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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

REGN.No.OA 485/91

Date of decision: 12 March 1991

Shri Mohd.Wasim ... Applicant

versus

Union of India & Ors. ... Respondents

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THE HON'BLE MR.JUSTICE RAM PAL SINGH, VICE-CHAIRMAN(J)  
THE HON'BLE MR.D.K.CHAKRAVORTY, MEMBER(A)

For the Applicant ... Shri V.P.Sharma, Counsel.

For the Respondents .. None

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE  
MR.D.K.CHAKRAVORTY, MEMBER)

The applicant, who is employed as Mach(H.S.I) in the ordnance factory Muradnagar, has challenged the order dated 17.12.90(Annexure A/1 of the paperbook) in which the date of retirement of the applicant is stated to have been indicated as 31.12.1991. He has prayed for a declaration that his date of birth is 10.1.1937 and that he is entitled to continue in service till he completes his 58 years of age on 31.1.1995.

2. The application was filed on 19.2.1991 and the approval of the Hon'ble Chairman was obtained on 20.2.91 for retaining this application before the Principal Bench. At the request of the learned counsel for the applicant it was decided that the case be disposed of at the admission stage itself. The case was taken up for hearing on 5.12.91 when we heard the learned counsel for the applicant and adjourned for the remaining arguments. This was finally heard on 24.1.1992 when the learned counsel for the applicant concluded his

arguments but Mrs. Raj Kumari Chopra, learned counsel for the respondents, was not available. Accordingly, the judgement was reserved.

3. The facts of the case in brief are that the applicant joined the Ordnance <sup>Clothing</sup> factory, Shahjahanpur on 5.12.62. At that time his date of birth was recorded as 4.12.32 by the official of the respondents instead of the correct date of birth which is 10.1.1937. This fact was not noticed by the applicant at that time. In the year 1980, the applicant came to know of this discrepancy and on 1.8.80 he submitted a representation for the correction of his date of birth. As the correction was not made upto 1985, the applicant made another representation on 14.1.85. He was informed on 21.6.85 that "your representation/request to change your date of birth has since been forwarded to OFB. As & when the decision received will be intimated to you." Despite several reminders sent thereafter, the respondents issued impugned order dated 17.12.90 treating his date birth as 4.12.32 and indicated his date of retirement as 31.12.1991. The learned counsel for the applicant contended that this is illegal, unjust, arbitrary and against the principles of natural justice. It is stated that since his correct date of birth is 10.1.37, he is entitled to serve the department till 31.1.1995. He contends that as per para 4 of Ministry of Defence decision No.9(2) under Article 51 of CSR Vol.I, the applicant is entitled for correction of service records pertaining to the date of birth. Further, the law laid down by the Hon'ble High Court of Punjab & Harayana in the case of Brig. Prithvi Raj Vs. Union of India (1986(1)SLR 754) is in his favour. In the aforesaid case the Government of India rejected the plea of the Defence personnel but the same was allowed by

the court.

3. The respondents have filed their counter opposing the application. They have taken a preliminary objection of [redacted] non-joinder of [redacted] parties as General Manager, Ordnance Clothing Factory, Shahjahanpur has not been impleaded. This application is barred by limitation as the grievance of the applicant pertains to the year 1965 and the application is dated 25.8.89 and that this case does not fall within the territorial jurisdiction of the Principal Bench of the Tribunal since the applicant is working at Muradnagar, District Ghaziabad, UP. It is contended that at the time of recruitment, the applicant did not submit his educational certificate or any other documentary evidence. In fact, he declared himself illiterate and, therefore, his date of birth was recorded as assessed by the Medical Officer who conducted his medical examination on 4.12.62. As per his own statement before the Medical Officer his age was 29 years on that date. Further, in the attestation form, he filled in his date of birth as 2.10.38 and as regards his educational qualifications he only stated that he "can read & write Urdu". Later on, after 18 years, he submitted an application dated 1.8.80 along with a photostat copy of his educational certificate dated 15.10.80 wherein his date of birth was mentioned as 10.1.1937. Thus it is clear that the applicant is not sure about his date of birth and his statements are full of contradiction. In view of this the scientific determination of the Medical Officer has to be accepted and the applicant merits dismissal outright.

4. It is further stated in the counter that prima facie the certificate produced by the applicant is a fictitious one. The applicant has submitted that

he studied upto 5th class in Chaubey Tola Primary School, Sitapur and, thereafter, he got his education upto 7th class from Municipal Inter College, Sitapur whereas the certificate produced shows that he was admitted in the Municipal Inter College in class 6th. The respondent No.3 has not passed any order of retirement of the applicant with effect from 31.12.90 but only from 3.12.92 when he completes his 60 years of age. The applicant has not made any representation against the impugned order so far. The application is, therefore, pre-mature as the applicant has not availed of all the remedies available to him. On these grounds, the application deserves to be dismissed. The respondents have also relied upon the judgement of the Central Administrative Tribunal, Calcutta Bench in the case of Sh.N.C.Choudhary Vs.Union of India (ATR 1986 CAT 139(Cal.)) for rejection of the application.

