

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 30th day of August 2006.

Original Application No. 499 of 1997.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member-A

Mewa Ram, S/o Sri Multani,
R/o Near Harijan Colony,
Babina Cantt.,
Distt: Jhansi.

. . . . Applicant

By Adv: Sri Komal Mehrotra

V E R S U S

1. Union of India through the Secretary,
Ministry of Defence,
NEW DELHI.
2. Lt. Col. Officiating Administrative Commandant,
Station Head-quarter, Babina Cantt.,
Distt: Jhansi.
3. Brig./Commander Headquarters,
Allahabad Sub Area,
ALLAHABAD.
4. The Director (DS 6/B) Army Headquarters,
NEW DELHI.

. . . . Respondents

By Adv: Sri S. Singh.

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member-A

The applicant in this OA No. 499 of 1997 was initially appointed as Safaiwala at Headquarters Squadron/1 Armed Brg., Babina, Cantt. Jhansi. As the applicant was illiterate person his date of birth is stated to have been decided on the basis of

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medical examination and the certificate given by the concerned doctor. It is stated by the applicant in the OA that his date of birth was recorded as 01.05.1939 in his service book.

2. After a long service with the respondents, the applicant received a show cause notice on 08.05.1996 in which it was stated that he was charged with tampering with the date of birth mentioned in the applicant's service book and his actual date of birth was 13.01.1931. Therefore, the applicant was required to show cause as to why his services would not be terminated with immediate effect. The applicant submitted his reply to the show cause notice requesting for a Hindi Version of the show cause notice which was supplied to him. The applicant, thereafter, submitted his detailed reply to the show cause notice, after which the applicant was informed that he was being treated as discharged from service on the basis of his actual date of birth which was 13.01.1931. Thereafter, the applicant submitted his representation against the order on 03.10.1996, but to no effect.

3. After all these a Rule 14 case was initiated against the applicant in the year 1997 vide memo No. 4026/4/Mewa Ram/GS (ST) dated 21.12.1996, copy of the charge sheet has been annexed with the OA as annexure A 2. However, this disciplinary proceeding

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was initiated after the alleged forced retirement of the applicant but was not followed up and concluded. No enquiry has been held so far. In the OA the applicant has impugned the show cause notice, and the order dated 16.09.1996 retiring him from service with immediate effect.

4. The grounds on which the relief has been sought by the applicant are as follows:

- a. He has been forced to retire before the date of superannuation without any inquiry being held and no opportunity being given to him for making proper defence. This was violative of Article 311 of the Constitution.
- b. Any inquiry, if at all carried out by the respondents was behind the back of the applicant. It was in-fact no statutory inquiry as required under rule, but merely a fact finding inquiry conducted unilaterally.
- c. The action of the respondents in terminating his services prematurely was a punitive action and, therefore, the protection under Article 311 (2) should have been afforded to him.
- d. Rule 14 inquiry which was initiated was a eyewash and never followed up.

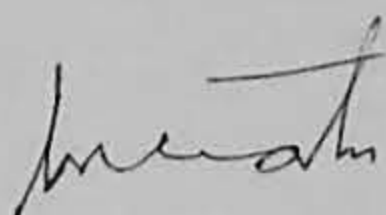
5. With the above mentioned ground the relief claimed by the applicant are as follows:

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- "a. to quash the orders dated 16.09.1996 and 21.12.1996, the notice for retirement and the chargesheet respectively.
- b. to issue a mandamus directing the respondents to pay entire salary and other benefits to the applicant treating his date of birth as 01.05.1939.
- c. to issue any other order or direction as this Tribunal may deem fit and proper in the circumstances of the case.
- d. to award costs to the applicant."

6. In the counter affidavit the respondents have denied all the allegations. They have categorically denied that the medical certificate specifying his age was available in the service book. According to the version given by the respondents upto October 1989, the date of birth of the applicant in the service book was mentioned as 13.01.1931, thereafter, the concerned page of the service book was replaced and the date of birth was changed to 13.01.1939. The respondents had referred the matter to the Government examiner of questioned documents i.e. handwriting expert and the reply received from the handwriting expert, was that there was clear evidence of tampering with the records including the date of birth.

