

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

O.A.No.
T.A.No. 514

1987.

DATE OF DECISION 7.10.88

Banij Math

Petitioner

Sri R. J. Tewari

Advocate for the Petitioner(s)

Versus

UOI

Respondent

Sri Ashok Motwani

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G.S. Sharma, J.M.

The Hon'ble Mr.

- 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- 2. To be referred to the Reporter or not ?
- 3. Whether their Lordships wish to see the fair copy of the Judgement ?
- 4. Whether to be circulated to other Benches ?

Dinesh/

(PM)

Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.514 of 1987

Baij Nath ... Applicant

Vs.

Union of India through Secretary
Ministry of Defence,
Govt. of India, New Delhi. ... Respondent

Hon.G.S.Sharma, JM

This is an application u/s.19 of the
Administrative Tribunals Act XIII of 1985 for the
correction of date of birth.

2. The case of the applicant is that he was initially appointed as a Majdoor in a temporary vacancy of additional staff in Station Health Organization (for short SHO) Fort Allahabad on 16.5.1963 and the Daily Order (for short D.O.) was prepared in that connection. The applicant was of 22 years of age at that time and 16.5.1941 was recorded as his date of birth in Part II of the D.O. The applicant is an illiterate person and he is able only to make his signatures in Hindi. He did not get his education in any School and at the time of his appointment he had orally stated his age to be 22 years which was found to be correct on his medical examination. The applicant along with 5 others of his group was transferred from SHO Fort Allahabad to Central Ordnance Depot (for short COD) Kanpur vide movement order dated 30.11.1963 in which it was noted that the applicant was within prescribed age limit at the time of his recruitment. At the time the applicant was recruited in service, the prescribed age limit was 25 years. The applicant was accepted at the C.O.D. Kanpur and on 16.11.1964 he was designated as Carpenter and Joinder (for short C&J) after ^{this} passing [^]

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prescribed trade test. It is alleged that sometime in 1984, the applicant was called by the Establishment Section of the COD for the verification of his service record and for the first time he was informed that his recorded date of birth in the documents was 16.5.1930 and he was over age at the time of his initial appointment at SHO Fort Allahabad and the upper age limit was got relaxed by the COD Kanpur. The applicant thereafter made representations for the correction of his date of birth but no heed was paid and on the rejection of his representation by the Director General of Ordnance Services on 1.4.1987, he filed this petition for a direction to the respondents to correct the entry regarding his date of birth as 16.5.1941 in place of existing entry of 16.5.1930.

3. The petition has been contested on behalf of the respondent and in the reply filed on its behalf by the Commandant COD Kanpur it was stated that on the appointment of the applicant as a Majdoor at SHO Fort Allahabad, the statement of his service was prepared showing 16.5.1963 as the date of his appointment and as 33 years was declared as ^{the} age _{of} the applicant, the corresponding date 16.5.1930 was recorded as his date of birth therein. The statement was signed by the applicant and he had also put the prints of his all the fingers in token of the correctness of the details mentioned therein. Later on COD Kanpur accepted the appointment of the applicant on the strength of his appointment at SHO Fort Allahabad w.e.f. 1.12.1963 and after trade test, he was appointed as

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C&J w.e.f. 16.12.1964. The similar statement of service was prepared by the COD Kanpur. In the attestation form submitted by the applicant in Oct./Nov.1968, he had mentioned 38 years as his age. The correctness of the entries of the attestation form was duly verified by the applicant. The upper age limit of the applicant was relaxed by the Director of Ordnance Services vide D.O. dated 27.7.1965 and its copies were endorsed to all concerned. The applicant had checked the statement of his service on 1.9.1969 and had put his signatures with date in token of his checking the same. The applicant never made any objection regarding his date of birth till 25.3.1984.

4. In the first representation made by the applicant on 26.3.1984, copy annexure CA-5, it was stated by him that his service document was overwritten to read 32 instead 22 years at the time of his initial appointment at Allahabad and his date of birth was recorded as 16.5.1941 (22 years) on the date of his appointment at Allahabad. This allegation of the applicant in his representation is incorrect as 33 years was recorded as his age and 16.5.1930 was recorded as his date of birth and the representation of the applicant was referred to the Director General Ordnance Services, New Delhi who did not accept the claim of the applicant regarding his date of birth and his decision was communicated to the applicant by the Commandant through his letter dated 30.3.1987. The annexure A-1, ~~of~~ the D.O. dated 16.5.1963 filed by the applicant with his petition is not available in the service record

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of the applicant and is not acceptable. The applicant did not disclose 22 years as his age at the time of his appointment and his age was recorded in his service record according to Article 51 of the Civil Service Regulations on the basis of the age 33 years as stated by the applicant at that time. The movement order of an employee from one station to another cannot be considered as a valid document for the purpose of date of birth. The employees are called from time to time to check the entries in their service documents according to the prevailing practice and the applicant had accepted the correctness of his service record as per verification on 1.9.1969. The fact that the upper age limit of the applicant was relaxed by the competent authority was fully known to the applicant and the allegations made by him to the contrary in the petition are incorrect and his date of birth having been correctly and properly recorded in the documents of his service, the same cannot be altered after such a long time.

