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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

O.A. No.346/2010

Jodhpur this the 1st January,2013

Coram

Hon'ble Shri B.K. Sinha, Administrative Member

Smt. Gurcharan Kaur W/o Late Sh. Bachan Singh,
R/o 3-E-Chhoti, Gali No. 5, SSB Road,
Sri Ganganager, District- Sri Ganganager
at present working as Permanent Labour
in the office of Commandant 24 FAD,
Pin – 909 724 C/o 56 APO

..Applicant

(Through Adv. Mr. Hamir Singh Sidhu)

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Defence, Secretariat, New Delhi
2. Commandant, 24 FAD, Pin-909724 C/o 56 APO
3. Administrative Officer, 24 FAD, Pin-909724 C/o 56 APO
4. The Officer-in-charge, Head Quarter-10 Core-A (D.V.) Pin 908510 C/o 56 APO

..Respondents

(Through Adv. Mr. Ravi Bhansali)

ORDER

The instant OA is not directed against any specific order but it being filed against the action of the respondents whereby they proposed to retire applicant from service w.e.f. 31/10/2010.

2. The following relief(s) has been claimed by the applicant :
 - (i) *Respondents are directed not to retire applicant w.e.f. 31/12/2010.*
 - (ii) *The action of respondents whereby they have changed date of birth of the applicant from 24/10/1958 to December, 1950 may kindly be declared illegal, arbitrary.*
 - (iii) *If during the pendency of the OA, the applicant is retired w.e.f. 31/12/2010, she may be provided all consequential benefits till the date of actual retirement i.e. 31/10/2018 and treat her in service upto the said date.*

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- (iv) *Any other appropriate relief which this Tribunal may deem just and proper in the facts and circumstances of the case*
- (v) *Application of the applicant be allowed with costs.*

3. The applicant had also prayed for interim relief in form of an order restraining the respondents to retire her from service w.e.f. 31.12.2010 and a direction to allow the applicant to continue in service till the final disposal of the OA. The matter was heard and interim relief was granted vide the order dated 16.12.2010:-

"In the result, by way of interim relief, it is ordered that until the date of her birth is clarified, and the basis for the sudden change in the month and year of her birth in GPF-DS statement of Accounts for the year 2009-2010 is explained to the applicant, the Respondents shall not taken any precipitate action against the interest of the applicant, and her date of birth shall be continued to be treated as 24/10/1958, until further orders in this regard in this OA"

As a consequence of interim relief granted to the applicant she has continued in service to this date almost two years beyond the stipulated date of her retirement, as deemed by the respondents.

Case of the Applicant

4. The case of the applicant is that she was appointed on compassionate grounds in August, 1990 and at the time of her appointment her date of birth was recorded as 24/10/1958 in her service records. Grievance of the applicant arises from the fact that now her date of birth (DoB) has been changed to 24.12.1950 without having issued prior show cause or having heard the applicant on this matter. The change in the DoB was first brought to light when the GPF-DS statement of account for the year 2009-10 was sent to the Controller of Defence Accounts (Funds). The applicant's husband was holding a permanent lien under the respondents. Initially the applicant had been provided post of a Labour. She was given a regular appointment by the respondents in the month of August, 1990 on compassionate grounds following death of her husband. The respondents sent the GPF-DS statement for the year 2003-04 dated 01.10.2004 to the Controller of Defence Accounts (Funds) in which her DoB was shown to fall in the month of October, 1958 (A-1).

5. The learned counsel for the applicant further submits that the respondent authorities issued a full membership card to the applicant in the month of June, 2005 whereby her DoB has been correctly shown as

24.10.1958 and her date of retirement has been shown as 31.10.2018 [A-2]. Similarly a canteen smart card issued to the applicant showing her date of retirement as 31.10.2018 [A-3]. Since the GPF-DS statement of accounts for the year 2009-10 was sent to the Controller of Defence Accounts (Funds), her DoB was changed from 24.10.1958 to 31.12.1950. The note attached to the statements states that if the DoB is not correct, the correct DoB should be submitted through the Pay Audit Office. The applicant apprehended that treating her DoB as 24.12.1950, she would be retired w.e.f. 31.12.2010.

6. It has also been submitted by the applicant that before recording her date of birth, she was examined twice by setting up medical boards to determine the real DoB. Though, applicant denied knowledge of the report of the medical board as this has not been provided to her as soon as the applicant learnt about the proposed move of the respondents to alter her DoB, she filed an application on 25.6.2010 under RTI Act before respondent No. 2 seeking information regarding her date of retirement and copies of the reports of the medical board [A-5]. The same was returned by the respondent no. 3 with a directive that it should be filed before respondent No. 4 [A-6].

