

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1155 OF 1995

ALLAHABAD THIS THE 13th DAY OF MARCH , 2003

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Om Prakash Sahu,
aged about 54 years
s/o Late Hira Lal Sahu,
r/o 41/25, Naya Chowk, Parade,
Kanpur.

At present working as Clerk in Ordnance
Parachute Factory,
Cantt. Kanpur.

.....Applicant

(By Advocate : Shri K.C. Sinha)

V E R S U S

1. Union of India through Secretary,
Ministry of Defence,
Raksha Bhawan,
New Delhi.
2. Additional Director General
Ordnance Equipment Factory
Group Headquarters,
G.T. Road, Kanpur.
3. General Manager,
Ordnance Parachute Factory,
Cantt. Kanpur.

.....Respondents

(By Advocate : Mr. S. Srivastava)

O R D E R

By this O.A. applicant has sought the following
reliefs:-

- (1) set aside the orders passed on 03.12.1994
and 03.02.1995;



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- (ii) The respondents may be directed not to retire the applicant on the basis of his date of birth as 13.09.1998, on 30.09.1996;
- (iii) respondents may be directed to permit the applicant to work upto 31st July 2000 when he shall be reaching to the age of superannuation on the basis of his record date of birth i.e. 05th July, 1942;
- (iv) any other relief as this Hon'ble Tribunal may deem fit and proper;"

2. It is submitted by the applicant that in view of Chinese aggression in the year 1962, recruitment process was started in the year 1963 and since it was a mass recruitment, Respondent No.3 was not very particular about age and qualification at that time as the main object was to have suitable hands so that they may discharge their duties for Ministry of Defence. Applicant was sponsored through Employment Exchange for the post of Tailor-D.

2nd verification

3. In the ~~PF~~ Form, applicant had specifically stated that his date of birth ^{was} ~~to be~~ 05.07.1942 and had also stated his educational qualification as 9th failed. Even he stated his age to be about 20 years at the time of Medical i. e. on 05.10.1963. After all the formalities were completed, applicant was given an appointment as Tailor-D vide letter dated 15.10.1963. He has further submitted that at the time of filling the Form of PVR, applicant had also submitted his transfer certificate of 9th failed obtained from B.N.S.D. Inter College Kanpur which was dated 05.10.1961 and even in that his age was recorded as 05.07.1942 (Annexure A-1). He has further submitted that he had changed the school in class VIth to B.N.S.D. Inter College Kanpur from P.P.N. Basic School Kanpur on 14.05.1953 and even in that his ^{been} date of birth has/shown as 05.07.1942. Therefore, he was under the impression that respondent would show his correct date of birth as 05.07.1942 in his service records as well

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but when he was issued permanent Identity Card on 15.10.1968, he noticed that his date of birth ^{is} recorded as 13.09. 1938 on the Identity Card which was contrary to the entry made by him in the P.V.R. Form as well as School Leaving Certificate. ^{he} Therefore, on 31.10.1968 immediately gave an application to respondent No.3 requesting him to correct his date of birth as it has wrongly been shown as 13.09.1938 instead of 05.07.1942 (pg.50). An explanation was called from the applicant as to why he did not produce documentary evidence at the time of his appointment, which according to applicant, was not received by him, therefore, he could not offer any explanation.

4. Vide circular dated 08.11.1974 respondents invited applications for the post of Checker and since applicant fulfilled the qualification of 08th class passed, he also gave an application on 22.11.1974 and on passing the requisite test applicant was promoted as Checker vide letter dated 27.02.1975 (pg.54). Thereafter in 1976 he took permission to appear in the High School Examination and Intermediate as a private candidate which was duly accorded by the respondents on 02.12.1977. He appeared in the examination of High School in 1978 and passed in second division (Pg.56). Even in this certificate his date of birth is shown as 05.07.1942. He requested the authorities by application dated 25.09.1978 to record his educational qualification in the service book. It was at this stage that on 28.03.1979 respondent No.2 issued a memo to the applicant asking him as to why he had not produced the 09th class transfer certificate at the time of entry in service and how he had been signing the ACRs wherein his date of birth was entered different. Applicant has alleged that he gave his reply dated 07.05.1979 stating therein that while putting his signatures on the ACRs applicant had attached a slip as a token of objection (pg.59). Thereafter certain more explanations were called but due to some family problem he could not attend to those letters as a result of which on

07.08.1981 case was closed.

5. The applicant, however, still gave a representation on 03.04.1986 (pg.67) whereof he was asked once again to submit his school leaving certificate duly authenticated by the educational authority for processing the case further (Pg.72). Accordingly applicant submitted his reply on 11.11.1986 and duly enclosed the authenticated original certificate of High School Examination, High School Marksheet and Transfer Certificate of BNSD Inter College, Kanpur (Pg.74). He was then informed that applicant had not put his signatures on the first page of Service Book vide letter dated 08.05.1987 (Pg.75). Therefore, on 11.05.1987 applicant put his signatures as well as impression of all five fingers on the service records. On 28.02.1988 certain more details were asked from the applicant (pg.76) which were replied by the applicant on 16.03.1988 (Pg.78). However, applicant was informed vide letter dated 20.03.1991 that his request could not be acceded to. (Pg.39).

