

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE OA 330/89 OF

NAME OF THE PARTIES S.P. Khazana Applicant

Versus

..... U.O.E. 2008 Respondent

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CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

Rechecked & Dated 11-10-11

Counter Signed.....

[Signature]
23/11/2011
Section Officer/In charge

[Signature]
Signature of the
Deputy Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

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CAUSE TITLE O.A. 330 of 1989 (V)

Name of the parties S.P. Khurana

Applicant.

Versus.

Union of India

Respondents.

Part A.B.C.

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~~Bank Copy~~~~A1-A12~~

Checked

21/6/11

(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

A
1

Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing: 11/12/87
Date of Receipt: 12/1/87

Registration No. 330 of 1989(L)

Deputy Registrar(J)

APPLICANT(S) S. P. Khanna

RESPONDENT(S) Union of India

Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent?
2. a) Is the application in the prescribed form?
b) Is the application in paper book form?
c) Have six complete sets of the application been filed?
3. a) Is the appeal in time?
b) If not, by how many days it is beyond time?
c) Has sufficient case for not making the application in time, been filed?
4. Has the document of authorisation/Vakalatnama been filed?
5. Is the application accompanied by B.D./Postal Order for Rs.50/-
6. Has the certified copy/copies of the order(s) against which the application is made been filed?
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed?
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly?
c) Are the documents referred to in (a) above neatly typed in double space?
8. Has the index of documents been filed and paging done properly?
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application?
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?

Yes

Yes

Yes

Five Sets Filed

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

(42)

<u>Particulars to be Examined</u>	<u>Endorsement as to result of examination</u>
Are application/duplicate copy/spare copies signed?	Yes
12. Are extra copies of the application with Annexures filed?	Yes
a) Identical with the Original?	Yes
b) Defective?	-
c) Wanting in Annexures	-
d) _____	-
13. Have the file size envelopes bearing full addresses of the respondents been filed?	-
14. Are the given address the registered address?	Yes
15. Do the names of the parties stated in the copies tally with those indicated in the application?	Yes
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true?	-
17. Are the facts of the case mentioned in item no. 6 of the application?	Yes
a) Concise?	Yes
b) Under distinct heads?	Yes
c) Numbered consecutively	Yes
d) Typed in double space on one side of the paper?	Yes
18. Have the particulars for interim order prayed for indicated with reasons?	-
19. Whether all the remedies have been exhausted?	Yes

directly

This application is not on a book let form while filing.

1/12/89

OA 3304(1)

:: 2 ::

A3

Serial number of order and date

Brief Order, Mentioning Reference if necessary

How complied with and date of compliance

15/12

No sitting. Adj to 22.12.09
Applicant is present.

Hon. Justice K. Nallu, VC
Admit

15/12

List this case for final order
20.2.90

VC

Hon. Justice K. Nallu - VC

The applicant claimed this filed an application for interim relief today. In case he puts up for order on the interim application on 28.2.90

VC

Hon. Justice K. Nallu, VC
Hon. K. J. Ramani, J.

Shri Ved Prakash is present on behalf of the applicant. Dr. Dinesh Chandra files counter on behalf of the opposite parties. The applicant may file rejoinder within two weeks and list for final hearing along with the application for interim relief on 20/3/90.

OK
RA filed
S.F.H.

OK
Submitted for order on 21/12/90

21/12

22/12

See original order on main file

OK
No reply filed
S.F. order

19/12

2.90

OK

Am.

VC

21/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

CIRCUIT BENCH LUCKNOW

of
2nd. NO. 330 1989(L).

DATE OF DECISION 23.3.90

S. P. Khurana

PETITIONER

Mr. Ved Baskash

Advocate for the
Petitioner (s)

VERSUS

Union of India and others

RESPONDENT

Mr. D. Chandra

Advocate for the
Respondent (s)

CORAM :

The Hon'ble Mr. D. K. Agarwal, Jm

The Hon'ble Mr. K. Obayya, Am.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether to be circulated to other Benches ? ✓

DR Agarwal

(AU)

Reserved

Central Administrative Tribunal, Lucknow Bench
Lucknow.

Registration O.A.No. 330 of 1989 (L)

S.P.Khurana

....

Applicant.

Vs.

Union of India and others

Respondents.

Hon. D.K.Agrawal, JM

Hon. K.Obayya, AM

This Application u/s.19 of the Administrative Tribunals Act XIII of 1985 has been made by the abovenamed Applicant aggrieved with the alteration in his date of birth made in the service book on 9.9.1960.

2. The facts are that the Applicant was appointed as CIV TCM in the Station Workshop EME, Lucknow on 1.3.1950 and his date of birth was recorded as 1.1.1931 at the time of entering into service. The contention of the Applicant is that his High School certificate was not available at the time of joining service. Therefore, he had submitted extract of birth register wherein his date of birth was recorded as 1.1.1931, which was accepted by the employer. Later on Matriculation Certificate dated 1.11.1947 issued by Punjab University, Lahore was supplied under the Ministry of Education letter dated 24th Aug. 1960 wherein his date of birth was recorded as April 1, 1930. The Applicant, therefore, made a representation to the Secretary, Govt. of India, Ministry of Education New Delhi on 9.9.1960 under intimation to the Station Workshop, EME Lucknow that the Applicant's date of birth shown as April 1, 1930 in the Matriculation Certificate of Punjab University Lahore was wrong and that the correct date of birth was 1st January 1931. The said letter

DK Agrawal

AS

was never replied to. There is no document available on record to indicate that the Applicant persuaded the matter any further. On the other hand, the employer, on the basis of the above information, made a change in the date of birth of the Applicant in his service book, i.e. the date of birth was altered from 1.1.1931 to 1.4.1930. The Applicant was also made to sign the altered date of birth in the service book. It is clearly admitted by the Applicant in para 4.19 that he was made to sign the altered date of birth in the service book. However, his contention is that he did so under protest. His letter of protest is also not available on record. The Applicant failed to file any document to show that any protest was made by him at the time he was made to sign the altered date of birth or at any subsequent stage.

3. The present Application was filed on 1.2.1989 allegedly on the ground that the alteration in date of birth was ratified by the Ministry of Defence in the year 1988. The facts in this regard are that an audit objection was raised by the Auditor while auditing the Station Workshop that the alteration in date of birth should have been attested by an officer after approval of the Ministry and in order to remove the objection, the department made correspondence and obtained the ratification of Ministry of Defence vide letter dated 1st November 1988, (annexure 8 to the Application). We are of opinion that it is difficult to accept the proposition that the date of birth was altered on the basis of letter dated 1.11.1988. The matter of fact is that the date of birth was altered on 9.9.1960. Due to an internal audit objection, it was ratified by the Ministry of Defence on 1.11.1988. Consequently, the Applicant's

OK Agaswal

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claim, in our opinion, is barred by delay and laches. The date of birth having been altered on 9.9.1960, it is not open to the Applicant to agitate the matter in the year 1989 when he was due to retire on 31st March 1990 according to the altered date of birth. The Application must be deemed to be barred by delay and laches.

4. We may observe that even assuming that the date of birth as recorded at the time of entering into service was 1.1.1931 and the same date was reflected in the birth register, the date of birth as recorded in the Matriculation Certificate will over-ride, i.e., the date of birth as recorded in the Matriculation Certificate will be deemed to be authentic in case of conflict with the entry of date of birth in the birth register. The date of birth as recorded in the Matriculation Certificate will be presumed to be correct unless otherwise proved. In the circumstances, we find no merits in the Application and the same deserves to be dismissed.

5. In view of our foregoing discussion, the Application is dismissed without any order as to costs.

MEMBER (A)

MEMBER (J)

Dated: 23.3.1990
kbb.

In the Central Administrative Tribunal
Additional Bench, Lucknow, Central Administrative Tribunal
Circuit Bench, Lucknow

Date of Filing 1/12/89
Date of Receipt by Post

FORM - I.

Deputy Registrar(J)

APPLICATION UNDER SECTION 19 OF
THE ADMINISTRATIVE TRIBUNALS ACT, 1985.

SA 330/04(1)

S.P.Khurana

...Applicant.

