

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALIAHABAD.

Registration (O.A.) No. 470 of 1987

V.P.S. Yadav Applicant.

Versus

Controller of Defence Accounts
(Other Ranks) North, Meerut and
another Respondents.

Hon'ble Ajay Johri, A.M.

This is an application received under Section 19 of the Administrative Tribunals Act XIII of 1985. The application has been made against an order dated 13.10.86 passed by the Accounts Officer (Admn.) retiring the applicant. The applicant's case is that he had joined the Indian Army on 21.11.1947 and he was discharged from the Army on 28.9.1954. He had passed his High School examination in 1946 and at the time of his enrolment in the Indian Army he had produced the Matriculation certificate in which his date of birth was indicated as 5.7.1931. On relieve from the Army he got an appointment as Lower Division Clerk in the office of the Controller of Defence Accounts, Eastern Command, Meerut on 16.5.1955.

3/ A new service record was opened for him and the date of birth as recorded in the same was 5.7.1931 which was entered on the basis of his Matriculation certificate.

3/ In the end of the year 1956 a circular letter was issued by the respondents asking all those persons who has served in the Army to produce their discharge certificate. The applicant deposited his discharge certificate also and when the service record of the applicant was shown to him it was found that his date of birth has been altered from 5.7.1931 to 21.5.1929, ^{when giving any} ~~when giving any~~

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opportunity to the applicant before the change was done. This date of birth was derived from the Army Discharge Certificate in which his age was mentioned. The applicant thereafter represented saying that his date of birth in the Matriculation certificate is the actual date of birth and the date of birth given in the Discharge Certificate was only an assessed date of birth on the recommendation of the Medical Officer. In the enrolment form for the Army there was no column to indicate date of birth. Thus only apparent age is normally mentioned in that form. On the basis of the Matriculation certificate his educational qualifications were also duly recorded by the Army Authorities. The date of birth recorded in the High School certificate normally prevails in case a person was considered to be in possession of the certificate at the time of joining the Army and the provisions of Rule 80(3) of the General Financial Rules do not have force in such cases. The applicant has stated that since he took up his civil post after having been discharged from the Military service sub-rule (3) of Rule 80 of the General Financial Rules were made applicable in his case. According to the applicant it should have been sub-rule (2) of Rule 80 of GFR which says that "If a person is able to state his approximate age his date of birth shall be assumed to be corresponding age after deducting the numbers of years representing his age from his date of appointment". The applicant has said that the time of his recruitment in the Indian Army he had produced his Matriculation certificate and, therefore, there is no question of his giving any ~~average~~ at the time of enrolment. The provisions of Rule 80 of GFR also did not exist at that time when he was appointed in the Defence

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Accounts Department on 16.5.1955. Thus the age of the applicant was recorded as per his Matriculation certificate and subsequently the change to 21.5.1929 as per the discharge certificate has put ^{him} ~~him~~ into dis-advantage. He represented to the respondents regarding the change in his date of birth in the service record, particularly in the back-ground of the revised Pension Rules according to which a period of 30 years was raised to 33 years and ~~thus~~ ^{by term} they were resulting in a short ~~form~~ ^{term} of ~~one~~ ³ of service for his earning full pension. His representation was, however, turned down. He made another representation to the President of India in October, 1978 which was also turned down. According to the applicant the provisions of ascertaining the actual date of birth as provided in Rule 80 of GFR came up for examination by the High Court of Delhi in cases of Yoga Singh, Parmal Singh and Sheo Raj Singh, all Accounts Officers (Retired) and the decision of the Delhi High Court in these three cases was that the date of birth as recorded in the Matriculation certificate was admitted as the only proof of age and that the persons concerned should be superannuated on the basis of age thus recorded. The applicant made another representation in March, 1987 but he has received no reply so far and since the Delhi High Court's judgment has become final because the Government did not file any appeal in the Hon'ble Supreme Court, Rule 80(3) of GFR becomes redundant as far as the applicant is concerned. According to the applicant, he has lost 2 years and 2 months of service due to this alteration of his date of birth. Thus it has caused an irreparable loss. He has, therefore, prayed for issue of a direction commanding the respondents to accept his date of birth as given in his Matriculation certificate.