5. In the rejoinder filed by the applicant, he reiterated the allegations made in his petition and stated that Sri Kalu Ram who has described himself as Commandant COD Kanpur is holding a junior post of Asstt. Personnel Officer and he is not the Commandant of the Depot and he has sworn the affidavit without any power or authority. The statement of service of the applicant was got signed and his finger impressions taken on some date afterwards and the same was not done on the date of his appointment and the entries made therein were not explained to the applicant and he had put his signatures and finger prints only in good faith and confidence without knowledge of the entries.

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The entry regarding the date of birth of the applicant was not made in accordance with the Article 51 of the Civil Service Regulations (for short CSR) as no person beyond 25 years could be appointed in service and the respondent cannot take the advantage of the mistake committed in preparation of the service statement of the applicant. The basic record prepared at the time of appointment of the applicant can be considered for determining the correct date of birth of the applicant and the documents prepared afterwards are liable to be ignored.

6. There is a difference of complete 11 years in the date of birth claimed by the applicant as his correct date of birth and the date of birth as recorded in his service record. There is no dispute between the parties about the fact that the applicant did not furnish any document in support of his educational qualification at the time of his appointment. He also did not furnish any document regarding his date of birth at that time. There is also no dispute between the parties on the fact that the age of the applicant was recorded in his service record on the basis of the age disclosed by the applicant himself at that time. The contention of the respondent is that he had disclosed 33 years while the contention of the applicant is that he had disclosed 22 years as his age at that time and it has to be ascertained as to what age was disclosed by the applicant at the time of his appointment and whether he has a right to get his date of birth changed subsequently.

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7. The original service record of the applicant has been placed before ~~us~~ ^{me} by the respondent on ~~my~~ ^{my} direction and it shows that the applicant was given the appointment on 16th May, 1963 and his service was to be reckoned from 14th May, 1963. Thirtythree years ^{might have been} ~~was~~ stated to be his age by the applicant at that time. The figure 33 has been written in the statement of service of the applicant as Majdoor without any cuttings, erasers or interpolations. 16th May, 1930 has been recorded as his date of birth in this statement. The statement of service bears the signatures of the applicant in Hindi as well as the prints of his all the five fingers on this statement. On the other hand, the applicant has filed annexure 1, the copy of Part II of D.O. dated 16.5.1963 in which 16th May 1941 has been recorded as ^{his} ~~the~~ date of birth. The contention of the respondent is that this document is not correct and there is no original document of this nature in their office. The applicant has further placed his reliance on the movement order dated 30.11.63, copy annexure A-2, which shows that the applicant and 5 other civilian employees of SHO Fort Allahabad were directed to proceed to COD Kanpur for permanent duty and in the last para of this movement order, it was noted that all the individuals were within the prescribed age limit at the time of recruitment. The contention of the applicant is that 25 years was the maximum age limit at that time and this movement order shows that the applicant was of less than 25 years at the time of his recruitment in 1963 and the date of birth recorded in the statement of his service is, therefore, incorrect. The respondent has not disputed the genuineness of this document

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but its contention is that this movement order is not a document of age or date of birth and the statement on which reliance has been placed by the applicant was inadvertently and incorrectly made in the movement order.

8. Annexure 2 to the reply filed by the respondent is an extract from the statement of service of the applicant which shows that the upper age limit of the applicant for appointment was relaxed by the Director of Ordnance Service and Part II of the D.O. in this connection was issued on 27.7.1965. The corresponding entry is available in the original service record of the applicant and it shows that the upper age limit ^{of the} applicant for his appointment was relaxed by the D.O.S. The entry is of 1965 and is not of recent origin. It bears the initials of the certifying officer though the signatures of the applicant are not visible therein. This statement also bears the same date 16.5.1930 as the date of birth of the applicant. In another sheet of his statement of service showing the absorption of the applicant in permanent vacancy and reclassification as C&J w.e.f. 16.11.1964 the same date of birth (16.5.1930) has been recorded and nowhere date 16.5.1941, as claimed by the applicant as his correct date of birth, has been recorded in his service record. It, therefore, does not appear to be the case in which some date of birth was recorded initially but afterwards due to some mistake or otherwise, a different date of birth started to be recorded.

