

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

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Original Application No. 139 of 2001

Friday, this the 11<sup>th</sup> day of September, 2009

**Hon'ble Mr. Ashok S. Karamadi, Member (J)**  
**Hon'ble Mrs. Manjulika Gautam, Member (A)**

Dr. R.S. Prajapati, aged about 61 years Son of Late Cheda Lal Prajapati, R/o 153 Devaki Nagar, Kanpur-11.

**Applicant**

**By Advocate: Sri Satish Mandhyan**

**Vs.**

1. The Union of India through the Secretary, Ministry of Defence Production, New Delhi.
2. The Addl. Director General Ordnance Factories Ordnance equipment Factories Group Hqrs. G.T. Road, Kanpur.

**Respondents**

**By Advocate: Sri R.C. Shukla**

**ORDER**

**By Hon'ble Mr. Ashok S. Karamadi, J.M.**

The present application was filed challenging the order passed by the respondents dated 10.08.2000, 14.10.2000 and 14.09.2000 (Annexure A-1, A-2 and A-3 respectively), and further direction to the respondents for payment of the arrears, and the amount recovered from the applicant.

2. The brief facts of the case are that the applicant was appointed as a Tailor, and the medical examination was done in the dispensary by the Doctor on duty. At the time of medical



examination, the applicant was asked various questions, to which he had replied, and no candidates who are attended the medical examination including the applicant were asked to furnish High School certificate either at the time of appointment or even subsequently. The applicant was never shown the entries recorded by the officer either before or after his appointment. The applicant was required to fill up attestation form prior to his appointment, police verification report, which was subsequently got verified by the Police and enclosed with the service records. The said attestation forms were required to be filled in triplicate and the applicant had clearly written in his own handwriting giving his date of birth as 01.07.1939, as per High School certificate, and qualification mentioned was High School, and not up to High School. The applicant was not aware that his date of birth was recorded as 10.06.1940 in his Service Book on the basis of afore mentioned medical examination conducted by the respondents. The applicant was never told the date of birth actually recorded in his Service Book nor was his Service Book ever shown to him. In the year 1969, when the applicant passed his graduation and applied for endorsement of his qualification in his service records by submitting the copies of High School certificate, Intermediate certificate and B.A. certificate. The respondents issued a Memo dated 28.10.1969 and brought to the notice of the applicant for the first time that in his service record, his qualification was recorded up to High School only, and further brought to the notice of the applicant that in his Service Book his date of birth had been recorded as 10.06.1940. The applicant was appointed initially in 1963, he was not issued any appointment letter as he had come

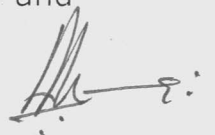


through Employment Exchange. The applicant replied to the Memo stating that at the time of his recruitment the applicant was asked his qualification on which he had replied "High School", and "not up to High School" as stated in the said Memo, and further stated that the applicant had not been asked to produce his High School certificate, with regard to date of birth the applicant had filed attestation form in his own handwriting, in that he had shown his date of birth as 01.07.1939, and as such the applicant was not responsible for the discrepancy in the date of birth recorded in his Service Book since he was never shown his service record. The applicant moved an application for endorsement of amendment of date of birth in his service record, but although the qualification of the applicant mentioned above, were endorsed in his Service Book, the applicant received a separate memo, mentioning "your request for amendment in the date of birth cannot be acceded to". After the said memo the applicant continued in service for the next 30 years without problem of any kind, the respondents promoted the applicant according to his qualification. On 20.05.1975, the applicant joined as a L.D.C. in Ordnance Equipment Factory, Kanpur after having been selected in the test conducted by the Ordnance Factory Board, Calcutta. By the said order of appointment, the applicant was required to furnish proof of his educational qualification and age, the minimum qualification required for that post was a pass in matriculation examination, or equivalent, the applicant was required to produce his educational certificate in original at the time of his appointment. The applicant at the time of his appointment produced all his original certificates including his



High School certificate containing his date of birth, which was duly examined by the authorities. The applicant was further promoted as Upper Division Clerk on 05.08.1987, and on 01.01.1998 promoted as Assistant. By the order dated 08.09.2000 passed by the Joint Director/Hqrs., the applicant was given notional promotion with effect from 01.04.1987, by another order dated 14.09.2007, Additional Director General Ordnance Factory illegally held that the applicant is not entitled to his notional promotion.