7. The applicant, thereupon, moved a fresh application on 19.6.2010 [A-7] which was returned stating that it should be presented before respondent No. 2 who would provide requisite information. The applicant moved another application before respondent No. 2 on 16.8.2010 but no information was provided, hence, again she was directed to approach respondent no. 4 [A-8 & A-9].

8. The learned counsel for the applicant submits that this shilly-shallying amongst respondents No. 2 and 4 continued without providing any information to her. This has compelled the applicant to approach this Tribunal by mean of instant OA for redressal of her grievances.

9. The applicant has adopted following grounds in her OA :-

i. 24.10.1958 was entered as DoB at the time of her joining Government service and has continued to be used ever since. A change has now been brought unilaterally in this DoB, thereby,

depriving her of 8 years of service and it was done without giving to her proper opportunity of being heard thereby violating the rules of natural justice.

- ii. Information relating to her DoB obtained through the RTI, has been consistently denied to her and she has been sent on a wild goose chase.
- iii. It was also submitted by the learned counsel for the applicant during the course of the arguments that interpolation has been made in the DoB of the applicant knowingly and deliberately in order to retire her 8 years prior to due date of her superannuation and these interpolation would be evident from the relevant records themselves.
- iv. In her rejoinder application to the counter reply the applicant has submitted that the first doctor is merely recorded after her medical examination that the age of her would be about 40 years on 05.12.1990 [R-1]. Not satisfied with these findings the applicant was examined by another medical board on 15.9.2009 (comprising of two experts) who have held that the age of the applicant on the given date was 45-55 years. The applicant submits that this implies that average age of the applicant is about 50 years which corresponds to claim of the applicant vide R-1. A copy of this medical report is enclosed at A/10.

10 The applicant further submits in her RA that the copy of the application in the prescribed proforma for Employment of Dependents of Government Servants Dying while in Service/Retire on Invalid Pension [R-4] had been filled up by one Shri Devendra Singh and the applicant being illiterate was not aware as to what had been written in the form. The learned counsel for the applicant vehemently argued that service records of the applicant has not been deliberately produced and that respondents should be so directed to produce the records in original.

11 The learned counsel for the applicant has heavily relied upon the fact that the DoB of the applicant continued to be 24.10.1958 up to the GPF-DS statements submitted to the Controller of Defence Accounts (Funds) and it was changed abruptly in her service records from 24.10.1958 to 24.12.1950 without having given the applicant any opportunity of being heard and showing cause. The learned counsel for applicant come to the extent of alleging interpolation by the respondent authorities in order to deprive the applicant of her legitimate service.

Case of the Respondents

12 The respondents have submitted a reply to the OA and have further submitted additional affidavit against the rejoinder application resisting the claim of the applicant tooth and nail. The principle arguments of the learned counsel for the respondents are as follows:

- (i) The applicant was initially enrolled as Mazdoor on compassionate grounds in relaxation to the normal rules and applicant submitted two affidavits one showing her DoB 24.10.1958 [R-1] and another affidavit showing the date of death of her husband 24.10.1958 [R-2]. These contradictory statements obviously could not be accepted and she was examined by a medical jurist at Sri Ganganagar who showed her age to be approximately 40 years [R-3]. The applicant, thereupon, submitted her application for appointment showing her age as 40 years on the basis of medical report on 05.12.1990 [R-4] and was accordingly appointed [R-5]
- (ii) It is here that the story changes. The learned counsel for the respondents contended that someone within the organization gave the applicant benefit with dishonest intention of causing wrongful gain to her and entered her date of birth as 24.10.1958 in form containing details of the family which is in a different ink and this is not based upon the medical certificate issued by the medical jurist. The learned counsel for the respondents strongly denied that DoB of applicant had been recorded as

24.10.1958 in August, 1990. The fact is that the form containing the details was submitted in December, 1990 and therefore, the question of granting of appointment to her in August, 1990 did not arise. The confusion regarding the DoB as being 24.10.1958 arises from the above interpolated entries in form 3 in the GPF-DS statement submitted on completion of one year of service on 27.08.1992 [R-8].

