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Om Prakash

Vs.

Union of India and others . . .

Respondents.

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2. It is alleged by the applicant that he had joined the then Ordnance Parachute Factory Kanpur on 28.6.1963 as Tailor 'C'. In 1966, the applicant was transferred to Small Arms Factory and in 1970, he was promoted as a Wireman and in 1983 as Electrician 'B'. He has further alleged that in 1985 he knew that his wrong date of birth, namely, 27.8.1928 was recorded in his service book. On 12.12.1985, he made a representation to the General Manager-respondent no.2 for the correction of his date of birth which according to him is 6.7.1931. But the same was wrongly rejected on 14.2.1986. According to the applicant, 6.7.1931 was recorded as date of birth in his school record as well as in the record of Employment Exchange through which he had applied for employment and in the gate pass issued to him by the Factory, 10.10.1934 has been recorded as date of birth and the date of birth recorded to the contrary in his service book is incorrect and should be corrected.

3. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the Deputy General Manager, Small Arms Factory, Kanpur, it has been stated that at the time of his appointment, the applicant did not produce any proof regarding his date of birth and on the <sup>estimate</sup> ~~assumption~~ of his age as 35 years on 27.8.1963 by the Medical Officer, his date



of birth was recorded to be 27.8.1928 in his service book according to rules. On 27.7.1973, in the nomination form furnished by the applicant to the Factory regarding to the General Provident Fund, he had noted the same date 27.8.1928 as his date of birth and the allegations made by him to the contrary are not correct. The gate pass is not a document of date of birth of the applicant and no reliance can be placed on the same regarding the entry about his date of birth made therein. The applicant is bound by his own admission and there is no ground to make any change in the date of birth of the applicant as recorded in his service book.

4. The applicant filed a rejoinder reiterating the grounds taken in his petition and further stated that though he was medically examined at the time of his appointment in the service, his date of birth in the service book was not recorded according to the report of the medical officer and the date of birth recorded in the service book is incorrect and requires correction.

5. Annexure CA-2 filed by the respondents is the copy of the service book of the applicant which shows that at the time of his medical examination, he had stated his age to be 30 years and from his appearance it was noted to be 35 years. The medical report forming part of the service book shows that the applicant was medically examined to ascertain his physical fitness. No data to ascertain his date of birth or age is mentioned in the medical report. In case the medical officer had made a thorough check up or had applied any scientific test for ascertaining the age of the applicant, he should have prepared a report based on such check up or data~~s~~. The same has not been produced before the Bench. On the other hand, <sup>shows</sup> from the service book annexure CA-2 that from his appearance, the applicant was found to be of 35 years. It, therefore, does not appear from this report that there was any



medical examination for determining the age of the applicant though it appears from the entry regarding date of birth that the date 27.8.1928 was noted on the basis of medical report and no documents were filed by the applicant. The relevant instructions (G.I.M.No.6(8)58/5198/D Appts.dated 28.5.1959 as amended by G.I.M. dated 6.1.1960 and 1.6.1961) issued by the Government of India for determining the date of birth at the time of initial appointment in service for civilians in Defence Service and mentioned in para 6 of the reply of the respondents make it clear that when a person entering service is unable to give his date of birth, but gives his age, he should be assumed to have completed the stated age on the date of attestation and when the authorities have any doubt about the correctness of the age stated by the person concerned, medical opinion to assess his age may also be obtained and suitable date of birth entered in his service record after taking into account the date stated and the evidence produced by the individual. Thus, according to these instructions, either the age stated by the applicant should have been accepted by the appointing authority or a medical opinion to assess his age should have been obtained. Without expressing any final opinion on the point, I very much doubt the correctness of the procedure that such medical examination could be based merely on the appearance of the person concerned. The respondents have laid much emphasis on the admission of the applicant regarding his date of birth 27.8.1928 as mentioned by him in his nomination form, copy annexure CA-1, and it was contended that the applicant fully knew that 27.8.1928 was his correct date of birth and it was so recorded in his service record and the stand taken by him subsequently for extending the period of his service at the fag end of his career is not correct. Reliance was placed on their behalf on a decision of a Bench of this Tribunal in Sharda Prasad Vs. Officer Commanding (A.T.R.1986 CAT-167) in which, placing reliance on



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a decision of the Hon'ble Supreme Court, it was held that the date of birth as recorded in the official record having been admitted by the employee, he cannot claim a different date of birth subsequently. The contention of the applicant is that this form is written in English while he knows Hindi only and he is not bound by the date of birth mentioned in the nomination form. In case, this contention is accepted then no entry made in the nomination form CA-1 can be binding on the applicant and his nomination will be rendered a waste paper. In my opinion, a person is bound by the facts stated in any document written in any language known to him or not containing his signatures or even thumb impression unless it is explained and proved by him that his signatures or thumb impressions were obtained fraudulently or under some bonafide mistake or for some other good reason. However, there appears to be one other document namely, the copy of the gate pass annexure 2, issued by the respondents mentioning 10.10.1934 as the date of birth of the applicant and in para 15 of his rejoinder, the applicant had the cheek to say that this date of birth was correctly recorded. In case, this is his correct date of birth, he should have mentioned the same in his petition. His stand is self inconsistent and on this ground alone, no reliance can be placed on the two dates i.e. 10.10.1934 and 28.8.1931 claimed by the applicant as his date of birth. A certain entry regarding his date of birth already appears in his service book from the very beginning of his entering the service and it is for the applicant to prove that the said entry is incorrect and it is not to be seen at this stage whether the entry made by the respondents in the service record of the applicant regarding his date of birth was made correctly. As the representation made by the applicant for the correction of his date of birth as recorded in his service



book was not properly considered, as will appear from the following discussion, I do not think it expedient to decide the question finally in this petition and it will be in the interest of justice that the matter is left open for deciding it afresh according to rules.

6. It appears from the impugned order dated 14.2.1986 passed by the Works Manager respondent no.3 on behalf of the respondent no.2 that the representation dated 12.12.1985 of the applicant for correction of his date of birth was rejected in view of the orders of the Government of India published vide S.A.F. Order Part I No.696 dated 19.12.1980, copy annexure 4. The respondents have filed the copy of the order No.696 dated 19.12.1980 in question as annexure CA-3 and it appears from this order that the rules amending the fundamental rules were issued by the President for persons serving in the Indian Audit and Accounts Department. The applicant undisputedly is not an employee of Indian Audit and Accounts Department and the order dated 19.12.1980 in question is not applicable to him. His representation for the correction of his date of birth was, therefore, rejected by the respondents without proper application of mind and in my opinion the matter should have been examined in necessary details in the light of the material available on the record and after affording him an opportunity of hearing in support of his claim. The order of rejection is, therefore, bad in law and cannot be sustained and in view of the various discrepancies pointed out above, it will be just and proper that the representation of the applicant is considered afresh according to rules.

7. I accordingly allow the petition and direct the respondents to dispose of the representation dated 12.12.1985 of the applicant regarding change in the date of birth afresh according



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to rules within a period of three months. The parties are directed to bear their own costs.

*G.S. Sharma*  
4/1/88  
(G.S.Sharma)  
MEMBER (J)

Dated: January, 4, 1988  
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