Versus.

Union of India & others

...Respondents.

I N D E X

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5.	Annexure 1 to 14 in compilation II	

Signature of the applicant

For use in Tribunal's Office.

Date of Filing

or

Date of Receipt by Post.....

Registration No.

Signature
for Registrar.

Filed today
1/12/89

Noted for 15-XII-89
1-XII-89

(18)

In the Central Administrative Tribunal,
Additional Bench, Lucknow.

.....

GA 330/09 (2)

S.P. Khurana, aged about 59 years, son of Sri
Guran Ditta Mal, Master Craftsman, Station Workshop,
EME, Lucknow Cantt, Lucknow.

....Applicant.

Versus.

1. Union of India, through Secretary,
Ministry of Defence, Govt. of India, New Delhi
-110011.
2. Director General of EME, Army Head Quarters,
DHQPO, New Delhi-110011.
3. Officer Commanding, Station Workshop EME,
Lucknow Cantt, Lucknow.

.... Respondent.

DETAILS OF APPLICATION

4. Particulars of the order against which application
is made:

(i) Order No. : B/03580/PC/EME-CIV-2/2685/D
(Appts) Dated 1.11.88, passed
by Ministry of Defence.

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(ii) Order No. : B/03580/PC/EME-Civ-2, dated 4.4.89, passed by Director General of EME, Army H.Q., New Delhi.

(iii) Order No : B/03580/PC/EME-Civ-2, dated 4.10.89, passed by Director General of E. & M.E., Army Head Quarters, New Delhi.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation:

The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case:

4.1 That the present application is being filed against the alteration of the applicant's date of birth by the opp. parties from 1st of January, 1931 as originally recorded to 1st of April, 1930, after 38 years of service having been rendered by the applicant.

4.2 That the applicant is a displaced person/refugee from West Pakistan (Montgomery). On partition of

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-3-

the country in 1947, the applicant's father, with members of his family including the applicant, migrated to India and since then the applicant is in India.

- 4.3 That the applicant was born on 1st of January, 1931, in Montgomery (Now in West Pakistan) and the same date of birth was recorded in Birth Register of the Municipal Committee (Montgomery).
- 4.4 That before the partition of the country i.e. 15th August, 1947, the applicant appeared in the Matriculation Examination Session 1947, which was held in the month of March, 1947.
- 4.5 That the Matriculation Examination there at that time was conducted by the Punjab University, Lahore. For appearing in that examination, the candidates were required to fill in the prescribed Admission Form. Accordingly the applicant also filled the Admission Form of the Matriculation Examination of the Punjab University, Lahore, for the Session 1947.
- 4.6 That the applicant in his aforesaid Admission Form entered his date of birth as 1st January, 1931, which was actual date of birth of the applicant and the same was also entered in the Birth Register of the Municipal Committee (Montgomery), as also in the records of the School concerned.
- 4.7 That the applicant's Admission Form was accepted

[Signature]

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by the said University and the applicant was allotted Roll No. 24152 for appearing as a candidate in the Matriculation Examination, 1947. The applicant appeared in the said examination and was declared successful.

4.8 That before the Matriculation Certificate of the applicant could be received from the Punjab University, Lahore, there were partition disturbances and the country was partitioned in August, 1947. On account of that the applicant's family migrated from West Pakistan to India, hence the applicant could not receive his Matriculation Certificate from the said University at Lahore.

4.9 That in accordance with the orders issued by the Government of India, New Delhi, the applicant approached the East Punjab University at Solan (Now in Himachal Pradesh), for issuing the Matriculation Certificate to the applicant, which examination the applicant passed in 1947 in West Pakistan. The East Punjab University at Solan was established after partition in India as a new university in lieu of the pre-partition Punjab University, Lahore.

4.40 That on 18th of March, 1948, the applicant was supplied with a Matriculation Certificate, issued by the East Punjab University, at Solan. In the said Certificate it was certified that the applicant was declared successful in the Matriculation Examination, 1947, according to the notification supplied to the said University by the Registrar,


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Punjab University, Lahore. A copy of the said Certificate is annexed hereto as Annexure-1.

- 4.11 That on 1.3.1950, the applicant was appointed as CIV TCM in the Station Workshop EME, Lucknow, and the applicant's prescribed age of retirement is 60 years, which the applicant will reach on 31.12.1990, as his date of birth is 1.1.1931.
- 4.12 That at the time of initial appointment of the applicant in Station Workshop EME, Lucknow, on 1.3.1950, the applicant was in possession of the Matriculation Certificate, issued by the East Punjab University, Solan (Annexure-1). Since this Certificate contained no date of birth, hence the applicant's true date of birth viz. 1.1.1931, was entered in the 'Record Card' (IAFO-2436), as no Service Book at that time was opened. The afore-said date of birth was recorded in the said Record Card only on production, of documentary proof to the satisfaction of the Appointing Authority with the endorsement as under:

" Date of birth recorded on the basis of an extract from the records of Municipal Committee Montgomery, West Punjab."

The procedure to be followed for recording the date of birth of Govt. servants is laid down in Govt. of India, Ministry of Defence O.M. No. 14311/B-12 dated 11.1.1950. A copy of the said Memo dated 11.1.50 is annexed hereto as Annexure-2, and the proforma of Record Card (IAFO-2436) is annexed hereto as Annexure-3.



AB

- 4.13 That the applicant was medically examined which is required to be done before actual appointment, and the Medical Examination of the applicant also indicated the same date of birth viz. 1.1.1931.
- 4.14 That during March 1953, the applicant's 'Service Book' was opened and some of the entries mentioned in the 'Record Card' (IAFO-2436) opened at the time of appointment on 01 March, 1950 (referred to in para 4.12 above) were also transferred to the said 'Service Book' Vol.-1, including the date of birth as 01 January, 1931 but without quoting its source. Coloumn 9 of the 1st page of the said Service Book Vol.-1 was signed by the applicant while Coloumn 10 of the 1st page of the same Service Book Vol.-1, was signed by the then Head of the Office viz. Captain Tirth Singh who commanded Station Workshop EME, Lucknow between 27 February 1952 to 28 June 1954.
- 4.15 That with effect from 15 July, 1957, the applicant was declared Permanent. Subsequent to applicant's confirmation, the applicant was provided on 12 Oct. 1957, with an extract from the 'Service Book' wherein applicant's date of birth was shown as 01 January, 1931. A copy of the extract is attached as Annexure-4.
- 4.16 That after protracted correspondence of about 14 years, the applicant's Matriculation Certificate dated 1.11.1947 of Punjab University Lahore was supplied under Ministry of Education, New Delhi letter No. F.21-34/58-SW.5 (Pak) dated 24 August 1960, wherein to the applicant's misfortune, a

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wrong date of birth viz 01 April 1930 was found mentioned instead of actual date of birth recorded in the Admission Form and in the Municipal records that is 01 January, 1931. A copy of the said Certificate is annexed ~~hereto~~ as Annexure '4-A'.

4.17 That on 09 Sep. 1960, the applicant wrote back to the authorities concerned, under intimation to Station Workshop EME, Lucknow, that the applicant's date of birth shown as 01 April 1930 in the Matriculation Certificate of Punjab University, Lahore was altogether wrong; that the correct date of birth was 01 January, 1931 as stated in the Matriculation Admission Form of Punjab University, Lahore. The copy of the said letter dated 09 Sept. 1960 is attached as Annexure-5. It may kindly be seen from the said letter that the applicant had not requested Station Workshop EME, Lucknow for alteration in the Service Record but for correction of his date of birth in the Matriculation Certificate of Punjab University, Lahore.

4.18 That on 9.9.1960, the date of birth of the applicant was altered from 1.1.1931 to 1.4.1930 at page I of the Service Book on the basis of Matriculation Certificate furnished under applicant's letter dated 9.9.1960 (Annexure-5).

4.19 That the applicant was simultaneously ordered on 9.9.1960 to sign the altered date of birth in the Service Book, which the applicant complied with but protested that the said alteration was wrong and



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incorrect and could not legally be made and in support thereof various reasons were given. It is further submitted that the said alteration, which is quite invalid, was made without reading the application dt. 9.9.1960 (Annexure-5) and without application of mind and due consideration of facts.

