

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

O.A. NO.1893/1994

This the 6 day of Jan 2003

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

HON'BLE SHRI A.K.BHATNAGAR, MEMBER (J)

Ehtesham Ullah Khan S/O Nizakat Ullah Khan,
R/O Mohalla Khalil Sharqui,
Shahjahanpur.

... Applicant

(By Shri K.C.Saxena, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Defence,
Secretariat, New Delhi.
2. G.M. Ordnance Clothing Factory,
Shahjahanpur.

... Respondents

(By Shri A.H.Mohiley, Advocate)

O R D E R

Hon'ble Shri Govindan S. Tampi, Member (A) :

Relief sought for in this OA is the correction of the date of birth of the applicant, based on the decision of the Tribunal in OA No.729/1989, in proper implementation of the earlier order.

2. Heard S/Shri K.C.Saxena and A.H.Mohiley, learned counsel for the applicant and the respondents respectively.

3. Shri Ehtesham Ulla Khan, the applicant, had his date of birth recorded as 17.2.1943 while joining Islamia Higher Secondary School, Shahjahanpur and Basic Primary School, Dilawarganj, Shahjahanpur. He got himself registered in Employment Exchange, Shahjahanpur with the

same age, wherefrom he joined the respondent-organisation as Tailor 'D'. He passed the high school examination only after joining service where also his age had been shown as 17.2.1943. His date of birth should have been got written in his service record and duly verified every five years, which apparently was not done. When he knew that his date of birth had not been correctly recorded, he applied for its correction which was not agreed to. He, therefore, filed OA No.729/1989 which was disposed of with the following observations :

"....It is evident from the two certificates produced by the applicant that the applicant's real date of birth is 17.2.1943. ...Thus, this much is clear that when the documentary evidence in possession of the applicant which could be said to be of unimpeachable character unless proved otherwise it was a fit case in which an enquiry should have been made and the matter should not be rejected on the ground that the instant rules do not permit it."

4. The Tribunal had also directed that an enquiry be held by the respondents by nominating one officer to go through the records and arrive at the correct position. However, the respondents appointed a Board of two officers who instead of making independent enquiries and taking evidence, cross examined the applicant and arrived at a decision contrary to what has been given by the Tribunal. The Board of Enquiry did not take into consideration the findings made by the Tribunal. On the applicant's seeking reconsideration of the issue, the Board of Enquiry further examined him on 14.1.1994 and recorded its findings that they did not find any evidence

to change their stand. This decision has led to the incorrect date of birth being continued in the records and the correct date of birth not being given effect to.

5. The grounds raised in this OA are that :

- (i) the directions of the Tribunal dated 15.2.1993 passed while disposing of OA No.729/1989 have been flouted;
- (ii) the procedure adopted for examining the correct date of birth under the aegis of the Tribunal's order was faulted, in that a board of enquiry and not an individual had conducted the enquiry;
- (iii) the Tribunal had directed to ascertain whether the facts given by the applicant were correct and if so to give him the benefit of the correct age, which has not been done;
- (iv) the rules and procedures have not been followed; and
- (v) once a finding has been recorded by the Tribunal, the respondents could not have taken a different view.

All the above points were reiterated by Shri K.C.Saxena during the oral submissions. He averred that once the Tribunal had recorded its findings about the correctness of the age indicated by the applicant, there was no ground for the respondents to take a different view. In

fact the respondents were only expected to give effect to the Tribunal's earlier order and give the applicant the resultant benefits. The OA, therefore, should succeed with full benefit to the applicant, is what Shri Saxena pleads.

