

Central Administrative Tribunal
Principal Bench

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O.A. No. 3293/92

New Delhi, the 29th day of May, 1995

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Jagdish Parshad s/o Shri Fakir Chand,
Working as MM-Fitter-C,
Ordnance Factory Murad Nagar,
Distt. Ghaziabad (UP).

... .. Applicant

(By Shri Ashish Kalia, Advocate)

Versus

Union of India through

1. the Secretary,
Ministry of Defence Production,
New Delhi.
2. The Director-General,
Ordnance Factory Board,
10- Auckland Road,
Calcutta.
3. The General Manager,
Ordnance Factory,
Murad Nagar (Ghaziabad - U.P.)

(By Shri V.S.R. Krishna, Advocate) Respondents

Judgement (Oral)

(delivered by Hon'ble Shri J.P. Sharma, Member (Judicial))

The applicant has been working as MM-Fitter-C
with Ordnance Factory, Muradnagar (Ghaziabad-U.P.). The
applicant made request to the respondents for correction
of his date of birth on 18th August, 1977 vide Annexure
A/14) wherein he has written to General Manager, Ordnance

Factory, Muradnagar that his date of birth is 10/1/1943 as per school record (copy attached) but as per entry it in service record is 14.6.1935 which is wrong and the same be corrected.

On the basis of the aforesaid representation by the applicant for correction of date of birth in the year 1977 the Assistant Manager issued a show cause notice to the applicant on 26th December, 1977 asking his explanation as to why he did not submit the correct information at the time of his appointment at Clothing Factory, Shahjahanpur. It appears that the applicant subsequently in a departmental disciplinary enquiry was punished by the order dated 28th August, 1988 by the General Manager (Annexure-A/11) and the order is re-produced below:-

" ORDER DATED 29/08/1988

WHEREAS Shri Jagdish Prasad, T.No. 2719/3586/MM, Fitter 'C' Grade was issued a memorandum No. Vig/2/IE/14 JP, dated 10.6.1987 under rule 14 of the CCS (CCA) Rules, 1965 for gross misconduct of submitted a false date of birth in his FVR Attestation Form;

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2. AND WHEREAS the said Shri Jagdish Prasad, T.NO. 2719/3586/MM Fitter 'C' Grade submitted his statement of defence dt. 1.7.1987 in which he denied the charge levelled against him and, therefore, an enquiry was ordered to probe into the charge levelled against Shri Jagdish Prasad, T.No. 2719/3856/MM, Fitter 'C' Grade vide order No.Vig/2/IE/Inq. dated 31.10.1987;
3. AND WHEREAS the undersigned encloses a copy of the Inquiry Report submitted by the Inquiry Officer appointed to inquire into the charge levelled against Shri Jagdish Prasad, T.No. 2719/3856/MM, Fitter 'C' Grade;
4. AND WHEREAS the undersigned on a careful consideration of the inquiry report/findings of the inquiry report and all the relevant factors and circumstances of the case the undersigned accepts the inquiry report has come to the conclusion that good and sufficient reasons exist for imposing a penalty of reduction of pay by five stages, for a period of two years with cumulative effect on Shri Jagdish Prasad, T.No. 2719/3586/MM, Fitter 'C' Grade;
5. NOW, THEREFORE, the undersigned in exercise of the powers conferred under the CCS(CO&A) Rules, 1965 hereby imposes upon the said Shri Jagdish Prasad, T.No.2719/

3586/MM. Fitter 'C' grade, a penalty of reduction of pay by five stages i.e. from Rs. 1050/- p.m. to Rs. 950/- p.m. in the revised scales of pay Rs. 950-20-1150-EB-25 1500/-, for a period of two years with cumulative effect from the date of issue of this order. It is further ordered that Shri Jagdish Prasad, T.No. 2719/3586/MM, Fitter-'C' Grade will not earn the increments of pay during the period of reduction and that on the expiry of this period the reduction will have the effect of postponing his future increments of pay.

sd/-

Encl:- Inquiry Report
Containing three pps.)

