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(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD this the 18th day of *February*, 2008.

HON'BLE MR. JUSTICE A. K. YOG, MEMBER- J
HON'BLE MR. K.S. MENON, MEMBER- A.

ORIGINAL APPLICATION NO. 797 OF 2006

Masood Hasan Khan, S/o Late Masood Hasan Khan,
R/o Mohalla- Dilazk near Pakka Kuaon, P.O. Sadar,
Distt. Shahjahanpur.

.....Applicant.

VERSUS

1. Union of India through Defence Secretary,
M/o Defence, South Block, B.H.Q, New Delhi- 110001.
2. The Director General, Ordnance Factory Board,
10-A, S.K. Bose Road, Kolkata (W.B).
3. The General Manager, Ordnance Clothing Factory,
Shahjahanpur.
4. The Controller of Account, (Ordnance Equipment Factory)
(Fys), O.E.F, Group, Headquarter, G.T. Road, Kanpur.
5. The Accounts Officer, In charge O.E.F (Ordnance
Equipment Factory), Kanpur.

.....Respondents

WITH

ORIGINAL APPLICATION NO. 993 OF 2006

Naseemuddin, S/o Sri Ahmad Ali,
R/o Mohalla- Mathi, Thana- Shahjahanpur,
Retired as Tailor, MCM.

.....Applicant.

VERSUS

1. Union of India through Defence Secretary,
M/o Defence, South Block, B.H.Q, New Delhi- 110001.
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2. The Director General, Ordnance Factory Board,
10-A, S.K. Bose Road, Kolkata (W.B).
3. The General Manager, Ordnance Clothing Factory,
Shahjahanpur.
4. The Controller of Account, (I/ys) (Ordnance Equipment Factory),
O.E.F. Group, Headquarter, G.T. Road, Kanpur.
5. The Accounts Officer, In-charge O.E.F (Ordnance
Equipment Factory), Kanpur.

.....Respondents

Present for the Applicants: Sri S.K. Pandey
Present for the Respondents: Sri Saumitra Singh

ORDER

BY HON'BLE MR. JUSTICE A.K. YOG, J.M.

Both the O.As are being taken together on the statement of learned counsel for the parties that the issues raised in these O.As are similar and the same can be decided together. For convenience we are referring the facts of O.A No. 797/06.

2. At the outset we are unable to restrain ourselves to observe that it is sever case of fraud committed by the applicants at the time of entry in service. The applicant got appointed on 09.05.1962 on the post of Tailor 'C'. According to the applicant, he had not passed High School examination at that stage and hence his age was determined on the basis of medical examination/assessment. The applicant has not brought on record any thing to show that his age was assessed by means of medical examination i.e. X-Ray ect. Be that it may his age was assessed and accordingly entered in service record/service book as 08.05.1943. However, the applicant appeared in High School examination and passed on 19.06.1962 (para 4.iv of O.A). According to High School Certificate, his age is 12.06.1947. On the basis of this High School Certificate. The applicant did not approach the authorities to correct his date of birth and waited for three years. He applied for correction of age in service book on 20.09.1965 and succeeded his age being corrected/alterd on the basis of High School Certificate without being noticed by concerned authority that by altering his ^{age} ~~age~~ ^{an} ~~he~~ ^{at} ~~render~~ ^{of} himself ineligible/disqualified.

for seeking appointment in the year 1962 since as per his age shown in High School Certificate i.e. 12.06.1947), he was minor in the year 1962 and not eligible to seek entry in service.

3. There is another interesting aspect of the matter. The applicant, in normal course, must have applied for appearing in High School Examination in the month of August/September, 1961 and disclosed his age in his 'form' submitted to the Board for appearing in High School Examination- 1962, generally held in March/April, 1962, Why the applicant concealed his age while seeking job in question, though he must have disclosed his age in the application form submitted to the High School Board (examining Body). The answer is clear. The applicant has acted with ulterior motive to play fraud upon the High School Board or the Department in question. It is clear that the applicant cannot claim advantage both at entry and exit parts of service.

4. The applicant claims that his date of birth was altered and recorded in service book as per High School Certificate and hence the same cannot be changed or treated otherwise unless opportunity is given. The respondents on the other hand pointed out through their CA that 'discrepancy' and 'anomaly' was detected on Audit objection being made out, it was found that procedure prescribed under relevant rules governing change of date of birth was not followed.

5. We are ^{of the opinion} ~~of the opinion~~ that the Government department are managed by several persons and having different hierarchy. All ministerial acts and clerical actions without express or implied knowledge, consent of superior competent authority/ officers cannot be treated as an act of the 'employer', namely the government. There is no 'estoppel' against statutory rules. The employer cannot be said to have 'acquiesced' or bound by 'entries' created/manipulated or obtained without following rules/ order, through fraud or

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without noticing or having knowledge of Head of Department and/or Rules on the subject.

6. It is also pointed out that minimum age prescribed for entering in the service in question at relevant time was undisputedly, 18 years and 60 years is that maximum age. This goes to show that a person can remain in service for maximum period of 42 years. Admittedly, the applicant had served for 44 years and he has thus drawn salary/emoluments and enjoyed privileges for a maximum of two surplus years.

7. The purpose of filing this O.A is clear. The applicant wants enhancement of pension by adding his working in service illegally on the basis of incorrect 'entry' of age in his service book. It is not permissible in law. Counsel for the applicant has cited certain decisions of Apex Court saying that any alteration should be done in service record by giving opportunity. These decisions are distinguishable on facts and 'ratio' laid therein cannot be applied in the facts of the present case.

8. We have examined the issues in hand. Undisputed facts show that the applicant had manipulated entry of his age/ date of birth in service record. While he was minor as per age shown in his High School Certificate. It is clear that the applicant intentionally and deliberately showed his incorrect 'age' in High School Examination Board-rerecords. He kept High School Certificate for about three years - before submitting to the department. As noted, total service span cannot extend beyond 42 years. In fact, such act of the applicant deserves to be deprecated besides warranting criminal action against the applicant. However, considering that the department has not so far initiated such proceedings, we are of the opinion that the applicant shall be entitled to his pension only for maximum period of 42 years of his service. There is no merit in the claim of the applicant.

9. With the above observation, the O.A is disposed of finally.

10. No costs.