

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD

Dated Allahabad this...4th...day of...June... 1996

CORAM: Hon'ble Mr D. S. Baweja, Member (A)

ORIGINAL APPLICATION NO. 78 OF 1995

G.B. Pathak aged about 57 years son of Late  
Ram Dutta Pathak, resident of 148/1, J.K. Colony,  
Kanpur -10, formerly employed as UDC Pay A/C  
No. 17087, No. 1 BRD: Air Force Station, Chakeri,  
Kanpur - Applicant

(By Advocate Sri N.K.Nair)

Versus

1. Union of India through the Secretary,  
Ministry of Defence, Government of India,  
New Delhi
2. Chief of the Air Staff, Air Hd. Qrs.,  
Vayu Bhawan, New Delhi
3. ACC-In-C, Hd. Qrs. Maintenance Command,  
IAF, Nagpur
4. Commanding Officer, No.1, BRD, Air Force  
Station, Chakeri, Kanpur - Respondents  
(By Advocate Sri S.C.Tripathi)

O R D E R

(By Hon'ble Mr D. S. Baweja, Member (A))

Prayer has been made through this application to quash the order dated 13.7.94 retiring the applicant retrospectively from 31.5.94 and to continue the applicant in service till 31.8.95 as per the recorded date of birth will all consequential benefits including pensionary and settlement dues.

2. The applicant was working as U.D.C. in No.1 BRD, Air Force, Kanpur. A service note dated 11.1.94 was issued notifying his date of retirement on 31.8.95. The final settlement of G.P.Fund form was also handed over

to him for completion. Another letter dated 16.2.94 was also issued by the Commanding Officer, No. 1 BRD, Air Force, Kanpur, informing that the applicant would retire on 31.8.95. The applicant was also asked to submit papers for pension and gratuity. However, subsequently vide order dated 13.7.94, he has been retired on 13.7.94 retrospectively on 31.5.94 on attaining the age of superannuation. He performed duties upto 12.7.94. The applicant made an appeal dated 7.9.94 against the same and the appeal was also rejected vide letter dated 7.10.94. Being aggrieved by the same, he has filed this application dated 24.1.95.

3. The applicant's case is that at the time of appointment, he filled the Police verification form in which the date of birth is indicated as 7.8.1937. In 1958, he passed the High School and applied for the post of Equipment Assistant (L.D.C.) in Group 'C' post in which High School pass was the requirement. In the High School Certificate, the date of birth is 7.8.1937 and this was enclosed with the application. He was all along under the impression that correct date of birth 7.8.1937 is recorded in the Service Book. In the various documents also his date of birth has been recorded as 7.8.1937. One such document which is seniority list issued on 1.10.82 is placed at ANNEXURE A-8

The respondents have thus illegally, and wrongly and prematurely retired him from service from 13.7.94 retrospectively from 31.5.94. No show cause notice has been also given before his services were terminated prematurely and thereby violating the principles of natural justice. The applicant is entitled to continue to work upto 31.8.1995 as per his correct date of birth recorded and deserves the reliefs prayed for.

4. The respondents have filed the counter affidavit through respondent No. 4, Sh K. S. Chauhan, Group Captain, Commanding Officer I BRD, Air Force, Chakeri, Kanpur.

Rejoinder to the same has been filed by the applicant.

5. In the counter affidavit, the respondents have submitted that the applicant was appointed on 7.6.1955 as a non-matriculate Group 'D' employee. His date of birth at that time was declared as 1.6.1936 vide office order No. 17/55 dated 9.7.55 at CA-1. The applicant was promoted to Group 'C' from 1.12.1960. In the last pay certificate duly audited by C.D.A. (Air Force), Dehradun, and forwarded to Air Force, C.A.O., New Delhi, date of birth is indicated as a. <sup>1.6</sup> ~~1.6~~ 1936 (CA-2).

Air Force, New Delhi, vide letter dated 2.3.1994 informed in usual manner to retire the applicant from 31.5.94 as per the date of birth based on the documents referred to above. The applicant, who was working in Civil Administration section requested the authorities that his correct date of birth is 7.8.1937. After checking the service document, an order No. 6/57 amending the date of birth to 7.8.1937 was issued and a fresh last pay certificate was raised by S.A.O. and forwarded to C.D.A. (Air Force), Dehradun. However, this office returned the Last Pay Certificate stating to take action as per Article 51 of C.S.R. Volume 1 and obtain the necessary sanction of the competent authority for alteration of date of birth. This was not possible at the belated stage and after tracing his initial employment letter No. 17/55, he was retired from service with date of birth as 1.6.1936 on attaining the age of superannuation.

It is also submitted that the date of birth shown in the seniority list is based on the annual confidential reports supplied by the Unit. Air Headquarters does not have any service record. Further the date of birth as per per High School Certificate is not of consequences as the date of birth as recorded at the time of appointment in Group 'D' is to be taken into account of all purposes.



The perusal of the service documents (ATC-4) revealed that there was tampering / overwriting in respect of date of birth. The date of birth indicated in the Service Book was not approved by the Competent Authority. The office order dated 11.4.1994 amending the date of birth to 7.8.1937 was issued without obtaining proper approval of the Competent Authority. Change of date of birth has to be done after complinace with provisions of Article 51 of C.R.S. Volume I.

The applicant has been retired on attaining age of superannuation and hence there was no question of issuing show cause notice and there was no malafide intention. The instant application is wholly misconceived and applicant is not entitled to any of the reliefs prayed for.

6. Head the Learned Counsel for the parties. Counter and rejoinder affidavits have been filed. We have carefully gone through the material placed in the record. The Service Book and personal file of the applicant has been presented by the respondents for perusal by the Bench.