4.20. That as a result of the aforesaid protest, the then Head of Office (Major Durlabh Singh) who commanded Station Workshop EME, Lucknow between 6.2.58 to 18.3.62, conceded the points urged by the applicant and agreed- not to attest and authenticate the alteration in the date of birth of the applicant from 1.1.1931 to 1.4.1930. Therefore, the said alteration became ineffective and non-est and of no consequence, and the applicant's actual date of birth viz. 04.1.1931 as recorded in the Service Book continued to exist.

4.21 That in the year 1963, vide letter dated 22.11.1963 the applicant received his marksheet through Ministry of Education, Govt. of India. It is further stated that a fresh matriculation certificate as requested by the applicant in his application dated 9.9.1960 (Annexure-5) was not received alongwith the marksheet sent by the Ministry of Education.

4.22 That in Dec. 1986, an audit objection was raised by the Local Audit Officer that three different



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dates of birth viz. 1.1.1931, 29.8.1930 and 01.4.1930 had been entered in the Service Book of Sri S.P.Khurana, on different occasions without authentication. The Audit Officer suggested that the matter be investigated.

4.23 That the aforesaid audit objection was referred to the Controller of Defence Accounts Lucknow for final audit report. That Officer, in his letter dated 16 Nov 1987, pointed out that Shri S.P. Khurana may be contacted and asked to intimate the basis on which the date of birth was initially produced by him and recorded in Service Book at the time of appointment.

4.24 That in compliance with the above cited directions, the applicant submitted an affidavit dated 17 Nov 1987 stating therein that at the time of initial appointment in Station Workshop EME Lucknow on 01 March, 1950, his correct date of birth was recorded as 01.1.1931 in the Service Documents. A copy of the said affidavit is attached as Annexure-6.

4.25 That after careful consideration of all the aspects, the Controller of Defence Accounts, Lucknow reported as follows to the Headquarters (Central Command) EME Branch, Lucknow vide No. P/VII/2010 dated 23 Nov, 1987. A copy of it is attached as Annexure-7:

C. D. A. Report

4.25.A

4.25.B Service Book Vol I of Shri S.P.Khurana indicates

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that three dates of birth viz. 01.1.1931, 29.8.1930 and 01.4.1930 stand noted. The first two dates stand deleted without any attestation. The first date i.e. 01.1.1931 appears to have been made at the time of appointment on the basis of birth certificate as intimated by the individual in his affidavit, as also by the Unit. How the 2nd date i.e. 29.8.1930 has crept in, is not forthcoming. The 3rd date i.e. 01.4.1930 has been recorded on the basis of Matriculation Certificate produced by the individual some time in 1960 or afterwards. Neither of the three dates stand attested and have been objected to in audit.

4.25.C The individual as per affidavit has contested that the date of birth i.e. 01.1.1931 was declared by him on the basis of an extract of records of Municipal Committee Montgomery and that no other date of birth is genuine. The Unit has submitted copies of Central Administrative Tribunals, Madras and Hyderabad decision on the subject which forms the part of the statement of case.

4.25.D Since, the date of birth which was declared by the individual at the time of recruitment in 1950, which was accepted by the appointing authority, could not be changed in 1960 after confirmation of the individual in 1957 or afterwards or cannot be changed now agreeably to the provisions of Ministry of Finance (Dept. of Expenditure) Notification No. 7(7)EV(A)/74 dated 07 Feb 1975, sanction of Govt of India, if accorded for acceptance of date of birth as 01.1.1931 i.e. one originally recorded

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would be in order and in tune with the Central Administrative Tribunal decision. (CDA Report ends)

- 4.26 That suddenly after 38 years, the Ministry of Defence vide their letter dated 1.11.1988, received under Army H.Q. letter dated 9.12.88 gave ex-post-facto sanction to change the date of birth as 1.4.1930 instead of 1.1.1931 and 29.8.1930. It is further ordered that all other entries made in the Service Book of the applicant regarding the date of birth will be treated as cancelled/deleted. A copy of the said order dated 1.11.1988 and letter dated 9.12.1988 are annexed hereto as Annexures 8 & 9 respectively. Thus the order dated 1.11.88 is invalid as the illegality committed on 9.9.60 can not be cured after 38 years by ex-post-facto sanction.
- 4.27 That order dated 1.11.1988 was passed without disclosing any reason for disagreeing with the recommendations/findings of the appointing and audit authorities to treat the original date of birth i.e. 1.1.1931 as final. For this no opportunity of hearing was afforded, though applicant's retirement has been preponed by 9 months.
- 4.28 That on receipt of the aforesaid order the applicant submitted a detailed representation dated 28.2.89 to Ministry of Defence to Station Workshop, Lucknow, requesting to approach/

Contd...12/-

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restore the correct date of birth of the applicant namely 1.1.1931 as originally recorded on the basis of extract of the Birth Register of the Municipal Committee, Montgomery (now in West Pakistan). A copy of the same is annexed hereto as Annexure-10.

4.29

That in the said representation the applicant referred to the various Govt. orders and the rules applicable for the change of date of birth of any Govt. servant, from what it was originally recorded at the time of initial recruitment of the employee, It was further submitted that the date of birth can only be altered on the basis of bonafide clerical mistake and on the specific request of the employee concerned, if made within 5 years of the entering in the service; but in the present case no clerical error was committed in recording the applicant's date of birth; that the appointing authority was satisfied on the basis of documents produced about the correctness of the applicant's date of birth as 1.1.1931; that in any case the date of birth can not be altered after confirmation of the applicant, who was confirmed in the year 1957; that due procedure as provided in various orders of the Govt. has not been followed in altering the applicant's date of birth; that after 38 years of service the applicant's date of birth has been altered to his disadvantage without any justification; that cryptic non-speaking order has been passed by the Ministry of Defence, Govt of India, vide its order dated 1.11.1988 (Annexure-8) to alter the applicant's date of birth



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by means of ex-post-facto sanction & no from 1.1.1931 to 1.4.1930 ~~and the~~ reasons have been mentioned therein as to why such an order for accepting 1-4.1930 as the date of birth has been passed; that in the applicant's Service Book, third date of birth viz 29.8.1930 has also been mentioned and the said orders ~~do~~ not explain as to how out of 3 dates only 1.4.1930 has been selected or sanctioned to be recorded; that the alteration is highly belated at the fag end of applicant's service career.

4.30 That it is pertinent to mention here that in the service book of the applicant third date of birth viz. 29.8.1930, has been also recorded which the applicant came to know only after audit objection. It is not clear as to how this third date of birth viz. 29.8.1930 was recorded in the service book of the applicant, which entry is also not authenticated and attested by any authority. It is further submitted that the authorities have not explained as to why and how 29.8.1930, has been recorded in the service book.

4.31 That the said representation (Annexure-10) of the applicant was forwarded to the Army HQ New Delhi, wherefrom a letter dated 4.4.1989 was issued to the HQ, Central Command, Lucknow, wherein the applicant's said representation was rejected on the ground that all the points raised by the applicant had already been considered while passing the earlier order dated 1.11.1988 (Annexure-8) by the Ministry of Defence, and therefore, his case had not been taken up again

[Signature]

with those authorities. The said order was communicated to the applicant on 13.4.1989. A copy of the said letter is annexed hereto as Annexure-11.

4.32 That the said letter dated 4.4.1989 (Annexure-11) is also a non-speaking order and it shows that the points raised have not been considered and the applicant's representation has been rejected mechanically, without application of mind.

4.33 That thereafter on 30.5.1989, the applicant submitted a Memorial to HE the President of India, against the decision of the Army H.Q. as conveyed vide their letter dated 4.4.1989 (Annexure-11) and the order of Ministry of Defence dated 1.11.1988 (Annexure-8). It is further stated that in his Memorial the applicant prayed that his original date of birth viz. 1.1.1931 be retained and the order dated 1.11.1988, passed by Ministry of Defence (Annexure-8) and the order dated 4.4.1989, passed by the Army H.Q. (Annexure-11) be set aside. It is stated further that various relevant Rules, Order and Govt. decisions were mentioned therein and their copies were also annexed therewith. A copy of the said Memorial without its enclosures is annexed hereto as Annexure-12.