7. The respondents have also denied that no opportunity was given to the applicant for making a representation. They have stated that the applicant



was summoned by the Headquarters, Allahabad Sub Area with other witness under rules and regulations. The inquiry was conducted by the Enquiry Officer to investigate as to who had amended the date of birth of Sri Mewa Ram.

8. During the hearing of the case more or less the same arguments, as stated in the respective submissions, were reiterated. On the basis of the pleadings and the hearing, we are of the view that the OA is to be decided on the consideration whether the termination of the service of the applicant should be taken as a penal action for which the usual protection of Rule 311 (2) should have been afforded.

9. The learned counsel for the applicant strongly pleaded that while deciding the date of birth of the applicant as 01.03.1931, no adequate opportunity was given for defence. It was a summary⁴ decision based on the findings of the handwriting expert. In support of this point of view he highlighted the fact that the respondents issued a Rule 14 case after forcefully retiring him from service but upon realising that there was an omission, and to cover up this error the disciplinary action was initiated.

10. The applicant hasⁱⁿ more than one instance ~~has~~ submitted in the OA that some persons harboring

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rancom against him, might have manipulated the date of birth in service record to bring him into disrepute and create trouble for him. Therefore, taking the decision merely on the basis of the opinion of the handwriting expert without affording him the opportunity to make a representation was against the principles of natural justice. We have taken note of this point made by the applicant and we are of the view that it is not devoid of substance.

11. The learned counsel for the applicant has also stated that perhaps it was this late ^{realisation} ~~relegation~~ ^{merit} of the omission that made the respondents want to cover it up by the issue of Disciplinary Proceedings under Rule 14. However, that was also not followed up.

We also find from the submissions made by the respondents and the learned counsel for the respondents that there are still ~~are~~ confusions regarding the date of birth, as in one place it is stated to be 13.01.1931, but in the suppl. Affidavit it is stated to be 01.03.1931. This gives rise to a impression that the whole matter was conducted rather summarily and hastily.

12. Having thus considered ^{the} matter we are of the view that the procedure adopted by the respondents suffer from certain inadequacies. The enquiry which the respondents asserted to have conducted was not

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the statutory enquiry required before a penal action *is taken* as enshrined in Article 311 (2), Retiring the applicant without this is a clear defect which needs to be corrected. We considered the possibility of remitting the case back to the respondents for initiating disciplinary action under Rule 14 and to conduct and conclude according to rules by giving the applicant full opportunity for defence. However, we are aware that the applicant had retired in the year 1996 and even if his date of birth was presumed to be 13.01.1939, he would have retired in the year 1999. Therefore, initiating disciplinary action for removing the inadequacy at this late stage would create complications. The statutory rules also provide that in respect of retired employees' disciplinary proceedings for irregularities committed before retirement should be initiated not later than four years from the date of retirement. Keeping these aspects in view we do not think it would be feasible and appropriate to initiate any disciplinary proceedings at this stage.

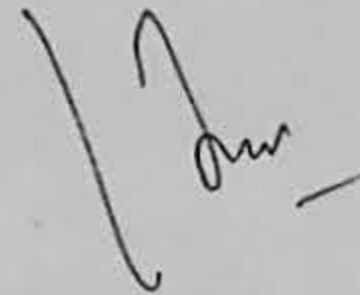
13. Agreeing with the submissions and the arguments made by the applicant that the action of the respondents were completely unilateral and was taken in disregard of the statutory rules, we have come to the conclusion that the defects in respondents' actions needs to be rectified. The fact that the applicant was an illiterate person should also have

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been borne in mind by the respondents. Being illiterate he might not have been aware of the statutory protections. It was the responsibility of the respondents to be careful and particular that at no stage his legal rights were infringed. Unfortunately, the respondents took action in disregard of these considerations. For these reasons we direct that the impugned order retiring the applicant be set aside and the applicant be allowed to continue in service notionally upto the appropriate date in 1999, ^{taking} ~~presuming~~ his date of birth as 13.01.1939, and the consequential benefits should be granted to him. No cost.



Member (A)



Vice-Chairman

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