3. On the basis of entry in his service book regarding his age as 10.06.1940, in 1998 the applicant was retired after completing 58 years, and all the terminal benefits/pension after audit was settled and the applicant received his Pension Pay Order, in the meanwhile the Government increased the retirement age up to 60 years, and the same was communicated to the applicant on 03.06.1998. The decision regarding refusal of amendment in the age of applicant was available to the respondents in 1969, otherwise it was not possible for audit and the management not to take note of date of birth mentioned in the Service Book as 10.06.1940 and that mention in the High School certificate as 01.07.1939. From this, it is clear that the authorities had decided to stick to the date of birth mentioned in the service record, the authorities suddenly decided to retire the applicant without any show cause notice by serving DO Pt. 113 dated 20.11.1999, stating that on the basis of High School certificate he would be deemed to be superannuated retrospectively w.e.f. 30.06.1997. The applicant preferred an appeal dated 25.10.1999, which was rejected by respondent No. 2 on 28/29.10.1999, and



consequently another order dated 10.08.2000 directing recovery of Rs.1,16,859/- from the applicant. Hence, this O.A. is filed.

4. On notice, the respondents have filed the Counter Affidavit and stated that the applicant was directly recruited as Tailor "D" on 20.06.1963 in Ordnance Equipment Factory, Kanpur, and his date of birth was recorded as 10.06.1940. According to these instructions, the date of birth in the case of literate staff shall invariably be supported by documentary evidence and be entered in the record of service in the Employee's own handwriting. If an employee is a matriculate or possesses a higher qualification, the date of birth as recorded in his matriculation/school certificate shall be accepted as the date of birth. In the case of illiterate staff, they will be required to produce some documentary evidence, in support of the date of birth which shall be recorded by a responsible gazetted officer and witnessed by another responsible employee of the Installation not below the rank of Supervisor or equivalent grade. It is further stated that in case no such proof is available and the person entering service states his age he should be assumed to have completed the stated age on the date of attestation. When the authorities have any doubt about the correctness of age stated or evidence produced by the person concerned in support of his age, medical opinion to assess his age may also be obtained and suitable date of birth be entered in his service record after taking into account the date stated/ evidence produced by the individual. Since the petitioner despite being a literate and matriculation passed at the time of entry into service had not submitted any proof of his date of birth, it was



entered in his service records as assessed by the Medical Officer at the time of his medical examination. Although no qualification was required for the post of Tailor 'D' to which the petitioner was initially recruited, yet being a qualified person he should have immediately protested to the Medical Officer at the time of assessing his age and produced documentary evidence in support of his correct date of birth. It is further submitted that applicant did not disclose the fact about his having matriculation certificate and did not submit any documentary evidence before the appointing authority in this regard during the period of five years from the date of his appointment. From the records, it is revealed that the General Manager, Ordnance Equipment Factory, Kanpur, the then Employer of the petitioner had made query that at the time of employment in the factory as Tailor 'D' his qualification was recorded as up to High School only and he had concealed that he was matriculate. Further he had acquired higher qualification of Intermediate and B.A. without obtaining prior permission from his employer. The petitioner was appointed on transfer as Lower Division Clerk by the office of Additional Director General of Ordnance Factories, Ordnance Equipment Factory Group Headquarters, Kanpur (respondent No. 2) and as he was already in Government service his service records were obtained from his earlier employer. The petitioner was promoted by the respondent No. 2 to the post of Upper Division Clerk in July 1988 and thereafter as Assistant with effect from 01.01.1998. The respondent No. 2 published Daily Orders notifying the date of superannuation of the petitioner as on 30.06.1998 (AN) on completion of 58 years of age and thereafter of 60 years of age as