4.34 That the Army H.Q. vide its letter dated 4.10.89, communicated the decision on the applicant's Memorial addressed to HE the President of India

Page 9

which was intimated to the applicant on 14.10.1989. In the said order it has been mentioned that the applicant's case was taken up with the Ministry of Defence, which has reiterated its earlier view and therefore, the decision already communicated vide letter dated 1.11.1988 holds good and the case is closed. A copy of the said order dated 4.10.1989 is enclosed hereto as Annexure-13.

- 4.35 That the recorded date of birth of the applicant could not be altered/changed after 38 years of service particularly after the confirmation of the applicant in the year 1957; which was also pointed out in the audit objection. Moreover as per Army Instruction No. 200 dated 23.7.1955, it has been provided that the cases in which the date of birth has already been determined and accepted will not be re-opened.
- 4.36 That the respondents before altering the date of birth of the applicant to his disadvantage, entailing pre-poning the date of retirement of the applicant, neither served any notice nor afforded any opportunity to the applicant against the contemplated action, which is in violation of the principles of natural justice besides being in contravention of the rules applicable.
- 4.37 That alteration of the date of birth of the applicant is to his prejudice and entails civil consequences and therefore, the respondents can not

[Handwritten signature]

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alter it except on the basis of a due enquiry, particularly when the applicant's date of birth was verified and then accepted by the Govt.

4.38 That the respondents by altering the date of birth of the applicant from 1.1.1931 to 1.4.1930 have reduced the service period of the applicant indirectly; which is effect amounts to removal, and it being a major penalty can not be inflicted without due process of law.

4.39 That in case of one Shri Balwant Singh, then Daftry and present/posted as Supervisor (NT) in Station Workshop, Lucknow, the respondents vide Army H.Q. Letter No. 92960/II/EME.CIV dated 28.2.1970, ordered that change of date of birth of an employee after confirmation is not permissible. A copy of the said order is annexed hereto as Annexure-14.

4.40 That in view of the orders (Annexure-14) in case of said Shri Balwant Singh, the alteration of the applicant's date of birth in 1988 after confirmation in 1957 is arbitrary, discriminatory and without jurisdiction.

5. Grounds for relief with legal provisions:

5.1 Because the applicant's date of birth as 1.1.1931 was initially recorded on the basis of the extract of Birth Register of the Municipal Committee, (Montgomery (Now in West Pakistan);

[Handwritten signature]

P24

- 5.2 Because the applicant was born on 1.1.1931;
- 5.3 Because the appointing authority at the time of appointment was satisfied and accepted the applicant's date of birth as 1.1.1931 on the basis of documentary evidence;
- 5.4 Because the impugned order dated 1.11.1988 (Annexure-8) was passed by the Ministry of Defence without affording any opportunity of hearing to the applicant;
- 5.5. Because by the impugned order the applicant's date of birth was changed to his disadvantage which reduced his service period without hearing him, and is highly belated having been passed after 38 years of Service;
- 5.6 Because the impugned orders are against the rules, Govt. Orders, and the principles of natural justice;
- 5.7 Because the applicant was confirmed in 1957 with date of birth as 1.1.1931;
- 5.8 Because the date of birth can not be changed to the disadvantage of the applicant after confirmation;
- 5.9 Because the rules provide that the date of birth as originally recorded can not be changed except on account of bonafide clerical mistake and that

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too on the request of the employee made within 5 years of entering service;

- 5.10 Because there was no clerical mistake in the applicant's date of birth as initially recorded and so it could not be altered;
- 5.11 Because the applicant never requested for alteration of his original date of birth;
- 5.12 Because the applicant in his Matriculation Admission Form entered his actual date of birth being 1.1.1931;
- 5.13 Because the date of birth as entered in Matriculation Certificate is wrong and incorrect, for the correction of which the applicant represented to the Ministry of Education, Govt. of India, through which the said certificate was received in 1960 after 14 years of passing the said examination;
- 5.14 Because the impugned orders are non-speaking and disclose no reason as to why 1.4.1930 date of birth has been selected out of 3 dates of birth (1.1.1931, 29.8.1930 and 1.4.1930) existing in the Service Book of the applicant;
- 5.15 Because out of three the two dates of birth i.e. 1.4.1930 and 29.8.1930 noted in the Service Book are not attested/authenticated by the competent authority, which is obligatory under Article 818 of the C.S.R.; (Civil Service Regulations)

A26

- 5.16 Because the impugned orders are ultra-vires
i illegal, in contravention of the rules and
orders and are arbitrary and have been passed in
violation of principles of natural justice;
- 5.17 Because the impugned orders are discriminatory
as in case of Sri Balwant Singh a contrary decision
has been taken;
- 5.18 Because no enquiry has been held to determine as
to which date of birth out of the 3 recorded in
the Service Book is correct;
- 5.19 Because the facts mentioned in applicant's letter
dt. 9.9.60 (Annexure-5) have not been considered;
- 5.20 Because the date of birth 1.1.1931 has been
deleted in hot haste without application of mind;
- 5.21 Because the date of birth i.e. 1.1.1931, entered
in Record Card (IAFO-2436) (Annexure-3) has not
been considered at all while passing the impugned
order;
- 5.22 Because in Record Card (IAFO-2436) the initially
recorded date of birth i.e. 1.1.1931 alone exists;
- 5.22.1 Because the applicant's date of birth has been
altered without following the prescribed procedure;
- 5.23 Because the impugned order has been passed in
contravention of the audit report;

[Handwritten signature]

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- 5.24 Because the applicant was medically examined before actual appointment and his date of birth 1.1.1931 was recorded as provided in Article 49 of the C.S.R.; (Civil Service Regulations)
- 5.25 Because the date of birth from 1.1.1931 has been altered vide Annexure-8 by ^{means} ~~means~~ of ex-post-facto sanction ^{at} ~~and~~ the fag end of the service career of the applicant.

6. Details of the remedies exhausted:

- 6.1 Representation dated 28.2.89 (Annexure-10) was preferred against the order dated 1.11.88 passed by the Ministry of Defence vide Annexure-8. The said representation was rejected vide order dt. 4.4.89 (Annexure-11).
- 6.2 Memorial to H.E., the President of India dated 30.5.1989 (Annexure-12), which was also rejected vide order dated 4.10.1989 (Annexure-13).

7. Matters not previously filed or pending with any other Court:

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before is not pending any Court of law or any other authority or any other Bench of the Tribunal.



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8. Relief sought:

In view of the facts mentioned in para 4 above, the applicant prays for the following reliefs:-

- 8.1 To hold and declare that the applicant's date of birth is 1.1.1931 as originally recorded in the documents, after setting aside/quashing the impugned orders mentioned in para 1a above;
- 8.2 To hold and declare further that for all purposes the applicant's date of birth be treated as 1.1.1931 in the matter of his Service and retirement;
- 8.3 Costs of the application be allowed to the applicant;
- 8.4 Any other relief deemed just and proper under the circumstances of the case be also granted to the applicant.

9. Interim order, if prayed for:

The applicant at this stage does not pray for any interim order.

10. In the event of application being sent by Regd. post:

The application is being delivered personally.

11. Particulars of Bank Draft/Postal Order filed in respect of the application fee:

I.P.O. No. B-02-401015 , Dated: 16.11.89

For Rs. 50/- only,

Issued by: G.P.O., Lucknow.

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12. List of Enclosures:


1. Impugned Order dated 1.11.88.
2. Impugned Order dated 4.4.89.
3. Impugned Order dated 4.10.89.
4. Annexure A-1 to A-14 in compilation.

VERIFICATION.

I, S.P.Khurana, son of Sri Guran Ditta Maik, age 59 years, working as Master Craftsman, in the Office of Station Workshop, E.M.E. Lucknow Cantt resident of 6-A, Adarsh Nagar, Alam Bagh, Lucknow do hereby verify that the contents of paras 1, 4 and 6 to 12 are true to my personal knowledge and para 2, 3 and 5 believed to be true on legal advice and that I have not suppressed any material facts.