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2. In the counter affidavit the respondents have said that as per Rule 117(3) of GFR it is necessary that when a person ^{3/ who} first entered into Military employment ^{3/ came} as consequential employee in Civil Department, the date of birth for the purpose of civil employment shall be the date stated by him at the time of his attestation. It is further stated that it was necessary for the department to correct the date of birth of the petitioner as per list of employment of the petitioner in Defence Department. According ^{3/} the date of birth of the applicant was corrected on the basis of the discharge certificate. This change was done with the consent and knowledge of the applicant and he has noted the change in his own hand-writing in 1956. They have denied that opportunity was not given to the applicant before changing the date of birth. The applicant having put his signature in the service book cannot claim that the change has been done behind the back of the applicant. They have ^{3/ admitted} ^{3/ agreed} that the date of birth was changed from 5.7.31 to 21.5.1929 in terms of the provisions of GFR 117(3). The representations ^{3/} made by the applicant in 1976 was turned down in consultation with the Department of Personnel and Administrative Reforms. They ^{3/} have further said that the applicant evidently did not submit his High School certificate at the time when he joined the Army service and ^{3/ also} ~~evidently~~ he did not disclose his correct date of birth and, therefore, he had intentionally hidden this fact at that time. It is clear from the declaration given at the time of his enrolment in the Army that he was 18½ years of age. No representation dated 3.3.1987 has been received by the department and in accordance with his date of birth recorded on the

basis of Army Discharge Certificate the applicant has been retired with effect from 31.5.1987. They have further said that the applicant has himself mentioned his date of birth as 21.5.1929 in the Pension papers and the ~~same~~ papers of gratuity and in other documents.

3. I have heard the learned counsel for the parties. Sri G.D. Mukerji, learned counsel for the applicant contended that the applicant has passed the Matriculation examination in 1946 and his date of birth shown in the discharge certificate was only on the basis of look and not facts and it was changed to 21.5.29 on the basis of discharge certificate while it was entered correctly earlier as 5.7.1931. Sri N.B. Singh, learned counsel for the respondents referred the Rule 117(3) of GFR seeing that his date of birth had to tally with the Military Discharge Certificate.

4. In his rejoinder affidavit the applicant has reiterated what he has said in the application. He has further said that the provisions of para 117 were available at the time he joined the Defence Accounts Department but they were not invoked by the authorities and they accepted his Matriculation certificate. He has said that the change was not done with his consent but he was made to accept the same. According to him it has been clearly held that the provisions of GFR 117(3) are not attracted in the case of persons who joined the army after passing Matriculation examination. He has also filed a copy of the judgment of the Delhi High Court in Writ Petition No.663 of 1983. He has denied that he enjoyed any extra benefit by mentioning his date of birth as 21.5.1929.

5. The General Financial Rule 117 refers to a Government servant who is unable to state the exact date of birth but can state the year or years and month of birth. GFR 116, however, refers to a newly appointed person in a service or post under the Government. It is mentioned in this rule that every person ³⁴ ~~who~~ at the time of his appointment ³⁴ ~~to~~ declare the date of his birth with confirmatory documentary evidence such as Matriculation certificate and Municipal Birth Certificate. If the exact date is not known, an approximate date may be given. The actual date or the assumed date as may be determined under para 117 should be recorded in respect of the Government servants and once recorded it cannot be altered except in the case of a ³⁴ ³⁴ clerical error, ~~Without~~ without the ³⁴ ~~provisions~~ orders of the local administration. It is thus clear that the basic document that is required is a Matriculation certificate or a birth certificate and that in the case of those who are unable to state their exact date of birth para 117 applies. Para 117(3) states that "when a person, who first entered Military employment is subsequently employed in a Civil department, the date of birth for the purpose of the Civil employment should be the date stated by him at the time of attestation". This evidently again refers to those who are unable to state their exact date of birth. In the case of the applicant he had passed his Matriculation examination before he joined the Army. Though he has stated that he produced his Matriculation certificate, ³⁴ ~~his statement is not correct. Also~~ it would appear that the enrolment officer relied more on his own guess work of his age which he recorded as ³⁴ 18½ years. In the enrolment form under the heading Description of Enrolment there is a column of date of birth and apparent age. In the applicant's case the