(D. S. P. SRI VASTAVA)
GENERAL MANAGER

To Shri Jagdish Prasad,
T.No. 2719/3586/MM,
Fitter 'C' Grade

The applicant preferred an appeal against this order to Ordnance Factory Board, Calcutta which by the order dated 4th August, 1989 quashed the punishment which is re-produced below:-

"No. 8592/A/VIG

Government of India
Min. of Defence,
Ordnance Factory Board,
10A Auckland Road,
Calcutta- 700 001.
Dated:- the 1.8.1989

ORDER

The appeal dated 6/11-10-1988 of Shri Jagdish Prasad Fitter 'C', OFB has been considered by the Appellate Authority with reference to the relevant records of the case

leading to the imposition of the penalty of reduction of pay by 5 stages from from Rs. 1050/- to Rs. 950/- per month for a period of two years with cumulative effect on him vide General Manager, Ordnance Factory Muradnagar Order No. VIG/2/IE/14/J.P. dated 28.8.88. Considering all aspects of the case the Appellate Authority has decided to set-aside the penalty.

BY ORDER AND IN THE NAME OF THE APPELLATE AUTHORITY

sd/-

(J.K.LAHIRI)
JT.DIRECTOR/VIG
ORDNANCE FACTORY BOARD.

To

Shri Jagdish Prasad,
T.No. 2719/3589/MM,
Fitter 'C' Grade,
Ordnance Factory,
MURADNAGAR.

(Through: The General Manager,
Ordnance Factory,
Muradnagar). "

The applicant in this application filed on 8/12/1994 has prayed for the grant of the reliefs that direction be issued to the respondents that the actual date of birth is 10.1.1943 and not 14.6.1935.

The respondents contested this application and in the reply it is stated that the applicant was initially employed w.e.f. 20.6.1963 in Ordnance Clothing Factory, Sahajahanpur as Tailor 'C' and subsequently he was transferred to Ordnance Factory, Muradnagar w.e.f. 20/1/1967. We have also summoned the original record and seen the same which goes to show that in the service-sheet of the applicant there is some erasing of the date of birth and over the erasing 10/1/1943 has been written. However, there is another writing in different ink which reads as

14/6/1935. The service sheet of the year 1967 of the

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Ordanance Factory, Muradnagar shows that initially the date of bith is 10/1/1943 which has been circled and against this 14/6/1935 has been written under the orders of General Manager, vide No. 1358 dated 22th July, 1989. While seeing to the relevant record regarding the order dated 22nd July, 1989 we find an endorsement in that order that this order is being passed on the order of the general authority order passed by the General Manager dated 28th August, 1988. The respondents have taken the stand that the application is barred by limitation as well as by jurisdiction because Murad Nagar Factory is in Ghaziabad district within U.P. and the C.A.T. Principal Bench lies territorial jurisdiction unless an order under section 25 is obtained for retention of the file in the Principal Bench. However, we find from the record that MP-4006/92 was filed by the petitioner before the Hon'ble Chairlan and this application has been ordered to be retained in the Principal Bench. The point of limitation shall be discussed in the later part of the judgement.

Respondents have also taken the stand that service book of the applicant was found missing from the office, subsequently was traced out and after the departmental disciplinary enquiry against the applicant is concluded in

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imposing the aforesaid punishment of reduction by 5 stages from 1050 to 950/-. The service sheet of the applicant was also corrected by sending a copy of this order to the concerned branch. We have also perused that from the departmental file. Respondents, therefore, argued that the applicant has no case and the application be dismissed.

The applicant has also filed the rejoinder and we have considered the points raised in the rejoinder where the applicant has placed reliance on a school leaving certificate of an institution of Muradabad of having passed 8th class after entering into the school in November, 1954 and left that school in May, 1955.

The learned counsel for the applicant has also shown to us the various result cards issued to the applicant while he was in a school, URK Inter College, Khurja and subsequently in an institution at Muradabad.