- (iii) The learned counsel for the respondents have submitted that neither the membership card nor the smart card have any sanctity regarding the DoB as they were filled up by the applicant herself and cannot be taken either conclusive or integrated proof of DoB. The learned counsel for the respondents further submits that as soon as anomaly came to the knowledge, immediate actions were taken for correction of the same.
- (iv) In their additional affidavit to the rejoinder the respondents denied any knowledge of Devendra Singh, LDC filling up the form and submitting second medical opinion giving radiological age as 45 to 55 years is irrelevant as 10 years is a considerable period. Her initial DoB was recorded as 40 years at the time of her appointment in the year 1990 and this as gone unchanged for almost 19 years. The applicant now stands estopped by the findings or opinion given by the doctors.

13. The original records of the 24 FAD C/o 56 APO service documents EIB personnel PT no. 399 rank Mazdoor in the name of Smt Gurcharan Kaur W/o late Bachan Singh DOB 05/12/1958, Date of appointment 28.8.1991 have been produced and carefully perused by the undersigned.

14. After having gone through the pleadings and listened to the arguments of the respective parties and also perused original service record of the applicant Gurcharan Kaur the only fact in issue that emerges is that whether the applicant Gurcharan Kaur was born on 24.10.1958 or on 24.12.1950. I take up the arguments advanced by the applicant one by one.



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15 The provision regarding recording of DoB has been made in Rule 79 and 80 of GFR is produced below:

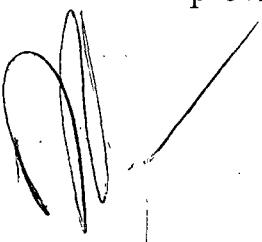
“Rule 79 (ii) : The actual date or the assumed date determined under Rule 80 shall be recorded in the History of Service, Service Book, or any other record that may be kept in respect of the Government servants's service under Government and, once recorded, it cannot be altered, except in the case of clerical error, without the previous orders of a Department of the Central Government or an Administrator.

Rule 80 (1): If a Government servant is unable to state his exact date of birth but can state the year or year and month of birth, the 1st July or the 16th of the month, respectively, shall be treated as the date of his birth.

(2) If he is only able to state his approximate age, his date of birth shall be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment.

(3) When a person who first entered Military employ is subsequently employed in a Civil Department, the date of birth for the purpose of the Civil employment shall be the date stated by him at the time of attestation, or if at the time attestation he stated only his age, the date of birth shall be deducted with reference to that age according to sub-rule (2) of this rule.

16. Here the situation has been complicated by the fact that the applicant is not literate and had never attended any school and attained any educational qualification. Nor is there any certificate of birth from the municipal authorities or Gram Panchayat. I take note of both the facts. It is to be considered that the appointment of the applicant had not taken place in normal course but as a measure of compassionate appointment in relaxation of the rules. Further note has to be taken of the fact that at the time of appointment the applicant had submitted her DoB as 1958 and in another affidavit date of death of her husband as 1958 itself. Obviously in view of this seeming contradiction the affidavits were not relied upon and authorities had rightly referred the matter for expert opinion by medical jurist. I further find that two medical certificates have been submitted and this fact is clearly brought out by the documents submitted by the respondents at R-1 and R-2 respectively. The medical certificate which has been enclosed at R-5 provides:


“I hereby certify that I have examined Smt Gurcharan Kaur W/o late Sh. Bachan Singh a candidate for employment in the 24 FAD C/o 56 APO and cannot discover that she has any disease (communicable or otherwise) constitutional weakness or bodily infirmity except Nil which is considered and disqualification for employment

as MAZDOR in the 24 FAD C/o 56 APO. Her age according to his statement is 40 years and by appearance about 40 years."

The opinion expressed by the learned senior medical officer of the state dispensary is based upon two facts (i) by her appearance (ii) upon her own statement that she is 40 years of age. As this report is given in the normal course of transactions it has substantial evidentiary value.

17. I also needed to look at the second medical certificate upon which the learned counsel for the applicant placed substantial reliance. Her second medical certificate which has already been discussed while dealing with the arguments advanced by the parties. This certificate is dated 15.09.2009 and mentions that "*Radiological age of Gurcharan Kaur is above & between forty five to fifty five years (B/W 45 to 55 years)*" [A/10 page 72]. The applicant has taken an approximation based upon the mean of these ages to support her contention. I feel that this if not a very unacceptable proposition as the range between the two is almost of 10 years. The medical report which proximates the age over such a wide period is not worthy or credence. A number of medical technologies have come into existence like ossification tests, judging from the angle of the bone etc. whereby DoB could be narrowed down to a few months.

