

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
O.A. NO. 15 OF 1997

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman
Hon'ble Mr. M. S. Mukherjee, Member (A)

Sri Narendra Nath Sharma
Fitter(Skilled), MS Section
Rifle Factory, Ichhapore,

VS

1. Union of India through the
Secretary, Ministry of Defence,
Dept. of Defence Production,
New Delhi
2. The Chairman/Director General,
Ordnance Factories,
10A, Auckland Road,
Calcutta
3. The General Manager, \
Rifflle Factory, Ichapore

..... Respondents

For the petitioner : Mr. S.K.Dutta, Counsel
Mr. T.K.Biswas, Counsel

For the respondents : Ms. Uma Sanyal, Counsel

Heard on : 23.7.97 : Order on : 5.8.97

O R D E R

M.S.Mukherjee, A.M.

This is a petition u/s 19 of the Administrative Tribunals Act, 1985 in which the petitioner has challenged the action of the respondents for allegedly changing the date of the petitioner in his service record from the previous entry of 30.10.44 to 20.12.37. He has also prayed for for the quashing of the impugned communications of the respondents dated 26.6.96 and 16.10.96 by which the petitioner's representations in the matter has been rejected.

2. The petitioner initially joined the Ordnance Factory at Ichapore as a Fitter on 21.12.1963. He has subsequently been promoted as Fitter, Skilled Grade and he is still working in that capacity. It is his contention that at the time of his entry into the service he had declared his age to be about 19

years on the basis of his school leaving certificate where his date of birth had been recorded as 30.10.44. But the authorities concerned wrongly recorded his date of birth as 20.12.37 on the basis of medical examination by the doctor. The petitioner adds that immediately after his appointment, he was asked by the authorities to produce his character certificate and the petitioner allegedly produced the same on 24.12.63. The character certificate was issued by the Headmaster of Cossipore Institution where the petitioner had studied and after submission of his aforesaid character certificate which also showed his date of birth, the relevant entry in the service book of the petitioner was changed by the respondents, it is contended by the petitioner, from 20.12.37 to 30.10.44. The petitioner has annexed a xerox copy of the said character certificate issued by the Headmaster, Cossipore Institution at Annexure-A1 to the petition. It is the contention of the petitioner that later on sometime in January 1970, the respondents directed the petitioner to submit his school leaving certificate and accordingly the petitioner further submitted his school leaving certificate issued by the Cossipore Institution on 2.2.70 to the authorities on 7.2.70. In that certificate, his date of birth had been shown as 30.10.44. The petitioner has also annexed a xerox copy of the said certificate at annexure-A2. The petitioner has contended that since then his date of birth had all along been treated by the respondents as 30.10.44 and this date was also reflected in the pay slips or the identity cards issued to him by the respondents. However, the respondents, according to the petitioner, unexpectedly directed him through a letter dt. 11.1.89 (copy at Annexure-A3) to produce the school leaving certificate and the petitioner adds that he submitted the said school leaving certificate again to the respondents.

3. The petitioner's grievance is that thereafter by a

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letter dt. 1.12.90 he had been informed by respondent No. 3 that his recorded date of birth would remain unaltered as 20.12.37. The petitioner contends that this action of the respondents is totally arbitrary and illegal as his recorded date of birth had previously been duly altered in the year 1963 itself as 30.10.44. The petitioner made certain representations which were rejected by the authorities. He then moved this Tribunal through OA 1136 of 1993 which was disposed of on 23.2.96. This Bench of the Tribunal had disposed of the said OA with the following directions, viz.~

"..... The petitioner may, within a month from to-day, make a fresh self-contained representation to the respondents authorities along with documentary evidence in support of his contention and the respondent authorities shall dispose of such representation through a speaking order after appropriate verification from the school authorities with reference to contemporary records and decide the case appropriately within three months from the date of receipt of the representation of the petitioner as above."

4. The petitioner submits that in pursuance of this order of the Tribunal, he made a detailed self-contained representation on 23.3.96 before the respondent No. 3 (Annexure-A6) but the respondents have rejected this representation through the impugned order dt. 26.6.96 vide Annexure-A6 at page 41 of the petition. The petitioner then made a further representation to the Director General, OFB, respondent No. 2 against the aforesaid order of respondent No. 3 but this also has been rejected by respondent No. 2 which has been communicated to the petitioner by other respondents on 16.10.96 vide Annexure-A7 at page 46 of the petition.



5. The petitioner has, therefore, prayed for the quashing of the impugned decisions of the OFB and respondent No. 3 dated 16.10.96 and 26.6.96 respectively and prayed for a direction on the respondents to treat his date of birth as 30.10.44 and to enter this date correctly in his service book accordingly. He has further prayed that the respondents be directed not to superannuate him before 2004 based on his date of birth as 30.10.44.

6. The respondents have contested the case by filing a written reply. They submit that the petitioner's representation has been duly considered in compliance with the earlier direction of the Tribunal dt. 23.2.96 in OA 1136/93 and the same has been rejected with a detailed speaking order on 26.6.96. According to the respondents, the petitioner has not been able to establish with documentary evidence that his date of birth had been 30.10.44 as now claimed by him. The respondents have, therefore, urged for rejection of the petition.

7. We have heard the learned counsel for the parties and have gone through the documents produced. In view of urgency of the matter, we propose to dispose of the case at the admission stage itself.

