

(Reserved on 17.01.2014)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 1st day of April, 2014.

Original Application Number. 966 OF 2005.

HON'BLE MR. SHASHI PRAKASH, MEMBER (A)

Amar Singh Yadav, aged about 55 years 7 months, S/o Sri Mijaji Lal, R/o P/45/17, Type III, Raksha Vihar Colony, Kanpur - 208013 and working as Security Assistant 'B', Defence Materials and Stores Research and Development Establishment (DMSRDE), G.T. Road, Kanpur - 208013 .

By Advocate: Shri V.K. Singh

.....Applicant

VERSUS

1. Union of India through the Secretary, Ministry of Defence, DHQPO, New Delhi - 110011.
2. The Director, Materials and Stores Research and Development Estt. (DMSRDE), Post Box No. 320, G.T. Road, Kanpur - 208013.

.....Respondents

By Advocate: Shri Firoz Ahmed

ORDER

The instant original application has been instituted for seeking following main relief/s :-

"8(a). To issue an order or direction in the nature of certiorari quashing the order No. AE/6799/P/VIG dated 28th September 2004 passed by Senior Administrative Officer -I on behalf of Director, DMS RDE, Kanpur rejecting the representation of the applicant;

8(b). To issue an order or a direction in the nature of a writ of mandamus to the Respondents to declare his date of birth as 1.1.1950 given in the High

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School Certificate in place of 2.10.1947 and the Respondents should not retire the applicant before the date of retirement calculated on the basis of his actual date of birth i.e. 1.1.1950."

2. Briefly; the facts of the case are that the applicant was enrolled as recruit during Indo-Pak war in the year 1965. At the time of his enrollment the applicant allegedly produced school leaving certificate of primary school of 1962 and junior high school certificate of 1965 before the concerned authority showing his date of birth as 01.01.1950. However, as mentioned in the O.A, the authorities did not take into account the date of birth indicated therein and recorded his date of birth as 02.10.1947 based upon medical assessment. Subsequently, the applicant passed high school examination in the year 1984. In the mark sheet of high school the date of birth of the applicant was entered as 01.01.1950.
3. The applicant was discharged from the army services on 31.10.1993 and in the discharge certificate his date of birth was shown as 02.10.1947. Thereafter he got himself registered with the Zila Sainik Board, Kanpur and on the basis of his discharge certificate his name was sponsored alongwith other candidates for recruitment to the post of Security Assistant (C). The applicant was selected for this post. In the attestation form the applicant filled his date of birth as 01.01.1950 and produced the high school certificate of 1984 as well as discharge certificate for verification. Both the certificates were returned to him after verification.

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Subsequently the applicant applied for pay fixation as per his pay during army services, which were higher than that of the Security Assistant. In the meanwhile on 17.03.1998 the applicant was asked to explain about discrepancies between date of birth in two certificates viz the High School mark sheet and discharge certificate. The applicant submitted his explanation on 24.03.1998 stating that when he was enrolled in army services in 1965 he was only 16 years of age and it was in interest of the defence of the country he was recruited and no certificate was produced at that time. Subsequently in the year 2001 the applicant was asked to submit both the original mark sheet and certificate of 1984 indicating his date of birth as 01.01.1950 as well as the discharge certificate containing his date of birth as 02.10.1947. Thereafter by letter dated 21.11.2001 the Director, DMS RDE, Kanpur intimated that R&D HQ has examined the issue and directed to fix the applicant's date of birth as 02.10.1947 as per the record in Bengal Engineering Group, Roorkee by letter dated 30.10.2001. Consequently his date of birth was amended from 01.01.1950 to 02.10.1947. On 23.03.2004 the applicant represented to the respondents to review his case and interpolate his date of birth as 01.01.1950. This representation was followed by at least three reminders. However, instead of recording correct date of birth the applicant was served with a charge sheet dated 18.07.2005 under rule 14 of CCS (CCA) Rules 1965 on the false allegation of tampering his high school mark sheet. The applicant, on receipt of charge sheet stated that being unqualified he demanded Hindi

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version of memorandum of charge and photocopies of annexures listed alongwith charge sheet. Being apprehensive that he would be retiring as per revised date of birth on 1947 or imposition of a major penalty, the applicant has filed the instant original application.

