

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 18.12.92

OA 2397/92

BALDEV SINGH

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... SHRI N.P. MITTAL.

For the Respondents ... SHRI M.L. VERMA.

1. Whether Reporters of the local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant is working as Assistant Engineer B/R (MES), Project No.4, Delhi Cantt. He is aggrieved by non correction of his date of birth from once recorded in the service record as 7.7.35 to 1.10.38. In this application, the applicant has prayed that a direction be issued to the respondents to correct his date of birth as 1.10.38 and the respondents be directed to allow him to continue in service till 30.10.96 after correcting the date of birth recorded in service record as 7.7.35.

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2. The case of the applicant is that he was born at Chak (village), Jaranwala, District Layalpur (now District Faisalabad in Pakistan). He was admitted by the illiterate father in the Primary School in Village Chak. In 1947, the family shifted to Repar District in Village Malikpur (Punjab), where he was got admitted in Khalsa High School, Repar. His father, because of his illiteracy, got his date of birth wrongly recorded as 7.7.35. The applicant passed the Matriculation Examination from Punjab University in 1952. He joined the Army Service on 17.10.55 and worked there till 24.6.58. Later on, he joined a Diploma Course in Civil Engineering and was selected as Supdt. B/R Grade-II where he joined on 27.9.63. His date of birth in all these records because of the wrong entry of the date of birth in the High School Certificate has been 7.7.35.

3. When the applicant learnt about this wrong entry he made representation for the correction of date of birth to 1.10.38 by the representation dated 26.12.89. He made another representation on 5.9.90 to Engineer-in-Chief, Army Headquarters, and he was informed by the letter dated 12.10.90 (Annexure A-5). In this letter, the applicant was informed that when date of birth once recorded in the Service Book and in other documents after verification from original Matriculation Certificate cannot be changed. Secondly, that an officer being literate person should not submit such application, as the personal-data recorded at first page of the Service Book are being verified by the concerned

officers/individuals after every five years and the particulars are got verified. He was also informed that instead of applying to Department, the officer should approach to Board of Education from where he passed his Matriculation Certificate for the purpose as no Department is empowered to take such action in respect of literate persons.

4. The applicant, however, made subsequent representation on 9.11.90 and the same has been disposed of by the impugned order.

5. The respondents contested the application and stated that the application is barred under Section 20 and 21 of the Administrative Tribunals Act, 1985. It is further stated that the date of birth remained unchanged throughout his service career and except ^{at} the fag-end of the retirement, which is due in July, 1993, the applicant had made representation for the correction of the same. The applicant has applied for the correction of date of birth after 26 years 3 months of joining the service in MES. If there was any mistake in recording the date of birth in the Repair School, the same could have been got clarified at the time of filling of the form for Matriculation Examination. The respondents have also placed reliance on Ministry of Defence Memorandum No. 5/4/64 D(Appts) dated 17.2.85, which lays down that unless the request are made within a reasonable time at the commencement of service, the request for change of date of birth should not be

considered and no request made about the time of superannuation shall be entertained. If the date of birth 1.10.38 is taken into account the applicant was only 13½ years old when he appeared in the Matriculation Examination during April 1952 and unless the matter is clarified from the school authorities as well as from the Board who conducted the Matriculation Examination, the alleged date of birth cannot be taken as correct one. Thus, according to the respondents, the applicant has no case.

6. I have heard the learned counsel for the parties at length. The thrust of the learned counsel for the applicant is of a certificate dated 26.9.89 issued by the Govt. Higher Secondary School, Satiyana, Distt. Faisalabad. In this certificate, the date of entry in the said school is shown as 8.4.46 and the date of birth is recorded as 1-10-38. The date of leaving the school is 17.8.47. He left the school in VIth class. The learned counsel for the applicant has also relied on the affidavit of the brother of the applicant Jaswant Singh, in which it is stated that he has two younger brothers namely Kulwant Singh and Baldev Singh, and Kulwant Singh is younger to him by two years and Jaswant Singh is younger to him by 6 years. An affidavit of Kulwant Singh has also been filed in which he has stated that his date of birth is 3.2.36. It is also stated that Baldev Singh is about 3 years younger to him. All these evidence in the light of the Matriculation Certificate do not carry any conviction. Firstly, the stand taken by the applicant is that his father got him admitted in Village Chak in Layalpur Distt.