Dated Nov. __, 1989.

Place: LUCKNOW.


Signatures of the
Applicant:

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In the Central Administrative Tribunal
Additional Bench, Lucknow.

.....

S.P. Khurana

..Applicant.

Versus.

The Union of India & others

..Respondents.

Annexure No.8.

apts.
No. B/03580/PC/EME-Civ-2/2685/D/
Government of India
Ministry of Defence.
New Delhi, the 1st Nov, 1988.

To,

The Chief of the Army Staff
New Delhi.

Subject: CHARGE ON DATE OF BIRTH OF SHRI SP KHURANA, TQM,
STATION WORKSHOP EME LUCKNOW.

Sir,

I am directed to convey the ex-post-facto sanction of the Ministry of Defence to change of date of birth in respect of Shri SP Khurana, TQM in Station Workshop EME Lucknow as 1.4.1930 (First day of April instead of 1.1.1931 (First day of January 1931)). 1930) All other entries made in the Service Book of Shri S.P. Khurana against the entries of date of birth will be treated as cancelled/deleted.

2. This issues with the concurrence of Ministry of Defence/Finance (AG) vide U.O. No. 1939-PB of 1988;

Yours faithfully

sd/-xxx

R. R. KOSHAL

Under Secretary to the Govt of India

True Copy

Amr
Adv.

[Signature]

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In the Central Administrative Tribunal
Additional Bench, Lucknow.

....

S.P.Khurana

..Applicant.

Versus.

Union of India & others

..Respondents.

Annexure No.11.

No.B/03580/PC/EME Civ-2,
Directorate General of EME (EME Civ)
Master General of Ordnance Branch
Army Headquarters
DHQ P.O. New Delhi - 110011

04 Apr 89.

To,

Headquarters,
Central Command (EME Br)
Lucknow -226 002.

Subject: REGULARISATION OF ALTERATION OF DATE OF BIRTH
SHRI SP KHURANA OF STN WKSP LUCKNOW.

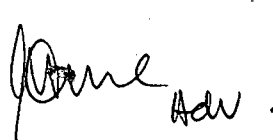
1. Refer to your letter 464302/11/EME Civ dt.17 Mar89
2. All the points raised by the individual (T/No. 2 MC (TQM) Shri SP Khurana of Stn Wksp EME Lucknow) have already been considered while taking a decision on the case. The decision communicated vide this Headquarters letter of even number dated 09 Dec 88 was taken after having considered/examined the case in detail by all concerned viz Ministry of Defence (Fin/AG), Ministry of Defence, Deptt of Personnel & Training and Army Headquarters/AG's Branch. As such the said decision still holds good and the case is not being taken up again with them.
3. The individual concerned may be informed accordingly.

Sd/ xxxxxxxxxxxx
(RP Makhija)
SWO
DD EME Civ

for: Director General of Electrical &
Mechanical Engg.



True Copy

 Adv.

A32

In the Central Administrative Tribunal
Additional Bench, Lucknow.

....

S.P.Khurana

..Applicant.

Versus.

Union of India & others

..Respondents.

Annexure No.13.

Tele: 3019333

Directorate General of EME (EME Civ)

Master General of Ordnance Branch

Army Headquarters

BHQ PO New Delhi- 110011

B/03580/PC/EME CIV-2

04 Oct 89

Headquarters

Central Command (EME Br)

Lucknow- 226 002

REGULARISATION OF ALTERATION OF DATE OF BIRTH
SHRI S P KHURANA OF STN WKSP EME LUCKNOW.

1. Refer to your letter No. 464302/11/EME Civ dt 20 Jul 89.
2. The case was again taken up with the Ministry of Defence who have re-iterated their earlier views. As such, the decision already communicated to you in this regards holds good and the case is closed.
3. The unit concerned (Stn Wksp EME Lucknow) may please be advised to inform the individual accordingly.

Sd/- x x x x

(H R Khajuria)

EME Offr (Civ)

Offg JD EME (Civ)

for Director General of Electrical & Mechanical Eng

Copy to:

HQ UP Area (EME Br)

Bareilly.

Stn Wksp EME

Lucknow.

True Copy

[Signature]
Adw

A37

ब अदालत भीमान

महोदय

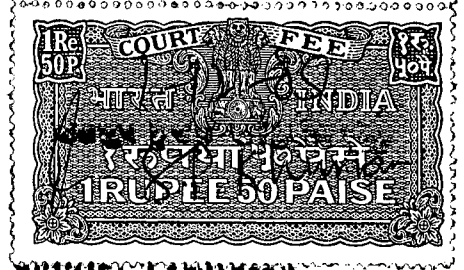
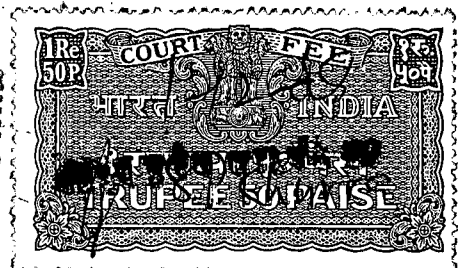
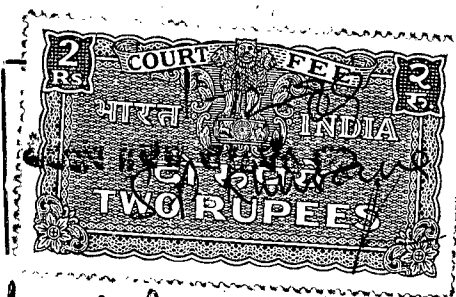
[वादी] अपीलान्त

प्रतिवादी [रूपावेन्त]

Central Administrative

Tribunal, Circuit Bench, Lucknow

वकालतनामा



S. P. Khurana

vs.

Union of Indus Others

बनाम

आयादा (रूपावेन्त)

नं० मुकद्दमा

सन्

पेशी की ता०

१२ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री वेद प्रकाश एडवोकेट

कृष्ण मोहन एडवोकेट ३६, ख्यालीगंज, लखनऊ

नाम अदालत
मुकद्दमा नं०
नाम फरीकन

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पेंरवी व जबाब देही व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रुपया जमा करें या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पेंरवी में एक तरफ मेरे खिलाफ फंसला हो जाता है उसकी जेम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

[Signature]

साक्षी (गवाह)

साक्षी (गवाह)

30

दिनांक

महीना

सन् १९४७ ई०

स्वीकृत

[Signature] 30.4.49
Adv.

व अदालत क्षीमान

[वादी] अपीलान्त

प्रतिवादी [रेस्पान्डेंट]

Central Administrative Tribunal
Circuit Bench, Lucknow

महोदय

वकालतनामा

टिकट

(वादीअपीलान्त)

S.P. Khumane v/s Union of India बनाया हुआ

प्रतिवादी (रेस्पान्डेंट)

नं० मुकद्दमा 330 सन् 1989(4) पेशी को ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

Dr. Vinod Chandra

Add. Gen. Standby Counsel

वकील

महोदय

Lucknow

एडवोकेट

नाम आदालत
मुकद्दमा नं० नाम
फरीकत बनाम

को अपना वकील नियुक्त करके प्रतिज्ञा(इकरार) करता हूं और लिखे देता हूं कि इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो पैरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या टावें या हमारी ओर से डिगरी जारी करावें ओर रुपया बसूल करें या सुनहाम वइकबालदावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमकरें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या अपने किसी पैरोका को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसीलिए वह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

Offg OC Secy to the Bench

for all respondents

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १६

स्वीकृत

A35

In the Central Administrative Tribunal
Additional Bench, Lucknow.

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07 330/07

S.P.Khurana

..Applicant.

Versus.

Union of India & others

..Respondents.

INDEX OF ANNEXURES/DOCUMENTS (COMPILATION-II).