8. Through the instant petition as well during the stage of hearing, Mr. S.K.Dutta, the 1d. counsel for the petitioner has argued at length on facts in order to substantiate that a few years immediately after the petitioner's joining the Rifle Factory on 21.12.63, the date of birth as originally recorded in his service record as 20.12.37 had been duly corrected to 30.10.44. He has argued further by citing various documentary evidences that the petitioner's date of birth is really 30.10.44 and the authorities' alleged action to change the entry back to 20.12.37 is illegal and unjustified.

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9. We need not discuss such detailed arguments and evidence and the counter arguments and counter contentions of the respondents here, as all these are repetitions of what the parties had urged at the stage of hearing of the earlier OA No. 1136/93. All these contentions and counter contentions had been analysed in detail and evaluated by this Tribunal in its order dt. 23.2.96 in the earlier OA. However, on a complete perusal of the Tribunal's order dt. 23.2.96 in OA OA 1136/93 it is seen that the Tribunal had ^{afforded in the same judgement} made the following observations :-

" We further note that rightly or wrongly, the recorded date of birth of the petitioner had been changed (from 20.12.37) to 30.10.44 even though it had been done by certain authority who was not competent with proper sanction. But when the said changed date of birth was again put back to the original one, the interest of the petitioner was no doubt adversely affected. But apparently this was done by the authorities without giving full opportunity to the petitioner to state his case. Also from the official notings in the service book, we find that the date of birth as shown in the transfer certificate as produced by the petitioner had not been independently verified by the authorities which allowed correction upon such certificate. So, in the absence of any such verification, one cannot conclude about the correctness of this date. Therefore, the respondent authorities should review the matter again and the petitioner should get fresh opportunity to produce all relevant evidence in support of his case."

10. These were the reasons why the Tribunal while disposing of the OA 1136/93 on 23.2.96 gave direction as reproduced at para above. A careful perusal of the aforesaid

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particular text of the directions would show that the following consequential steps would have to be taken by the concerned parties :

i) Within a month, the petitioner was to make a fresh self-contained representation to the respondents along with documentary evidence in support of his contentions.

ii) The respondent authorities would have to verify from the school authorities (about the certificates) with reference to contemporary records and decide the case appropriately within 3 months from the date of receipt of the representation.

iii) Accordingly, the respondent authorities would have to dispose of the representation of the petitioner through a speaking order.

11. Now, the impugned speaking order dt. 26.6.96 of the respondents shows that a detailed representation subsequently filed by the petitioner had been considered by them. But the petitioner did not produce any new or additional evidence in support his claim. He merely repeated the old certificates and arguments which had already been discussed and analysed by this Tribunal in its order dt. 23.2.96 in the earlier OA in which the Tribunal had expressed scepticism about the tenability of these documents/evidence of the petitioner. Therefore, when we asked the petitioner to adduce relevant evidence, the petitioner really got an opportunity to produce additional evidence, if any, in order to substantiate his case. But the petitioner has failed to discharge this burden. On the other hand, the respondents were also directed to discharge their part of the burden by meanwhile attempting appropriate verification from the school authorities regarding the contents of the certificate produced by the petitioner with reference to contemporary records. Now the impugned speaking order of the respondents dated 26.6.96 makes it clear

that the respondents had subsequently really written to the management of the Cossipore Institution seeking such clarification about the date of birth as recorded in the school registers. But the Cossipore School authorities through their reply have conveyed to the respondents that they are unable to confirm the date of birth with reference to original records, as the records of the institution were burnt in 1971. Therefore, the authenticity of the school leaving certificate cannot, it is stated, be verified at this stage.

12. This piece of information, therefore, clinches the issue. According to the respondents, it is significant, the petitioner actually never produced the said school leaving certificate or any certificate before the authorities prior to 1989 which contention, of course, the petitioner contests. But the petitioner has not been able to produce any documentary evidence that he had really submitted the school leaving certificate dt. 2.2.70 or any certificate on any date prior to 1971 when the original records of the school were destroyed by fire. So, the reliability of the contents of any such certificates even if dated prior to 1971, but submitted after 1971, become questionable, since the contents are not capable now of any independent verification.

13. On the other hand, as we have already held while disposing of the earlier OA, there is no evidence that the change of the original entry (regarding date of birth) of the petitioner in the service book from 20.12.37 to 30.10.44 had been done by any authority with due authority or competence by following the due procedures. There was enough indication in our judgement in the earlier OA that it was a change of entry in the service book which was without due authority. Therefore, when the authorities wanted to restore it on review, they were entitled to the same. But for this the petitioner should have been given due opportunity to state his

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case and adduce evidence if any. This opportunity has amply been given to the petitioner subsequently when he was allowed to make fresh representation in terms of the Tribunal's order dt. 23.2.96 in OA 1136/93. But he has not been able to produce any satisfactory evidence.

14. Under the circumstances, we do not propose to interfere with the action of the respondents. The petition, therefore, fails and it is accordingly rejected without any order as to costs.

M.S. Mukherjee
5/8/1997
(M.S. MUKHERJEE)

MEMBER(A)

A.K. Chatterjee
5.8.97
(A.K. CHATTERJEE)

VICE CHAIRMAN

~~It is understood that the previous order is still valid.~~