per his recorded date of birth. Subsequently it was observed by the Internal Audit on 14<sup>th</sup> October 1999 and reported in report dated 15.10.1999 that there was discrepancy in the date of birth as recorded in the Service Book and that given in the matriculation certificate of the petitioner Shri R.S. Prajapati. It is also submitted by the respondents that based on the discrepancy pointed out by the internal audit, the matter was examined and it was decided to retire the petitioner with effect from 30<sup>th</sup> June 1997 on the basis of his date of birth 1st July 1939 as shown in his Matriculation Certificate. His name was immediately struck off the strength of the office of Additional Director General Ordnance Factories, Ordnance Equipment Factory Group Headquarter with effect from 20.10.1999 and he was granted pension for life w.e.f. 01.07.1997. The order of superannuation was challenged by the petitioner by filing O.A. No. 1387 of 1999: R.S. Prajapati vs. Union of India and others. After exchange of affidavits the case was heard and dismissed by the Order dated 29.05.2000. It is stated that the applicant indicated in one of the attestation form for PVR with correct date of birth i.e. 01.07.1939 as per High School certificate issued by the U.P. Board, Allahabad but he had indicated incorrect date of birth in another copy of attestation form, the service documents were shown to the applicant from time to time under the Rules and he has signed in appropriate column of the service record in token of correctness of all entries made in the Service Book, and further stated that the explanation given by the applicant with regard to discrepancy, to ascertain the same the records are not available as the case being very old. It is stated that for any appointment either through Employment

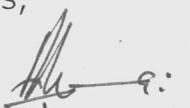


Exchange or other agencies, the appointment letter is issued for joining the respective post after completion of procedural formalities such as PVR, Medical examination etc., and further denied the statement of the applicant as they are not supported by the documents, and also stated that the applicant has not disclosed the correct date of birth, although no qualification was required for the post of Tailor 'D' to which the applicant was initially recruited, as the applicant being a qualified person should have produced documentary evidence in support of his correct date of birth, and further stated that the applicant is not entitled to be continue in service, and there is no illegality in the action taken by the respondents' authorities in realizing the amount and, therefore, applicant is not entitled for any relief hence sought for dismissal of the O.A.

5. The applicant has filed the Rejoinder Affidavit, reiterating and clarifying the statements made in the Counter Affidavit. The respondents have also filed the Supplementary Counter Affidavit, and reiterated the contention taken in the Counter Affidavit.

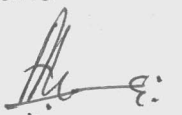
6. We have heard the learned counsel for the parties and perused the pleadings and materials on record.

7. On perusal of pleadings on record, it transpired that the issue involved in this O.A. is pertaining to the date of birth of the applicant which was entered in the service records of the applicant as 10.06.1940. It is an admitted fact that the applicant was appointed as a Tailor 'D', after having the selection process,





according to the respondents the date of birth of the applicant was entered on the basis of medical examination, and the same was continued in the service records of the applicant. While he was in service, the applicant completed his Graduation, and applied for endorsement of his qualification in his Service Record by submitting the copy of High School certificate, Intermediate certificate and B.A. certificate, and thereafter the respondents recorded his qualification and memo was issued to the applicant regarding his date of birth, which was entered as 10.06.1940, the applicant replied for the same stating that he was never asked by the authorities to produce his High School certificate with regard to his date of birth, and further stated that he has filed the attestation form in his own handwriting, in that he has mentioned his date of birth as 01.07.1939, and further stated that he is not responsible for the discrepancy in the date of birth recorded in his Service Book from the year of his appointment i.e. since 1963. The applicant continued in service for more than 30 years with the same entry in the service records. The respondents promoted the applicant according to his qualification, on 20.05.1975 the applicant joined as L.D.C. in Ordnance Equipment Factory, Kanpur after having been selected in the test conducted by the Ordnance Factory Board, Calcutta, in view of that the applicant was required to produce proof of his educational qualification and age, for the said post the minimum qualification required was Matriculation examination or equivalent. The applicant produced all his original certificate including his High School certificates containing his date of birth as 01.07.1939, in spite of that in the service records of the applicant the date of birth was continued as 10.06.1940, and