6. Fiercely contesting the pleas raised on behalf of the applicant, the respondents pointed out that at the time of his appointment as Tailor "D" on 20.6.1963, he had not submitted any documentary proof about his educational qualification or date of birth. Accordingly, his age was assessed as 29 on 17.5.1963 by the Medical Officer, based on which the date of birth was worked out as 17.5.1934. At the time of preparation of the service book the individual had himself signed against the column meant for the date of birth and had also given his thumb impression in token of having accepted the correctness of the ^{above} _L date of birth, as recorded in the service book. In his GPF form filed on 2.11.1981 also, the applicant had accepted his date of birth as 17.5.1934. It is in these circumstances, that the applicant's request for change of recorded date of birth was found to be not acceptable by the Additional Director General, Ordnance Factory Headquarters, Kanpur ^{who} ₂ held the same to be not acceptable. The respondents also point out that the high school certificate produced by him showed his name as Ehtesam Ullah Khan son of Nazakat Ullah Khan whereas his name has been recorded as Ehtesam Khan son of Laloo Khan in the service book. It is true that the Tribunal in its judgment dated 15.2.1993 had directed the respondents to hold an enquiry in the matter after associating the applicant with the same, wherein the applicant was placed

at liberty for furnishing further proof in support of his case. The respondents had accordingly appointed a Board of Enquiry who permitted the applicant to be associated with the same and to lead evidence/proof of his case. The findings of the board were duly intimated to the applicant on 3.7.1993. On his making a subsequent application, the Board considered it once again but reiterated its decision on 4.3.1994. According to the respondents, all the points raised by the applicant are totally misconceived and baseless. The applicant had been given full opportunity to explain his case before the Board of Enquiry not once but twice and had considered the same and given its findings. The instant OA is highly barred by limitation as he had come before the Tribunal only on 7.12.1994 as against the order dated 3.7.1993. He cannot get any benefit of the letter dated 4.3.1994 as it was only a reiteration of their earlier letter. ^{4.3.93n 2} The respondents wondered as to why the applicant had not submitted proof of his educational qualification and date of birth at the time of his joining service and subjected himself for medical examination and assessment of age by the concerned medical officer. Having once accepted the same, it is not for the applicant to make a representation against it, which was too late in the day. All his averments regarding registration in the Employment Exchange earlier or ~~even~~ the age shown in the high school examination certificate which was on a date subsequent to his joining the respondent-organisation cannot be taken as valid. As at the time of his original recruitment his age had been assessed as 29 and the same had been accepted by the applicant, all averments to the contrary are fallacious and deserve to be rejected. The

respondents have taken action as directed by the Tribunal by appointing a Board of officers to arrive at the veracity of the applicant's claim. The Board had given detailed findings as to how it found the applicant's age to be the same as what has been accepted by the Government and not what the applicant has been claiming ^{4/} ~~itself~~ to be. Except the high school certificate which is of a much later date, the applicant has not produced any documents which would support his case. The Tribunal had not passed any order holding that the applicant's date of birth was ~~in~~ 1943 which he was claiming but had only pointed to the possibility of the same and had directed the Board of Enquiry to go through the same. It has been held by the Hon'ble Supreme Court time and again that the age/date of birth once entered in the service records cannot be changed by the individual at his special desire. Shri A.N.Mohiley, learned counsel for the respondents, had also relied upon a number of decisions in support of his plea, viz., 1976 SCC (L&S) 474 : Dr. G.Sarana v. University of Lucknow & Ors.; AIR 1957 SC 425 : Manak Lal v. Dr. Prem Chand Singhvi; and 1995 SSS (L&S) 712 : Madan Lal v. State of J&K & Ors.

7. We have carefully considered the matter. The point for determination in this OA falls within a very small compass-as to whether the applicant's date of birth was in 1943 as claimed by the applicant or in 1934 as held by the respondents. Undisputed facts in this case are that the applicant had, while appearing for the recruitment had not produced any evidence about his age or date of birth. Therefore, in the year of recruitment,

