

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 6th day of June 1997.

Transfer Application no. 1792 of 1987
(Writ Petition no. 2948 of 1985)

Hon'ble Mr. S. Dayal, Administrative Member.

Gaje Singh, Section Officer (A) Office of the Controller of Defence Accounts (O&S) North, Meerut Cantt.

... Applicant.

C/A Shri A.D. Prabhakar

Versus

1. The Union of India through the Ministry of Finance (Defence), Govt. of India, New Delhi.
2. The Controller General of Defence Accounts, West Block-V, R.K. Puram, New Delhi.
3. The Controller of Defence Accounts (O&S), North, Meerut Cantt.

... Respondents.

C/R Shri N.B. Singh.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985, seeking the setting aside of the order that the applicant would superannuate on 31.03.85 based on an altered date of birth.

This case was initially filed in the High Court

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on 14.03.85 as a Civil Miscellaneous Writ Petition no. 2948 of 1985 and was transferred to the Central Administrative Tribunal Court by an order of a Single Bench of the High Court dated 13.07.87. The writ petition was listed on 15.03.85 and the court was pleased to give an interim direction to Respondent no. 2 to dispose of any representation which the applicant may submit by 20.03.85 and the date of disposal was indicated as 27th March. The Writ petition remained part heard on 27.03.85 and was adjourned to 01.04.85 when it could not be taken up and was adjourned to 03.04.85 when the following directions were given by a Division Bench of the High Court.

" Meanwhile until further orders of this court, the petitioner shall be entitled to the payment of his salary and other emoluments due to him as if he had continued in service after 31st March, 1985, month to month subject to the undertaking given on behalf of the petitioner that in the event of this petition being dismissed, the entire amounts which the petitioner may have drawn in pursuance of this order shall be refunded by the petitioner to the respondents within six weeks of the dismissal of the petition. The respondents shall, however, be at liberty not to take work from the petitioner. The petitioner shall not be evicted from the accommodation which he is occupying as Section Officer until further order of this court." The case was admitted on 18.09.85 and the stay was allowed to continue till 30.11.85 which was date of Superannuation of the applicant according to his claim in the writ petition.

The applicant had filed the writ petition (on transfer treated as an application under section 19 of the Administrative Tribunals Act, 1985) praying for setting aside of Part II office Order no. 780 dated 16.10.84 and a direction to the respondents not to interfere in the working of the petitioner as Section Officer (A) in the office of Controller of Defence Accounts (ORs) North, Meerut Cantt till 30.11.85. The petitioner also claimed cost of the petition.

The case of the applicant is that the applicant was recruited in the army as a young boy of 16 years in 1943. After the end of the Second World War, he was released from the Army services with effect from 27.03.47. Punjab University under Special War Regulation got Jat High School, Rohtak, in which the applicant was studying in final year before his recruitment, to issue a certificate of matriculation examination on dated 21.02.47 in which the date of birth of the applicant was shown as 15.11.47. The applicant passed intermediate and B.A. examination thereafter. The applicant again sought appointment as Lower Division Clerk in the office of the Controller of Defence Accounts, Meerut, with effect from 10.06.54. He declared his date of birth as 15.11.27 on the basis of matriculation certificate at the time he joined as Lower Division Clerk and this was entered in his Service Book. It is stated that the Controller of Defence Accounts altered his date of birth without any information or notice to the applicant from 15.11.27 to 27.03.27. The representation of the applicant against alteration in the date of birth is alleged to have remained unconsidered till the date of filing of writ petition.

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He claims that alteration of date of birth was against natural justice, General Financial Rules and law laid down by Delhi High Court.

This case had been heard by Single Bench and judgment was pronounced on 28.04.92. The application was dismissed on the basis of contents of the order rejecting the representation of the applicant. The order of dismissal was, however, recalled because the date of hearing was changed and notice of the same was not served on the applicant or his counsel. This was done by order dated 13.11.92 in the order sheet.

The arguments of Shri A.D. Prabhakar, learned counsel for the applicant, and Km. Sadhana Srivastava, learned counsel for the respondents have been heard. The written pleadings have also been taken into account and the conclusions drawn by me are set forth in the ensuing paragraphs.

The short question which has to be answered in this case is whether the date of birth as entered in the service book can be changed unilaterally by the authority vested with this authority on the basis of army discharge certificate in variance with the age declared by the applicant at the time of entry into civilian service on the basis of his matriculation certificate.

The Respondents in their second counter reply have stated that respondents no. 2 had issued a letter no. 6369/AN dated 03.05.56 which they claim was annexed as Annexure I to the CA. But Annexure CA I and II annexed to

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the counter reply is only the first page of the applicant's Service book and the letter no. 6369/AN dated 03.05.56 has not been annexed. It can not be ascertained without a copy of this letter whether any order was passed by Controller General Defence Accounts.

Even if it is assumed that such an order was passed, the respondents have claimed in the second counter reply in the form of affidavit of Shri Paras Ram, that the change in the date of birth was on the basis of provisions of G.F.R80(3). GIGFR 80 (3) has been reproduced in the application along with GFR 80 (1) (2) and reads as follows:-

- 80 (1) If a government servant is unable to state his exact date of birth but can state the year or year and month of birth, the 1st July or 16th of the month respectively shall be treated as the date of birth.
- (2) If he is only able to state his approximate age, his date of birth shall be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment.
- (3) When a person who first entered military employ is subsequently employed in a civil department, the date of birth for the purpose of the civil employment shall be the date stated by him at the time of attestation or if at the time of attestation he stated only his age, the date of birth shall be deduced with reference to that age according to Sub rule (2) of this rule."

