

A3

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1685 of 1987

Ishtiaq Ali Siddiqui .... Petitioner.

Versus

Union of India & others .... Respondents.

Hon'ble Ajay Johri, A.M.

This writ petition has been received on transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. According to the petitioner he declared his date of birth as 6.5.1933 when he joined the Ordinance Depot, Allahabad in December, 1962 but the same was wrongly entered as 21.3.1926. To support his contention he has submitted the Matriculation Certificate of his elder brother, Ishrat Ali, who passed High School Examination in 1953 where his date of birth is shown as June 10, 1928 and, who is also working in the Ordinance Depot at Allahabad. <sup>3/</sup> <sup>3/ 1959 £</sup> He has also relied on the Electoral Rolls prepared in the years <sup>1966</sup> and the School Leaving Certificate given to him from the Majidia Islamia Inter College, Allahabad. He applied for the change of date of birth on 4.4.1984 followed by other representations but there was no response. He had made the request within 5 years of the enforcement of the circular of the Government of India dated 30.11.1979 in the Ordinance Depot. Finally on 8.6.1985 he received a communication that his date of birth could not be changed at this belated stage. He has, therefore, prayed for the issue of writ of certiorari to quash the letter of 8.6.1985 and for the issue of a mandamus directing the respondents to correct his date of birth and to make consequential changes in his service records.

3. The petition has been opposed by the respondents

on the grounds that the petitioner had no authentic documents to prove his date of birth at the time when he joined the service on 6.12.1962. The date of birth was entered according to his declaration and the assessment of the Doctor. The petitioner has attested the document regarding his date of birth a number of times thereafter. On 30.11.1979 the Ministry of Defence restricted the requests for alteration of date of birth unless these were made within 5 years of joining service. This circular was circulated in the Depot on 10.8.1983 but the request from the petitioner was received only on 4.4.1984. Hence the request could not be entertained and his representations were rejected. At the time of his employment the petitioner had given his date of birth as 21.3.1926. This was attested by two independent witnesses. The respondents have not accepted the school certificate on the ground that the Matriculation Certificate is the minimum requirement.

4. I have heard the learned counsel for the parties. The learned counsel for the petitioner contended that the letter dated 30.11.1979 has no retrospective effect hence the respondents could not take shelter behind that letter to reject the petitioner's request for the change of date of birth. Moreover, the petitioner had applied within 5 years of the notification of the letter. So the representation cannot be rejected on this ground alone. The brother's age also stood admitted by the respondents. So he emphasised that the respondents should consider the request on its merits. The learned counsel for the respondents opposed these contentions on the grounds that no documents had been produced by the petitioner to authenticate the date of birth and the application was moved late. I have also gone through the petition and the papers filed along with it.

5. In the copy of the Electoral Roll for the year 1959 the age of the petitioner is shown as 24 years while in the Electoral Roll for the year 1966 the age has been shown as 26

years. These two figures obviously give the year of birth of the petitioner as 1935 and 1940 respectively. Electoral Rolls are prepared on the basis of oral declarations given to the census authorities who visit the residences while preparing the rolls. They cannot be considered as reliable document for the purpose of correction or entry of date of birth. The document that could be relied upon could be an extract from the birth and death register of the concerned municipality. But no such document has been filed by the petitioner. The Electoral Roll of 1959 and 1966 giving such wide variations in the age of the petitioner speak very clearly of the degree of reliance that can be placed on them. They instead of helping the petitioner militate against his contention that his year of birth is 1933. According to ~~EW~~ the documents it is not 1933 but either 1935 or 1940.

6. The elder brother's Matriculation Certificate submitted by the petitioner does also not come to his rescue either. If at all it gives a handle to the respondents to question the authenticity of the age declared by the petitioner's brother. It is not stated whether the brother passed the Matriculation examination before joining service. If he had passed the same subsequent to joining service, the age declared in the certificate cannot be accepted as authentic on the basis of that document alone.

7. The learned counsel for the respondents had filed during the course of hearing of the petition, photo copies of the attestation form submitted by the petitioner on 6.12.1962 as also a certificate which was required to be completed in candidates own handwriting. This certificate clearly shows an entry of the date of birth as 21.3.1926. Another declaration and statement was made by the petitioner in reference to the Government of India, Ministry of Health O.M. No.F.5-(II)-55/56-M-II, dated 27.9.1957 wherein he had to make the statement prior to his medical examination. In this also the date of birth has been entered as 21.3.1926 and the ages of <sup>by his</sup> ~~number of~~ brothers living have been shown as 38 years,

34 years and 30 years and the age of the father has been shown as 55 years. Thus if the elder brother was 38 years old on the date he signed this declaration which is 6.12.1962 the elder brother's date of birth come to 1924 and on that basis if his date of birth is 1926 it cannot be said that it was wrongly entered by him.

8. A plea has been taken by the learned counsel for the petitioner that repeated endorsements on the service record cannot result in the request of the petitioner not being considered for the change of date of birth. Though there is no doubt that the petitioner has signed the first page of his service book, a photo copy of which was submitted by the learned counsel for the respondents, a number of times and there has been no change in the date of birth column which showss the date of birth as 21.3.1926, I feel that merely endorsing the entries periodically cannot deny a person the chance of making a request for change of date of birth if it is supported by some new and ~~gauthentic~~ information that may come in the possession of the person subsequently.