4. Learned counsel for the applicant argued that at the time of entering into DMSRDE, Kanpur in 1996 the applicant had clearly indicated his date of birth as 01.01.1950 and as the high school mark sheet / certificate have a probative value so far proving of date of birth is concerned , the applicant has right to change his date of birth from 02.07.1947 to 01.01.1950. He pleaded that as the applicant had already retired in October 2007, the only benefit he will get consequent to the correction of the date of birth to 01.01.1950, is only notional to which he is fully entitled.

5. Shri Firoz Ahmed, learned counsel for respondents on the other hand submitted that the applicant, who retired from army services, was appointed in DMSRDE, Kanpur as Security Assistant (C) in the year 1996. Insofar as the list of candidates received from Zila Sainik Board is concerned, the additional qualification as well as date of birth of the applicant had been shown as high school passed and 01.01.1950. On the request of the applicant seeking benefit of his past service rendered in army, the respondents had an occasion to peruse the discharge certificate and found that there was a clear discrepancy between the date of birth recorded in

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discharge certificate (02.10.1947) and in high school certificate (01.01.1950). When the applicant was asked to clarify the discrepancies in his stated date of birth, the applicant reiterated that 01.01.1950, as contained in high school mark sheet is correct and that at the time of joining of the military service, he was 16 years of age. At that point of time he did not submit any document in support of his date of birth. It is the contention of the respondents that the respondent no. 2 while selecting the applicant as Security Assistant (C), committed a mistake in accepting the applicant's date of birth as 01.01.1950, as recorded in high school mark sheet and not taking into account the date of birth, as mentioned in discharge certificate. A reference in this regard was made to Record Office , B.E.G, Roorkee to ascertain the date of birth of the applicant in record. By letter dated 26.03.1999, the concerned authority of Record Office intimated that there had been tampering in the mark sheet of high school and his date of birth has been recorded as 02.10.1947 in place of 01.01.1950. On knowing this fact the respondent no. 2 decided to issue a memorandum of charge dated 18.07.2005 to the applicant. In reply the applicant denied the allegation in the charge sheet. The case of the respondents is that the applicant could not have been enrolled in the army service, if his date of birth was 01.01.1950, as he was clearly under age and, therefore, ineligible for enrollment. In fact the applicant made a deliberate attempt to conceal his age to get appointment in military service. Having regard to the above facts learned counsel for respondents pleaded that there was a clear

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intention on the part of the applicant to mislead the respondents in order to extend his service and his case for correction of date of birth is not tenable.

6. Heard learned counsel for both side and perused the pleadings.

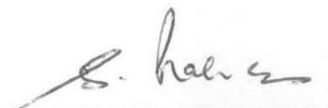
7. In the first place it is to be noted that while the disciplinary proceeding was initiated against the applicant relating to the discrepancies in date of birth submitted by him, from the pleadings, it is not clear as to what was the out come of the aforesaid proceeding.

8. The moot point involved in this O.A is whether date of birth submitted by the applicant has to be accepted by the respondents / DMSRDE. At the initial stage of recruitment in the year 1965 in the military service the date of birth of the applicant was recorded as 02.10.1947 on the basis of a certificate based upon medical assessment. It is to be noted that if this date of birth is reckoned the applicant had completed 18 years of age and was accordingly eligible for being enrolled in military service. During the period of his service rendered in the military from 1965 till the year 1993, when he was discharged, the date of birth of the applicant continued to be recorded as 02.10.1947. In the meantime in the year 1984, the applicant passed the high school examination wherein his date of birth was recorded as 01.01.1950. If the actual

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date of birth was 01.01.1950, he ought to have moved to the competent authority during his military services for change of his date of birth. The fact that he did not do so is ~~an~~ indicative of the fact that the applicant was well aware that in case he moves for change of his date of birth from 02.10.1947 to 01.01.1950, he would have been treated under age at the time of his initial enrollment in 1965 and his appointment at that stage itself would have been considered ab initio irregular. The fact that during this period he did not move for any change in date of birth does not entitle him for seeking any change in date of birth at a later stage. In the case of **Shovakhu Sumi Vs. State of Nagaland - 2005(8) SLR 797**, the Apex Court has clearly laid down that even if the employee produces irrefutable proof relating to his date of birth as different from the earlier one recorded in the service book, he cannot ask for correction of date of birth recorded in the service book, if he continued to allow the wrong date of birth without any objection for a number of years.

9. In view of the above, we do not find any merit in the claim of the applicant. Accordingly, the O.A is dismissed. No costs.


(SHASHI PRAKASH)
MEMBER- A.

Anand...