based on that he retired from service. The respondents on the basis of audit report taken the action against the applicant, on the ground that even though the applicant is literate, has failed to produce Matriculate certificate at the time of his initial appointment, therefore, on the basis of the medical report his date of birth as 10.06.1940 was entered, and further stated that the applicant has concealed and suppressed the facts with regard to his date of birth. This contention of the respondents cannot be accepted having regard to the fact that at the time of his initial appointment as a Tailor, and thereafter the respondents themselves admitted that in the attestation form which is sent for PVR, it is mentioned his date of birth as 01.07.1939, as per the High School certificate issued by the U.P. Board, Allahabad, but it is further stated that in correct date of birth in another copy of attestation form, the respondents have not come forward with any materials or particulars which is the other form they have stated in the Counter Affidavit. That being so it is clear that on Police Verification Report, the applicant has not suppressed, and further in that event at the initial stage itself the respondents ought to have looked into the matter, as they failed at the initial stage, and it is on the basis of the medical examination the date of birth entry was made of the applicant, as it is one of the procedure to be followed by the respondents to make entry regarding date of birth of the candidates as the applicant undergone that procedure, which was done by the respondents cannot be said to be illegal, and as such the applicant cannot be found fault for the same entry made in the service records by the respondents. The respondents ought to have verified



subsequently when he was promoted as L.D.C. in the year 1975, it is but natural that the respondents ought to have verified the materials with regard to the age proof as it is one of the requirement in the service recruitment procedure for any post, since the applicant has produced the documentary evidence at that time or otherwise it has come to the notice of the respondents that the Matriculation certificate of the applicant, which indicated his date of birth as 01.07.1939, as the respondents failed to verify and take necessary decision in the matter during the period while he was in service, in spite of the materials before the respondents' authorities they have failed to take a decision and to correct the date of birth by substituting the date of birth of the applicant on the basis of acceptable documentary evidence with regard to the date of birth. In the instant case, the applicant is not seeking correction of his date of birth contrary to the documents, i.e. the matriculation certificate in which it is shown as 01.07.1939, and therefore the respondents failed in their act to take the decision on the basis of the materials which are normally acceptable while determining the age of the individuals. Having regard to the facts and circumstances stated above, the contention of the respondents that the applicant has suppressed and misrepresented with regard to his date of birth, cannot be accepted, as the applicant has no hand in making any entry in the service records of the department, it is only the concerned competent persons in the department have the access to make the entry with regard to the date of birth of the employees, and therefore accepting the contention of the applicant, we reject the contention of the respondents.



8. The Hon'ble Supreme Court in the case of ***Union of India vs. C. Ramaswamy, AIR 1997 SC 2015*** has held as under: -

***"In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office."***

In the instant case the applicant has not communicated at the first instance regarding his date of birth, the respondents on the basis of the Medical Officer's assessment recorded the date of birth of the applicant as 10.06.1940 hence the applicant is not responsible for any act done by the respondents and there is no fraud or mis-representation on the part of the applicant and, as such, the respondents are not entitled to ask for the refund of the amount received by the applicant and also the respondents are not entitled for any recovery of the amount from the applicant and, as such, the recovery proceedings and the orders passed by the respondents are unsustainable in law and are liable to be quashed. This view of ours is supported by the decision of Hon'ble High Court of Allahabad [*reported in 2004 (2) E.S.C. (All.) Dr. Gopalji Mishra vs. State of U.P. and others*], which by relying upon the decision of Hon'ble Supreme Court has held as under: -

"20. So far as the payment of excess amount, which the petitioner was not entitled is concerned, as there has been no misrepresentation or fraud on the part of the petitioner, he cannot be asked to refund the same. More so, petitioner might have spent the same considering his own money. Recovery thereof would cause great financial hardship to the petitioner. In such circumstances, recovery should not be permitted. [Vide *Shyam Babu Verma and others v. Union of India and others, (1994) 2 SCC 521*; *Sahib Ram v. State of Haryana and others,*




**1995 Suppl (1) SCC 18**; and *V. Gangaram v. Regional Joint Director and others*, **AIR 1997 SC 2776**]"

The applicant has produced the evidence in support of claim regarding the date of birth i.e. High School certificate in which his date of birth is shown as 01.07.1939, <sup>it</sup> ~~he~~ is an irrefutable. Hence the respondents shall accept the same for all purposes of service record of the applicant. This view of ours is supported by the decision of Hon'ble High Court of Allahabad reported in 2006 (1) *ESC page 80 (All) Hari Shankar Pandey vs. U.P. Power Corporation, Lucknow and others*, which held as under: -