9. The learned counsel for the petitioner has relied on the case of R.R. Yadav v. Union of India & others (A.T.R. 1987 (2) C.A.T. 506) wherein it was held that the entry in the service record may not be conclusive and although it stood undisputed for over 30 years, still it raises only a rebuttable presumption and that in the absence of any evidence to the contrary to support the entry in the service record and in fact of the unimpeachable school record produced before the respondents and now before the Tribunal the presumption is effectively rebutted. As far as the petitioner's case is concerned he has not ben able to produce any conclusive evidence in support of the request for change of his date of birth. The Electoral Roll, copy submitted by him, cannot be relied on for the obvious reasons indicated in paras supra. As far as his own declarations are concerned there is overwhelming evidence that he had made a number of declarations and statements and in all of them he had shown his date of birth as 21.3.1926.

A3  
5

3/  
-: 6 :-

10. There is no doubt that the circular of 30.11.1979 will not be applicable in the case of the applicant and, therefore, the rejection of his request for change of his date of birth on the grounds that he had not requested for the same within 5 years of joining service in terms of this circular would not be in order. The applicant had joined service in December, 1962. Even before joining this service, according to the declarations made by him, he was employed in the Ordnance Depot, Cheoki during the period 21.3.1944 to 17.10.1947 and was retrenched due to reduction in establishment. On the basis of the claimed date of birth of 1933 he could not have been employed as a leading hand 'B' in the Ordnance Depot in 1944 as he would have been only 11 years of age.

11. A contention was also raised by the learned counsel for the petitioner that the procedure as laid down in the Civil Service Regulations in respect of the recording of date of birth ~~say~~ <sup>2/ say</sup> ~~say~~ that in case of literate staff, the date of birth shall invariably be supported by documentary evidence and be entered in the record of service in the employee's own handwriting. In the case of illiterate staff the date of birth is to be recorded by a responsible gazetted officer and witnessed by another responsible employee not below the rank of a supervisor or of equivalent grade. According to the learned counsel these ingredients are missing as the perusal of the original Service Record shows. The learned counsel for the defendants, however, repelled these contentions on the ground that the Service Record entries at all the places show only one date of birth and these entries have been countersigned by the petitioner periodically.

12. There is no denial of the fact that the entries in the service book have been attested by the petitioner. Against two attestations there is no date while against one the date is 14.12.1976. So if he has attested the same as late as 14.12.1976 he cannot turn back and say that he did not know what he was attesting. There is, of course, lapse on the part of the defendants in regard to these

-: 6 :-

attestations as they have not been done at regular periodic intervals of 5 years. There is also no date against the signature of the attesting officer. But it cannot be said that on these lacuna the entries in Service Book become wrong. Moreover, the school leaving certificate on which the petitioner is now relying could have been produced by him at the time of joining service but he had not produced it then and it is evident that the particulars of his family etc. that have been entered in his service book or are indicated in the various declarations given by him at various times and which indicate the date of birth as 21.3.1926 could not have been filled without the petitioner giving the information and they cannot be ignored.

13. I also find that in his declaration for benefits of the ~~34 placed in his Service Book~~ 49 years in 1980 and CGEIS, he has shown the age of his wife as 50 years on 26.12.1981.

It is normal social custom that wife is always younger to the husband. If the date of birth is taken as claimed by the petitioner, i.e. 6.5.1933 he would be only 48 years old in 1981 and younger to his wife.

14. The petitioner has said that the matter is also subjudice before the Supreme Court as the defendants have preferred a special Leave Petition against the Allahabad High Court's orders of 24.7.1986, hence the case should not be proceeded with. The Allahabad High Court's order of 24.7.1986 reads as follows :-

"Learned counsel for the petitioner stated that inspite of his best efforts the case could not be listed for hearing hence the interim order be extended. Sri Mohiley, learned counsel for the respondent stated that the interim order should not be extended as it would be difficult to recover the pay paid to the petitioner in the event the writ petition fails and dismissed.

The interim order dated 16.5.86 is extended till further orders or till the posting of the writ petition for hearing whichever is earlier.

Learned counsel for the petitioner Sri J.N. Tewari has given an undertaking that in the event the writ petition fails and is dismissed, the salary paid to the

A3  
7

-: 7 :-

petitioner shall be reimbursed from his Gratuity and Provident Fund which are lying with the respondents."

I do not think that prefering a SLP against an interim order would make the petition subjudice. Even if SLP is allowed the petition has to be considered on merits and decided.

15. On the above grounds I find no merit in the petition and the reliefs claimed by the petitioner for quashing the order dated 8.6.1985 rejecting his request for the change of date of birth from the one recorded in the service record to the one claimed by him. I also do not find any merit in the request made at the Bar by the learned counsel for the petitioner that the case may be examined by the respondents on merits as the rejection of the request was made because it has not been preferred within 5 years of joining duty in terms of the 1979 circular. In the result the application (Civil Misc. Writ Petition No. 14290 of 1985) is dismissed with costs on parties.

3/5/88

MEMBER (A).

Dated: May 31<sup>st</sup>, 1988.

PG.