date of birth has been scored out and the applicant's age has been shown as 18½ years. There seems to be no reason why if the applicant had a Matriculation certificate he should not have produced the same before the Recruiting Officer. It is quite probable that there must have a number of recruits to be dealt with and the Recruiting Officer found it convenient to write an apparent age rather than the exact date from the Matriculation certificate which may have been produced by the applicant. The Delhi High Court in Writ Petition No.663 of 1983 have dealt with a case which is very similar to the applicant. There is a comment on the details of the enrolment form in this judgment and it has been remarked that on the ³⁴ column of date of birth there is an asterisk mark and the note below it indicates that the date of birth should tally with the age given in one of these certificates, i.e. birth certificate, High School examination or School Leaving Certificate. In this judgment it has been further said that the Defence Services Regulations were compiled in 1960 and on the para dealing with selection of recruits para 33(d) deals with the question of determination of age. This regulation lay down that a recruit who is in possession of the prescribed documentary proof of date of birth the same had to be recorded in the enrolment form. When the apparent age is to be assessed by the enrolling officer in consultation with the medical officer, both the apparent age and the date of birth as calculated had to be recorded in the enrolment form and the medical officer is required to inform the recruit about the age so recorded. A ³⁴ from certificate had also to be taken in the prescribed form such a recruit and it had to be attached to the enrolment

form. It is only in case of non-Matriculates or illiterate recruits not in possession of any certificates, his apparent age had to be assessed by the ~~enrolking~~³⁶ ~~ment~~ officer in consultation with the Medical Officer concerned. These instructions were again modified in 1968. According to them no request for alteration of age is to be entertained and a Matriculation certificate obtained after passing Matric examination subsequent to enrolment is not-recognised. The Delhi High Court has further observed that the case that arose in that case was whether the petitioner had stated the date or age at the time of his attestation. The stating of date of birth was absent in the case of that petitioner. The description on enrolment completed by the Recruiting Officer leaves the column of date of birth as blank. The date of birth has to tally with the age given in the certificates. In that case the High School certificate could not be in possession of the petitioner on June 29, 1943 as the Matriculation certificate was issued on November 1, 1943. The inference was, therefore, made by the High Court that the petitioner did not state the date of birth at the time of attestation and the age was given by the Recruiting Officer. The petitioner never gave his apparent age as 18 years. The responsibility for recording the apparent age is of the Recruiting Officer and the Medical Officer and ~~as~~ such an age could have never been given by a recruit or the petitioner in that case.

6. The case of the applicant is similar to that of the case of the petitioner in Writ Petition No.663 of 1983, Parmal Singh v. Union of India & others, referred to above. I am not convinced that the applicant had obtained any unfair advantage by his age having been

declared as 18½ years. He could have got his recruitment even at the age of 16 years because the age of recruitment was between 16 and 25 years. In the case of Joga Singh v. Union of India (1979 S.L.J. 21) the Delhi High Court had referred to a memorandum of the department which was operative at the time of passing an order in that case dated July 25, 1962 which provided that in reckoning the correct date of birth and age of individuals having previous Army service on re-appointments, the Matriculation certificate was to be viewed as authentic. This circular was cancelled in July, 1978. The decision in Joga Singh's case was given by the Delhi High Court in September, 1978 and the judgment was accepted by the department and implemented.

7. From the circumstances of the case it would appear that the applicant did not state his date of birth or age at the time of his enrolment in the Army and since he did not make any statement I would agree with the view held by the Delhi High Court in Writ Petition No.663 of 1983 that in the absence of any statement about the date of birth or age given by the applicant at the time of his enrolment, Rule 117(3) is not attracted and it is the Matriculation certificate which is required to be taken as authentic proof of his age specially when he had passed the examination before his enrolment in the Army. His date of birth was evidently recorded correctly at the time when he joined the department but it was subsequently changed on the basis of the discharge certificate, ^{as per} ~~which has~~ held in the Delhi High Court's judgment to which I also agree should not have formed the basis because it was not based on the age declared by the applicant. It was purely on

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an assessment made by the Recruiting Officer which cannot be called as scientific assessment.

8. On the above considerations I direct that the date of birth of the applicant will be taken as 5.7.1931 on the basis of his Matriculation certificate and he will be considered to be continuing in service and his retirement on the basis of date of birth as ³⁸ ~~21.5.1929~~ ^{The application is allowed. 21} is void. /Parties will bear their own costs.

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Member (A).

Dated: December 16th, 1987.

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