7. From the rival contentions, the short question to be answered is, that what is the date of birth of the applicant as per Service record. We have gone through the Service Book and the Personal File of the applicant. From the Service Book (ATC-4) Part I it is noted that the date of birth is written as 7.8.1937. It is written both in words as well as in figures. The other entries are in black, while the entry of date of birth is in blue ink. In ATC-2 which contains the leave account, the date of birth has been written as 7.8.1937 on the top of the sheets. In the Service Book Part II, the date of birth has been also recorded as 7.8.1937 which appears to have been filled up in 1969 from the date of signature of head of <sup>the</sup> office.

8. The respondents have, however, counted above noted entires stating that date of birth entry in the service

Book ATC-4 part I has been tampered. As per the appointment order CA-1, the date of birth is recorded as 1.6.36 which is authentic date of birth and has been tampered on the Service Book. We have examined the service record from this angle. It is noted that the date of birth is recorded in blue ink both in figures as well as <sup>m</sup> words while other entries are in the black ink. The ink of this entry <sup>m</sup> is <sup>figures</sup> different than that of entry in words. There is an entry of 'Uttar Pradesh' below the address which is <sup>m</sup> alignment with the column No.3 for date of birth entry. This appears to be written in different ink by erasing some entry below. The respondents' plea is that original entry of date of birth has been tampered and 'Uttar Pradesh' is written over the same and fresh entry for the date of birth has been made. There is a signature near this entry but it does not indicate the designation as to <sup>who</sup> ~~why~~ has certified this entry.

From the above observations, we are inclined to form the opinion that the original entry has been erased and new entry of the date of birth as 7.8.1937 has been made. Since the subsequent records show the date of birth as 7.8.1937, it appears that the date of birth 7.8.1937 was added in the earlier years.

9. On going through the engagement order at CA-1 (The original of which has been linked in the relevant file). I make a significant observation. In this order, the age in years for all the candidates except those who were 21 years of age and above at the time of appointment has been indicated. The pay fixed in the scale of Rs.30- $\frac{1}{2}$ -35 has also been indicated. The fixation of the pay is linked with the age as will be seen from the analysis as under:-

21 years	-	Rs. 30.00
20 "		Rs. 29.00
19 "		Rs. 28.00
18 "		Rs. 27.00
17 "		Rs. 26.00

We have not been able to link the relevant rules but understand that there was rule at that time for fixation of pay linked with the age at entry.

From the above it will be seen that the fixation of pay is less at the rate of Rs.1/- for each year of age less than 21 years and for the age 21 years pay is fixed as Rs.30/- at the minimum of the grade.

From the statement of pay fixation available in the file, the pay of the applicant on 1.7.59 was fixed as Rs.31.50 which confirms that his pay at the time of appointment was fixed at Rs.28/- based in 19 years of age. If the date of birth was as written in the Service Book and claimed by the applicant, the pay should have been fixed at Rs.27/- and not Rs.28/-, This fact revealed from the records confirms the contention of the respondents that as per the old record, the date of birth at the time of appointment was admitted as 1.6.1936 and the date of 7.8.1937 in the Service Book has been entered subsequently by tampering with the original entry of the date of birth.

10. The applicant in the rejoinder has averred that he never declared his date of birth as 1.6.1936 and he was not aware as to what was mentioned in the office order Part (III) A S.No. 17/55. It is, however, difficult to accept this contention on the fact of the appointment letter giving his initial pay fixed Rs.28/-<sup>hray</sup> based on the age of 19 years instead of <sup>minimum of grade.</sup> The applicant will be very well aware that his pay was not fixed at Rs.30/- which he would have expected. otherwise

11. The applicant has submitted that he passed matriculation in 1958 and submitted the matriculation



certificate along with his application for appointment as L.D.C. There is not a whisper of averment made that the applicant made a request for change in date of birth based on the High School Certificate. His contention that the date of birth was changed in the submission of the High School Certificate is not tenable. Mere submission of the certificate obtained after joining the service <sup>will</sup> ~~were~~ not automatically result in change of the admitted date of birth. The applicant in Para 23 of the rejoinder has also contended that the date of birth was corrected in 1960 at the time of appointment as L.D.C. on the basis of High School Certificate. However, he has not placed on the record any document on the basis of which he has arrived at this conclusion and whether any official letter was issued regarding changing his date of birth as per the extant rules with the approval of the competent authority.

12. The entries in the Service Book are with dated signature of 1962 and 1967 and there is no entry by the competent authority that the date of birth has been changed in 1960. This submission also contradicts the plea of the applicant that he was not <sup>aware</sup> ~~was~~ of <sup>the</sup> date of birth recorded at the time of joining. If the applicant knows that the date of birth was changed in 1960, this itself implies that his date of birth was recorded differently at the time of appointment and he was aware of the same. The applicant did not take any steps to <sup>get</sup> ~~correct~~ <sup>ed</sup> his date of birth as per rules <sup>if</sup> ~~and~~ he felt that date of birth is wrongly recorded. I am, therefore, in agreement with the submission of the respondents that the applicant has been retired on attaining the age of superannuation based on the date of birth <sup>original</sup> recorded. *and admitted at the time of appointment.*

13. In the light of the facts enumerated above, I

find no merit in the application and the same is dismissed. For the period beyond 31.5.94 i.e. due date of superannuation, the applicant was continued in service, he will be paid the full wages for this period within three months from the date of judgement. However, the pensionary benefit, and settlement dues will be based on the due date of superannuation.

No order as to costs.

*S. Srinivas*  
Member (A)