6. On perusal of non-speaking order, applicant again gave an application on 13.07.1991 requesting the authorities to give rules under which his request could not be acceded to (pg.80). It was at this stage that respondent No.3 vide his letter dated 06.02/03.1992 referred the matter to respondent No.2 stating therein clearly that it seems to be a case of clerical error and recommended that the same may be rectified (pg.82) but yet vide memo dated 10.03.1993 respondent No.3 asked him as to why he remained silent for 5 years after the entry in Government service. Applicant once again replied that he had been pursuing his case right from 1968 after his Identity Card ^{was} ~~is~~ issued, therefore, the bar of 5 years would not be applicable in his case (Pg.85). Thereafter vide letter dated 26.05.1993 applicant was informed that his case is under consideration, however, his date of birth shall remain unchanged till the final decision is taken (Pg.88).



7. Applicant was surprised when on 19.12.1994 a list of officials was issued who were going to be retired within 2 years and in ^{the list} ~~which~~ list applicant's name figured at serial No.12 stating therein that he shall be retired on 30.09.1996(Pg.41). Simultaneously, on 03.12.1994 applicant was also informed by respondent No.3 that since applicant has agitated the matter after 31 years of entry into the service and he has not ~~been~~ given any satisfactory explanation, therefore, his request for correction in date of birth cannot be acceded to (Pg.43). Applicant immediately represented reiterating his case that he had been pursuing his case right from the date of his knowledge, therefore, it cannot be said that he has raked up the matter after 31 years (Pg.90), therefore, finding no other alternative applicant had to file the present O.A.

8. Applicant's counsel strenuously argued that the reasoning given by the respondents while rejecting his case for correction of date of birth is absolutely not sustainable in law because he had been pursuing his case right from 1968 onwards. As such, it cannot be said that he had raked up after 31 years from entry into the service. He has also relied on the judgment given by this Tribunal in O.A. No.192 of 1994 dated 13th December, 2002. He has also relied on 1997 Supreme Court (L & S)1158 Union of India Vs. C. Rama Swamy and others and 2002 (3)ATJ 237 to substantiate his contention.

9. Respondents, on the other hand, have opposed this O.A. and have submitted that applicant did not produced any certificate at the time of his entry into the service, therefore, his date of birth was entered on the basis of Medical Report as is prevalent. In such circumstances and since applicant was fully aware that in service record his date of birth is entered as 13.09.1938, he ought to have



raised objection at that relevant time and got the same corrected, if he was so sure about his correct date of birth. On the contrary they have submitted that on the Identity Card his date of birth was shown as 13.09.1938 and even in his ACR, which was duly signed by him, his date of birth was shown as 1938 but he never objected to it. They have further submitted that in P.V.R. attestation Forms and service records applicant has not mentioned his residential address as 103/36, Colonel Ganj, Kanpur. As such, it creates doubts that the certificate may not be original and on verification the P.P.N. Educational authorities showed their inability regarding verification of the School Leaving Certificate vide their letter dated 08.02.1991 whereas on verification the Nagar Mahapalika authority has specifically stated in their letter dated 06.05.1988 that there is no entry regarding birth of Hira Lal's son resident of 41/25 Naya Chowk, Kanpur in the records. Both letters are annexed. Moreover, they have submitted that in the P.V.R. Form, even though against Col. No.7(c) he has mentioned his age to be 19 years according to which date of birth comes to 1938 but against Col.No.7(a) of the same PVR Forms he has written his date of birth as 05.07.1942. Moreover, against Col.No.10 petitioner has mentioned ^{his date of entry} as 08.07.1953 and date of leaving as 24.08.1957 ~~and~~ in B.N.S.D. Inter College Kanpur. Whereas B.N.S.D. college has mentioned these dates as 08.07.1953 and 30.06.1958 respectively in the school leaving certificate (Annexure CA-6). Therefore, there is a doubt that these certificates are manipulated by the applicant after joining the service. They have further submitted that vide letter dated 18.11.1968, 28.03.1979 and 16.08.1979 applicant was asked to explain the reasons as to why he did not produced documentary evidence at the time of his recruitment but till date he has not submitted any satisfactory explanation, therefore his



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^{Re} request could not be acceded to, as per rules. The request was even referred to the Ministry of Defence but even they have rejected the request. They have relied on the judgment given by Hon'ble Supreme Court in the case of Harnam Singh wherein it is held as under:-

"Inordinate and un-explained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within 5 years after 1970, the earlier delay would not have ^{not} suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of note 5 to FR 56 in 1979 either. His inaction for all this period of about thirty five years from the date of joining service, therefore, precludes him from showing that the entry of his date of birth in service record was not correct."