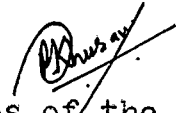
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2.	Annexure-2. Min. of Defence OM No. 14311/D.12 dt. 11.1.1950 laying down the procedure for recording date of birth	4.12	2
3.	Annexure-3. Specimen of Record Card (IAFO-2436).	4.12	3
4.	Annexure-4. An extract dt. 12.10.1957 form Service Book.	4.15	4
5.	Annexure-4A Matriculation Certificate dated 1.11.1947 of P.U. Lahore.	4.16	5
6.	Annexure-5. Applicant's letter dt. 9.9.1960 addressed to Min of Education and copy endorsed to Stn. Wksp, EME, Lucknow.	4.17	6 - 7
7.	Annexure-6. Applicant's Affidavit dt. 17.11.1987.	4.24	8
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al dt.30.5.89 addr-
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92960/II/EME.CIV
dt. 28.2.1970. | - 34. |

Lucknow Dated
Nov.____, 1989.


Signatures of the Applicant.

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In the Central Administrative Tribunal
Additional Bench, Lucknow

.....

S.P.Khurana

.. Applicant.

Versus.

Union of India & others

.. Respondent.

Annexure No.1.

"East Punjab University"

Serial No. 1707

Solan, the 18.3.1948.

Certified that according to the Notification
supplied to this office by the Registrar,
Punjab University, Lahore, Sewak Prakash
Khurana (Roll No. 24152) has been declared
successful in the Matriculation Examination,
1947, securing 363 marks.

Sd/-

Deputy Registrar (E)

True Copy

*Paul
Adv.*

[Signature]

- 2 -

In the Central Administrative Tribunal
Additional Bench Lucknow.

(MD)

S.P. Khurana

..Applicant.

Versus.

Union of India & others

..Respondents

Annexure No. 2.

Documentation—Procedure for recording of Date of Birth and Age in Service Records of Civilian Employees.

.. Govt. of India, Ministry of Defence Memo. No. 14311/D-12, dated 11th Jan. 50 on the above subject is reproduced below for information and guidance.

"Date of Birth.—(i) Every person on entering service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering service in Central Govt. Installations.

(ii) In the case of literate staff, the date of birth shall be invariably supported by documentary evidence, and be entered in the record of service in the employees' own handwriting.

(iii) In the case of illiterate staff, they will be required to produce some documentary evidence, if available, e.g., horoscope or an extract from the Municipal Birth Register in support of their date of birth which shall be recorded by a responsible gazetted officer and witnessed by another responsible employee of the Installation not below the rank of Supervisor or of equivalent grade. In case no such proof is available the procedure as laid down in para 2 below will be followed.

2. (a) When the year and the month of birth are known but not the exact date, the 16th of that month shall be treated as the date of birth.

(b) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g., if a person enters service on 1st January 1950 and if on that date his age is stated to be 18, his date of birth should be taken as 1st January 1932.

(c) Where the person concerned is unable to state his age, it should be assessed by the medical officer and the age so assessed entered in his record of service in the manner prescribed above.

3. The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall be permitted except where *prima facie* evidence is produced that the date of birth recorded in service records is incorrect. Where alterations become necessary due to a clerical error, it shall be open to the Head of the Service in the case of gazetted officer and the Senior Officer of an Installation, or any other officer authorised, in the case of non-gazetted employees to cause the date of birth to be altered. All other cases for the change of the date of birth shall be referred to the Ministry of Defence. Unless requests for alteration of date of birth are made within reasonable time or good grounds are adduced for long delay in making such requests, these shall not be considered. No requests made about the time of superannuation shall be entertained.

4. Where it is proved that the date of birth had been falsely stated by an employee to obtain an advantage, otherwise inadmissible, disciplinary action shall be taken against the individual concerned in addition to effecting the necessary alteration of the date of the birth in service records."

True Copy
[Signature]
Adv.

[Signature]

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In the Central Administrative Tribunal
Additional Bench, Lucknow.

....

S.P.Khurana ...Applicant.

Versus.

Union of India & others ...Respondents.

Annexure No.3.

SERVICE CARD

I A F O -2436.

Name (in Block letters)
Date of Birth
Place of birth Caste.....
Father's Name
Vill.....Tehsil.....Thana.....Distt.....
Local address:.....
Identification Marks:.....

Record of Employment

<u>DO</u> <u>No.&Date</u>	<u>Ticket</u> <u>No.</u>	<u>Appoint</u> <u>ment.</u>	<u>Grade or</u> <u>Class</u>	<u>Rate of</u> <u>pay.Rs.As</u>	<u>Rate of</u> <u>Casualty</u>	<u>Nature of</u> <u>Casualty</u>
----------------------------------	-----------------------------	--------------------------------	---------------------------------	------------------------------------	-----------------------------------	-------------------------------------

Conduct Sheet.

<u>Offence</u> <u>Date Nature</u>	<u>Punishment</u> <u>Awarded</u>	<u>Amount of fine</u> <u>if any</u> Rs As P	<u>DO No.</u> <u>&Date</u>	<u>Remarks</u>
--------------------------------------	-------------------------------------	---	-----------------------------------	----------------

General remarks regarding efficiency & character.

Printed on 16.4.44.

True Copy

[Signature]
Adv.

[Signature]

AYB

In the Central Administrative Tribunal
Additional Bench, Lucknow.

.....

S.P.Khurana

..Applicant.

Versus.

Union of India & others

..Respondents.

Annexure No.4.

SERVICE PARTICULARS AS PER SERVICE BOOK IN RESPECT
OF CIV TELECOM MECH SHRI SP KHURANA.

.....

Father's Name	..Late Suran Ditta Mal.
Residential Address	..6-A, Adarsh Nagar, Alam Bagh, LUCKNOW.
Date of appointment	..1 MAR 1950
Date of birth	..1 JAN 1931
Present basic pay	..Rs. 152.50 (incl D.P.) plus usual allowances
Scale of pay	..Rs. 90-5-125-EB-6-155-EB-6- 185.
Educational Qualification	..Matriculate.

Sd. xxxxxxxx

(M A CHERIAN)
Capt

LUCKNOW

Dated. 12 Oct 57.

Off Officer Commanding
Station Workshops EME, Lucknow

True Copy.

[Signature]

[Signature] Adv.

Pen

In the Central Administrative Tribunal
Additional Bench, Lucknow.

.....

S.P. Khurana ..Applicant.

Versus.

The Union of India & others ..Respondents.

Annexure No. 4-A.

THE UNIVERSITY OF THE PANJAB
THE MATRICULATION EXAMINATION SESSION
1947.

This is to certify Sewak Parkash Khurana
son of L. Guran Ditta Mal Khurana of DAV High School,
Montgomery passed in the Third Division, the matriculation
Examination held in March 1947.

Passed in also One additional subject.

Date of birth 1st April, 1930

(First April)

One Thousand Nine Hundred and Thirty

Senate Hall

Lahore:

The 1st November, 1947.

sd/xxxxxxxxxxxxx

(REGISTRAR)

University of the Punjab.

True Copy

*True
Adv.*

[Signature]

4812

In the Central Administrative Tribunal
Additional Bench, Lucknow.

.....

S.P.Khurana ...Applicant.

Versus.

Union of India & others ...Respondents.

Annexure-5.

To,

The Secretary to the Govt. of India,
Ministry of Education,
NEW DELHI.

Subject: EDUCATIONAL CERTIFICATE.

Sir,

Matriculation Certificate dated 01 Nov 1947
received under your letter No. F.21-34/38 -SW.5 (Pak)
dated 24 Aug 1968 is hereby acknowledged with thanks but
I regret to point out that the Date of Birth recorded
therein as 01 Apr 1930 is not correct for the following
reasons:-

- a. That I was born on 01 Jan 1931 in Montgomery now forming part of West Punjab and the same date of birth was recorded in the Birth Register of Municipal Committee Montgomery, as also in the School records.
- b. that accordingly I entered my date of birth as 01 Jan 1931 in the Admission Form of Matriculation Examination of 1947 Session.

[Handwritten signature]

[Handwritten signature]
Adv.

PA-13

- c. that I was appointed in Station Workshop EME Lucknow on 01 Mar 1958 and my date of birth in the 'Record Card' (IAFO. 2436) was also entered as 01 Jan 1931 with the following remarks:

" Date of Birth recorded on the basis of an extract from the records of Municipal Committee Montgomery (WP)."