We have heard Shri Ashish Kalia counsel for the applicant and Shri V.S.R. Krishna counsel for the respondents. Shri Krishna counsel for the respondents pointed out that in view of the case of Union of India V/s Harnam Singh reported in ATQ(24) 1993 Page 93, in which Hon'ble Supreme Court of India considered a decision of the Tribunal where the date of birth of Harnam Singh was directed to be corrected though he has come quite late at the fag end of his service when he was

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about to superannuate. The Hon'ble Supreme Court of India has interpreted the amendment made in the FR 56 Clause 6 where it has been provided that by an amendment of 1979 any correction in the date of birth can be sought by an employee within five years from the date of joining of service. The Hon'ble Supreme Court has interpreted the provision in the manner that even though the employee might have entered into the service earlier but is bound by this provision and at least if the application for correction of date of birth has been moved earlier to 1975 that can be considered by the respondents but not when the applicant has already entered into service and files an application after 5 years after the aforesaid amendment in 1979 in FR 56 clause 6.

We have heard Shri V.S.R. Krishna counsel for respondents on this point at considerable length and he could not show any other authority where a person who has filed for the correction of date of birth earlier to 1979 cannot be non-suited. In view of this, we do not find that the present application is barred by limitation.

Now coming to the merit of the matter, we find that the applicant was proceeded against in departmental proceedings disciplinary for subscribing to a false date of birth

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and that the service sheet was misplaced when discovered it was found that there was erasing on the date of birth and 14/6/1935 has been written while there is erasing on 1/10/1943. In the service sheet prepared on transfer in Muradnagar Factory, 10/1/1943 is clear in the same ink in which the other particulars of the service sheet are written and against this there is an amendment to read the date of birth as 14/6/1935 as said above in the earlier part of this order.

We know the limitation imposed by the Hon'ble Supreme Court of India in considering the matter of correction of date of birth when a person long years after his service career applies for its correction. We are also aware of the principle of natural justice whether rightly or wrongly if there is some manipulation, mutilation, or tempering with the earlier recorded date of birth then the concerned ^{person} should be heard before taking any action against him. In this case, the respondents resorted to that action, and the applicant was punished also by the General Manager by the order dated 29th August, 1988. The charge against the applicant was only this that he has filed an application for correction of his date of birth and submitted his date of birth in the FVR Attestation Form which was wrong, the Appellate Authority has quashed the punishment out right.

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The order of the disciplinary authority was also sent to one of the sections by which an amendment was made in the service-sheet. There is no order on the file of any competent authority whereby the date of birth of the applicant has been directed to be restored either 14/6/1935 which is alleged to have been given by the applicant while he was in Clothing Factory, Shahjahanpur or that his date of birth be recorded after deleting the mutilated and manipulated date of birth 10/1/1943. The matter, therefore, is left to the respondent to find out the real and actual and truthful position regarding the date of birth of the applicant after considering the various certificates the applicant has in his possession of having entered Inter into JRK/College, Khurja in the primary stages and subsequently in an institution at Muradnagar in 8th class for a period of six months only.

We are aware of the fact that the applicant has to superannuate by 30/6/1995 on the basis if the date of birth in the service-sheet which is amended by the order dated 28/8/1988 is taken as correct. If the date of birth is subsequently changed as the applicant

alleges to be 10/1/1943 then he will have to serve many more years till 2003. In the interest of justice and fair play, we direct the respondents that they may continue the applicant even after June, 1995 on the specific condition that if finally his case of correction of date of birth is decided against him he will not get any benefit of the service he renders after 30/6/1995 and his terminal benefits shall be calculated as if he should have retired from 30/6/1995. If his date of birth by the competent authority after enquiry is found to be 10/1/1943 then he may continue and he may get the benefit as normally are available to a person superannuating at the prescribed age.

It shall be in the interest of justice itself to decide the matter at the earliest and the applicant is to co-operate and file whole of his evidence before the competent authority within 15 days from today.


If this is done, the case can even be decided, if taken on priority basis, before 30.6.1995 also. The representation filed by the applicant before the higher authority than shall the General Manager/stand abated, if not already disposed of,

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If disposed of, that order shall be finally governed by the order to be passed in the enquiry of date of birth as said above.

In the circumstances, the application is disposed of accordingly leaving the parties to bear their own costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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