.05.2018 intimated the applicant that her date of birth is 01.02.1961. Hence, this O.A. before this Tribunal.

3. Heard Sri M. Chanda, learned counsel for the applicant and Sri S.K. Ghosh, learned Addl. CGSC for the respondents.

4. Sri M. Chanda, learned counsel for the applicant raised the issue that recording of date of birth originally in the papers while the applicant was entered in her service the date of birth was 01.11.1964 as per school certificate



dated 17.02.1988. However, the department without any intimation or notice to the applicant, altered themselves unilaterally and put in the official papers as 01.02.1961 which is not at all permissible under the law.

5. Sri M. Chanda, learned counsel has drawn my attention to Para 2 & 3 of Swami's handbook i.e. Entry of Date of Birth in Service Record and Subsequent alteration of Date of Birth.



6. Learned counsel further has drawn my attention to the School Certificate dated 17.02.1988 (Annexure-A3) which says that date of the birth of the applicant on 01.03.1982 is 17 years 4 months and if so calculated on the basis of said school certificate which was placed before the authority at the time of joining, the actual date of birth is 1.11.1964. It is totally unbelievable and surprising that on what basis the respondent authorities have altered the date of birth of the applicant in their paper i.e. Part II order dated 24.12.2012 (impugned herein) wherein it is written as -Amendment of PTO - 'FOR': Date of birth 01.02.1961 'READ': Date of birth 01.02.1961. Hence, this is challenged by this O.A. Second

paper was issued on 26.05.2018 which was the intimation to the applicant from Garrison Engineer (Air Force) PIN 900661 C/o 99 APO that HQ CEEC Kolkata has confirmed that date of birth and date of retirement of the applicant is 01.02.1961 and 31.01.2021 respectively as per available records and service documents which has been issued by Barun Dam, AE (Civ) for Garrison Engineer (AF).



7. Sri M. Chanda, learned counsel has drawn my attention to the Birth Certificate dated 15.10.2014, Annexure-A5 to the O.A. which was issued by the Department of Health Service, Government of Assam, Registration of Birth and Death, where it is written that the name of the applicant is Chinu Chaliha, Date of Birth is 01.11.1964 and her name of her parents are Tivili Chaliha (Mother) and Late Baputi Chaliha (Father) respectively.

8. It was submitted by the learned counsel that after marriage of the applicant, she changed her title from Chinu Chaliha to Shinu Rupa Dutta. According to the learned counsel, if any alteration is to be made by the authority, that ought to have been on the basis of paper by providing her to verify the bona-fide mistake if

any and without giving any opportunity to verify the unilateral alteration of the date of birth cannot be sustainable.

9. Sri Chanda vehemently argued that unilateral alteration of date of birth of the applicant in her Service Book after 17 years of service without taking into account the date of birth as per School Leaving Certificate issued on 17.02.1988 is not permissible and as such, the impugned order dated 24.12.2012 is void ab initio.



10. In the instant case, notice was issued on 31.01.2019. Thereafter, on several occasions i.e. on 03.04.2019, on 11.07.2019 and even on 06.09.2019 as a last chance, time was granted to the respondents to file their reply/written statement so as to defend their case in proper manner. Even the respondents, at the time of hearing, failed to submit the Service Book or any other documents so as to exhibit on evidence and establish their case that the alteration made unilaterally by the respondent authority is a correct one. In the statement on the basis of relevant papers and documents as annexed in the O.A., have not been rebutted by the

respondent authorities in any way. Sri S.K. Ghosh, learned Addl. CGSC (who representing the respondents) submitted that despite his best efforts, the respondents failed to instruct him to defend the case on behalf of them.