They have, thus, submitted that there is no merit in the case and the same may, therefore, be dismissed.

10. I have heard both the counsel and perused the pleadings as well as original records which were produced by the respondents as per court's direction.

11. Perusal of the Service Book of applicant shows that applicant has signed first page of his service book on 12.05.87 and as per his statement before the Medical Board he had stated his age to be 20 years but as per his appearance Medical Board assessed his age to be 25 years, meaning thereby that even at that ^{time} when his medical was specially conducted as per the statement his date of birth would have ^{been} somewhere in 1942. In his P.V.R. Forms applicant had stated ~~shown~~ his date of birth to be 05.07.1942, Present age 21 years and age at the time of Matriculation is 19 years. Therefore, it definitely cannot be said that applicant had raked up the issue of correcting his date of birth after 31 years. This P.V.R. Form was filled somewhere in 1963 and even at that time applicant had stated his age to be 21 years by showing his date of birth as 05.07.42. Thereafter, also there are number of letters on record to show that applicant had been requesting ^{Respondent B} to correct his date of birth

to 05.07.1942 instead of 13.09.1938 was recorded in his service book. Even the School Leaving Certificate and transfer certificate show that his date of birth ~~is~~ recorded therein as 05.07.1942 and it was not the case of respondents that these certificates are either forged or are not authentic~~ated~~ certificates.

12. The only reason given by the respondents for rejecting the claim of applicant is that he has raked up the issue after 31 years of entering into the service which reasoning cannot be said to be correct. In view of the various letters found on record by which applicant had been requesting the authorities to correct his date of birth in the service record, ^{that} it is seen ^{by} the first order, respondents merely informed the applicant that his request cannot be acceded to without giving any reason, whatsoever, and in the second reply his request has been rejected on the ground that he has made a request after a gap of 31 years and no satisfactory explanation was given by him. As stated above, since the ~~first~~ reasoning given by the respondents is not correct and is contrary to the letters on record, the said order is not sustainable in law and is liable to be quashed and set aside on this very ground. I have read the entire reply filed by the respondents and there is no averment to this effect that either the School Leaving Certificate or Transfer Certificate has not been issued by the appropriate authorities or is not valid. They have only raised ^{on this point} doubt that it may not be correct~~ed~~ since it was not verified by the school authorities but that was due to change in the building and non-availability of the old records. It is correct that when applicant had come to know about the wrong date of birth ^{which} had been entered in his service book, he ought to have taken steps to get it corrected through a court of law within a reasonable time, if the authorities were not acceding ^{to it} his request but it could not be

*respondents stand
can be sustained
in law*

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said that he had not been pursuing the case with the authorities or had raked up the issue after 31 years as alleged by the respondents. Therefore, the impugned orders are quashed and set aside.

13. The next question ^{that arises} is, as to, what relief should be granted to the applicant. In normal course we would have remitted the matter back to the authorities to re-consider the case but now ~~the~~ the applicant has already retired w.e.f. 1996 and this matter is pending since 1995, I do not think any purpose would be served by remitting the matter back at this stage. Therefore, in order to avoid any further delay in the matter, respondents are directed to correct the applicant's date of birth as 05.07.1942 in his service book and allow him to remain in service till 31.07.2000 ^{Don paper 12} when he would have attained his age of superannuation on the basis of his correct ~~dated~~ date of birth as 05.07.1942. Respondents are further directed to treat the period from 1996 to 2000 as qualifying service for all other purposes namely for grant of notional increment and to re-fix his pensionary benefits from August 2000, as per the fixation done. After giving him notional increments, respondents would, ~~however~~, be at liberty to adjust the amount already given to the applicant after his retirement in 1996.

14. It is, however, made clear that applicant would not be ^{to} entitled/any actual wages from the period from 1st October 1996 to 31st July 2000 because he had approached the Tribunal by filing this O.A. only on 31.10.1995 when he was due to retire on 30.09.1996 i.e. almost at the fag end of his career. Admittedly as per applicant's own averment, he had come to know about his recorded date of birth as 13.09.1938 in the year 1968 itself. Therefore, they gave sufficient time to him to get the same corrected by filing a case in the court of law, if authorities were not acceding to his request but for reasons known to him



he merely kept correspondence with respondents without taking any steps to get it corrected through a court of law. since he approached the Tribunal at the fag end of his career, I am of the opinion that he would not be entitled to any actual wages because he has not performed any duties for the said period and ~~it is only because~~ he approached the court at the fag end of his career.

15. With the above directions, this O.A. is allowed to the extent as explained above. No order as to costs.



Member (J)

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