- d. that a copy of the Service Particulars issued by the Station Workshop EME Lucknow on 12 Oct 1957 (indicating the same date of birth viz 01 Jan 1931 as was mentioned in the Record Card) is enclosed. The original extract of birth register of Municipal Committee Montgomery referred to in sub para (c) above was retained alongwith the Record Card.

2. In the light of the facts brought out in the preceeding paragraph, it is requested that the Registrar Punjab University Lahore may kindly be approached to issue the fresh Matriculation Certificate with correct date of birth viz 01 Jan 1931 and also the Marks Certificate of the said examination.

Yours faithfully

Dated: 09 Sep 1960

sd/- S P Khurana.

Copy to Station Workshop EME - for info please together Lucknow.

with copy of the Matriculation Certificate of 1.11.47.

True Copy

[Handwritten signature]

Agg

In The Central Administrative Tribunal
Additional Bench, Lucknow.

.....

S.P.Khurana

..Applicant.

Versus.

Union of India & others

..Respondents.

Annexure-6.

Before the Officer Commanding Station Workshop
EME Lucknow- Cantt.

A F F I D A V I T

"I, S.P.KHURANA aged about 57 years, s/o late
Shri G.D. Mal Khurana r/o 38/4 Adarsh Nagar, Alambagh,
Lucknow, solemnly declare on oath as under:-

1. That according to the records of Municipal Commi
Montgomery (now forming part of West Pakistan),
the deponent was born on 01 Jan 1931.
2. that at the time of deponent's initial appoin
in Station Workshop EME Lucknow on 01 Mar 1950,
deponent's correct date of birth was recorded as
01 Jan 1931 in the Service documents, on the basis
of an extract from the records of Municipal
Committee Montgomery.
3. that in view of the above mentioned facts, barring
the date of 01 Jan 1931, no other date of birth is
genuine".

Sd/-

DATED: 17 Nov 1987

(S.P.KHURANA)
Deponent.

LUCKNOW.

True Copy

[Signature]
Adv.

[Signature]

Recd

In the Central Administrative Tribunal
Additional Bench, Lucknow.

.....

S.P.Khurana

...Applicant.

Versus.

Union of India & others

...Respondents.

Annexure-7.

No. P/VII/2010
CDA (CC) LUCKNOW.
Dated 23.11.87

To,

The Hqr (CC)
EME Branch
LUCKNOW.

Subject: REGULARISATION OF CUTTINGS IN THE DATE OF BIRTH
IN RESPECT OF SHRI SP KHURANA, STN WKSP EME LUCKNOW

- a. Service Books Vol I & II
- b. Statement of Cases
- c. Audit Report given by LAO (AD) LUCKNOW
vide their letter No. LK/1/634/10-12/86
dated 10.9.87 (in Original)
- d. Photostat copy of Matriculation
Examination Certificate.
- e. Station Workshop EME Lucknow letter
No. 20602/Audit dated 20.11.87.
- f. Statement of individual dt. 17.11.87
- g. Affidavit dated 17-11-87
- h. Other allied papers.

Forwarded here-
with for further
action at your
end.

The papers were
received in
this office
from HQ UP Area
Bareilly for
audit report.

2. The Service Book Vol I indicates that three dates
of birth viz 1.1.31, 29.8.30 and 1.4.30 stand noted in the
Service Book. The first two dates stand deleted without any

[Signature]

[Signature]
Adv.

attestation. The first date ie 1.1.1931, appears to have been made at the time of appointment on the basis of birth Certificate as intimated by the individual in his affidavit, as also by the Unit. Now the second date ie 29.8.1930 has crept in is not forth-coming. The 3rd date ie 1.4.1930 has been recorded on the basis of Matriculation Certificate produced by the individual some time in 1960, Or afterwards. Neither of the three dates stand attested and have been objected to in audit.

3. The individual as per Affidavit has contested that the date of birth ie 1.1.1931 was declared by him on the basis of an extract of records of Municipal Committee Montgomery and that no other date of birth is genuine. The Unit has submitted copies of Central Administrative Tribunals Madras and Hyderabad decision on the subject which forms the part of the Statement of case.

4. Since the date of birth which was declared by the individual at the time of recruitment in 1950 which was accepted by the appointing authority could not be changed in 1960 after confirmation of the individual in 1957 or afterwards- or can not be changed now agreeably to the provisions of Min of Finance (Deptt of Expenditure) Notification No. 7(7)EV(A)/74 dated 07.2.75 sanction of Govt of India, if accorded for acceptance of date of birth as 1.1.1931 ie one originally recorded would be in order and in tune with the Central Administrative Tribunal decisions.

sd/-xxxxxxx
(B M DUBE)
Dy. C.D.A.

True Copy

[Signature]
Adv.

[Signature]

In The Central Administrative Tribunal
Additional Bench, Lucknow.

.....

S.P.Khurana

...Applicant.

Versus.

Union of India & others

...Opp.Parties.

Annexure - 8.

Attached with Application (Compilation-I)

at Page -23,

(Ministry of Defence letter dt. 1.11.88).

[Signature]
Adv.

AND

In the Central Administrative Tribunal
Additional Bench, Lucknow.

.....

S.P.Khurana

...Applicant.

Versus.

Union of India & others

...Respondents.

Annexure No. 9.

Teld: 3019333

Directorate General of EME (EME Civ)
Mater General of Ordnance Branch
Army Headquarters
DHA P.O. New Delhi- 110011

B/03580/PC/EME CIV-2

09 Dec 88

Headquarters

Central Command (EME Br)

Lucknow- 226 002.

REGULATION OF ALTERATION OF DATE OF BIRTH

SHRI SP KHURANA OF STN WKSP EME LUCKNOW.

1. Refer to your letter No. 464302/11/EME Civ dated 04 Apr 88.
2. Five copies of Government of India, Ministry of Defence letter No. B/03580/PC/EME Civ-2/2685/D (Appts) dated 01 Nov 88, on the above subject are forwarded herewith for further necessary action.
3. Service book Vol I and II in respect of the above named individual is returned herewith.

[Signature]

[Signature]
Adv.

219

4. Please acknowledge.

(RBL Sheopuri)

Lt Col

JD EME Civ

for Director General of Electrical & Mechanical Eng.

Encl: As above.

Copy to:-

Stn Wksp EME

Lucknow. - Alongwith 5 copies of the above mentioned
Govt. letter.

True Copy

True
Adv.

In the Central Administrative Tribunal
Additional Bench Lucknow

250

....

S P Khurana

Applicant

Versus

Union of India & others

Respondents

.....

Annexure No. 10

To

The Commanding Officer
Station Workshop EME
Lucknow

**S u b j e c t : REGULARISATION OF ALTERATION OF
DATE OF BIRTH SHRI S P KHURANA
OF STATION WORKSHOP EME LUCKNOW**

Sir,

1. With reference to Min of Def letter No B/03580/PC/EME - CIV-2/2685/D (Appts) dated 01 Nov 88 received under Army HQ letter No B/03580/PC/EME Civ-2 dated 09 Dec 88, I beg to submit as under :-

- (a) GIFD No. 7455 P dated 24 Dec 1907
- (b) Min of HA Memo No F9/1/62-Est (A) dated 17 Nov 1962
- (c) Min of Fin (D of E) Notification No 7 (7)EV(A)74 dated 07 Feb 1975
- (d) Department of Personnel and Administration Reforms :-
 - (i) Memo No 19017/2/76 Estt (A) dt 29 Nov 1976
 - (ii) Memo No 19017/1/76 Estt (A) dt 10 Oct 1977
 - (iii) Notification No 19017/7/79-Estt (A) dt 30 Nov 1979
 - (iv) Memo No 19017/6/80-Estt (A) dt 28 Nov 1980

- 2. The marginally noted orders lay down the procedure to be followed for determination and recording of date of birth of Govt servants.
- 3. According to the aforesaid orders, every person newly appointed to a service or post shall at the time of appointment declare the date of birth by the Christian era. The declared date of birth may be accepted by the appropriate authority on production of confirmatory documentary evidence such as Matriculation Certificate or extract from birth register.