The respondents have annexed a copy of their^{repy}/to the representation of the applicant given by them on 25.03.85 as Annexure CA-4 to their second counter reply sworn by Shri Paras Ram. They have stated in their reply that the

amended date of birth of the applicant was based on the date of birth shown in the army discharge certificate. The applicant has annexed Army Discharge Certificate as Annexure 1 to the O.A. This discharge certificate does not give any date of birth but mentions age as 20 years. The respondents seems to have deducted 20 years from date of discharge of the applicant which was 27.03.47 and appear to have unilaterally corrected the date of birth as 27.03.27. This is not consistent with the provisions of GFR 80 (2) as the date of discharge is not to be made the basis of computation of date of birth even according to GFR 80 (2).

The applicant has cited the case law in writ petition no. 663 of 1983 of Shri Parmal Singh, Accounts Office in CDA decided on 24.01.84 and writ petition of another Accounts Officer Shri Joga Singh decided by the Delhi High Court on 20.09.78. Another writ petition of Shri Sheo Raj Singh was stated in the application as allowed in the year 1984. The respondents have mentioned in their first affidavit made by Shri Nand Kishore (para 15 of it) that the case of the applicant is distinguishable from the cases cited by him because they had not declared their date of birth at the time of their enrolment while the applicant did not give any documentary proof to that effect. The applicant has annexed a copy of the Long Roll to his rejoinder in which in column 5 date 03.05.43 has been mentioned as the date of enrolment and 16 years is mentioned as "apparent age" on that day. In another annexure (RA-3) annexed to his first rejoinder the date of birth column contains 16 years as apparent age. These annexures make it clear that the recorded age was the age assessed by military authorities and not declared by the applicant. The learned

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counsel for the applicant cited yet another judgment in T 1000/85 of the Principal Bench of Central Administrative Tribunal which was decided on 11.12.87 between Smt. Majtabu-Un-Misa Begum V Union of India and others in which the date of birth as originally recorded on the basis of High School Certificate was treated as the correct date of birth and date of birth mentioned on discharge certificate was not treated as unalterable. It is clear that the ratio of the cases cited by the applicant is clearly applicable to his case.

The respondents in their reply dated 25.03.85 annexed to their second counter affidavit have mentioned that the date of birth of the applicant could not be based on matriculation certificate because he had not joined the army as a matriculate. It is clear from the averments that the applicant was awarded matriculation certificate before he was given the discharge certificate on 27.03.47 and he was awarded matriculation certificate on 21.02.47. The age at the time of discharge was 20 years and the respondents have based his date of birth on the date of discharge. The respondents had recorded his date of birth at the time of his entry into the service in their department on the basis of his matriculation certificate, which was a more authentic document of the applicant's date of birth than calculation of his age on the basis of his age shown in the discharge certificate from the date of discharge. In any case the year of birth of the applicant remained the year 1927 and the only question was the date and month of birth which were at variance if taken from date of attestation or date of

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discharge or matriculation certificate. The date of birth as shown by the applicant in his matriculation certificate was not inconsistent with the year of birth assessed by the authorities at the time of induction of the applicant as a boy soldier in the military service.

The respondents changed the date of birth unilaterally without affording an opportunity to the applicant of showing cause as to why his recorded date of birth should not be changed. The respondents have claimed that date of birth was changed on the basis of letter no. 6369/AN dated 03.05.56 issued by Respondent no. 2. The respondents have mentioned this letter as annexed to their C.A. as Annexure 1 without annexing this letter at all. Instead of filing this letter, they have combined Annexures 1 & 2 and produced the first page of the service book of Shri Gaje Singh, the applicant, as these annexures. In the absence of a copy of this letter, it can not be said as to when the change in date of birth was made and who ordered the change of birth. It is not known whether letter no. 6369/AN dated 03.05.56 was regarding change of date of birth of the applicant or a letter stating general principle on the basis of which date of birth cases of this type were to be dealt with. Annexure 1 to the CA shows that correction of date of birth to 27.03.27 was entered by A.A.O on 21.05 i.e. 21st of May. The year of making this endorsement is not shown. We, cannot, therefore, make any assumption regarding the authority which passed order no. 6369/AN dated 03.05.56 and whether this authority had passed a specific order regarding applicant's date of birth on the basis of which the A.A.O. made the endorsement in his service book. We cannot,

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therefore, accept the contention of the respondents that the applicant had seen this change thrice after it was made.

In any view of the matter, the order of the respondents changing the date of birth of the applicant can not be sustained. I hold that the applicant would be deemed to have superannuated on the after noon of 30.11.85 and to have continued in service till that date. He would, therefore, be entitled to all consequential benefits including salary, increment if due and retirement benefits. The respondents are directed to consider any claim of the applicant arising out of this judgment and finally settle the claim within three months of receipt of claim along with a copy of this judgment from the applicant.

There shall be no order as to costs.

Sd/-
A.M.

/pc/

Compared
P.M.