"Date of birth - Determination of - Correction sought at the fag end of service - Dispute as to date of birth mentioned in service record and High School Certificate - Employee passed High School prior to entering into service - Held, date of birth mentioned in the High School Certificate to be treated his date of birth. [U.P. Recruitment to Services (Determination of Date of Birth) Rules, 1974 as amended in 1980]"

Normally the date of birth mentioned in the High School certificate has to be taken for the purpose of retirement, admittedly the applicant has passed the High School before entry into service, as the date of birth wrongly entered at the instance of respondents on the basis of the Medical Officer's assessment hence to be corrected based on the High School certificate for all purposes of the applicant's service. The learned counsel for the applicant during the course of his argument submitted that the date of birth of the applicant for all purposes shall be taken into consideration on the basis of the entry made in the <sup>High School</sup> record. Having regard to the same the date of birth of the applicant be taken into account as 01.07.1939 for the purpose of the applicant's service is concerned. This submission of the applicant is accepted having regard to the proportion of the law laid down by the Hon'ble High Court, stated above.



9. Now we come to the contention of the applicant that he has worked beyond the period of his retirement and received the payments. Under the facts and circumstances of the case and in the absence of any fault on the part of the applicant, it shall not be just and proper to recover the salary already paid and the payments made to the applicant. This view of ours is supported by the decision of the Hon'ble Supreme Court and also that of the Hon'ble High Court of Allahabad reported in (2004) 2 UPLBEC 41 *Nau Singh vs. State of Uttaranchal and others*. The relevant para-14 reads as under: -

"14. In *Ram Khelawan Pathak v. State of U.p. and others*, reported in (1998) 3 UPLBEC 1954, wherein it has been held that when employee has worked beyond the period of his retirement the residuary period should be treated as fortuitous. His Lordship has relied upon the judgment of Apex Court in *S.V. Bhima Bhatta and another v. State of Karnataka and others*, reported in JT 1996 (2) SC 236. The observations in the judgment of *Ram Khelawan Pathak (supra)* is quoted below:

"In a case where an employee has worked beyond the period of his retirement the residue period should be treated as fortuitous as has been held by Hon'ble Supreme Court in Judgment Today 1996 (2) SC 236, *S.V. Bhima Bhatta and another v. State of Karnataka and others*. The matter also came to be considered in another case reported in Judgment Today 1997 (1) SC 353, *Mahmood Hasan and others v. State of U.P. and others*, where the employees were reverted to a lower post as their promotion was against rule, it was held that those who will have to step down on a count of correctional process need not refund the pecuniary or other benefits enjoyed by them for they had actually worked during that period. There is yet another direct authority on the point reported in 1994 (2) SCC 621, *Shyam Babu Varma and others v. Union of India and others*. In which the Apex Court dealing with the similar situation, ruled that since the petitioner received higher pay scale not due to fault or his own, it shall not be just and proper to recover the salary already paid to him."

10. In view of the foregoing reasons, the applicant has made out a case for grant of relief, as claimed, and accordingly we pass the following order: -

"The O.A. is allowed. The impugned orders dated 10.08.2000, 14.10.2000 and 14.09.2000 (Annexure A-1, A-2 and



A-3 respectively) are quashed, with direction to the respondents for payment of the amount recovered from the applicant in pursuance of the impugned orders within a period of three months from the date of receipt of a copy of this Order. The respondents are further directed to accept the date of birth of the applicant as '01.07.1939', and record the same in his Service Records as per the High School certificate, and thereafter finalise all his pensionary benefits, which he is entitled, in accordance with the Rules, and further directed not to make any recovery for the period he was allowed to work by the respondents taking his date of birth as 10.06.1940, and settle all his dues in accordance with the Rules, as expeditiously as possible within a period of three months. No order as to cost.

  
{**Manjulika Gautam**}  
Member 'A'

  
[**Ashok S. Karamadi**]  
Member 'J'

/M.M/