11. Sri M. Chanda, learned counsel for the applicant has further brought out the notice of the Court on the decision of this Tribunal dated 02.06.2015 passed in O.A. No. 165/2014 in the case of similarly situated individual wherein this Tribunal relied the decision of Hon'ble Apex Court rendered in the case of **M/s Bharat Coking Coal Ltd. and others Vs. Chhota Birla Uranuw, AIR 2014 SC 1975.**

12. Having heard the learned counsel, perusal of the pleadings and material placed before me, the only issue to be decided as to whether putting of date of birth by the department subsequently as 01.02.1961 instead of 01.11.1964 is fair, proper and permissible under the law? It is not disputed that school certificate dated 17.02.1988 was produced before the respondent authority at the time of joining as Duftry in the office of the MES. It is also

not disputed that originally amendment/alteration of date of birth of the applicant was made from 30.11.1964 to 01.02.1961 which has been appeared from PTO paper dated 24.12.2012. Thus, it is explicit clear that same was not rebutted either by the respondents or by the engaged Addl. CGSC that said alteration was made unilaterally without intimation and providing opportunity to verify the records and to submit the paper if any with the applicant's hand.



13. From the School Certificate dated 17.02.1988 as well as Birth Certificate dated 15.10.2014 issued by the Government of Assam, Department of Health Services, Registration of Births and Deaths, it is shown that the age of the applicant is 17 years 4 months as on 31.03.1982 and if is calculated, it is found that the date of birth of the applicant is 01.11.1964. Thus, there is no ambiguity that date of birth of the applicant is 01.11.1964. For recording date of birth, the Matriculation Certificate is to be considered as genuine. The Hon'ble Apex Court in the case of **M/S Bharat Coking Coal Ltd. and others Vs. Chhota Birla Uranw, AIR 2014 SC 1975** held that – “.....Certificate issued after joining service but on basis

of school record containing date of birth – cannot be disregarded as one issued after joining service". In the said case, it was further held that – "Claim of the employer that other non-statutory documents like school leaving certificate should not be given precedents over service record cannot hold good".



14. It is also not disputed that papers annexed herewith to establish the case of the applicant is not genuine. It is also clearly stipulated in the **Complete Manual on Establishment and Administration of Swamy's Handbook-2011** at Sl. No. 2 that – *The actual date or assumed Date of Birth determined as above will be recorded in the service Book or their Service Records. Once entered, it cannot be altered, without prior order of Head of Department, except in the case of a clerical error."*

15. By relying the decision of Hon'ble Apex Court in the case of **M/s Bharat Cooking Coal Ltd. and others (supra)**, this Tribunal vide order dated 2nd June 2015 in O.A. No. 165/2014 in the case of similarly situated person, has passed the following order:-

“11. In the above backdrop and after taking into consideration the entire conspectus of the case as well as the above decisions of the Hon’ble Apex Court, I direct the respondents to correct the date of birth of the applicant and his date of retirement be computed by treating his date of birth as 01.01.1955 as recorded in the HSLC Examination Passed Certificate issued by the Principal, Government Boys’ H.S. School, Solchar as well as the Admit Card issued by the Board of Secondary Education, Assam, Guwahati, copies of which have been certified as true copies by Mr. M. Chanda, learned counsel for the applicant, and annexed to the O.A. as Annexures – 2 & 3.

12. In the result, the O.A. stands disposed of. No order as to costs.”



16. I do not find any logical reason to put forth by the respondent authority not recording the date of birth in the Service Book of the applicant as per the Admit Card and the HSLC Passed Certificate dated 17.02.1988. The decisions of the respondents to retire the applicant on superannuation on 31.01.2021 (by treating her date of birth as 01.02.1961 instead of 01.11.1964) is not sustainable in law.

17. By taking into consideration the entire conspectus of the case as well as decisions relied upon as above and as not disputed with any papers either by the respondents or by their representative on the statements made by the applicant herein, this O.A. deserves to be allowed. Accordingly, impugned order

dated 26.05.2018 under No. PF/CRD/Duftry/66/E1R as well as impugned Part II order dated 24.12.2012 are hereby quashed and set aside. Respondent authorities are hereby directed to correct the date of birth of the applicant as 01.11.1964 and retirement of the applicant be made by treating the date of birth of the applicant as 01.11.1964 accordingly.



18. O.A. stands allowed to the extent as indicated above.
19. Consequently, M.A. No. 040/00017/2021 by which the applicant prayed for interim order to the extent that she may be allowed to continue as Duftry, treating her Date of Birth as on 01.11.1964 in all service records also stands disposed of.
20. No order as to costs.

**(MANJULA DAS)
MEMBER (J)**