1963, his age was assessed by the medical officer from the respondents' Factory as 29 and working out from that, his date of birth was fixed in 1934. This has been accepted by the applicant on earlier occasions as well. Even as late as 1981, he has referred to his date of birth as 1934. Only thereafter he has sought the change of modifying it into 1943 on the basis of the high school examination. Interestingly, this examination was taken by him in 1965, i.e., two years after joining the service. There is also no evidence to show that this was produced by him at any time earlier, even immediately after obtaining the certificate. It is true that the Tribunal had while disposing of his earlier OA No.729/1989 referred to the possibility of his date of birth being 17.2.1943. At the same time, the Tribunal itself did not feel it necessary to accept the same but found it necessary to have an enquiry conducted by an independent body to ascertain the veracity of the same and to take a decision. The respondent-organisation had appointed a Board consisting of two officers to conduct the enquiry. In this connection, the applicant had complained that instead of the enquiry being conducted by one officer, a Board had been constituted. This allegation has no basis whatsoever. The Board of Enquiry is found to have associated the applicant in their process of fact finding and had, after detailed enquiry, recorded as to how they did not accept his contention. The findings of the Board of Enquiry merit repetition as below :

"1. The statement of individual varies at various stages as could be evident from the documents on record. He could understand the value of recorded entries being qualified upto

IXth standard as he claimed and should have protested when his age was assessed by the Medical Officer at the time of the medical examination as 29 years and should have submitted the documentary evidence in regard to his correct date of birth either from the school where he studied or elsewhere which he failed.

2. The individual while signing on the G.P.Fund form on 2.11.1981 and the identity card record dated 28th March 1981 where the entry against date of birth was shown as 17.5.1934, did not protest the correctness of date of birth.

3. Since he passed the High School Examination during the year 1965 i.e. after coming into service the same cannot be taken as authenticated one (for making any amendment in the recorded date of birth in the service book at the time of his appointment in the factory).

4. Apart from the above the name and parentage of the individual also varying from the documents which creates doubt.

5. Though an opportunity was given to the individual to follow the laid down procedure for change of name and parentage the same was not availed by the individual.

6. The name of Shri Ehtisam Khan has not been changed to Ehtisham Ullah Khan till the date of his retirement. He retired from service on 31.5.1992 (A/N). Hence it leaves no room for consideration/recommendation for any change in the initial recorded date of birth i.e. 17.5.1934.

7. The individual has not produced any other documentary evidence except High School Certificate and TC in proof of his date of birth as 17.2.1943. The individual had appeared in High School Examination after coming into service. At the time of initial appointment he had not submitted any documentary proof in support of his educational qualification as well as his date of birth. Hence the date of birth recorded in the School Transfer Certificate is not conclusive evidence.

The individual cannot be allowed to rectify from wrong date of birth given at the time of coming into service at a later date.

The individual has obtained employment by concealing his real age.

The date of birth as recorded in the official records had been admitted by the individual and he should not claim the different date of birth subsequently."

8. The above is totally a reasoned and speaking finding. After the said finding was communicated, the applicant filed a fresh representation which was also considered but rejected. Evidently, therefore, the respondents have acted strictly in accordance with the directions of the Tribunal, issued while disposing of the earlier OA No.729/1989. There cannot be any quarrel with such decision. While under normal circumstances, the high school certificate produced would be a basic document for determining the date of birth, in the instant case the same cannot be accepted as it is of a much later date than the applicant's joining service and had not been produced by him at any earlier date. The respondents in the circumstances cannot be faulted for taking a decision that the applicant was only trying to take advantage of a situation, which according to him was a fluid situation, but in fact was a settled position. The judgments relied upon by the respondents also support their case in the facts and circumstances, as brought out on record. We have not come across any factor either in the pleadings or on the record which would call for any re-examination of the issue in favour of the applicant.

9. The respondents have raised a preliminary objection of limitation. However, in the circumstances of the case we are overlooking the same and considering the OA on merit. As the OA fails on merit, the preliminary objection of limitation becomes not relevant.

10. In the above view of the matter, we are convinced that the applicant has not made out any case for our interference. The OA, therefore, being bereft of merit, fails and is accordingly dismissed. No costs.

An
(A. K. Bhatnagar)
Member (J)

Govindan S. Tampi
(Govindan S. Tampi)
Member (A)

/as/