18. I have also gone into the family pension paper of the late Bachan Singh and I refer to the nominations made to the GPF. On 03.12.1982 the age of the wife is mentioned as 25 years. Going by this entry the applicant would be 33 years by the time she came to be appointed. Again on 7.9.1988 while providing the details of the family the age of the wife has been mentioned as 30 years; two years down the line the age of the applicant should be approximately 32 years which

corresponds more to the claim of the applicant. Here one has to also consider the discrepancies between the entries in service records of late Bachan Singh and that in the service record of the applicant. The earlier of these records approximates the claim of the applicant. However, considering the fact that there is contradiction between the two entries in the service book of late Bachan Singh it appears that age of the applicant as wife of the deceased employee was not the principal issue under consideration that had been lightly made without any care for precision. It is equally true that these entries were made on the basis of the knowledge of the applicant's deceased husband and have been signed by him. On the other hand the date of birth of the applicant in her service book is based upon a certificate provided by a qualified doctor. Hence, I would place my reliance upon the recorded entry in the service book of the applicant. Even if we were to accept the theory of conspiracy as correct the applicant has not submitted any credible explanation of who would make the interpolation and as to why. Throughout the case this has remained an unstated mystery and was never supported by plausible explanations.

19. I also taken up now the entries made in form 3. I find that in the original copy of form 3 that the service record, the DoB has been entered as 24.10.1950 above that there is another entry where the DOB is entered 05.12.1958. The second DoB i.e. one relating to 1958 has been entered in an ink handwriting which are both different from the remaining entries in the service book. I also find that in the service

card the entry as 05.12.1950. There is, however, an overwriting in respect to the first two entries which appears to have been 24.10.1950.

20. Likewise in the case of form 3, I find that there is a writing of the DoB 24.10.1958 in a different ink while the entry has been made in another handwriting which match with the rest of the handwriting. I further find that the first medical certificate affirm the DoB of the applicant as 40 years has also been placed on the file. In part one proforma dealing with the Government servant dying while in service/retired on invalid pension there is entry of 40 years as per medical jurist report dated 30.11.1990. On the other hand in column 3 of form 3 dealing with details of family it is entered "Date of birth – 40 years 24.10.1958, These entries were made on 21.8.1991. The fact remains that whatever might have been the entries in the service book of the late Bachan Singh they were made on the basis of his personal knowledge. It had no legal basis. In case of conflict with the service book of the applicant the later shall prevail. In consideration of these facts that I find substance in the arguments of the learned counsel for the respondents for the age of the applicant was entered as 40 years and on the basis of medical certificate and the duplicate entries relating to 24.10.1958 are being made in different ink and handwriting and appear to be later additions and interpolation.

21. As regards the smart card, the LIC entry and such other documents they are not conclusive proof of the DoB. Here, another point that has to be taken into consideration is that after the original DoB has been recorded as 05.10.1950, the same was reaffirmed a year

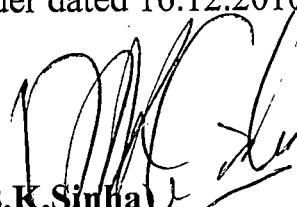
later. The mistake in GPF-DS account statement can be safely deduced from the previous fact is that on account of interpolation. It was corrected as and when discovered by the respondents. The issue has been agitated by the applicant after a period of almost 21 years. It is also significant to recall that 24.12.1950 had been accepted by the applicant at the time of her appointment. 24.10.1958 has appeared in the records as a consequence of interpolation. Here the respondents have referred note 5 of the Fundamental Rules (FR) 56 which is reproduced as below :

“ Note 5- The date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government or the Comptroller and Auditor-General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving if:-

- (a) a request in this regard is made within the five years of his entry into government service;**
- (b) it is clearly established that a genuine bona fide mistake has occurred; and**
- (c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.”**

22. Here, I feel that it is not a question of correction but one of interpolation and tampering with Government records. In the same breath it is also admitted that 24.10.1958 as DoB is cleverly introduced in the service book by some unscrupulous person within the organization. Interpolation in initial service record is a penal act. However, it is not known and nowhere has it been asserted as to how it has taken place and who is responsible for the same. In any case, the

applicant does not stand to derive any advantage from the same. Therefore, I have the least hesitation to dismiss the OA without costs. The respondents are discharged from all responsibilities that had been imposed upon them by means of the interim order dated 16.12.2010.



(B.K.Sinha)
Administrative member

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