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No record of that school, as to what was the date of birth recorded there, has been filed. It may be that now that is the part of Pakistan but the certificate of school leaving of Village Satiyana cannot be taken to be authentic because it is a certificate issued by the Principal of that school ^{and is} ~~not~~ the true copy of the admission register of the said school. Merely issuing the certificate about the date of birth ^{un-} ~~supported~~ by the record of the school can carry no conviction. Secondly, the applicant appeared in the Matriculation examination of Punjab University and he himself would have filled up the Form. At that time, the applicant and his elder brothers Kulwant Singh and Jaswant Singh could have known about the actual date of birth of the applicant. So, if there was an error in giving the date of birth in the Repar Khalsa School then the same could have been corrected at the time of appearing in the Matriculation Examination.

7. Thirdly, the applicant was in Army Service from 1955 to 1958 and there he has given the same date of birth i.e. 7.7.35. At that time, the applicant has grown sufficiently old so also his brothers Kulwant Singh and Jaswant Singh. Not taking any action at that time on the part of the applicant or his family members for getting the date of birth corrected gives an adverse influence against the applicant. Fourthly, the applicant applied for the Diploma Course in Civil Engineering and at that time he had an occasion to check his date of birth, which is already recorded in the Matriculation Certificate as 7.7.35. In the

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light of all these facts, the applicant in January, 89 learnt about the fact that the date of birth recorded in the Matriculation Certificate as well as in the service record is wrong cannot be taken for granted.

8. Further, the applicant was specifically told by the respdts. in the letter dated 12.10.90 that he should approach the Board of Education from where he passed the Matriculation Certificate but the applicant did not approach the said Board and the date of birth remained recorded in the Matriculation Certificate as 7.7.35. The date of birth recorded in the Matriculation Certificate is taken to be correct date of birth as an authenticity ^{is} attached to it.

9. The present application also is not within the limitation as the applicant was told by the letter dated 12.10.90 about the rejection of the representation dated 5.9.90. The applicant should have filed the application within one year thereafter but the applicant has filed the present application on 17.9.92. This application, therefore, is barred by limitation also. Repeated representation do not add limitation, as held in the case of Dr. S.S. Rathore Vs. State of Madhya Pradesh (AIR 1990 SC 10). However, the present application has also been considered on merits.

10. The learned counsel for the applicant has also referred to the judgement of the Chandigarh Bench in OA 449/91 dated 26.6.91. That application only remanded the matter for consideration of representation of the applicant after conducting proper enquiry

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so, that case does not help the applicant. The applicant of that case again filed OA 1398/91, which was decided on 24.3.92. After considering the facts on the basis of the enquiry conducted in the case of the applicant by the respondents of that case to come to a decision about the correct date of birth, the Tribunal ordered that the correct date of birth of that applicant is 1.7.34. In the present case, however, the facts are totally different. The applicant did not approach the respondents at proper time and there is no convincing evidence to show that the date of birth of the applicant is 1.10.38. The certificate of the Principal of Satiyana School cannot be taken as an authentic document to establish the date of birth of the applicant as 1.10.38. The applicant was in Army Service since 17.10.55 and at that time he was hardly 17 years of age. The applicant has joined the Engineering Service with the MES on 27.9.63 and had ample occasion to find out what is the correct date of birth recorded in the various documents at various stages of his career.

11. The learned counsel for the applicant has also filed a Judgement of OA 927/91, decided by the Chandigarh Bench on 14.9.92. In that case also the matter was remanded to the respondents to consider the representation for the correction of date of birth.

12. In a recent decision by the Hon'ble Supreme Court in the case of Executive Engineer, Bhadrak, (R/B) Division, Orissa Vs. Rangadhar Malik, the Hon'ble Supreme Court has held that

that coming at the fag-end of the service for correction of date of birth and praying that the date of birth allegedly recorded in service records be changed, ~~can~~ if the administration has not be granted considered the relevancy of these documents, and rejected the claim of the petitioner.

13. The learned counsel for the applicant also argued that the order of rejection of representation is not a speaking order. It is a fact but the evidence relied upon by the applicant is not at all convincing and the conclusion, which could be drawn on the basis of that documents cannot be other than what has been arrived at by the respondents, then non-giving reasons for rejection would not matter.

In view of the above facts, the present application is totally devoid of merit and is, therefore, dismissed leaving the parties to bear their own costs.

J. P. SHARMA
18/11/51
MEMBER (J)