

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

OA No. 748/86
Sh. Jai Narain

Date of decision: 12th Oct. 92
Applicant

versus

Union of India through
Secretary,
Ministry of Defence & Air....

Respondents

CORAM: THE HON'BLE SH. T. S. OBEROI, MEMBER (J)
THE HON'BLE SH. P. C. JAIN, MEMBER (A)

For the Applicant ...

Ms. Sunita Rao,
Counsel.

For the Respondents ...

Ms. Nisha Sahay,
proxy counsel
for Sh. M. L. Verma,
counsel.

1. Whether local reporters may be allowed to see the judgement? *Yes*.
2. To be referred to the reporter or not? *No*.

JUDGEMENT

(DELIVERED BY HON'BLE SH. T. S. OBEROI,
MEMBER (J))

Facts giving rise to the filing of the present OA under Section 19 of the Administrative Tribunals Act, 1985, briefly stated, are that the applicant, before his employment in Military Engineering Service (MES, for short), had served in the Indian Army, and the date of birth, as recorded in his service record, prepared in the two services, differed, inasmuch as the date of birth recorded in his service with the MES was 9.1.26, whereas that in the Indian Army was 25.9.21. This resulted in applicant's continuance in later service in MES, by 3 years and 15^{days}/more. On this anomaly being detected

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by the authorities concerned, in MES department, the applicant was called upon to explain about the same. It was also alleged on behalf of the respondents in the MES department that the applicant deliberately suppressed the factum of his having rendered Army Service, before his entry into the MES, with a view to remain in service for additional spell of 3 years and 15 days, and also to avail of the pay and allowances for this period, and hence, he should be made to refund the pay and allowances drawn by him for this excessive period, by adjustment from his retiral benefits, due payment to him. This was contested by the applicant, on the ground that being illiterate, he did not know about his date of birth recorded by the authorities concerned, in his record of service, prepared by the Army authorities, nor the one recorded by them in his discharge certificate, and,

therefore, he could not disclose the same, at the time of his entry into service in the MES. The allegations regarding the deliberate suppression of the previous service put in by him in the Army, with an eye to remain in service for greater spell of 3 years and 15 days or so, were vehemently denied.

2. We have heard the learned counsel for both the parties and have also perused the material

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placed by them, on record, in support of their respective contentions. Reliance was also placed by the learned counsel for the applicant in a case reported in (1990)14 ATC 250 (Kalinath Sarma Vs. Union of India & ors.) in support of applicant's case.

3. The learned counsel for the respondents pleaded that it does not stand to reason that the applicant would not have known about the date of his birth or age, as recorded by the Army authorities, at the time of his entry into that service, and, therefore, his non-disclosure of the Army service, at the time of entry into MES, would have been motivated with the obvious intention of remaining in service for longer spell, and also with a view to reap other benefits, consequent thereto, and accordingly, the applicant should at least be burdened with the ^{refund of} pay and allowances drawn by him unauthorisedly, for the period in question, by recovering the same from his retiral benefits. The learned counsel for the applicant, on the other hand, prayed for the payment of retiral benefits, by taking into account the ^{additional} spell of 3 years and 15 days of service rendered by the applicant, in

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the MES, and paying him the retiral benefits at the enhanced rates, that may accrue to him, stating that it was the fault of the administrative authorities concerned, not to reconcile the applicant's date of birth/age, at appropriate stage and time and, therefore, the applicant should not be made to suffer or lose in the matter of his retiral benefits.

4. We have given our careful consideration to the rival contentions, as briefly discussed above. Keeping in view the peculiar facts and circumstances of the case and in the interest of justice, we order that the applicant's date of superannuation be determined with respect to his entry into first service in the Army and the period for which he overserved by 3 years and 15 days may be taken as is re-employment, without any liability on his part to refund the pay and allowances already drawn and paid to him, particularly so in view of the respondents having availed of applicant's services, for period over-spent by him in service. His pension and other retiral benefits shall also be reckonable on the date of his superannuation as worked out with reference to his first entry into Army, and at the rate of the emoluments payable to him on that date. Action on the above lines, be accomplished by the respondents, as early

as possible, and preferably within three months from the receipt of a copy of this judgement. The OA is disposed of on the above lines with no order as to costs.

C. C.
(P.C.JAIN) 12/10/92
MEMBER(A)

T. S. Oberoi
(T.S.OBEROI) 12.10.92
MEMBER(J)