5. We have heard the learned counsel for the applicant and have gone through the records of the case carefully.

6. The learned counsel for the applicant stated that after 1961 there was mass recruitment of labourers in various ordnance factories in the country. During rush that/ period the dates of birth were recorded in haste by the concerned recruiting official and some times on the basis of medical report. However, Government gave a chance for change of date of birth for such employees for which the cut off date of 1979 was laid down. Many employees availed of this opportunity and got the corrected date of birth recorded. Later, the Ministry of Defence extended the period to 30.6.1987 as may be seen from the letter placed

at pages 47-48 of the paperbook in respect of the Khamaria Ordnance Factory. However, no such notice was issued in the Ordnance Factory, Muradnagar and, therefore, the present applicant was not aware of the extension in the cut off date. As stated earlier, the applicant came to know of the discrepancy in his date of birth in 1980 and since then he has been representating for the correction of his date of birth but to no effect. The learned counsel for the applicant contended that the applicant herein having produced reliable documents in support of his representation for change in the date of birth, the respondents cannot reject the same either on the alleged ground of delay or on the plea that the applicant himself had given a statement before the Medical Officer that his age was 29 years or because he had at one point of time filled a different date of birth in the attestation form. The learned counsel for the applicant relied upon various rulings\* of courts and we have duly considered them.

7. We reject the preliminary objections raised relating to non joinder of parties and territorial jurisdiction. The applicant has impleaded necessary parties <sup>in</sup> and/ our opinion, the General Manager, Ordnance Clothing Factory, Shahjahanpur is not a necessary party in this case. The objections about jurisdiction is also not valid as the Hon'ble Chairman had passed appropriate orders under Section 25 of the Administrative Tribunals Act, 1985 for retention of the OA in the Principal Bench. There is also no substance in the

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\*1989(4)SLJ 557; ATR 1989(1) CAT 557; 1990(14) ATC 20& 1990(1) SLR 31.

objections relating to limitation on grounds of delay. It has been held by the Principal Bench in the case of **Hira Lal Vs. Union of India & Others (1987 ATC(3) 130)** that a Government servant cannot be precluded from showing that entry made in service record is wrong. The age of a Government servant as of anyone else has to be counted with reference to the date on which the person was born. Any error in the service record as regards the date of birth cannot alter the date of birth. If there is some error in the service record about the date of birth, the Government servant is entitled to make a representation and show that the entry is not correct. In the absence of any rule prohibiting any correction in the date of birth the concerned Government servant must be given adequate opportunity to prove his contention. This is exactly what the applicant in the present case is trying to do ever since 1980, by producing the school transfer certificate in which his date of birth is recorded as 10.1.37. The original copy of this school certificate has been given to the respondents in 1980 and a photocopy thereof has been submitted along with the OA at page 15 Annexure A/4 of the paperbook. The respondents have rejected the representation submitted by the applicant out of hand on the plea that in their opinion prima facie the certificate produced by the applicant is a fictitious one. Neither in the counter nor at the time of hearing, the respondents have produced any document or papers to show whether efforts have been made to verify the authenticity of school leaving certificate submitted by the applicant. From the photocopies produced, the Tribunal cannot arrive at a conclusive opinion on the authenticity of the documents submitted by the applicant

but the respondents are required to make a thorough scrutiny before taking any final view on the admissibility of the claim made by the applicant.

8. In the light of the above discussion and in the facts and circumstances of the case, we direct the respondents to verify the school leaving certificate and any other evidence that the applicant has submitted along with his representation for correction of his date of birth. The respondents shall complete the scrutiny as expeditiously as possible but preferably within a period of two months from the date of communication of this order. If such investigation proves the contention of the applicant then the respondents shall enter in the service book the correct date of birth of the applicant. After the correction of the date of birth, the applicant shall be allowed to continue in service till he attains the age of 60 years.

9. After the respondents have taken a final decision on the correct date of birth, the applicant, if he is still aggrieved, shall be at liberty to approach this Tribunal through a fresh OA according to law, if so advised.

10. The OA stands disposed of with the above observations and directions.

There will be no order as to costs.

*D.K. Chakravorty*  
(D.K. CHAKRAVORTY)  
MEMBER(A)

*Ram Pal Singh*  
(RAM PAL SINGH)  
VICE-CHAIRMAN(J)