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9. There is, however, one very material document in the service record of the applicant which supports his case to some extent. It is the medical certificate dated 30.3.1963 of the Military Hospital, Allahabad in which 22 years was recorded as his age according to his own statement and from his appearance ^{also} the applicant ~~also~~ appeared to be of 22 years. According to this, the date of birth of the applicant should come to 16.5.1941. It is, however, surprising that no effect of this certificate was given by the authorities of SHO Fort Allahabad and it is not known on what basis his age 33 years was recorded. The contention of the respondent, however, is that the applicant after ~~this~~ his appointment in service, himself accepted 16.5.1930 as his date of birth and he is now estopped from disputing its correctness. Besides the original documents already pointed out above, in the attestation form required to be submitted by the applicant about his personal and family particulars in detail\$, he had mentioned 16.5.1930 as his date of birth and 38 years as his present age. This attestation form contains a warning at the top to the effect that furnishing of false information in the attestation form would be disqualification and may render the candidate unfit for employment under the Government. In the end, it bears, the certificate to the effect that the foregoing information is correct and complete to the best of knowledge and belief and it bears the signatures of the applicant. The contention of the applicant that he had signed this attestation form without minding the entries cannot be ^{readily} accepted. This is a document which is not supposed to have been prepared in the office of the respondent on the basis of the existing record but is supposed to have been furnished by the

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applicant on the basis of the information disclosed by him to the scribe/s of this document, if it was filled up by someone else. In view of the warning and the certificate contained in this attestation form, the statement of the applicant regarding age ~~erroneously~~ as mentioned therein ~~cannot~~ be ignored or treated lightly. The respondent has further placed his reliance on the G.P.F.Account of the applicant as prepared in the COD office Kanpur in which 16.5.1930 was recorded as his date of birth and it was signed by the applicant on 18.9.1984 at three places including at a place close to the entry of date of birth. Prior to that the applicant had already represented on 26.3.1984 against the correctness of the entry of date of birth appearing in this service record vide copy annexure A-3 and on this basis, I am of the view that the entry regarding date of birth in the G.P.F.Account could not be knowingly signed by the applicant as correct and on this basis, much reliance can ^{not} be placed on the fact that the applicant had accepted the date of birth recorded in his service record as correct.

10. Both the sides have placed their reliance on Art.51 of the C.S.R. and the Govt. instructions ^{under} noted therein. These instructions prescribe that in the cases of literate staff, the date of birth shall be invariably supported by documentary evidence and be entered in the record of service in the employee's own hand writing. In the cases of illiterate staff, they will be required to produce some documentary evidence, if available, in support of the date of birth which shall be recorded by a responsible gazetted office and witnessed by another responsible employee of the installation not below the rank of the Supervisor or of equivalent grade. And, in case, no such proof is available, the age has to be recorded accord-

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ing to the information given by the candidate and in case of doubt about the correctness of his information, the medical opinion should be sought. The record of service of the applicant shows that the date of birth of the applicant was not recorded according to these instructions and the disparity in the age disclosed by the applicant and assessed by the medical officer and that recorded in his service record cannot be reconciled. In any case, the service record does not disclose the source of information or the basis on which the applicant's age and date of birth was recorded at the time of his appointment and there being a considerable difference of 11 years in his age according to the parties, I do not think it expedient to take any technical view in the matter and will like that the competent authority of the respondent shall take suitable steps for determining the correct age and date of birth of the applicant after affording the applicant an opportunity of adducing necessary evidence. Such evidence may include the documents regarding date of birth of the applicant, his wife, children, brothers and sisters of the applicant. The age of the parents, if alive, and their age at the time of death, if they are no longer alive, may also be material. In case, ~~there~~ be any dependable scientific test for determining the age of a person at the advanced age ^{is} available, the applicant be also subjected to such medical test by a team/Board of competent medical officers. The respondent may also institute an inquiry leading to the circumstances in which the discrepancy regarding the age of the applicant, as discussed above, was made in his service

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record. It may also be ascertained whether the applicant was ever informed about the relaxation of age by the Director of Ordnance Service in 1965. The competent authority may take into consideration such other material as may be found necessary in this connection.

11. The respondent is directed to undertake this exercise for redetermining the age of the applicant within a period of 6 months from the date of the receipt of this order.

12. The petition is disposed of accordingly without any order as to costs.

S. Bhargava
MEMBER (J)

Dated: 7th Oct. 1988
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