[Signature]

[Signature]
Adv.

Contd.....P/2

ASI

- 2 -

4. The date of birth so declared by a Govt Servant and accepted by the appropriate authority shall not be subject to any alteration except if a request in this regard is made within five years of entering the service and it is clearly established that a bonafide clerical mistake has occurred in recording the date of birth in the service records. When all these conditions are met, a Ministry or Dept of Central Govt may consider alteration in the date of birth.

5. As a result of the decision conveyed in Min of Del letter No B/03580/PC/EME Civ-2/2685/D (Appts) dated 01 Nov 88, the date of birth, as originally recorded in my service records, is proposed to be changed to my dis-advantage in violation of every rule and order quoted above, particularly ~~the~~ those stated in the preceding paragraphs explained below.

6. At the time of initial appointment on 01 Mar 50, only one date of birth, viz 01 Jan 1931 was recorded in the service records on the authority of :-

- (a) An extract from records of Municipal Committee Montgomery, (Now in Pakistan) since no date of birth had been indicated in the Matriculation certificate issued by East Punjab University, Solan, and
- (b) Medical examination, which preceded actual appointment and indicated the same date of birth viz 01 Jan 1931.

7. The date of birth was correctly recorded by the appropriate appointing authority and there was absolutely "no clerical" or other error in recording the date of birth. Evidently, the appointing authority was satisfied by the relevant documents and had obtained further confirmation through medical examination. Had the date of birth not been entered on the basis of a relevant document, it would have been recorded as 01 July or 16 March and not 01 January, in terms of GFD No.7455 P dated 24 Dec 1907.

8. It has not been "clerly established" that there was any clerical error. Ten years after my appointment I received a copy of Matriculation certificate from Pakistan through the Govt of India, Min of Education. I, voluntarily submitted this certificate to the appointing authority. As the date of birth indicated in this certificate viz 01 Apr 1930 was incorrect, I requested the Min of Education, Govt of India, to have it corrected. The appointing authority initiated action to incorporate this revised date viz 01-4-1930 in place of the date originally recorded viz 1-1-1931 but did not complete the process; the revised entry in Service Book has never been authenticated. Without "Clerly establishing" that the original date was incorrect, it is now sought to unilaterally reverse it.

Contd.....p/3

[Signature]

[Signature]
Adv

AS2

- 3 -

9. All Govt rules and orders on the subject direct that the date of birth as declared by the Govt Servant accepted by the appointing authority and entered in the service book should not be allowed to be changed ordinarily and never after the declaration of satisfactory completion of probation or Quasi Permanency, whichever is earlier. By 1960, when the question of change of date of birth was initiated by the appointing authority in my case, all these limits had been crossed and I had been even confirmed in the service.

10. A Ministry of Dept of Central Govt may consider an alteration in the date of birth, if among other conditions being met "a request in this regard is made within 5 year" of the employee's entry into Govt service. By now I have rendered about 38 years service. I have never applied for alteration in the date of birth as originally recorded in my service records, nor did the appointing authority approach the Central Govt on this issue within the prescribed period of 5 years. I submit that 33 years after expiry of the prescribed limit of 5 years, it is not open either to me, or any other party, to re-open this issue of alteration by approaching Central Govt. The rule is very clear and un-ambiguous in this matter.

11. The cryptic ex-post facto sanction to change of my date of birth as envisaged in Min of Def executive order dated 01 Nov 88 does not convey any considerations or reasons that led to this decision. No inkling has been given as to how, out of the three dates of birth recorded in the service book only one viz 01-4-1930 has been treated of a greater probative value than the other two viz 01-1-1931 and 29-8-1930. It is unjust and unfair-----all the more so because in this particular case the action of altering an already accepted date of birth several decades after the prescribed time limit of five years, is manifestly in violation of the prescribed procedures.

12. Whatever reasoning might have been followed by the Min of Def was obviously conjectural and ~~was~~ speculative because any error in the Matriculation Certificate can not alter the actual date of birth of the Govt servant unless some service rules operate as an estoppel against correction of error in the Matriculation Certificate.

13. In arriving at the decision regarding alteration in my date of birth, I have not been afforded any opportunity to defend my-self. Even if it were within the competence of any authority to re-open this issue at this late stage, I find it difficult to present my case since the reasons that may have weighed in favour of alteration of date of birth have not been spelt out in the sanction order dated 01 Nov 1988
ibid.

Contd.....P/4

[Signature]

[Signature]
Adv

153

14. The Ministry's decision in this case amounts to a general ruling that the effective date of birth of an employee, for the purpose of retirement, would be the one mentioned in his Matriculation Certificate regardless of his genuinely correct date of birth, and the circumstances in which it was accepted for entry in service records. Furthermore, on the precedent of this decision the issue of alteration in date of birth may be taken up by either party at any time till the employee is in service.

15. I am approaching my retirement and this unforeseen preponment, due to alteration in date of birth, has ~~xxxx~~ detrimental and unsettling effect on me. I have major responsibilities to discharge towards my children; who are not yet settled in life. My retirement in service upto the correct -----and all along anticipated----- date of retirement does not involve any additional financial burden on Govt for only one person will be holding this post in any eventuality. On the other hand this sudden and unjust, decision towards the fag end of my service has disastrous financial consequences for me.

16. I request that in view of the position in respect of rules as explained, and the hardship involved, Min of Def may kindly be requested to restore the correct date of birth viz 01 Jan 1931 as originally recorded in my service records.

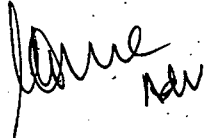
Thanking you very much.

Yours faithfully,

Dated : 28 Feb 1989


(S P KHURANA)





45

In the Central Administrative Tribunal
Additional Bench, Lucknow.

.....

S.P.Khurana

...Applicant.

Versus.

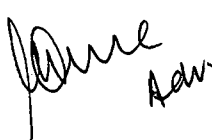
Union of India & others

...Respondents.

Annexure -12.

attached.




Adv.

134

In the Central Administrative Tribunal
Additional Bench, Lucknow.

....

S.P.Khurana

...Applicant.

Versus.

Union of India & others.

...Respondents.

Annexure -11.

(Attached with Application (Compilation-I)

at Page 24,

(Order dated 4.4.89 of Army H.Q.)

True Copy
Adv.

455

In the Central Administrative Tribunal
Additional Bench, Lucknow.

.....

S.P.Khurana

...Applicant.

Versus.

Union of India & others

...Respondents.

Annexure -12.

attached.

~~Signature~~

Signature
Adv.

Memorial to Hon'ble President

To

The Hon'ble
President of India,
New Delhi

Through : The Proper Channel

From

Shri S.P. Khurana
Master Craftman,
Station Workshop, ME
Lucknow Cantt.

Dated, Lucknow

May 30, 1980

Subject

Memorial of the above named in connection with his true date of birth
for purpose of Superannuation

May it please the Hon'ble President,

I. Preliminary Submissions

1. After tendering his dutiful respects, the Memorialist begs to state that this memorial is directed against the order of the Ministry of Defence conveyed in their letter No. B/03580/PC/ME Civ-2/2685/D (Appts) dated 1.11.1980, addressed to the Chief of the Army Staff New Delhi. A copy of it is attached herewith as Annexure 'A'.
2. In the said letter, the Ministry of Defence conveyed their ex-post-facto sanction to the change of the memorialist's date of birth from 01.1.1931 to 01.4.1930, that is, pre-dating his date of birth by nine months. This means that, according to this changed date the memorialist will have to retire on superannuation nine months earlier than his unchanged date of birth. This decision operates adversely to the memorialist, and it is for the redress of this grievance that the memorialist humbly begs to submit this memorial.

Note: According to the memorialist's true (and unchanged) date of birth (01.1.1931) as originally recorded in his "Record Card/Service Book", the memorialist becomes due for superannuation on 01.1.1991. But the changed date of birth (01.4.1930) makes his retirement operative nine months earlier, to the great disadvantage of the memorialist as brought out hereafter.

[Signature]

[Signature]
Adv.

AS3

II. Narrative of the case

3. Before submitting the grounds of the memorial the petitioner began to narrate as follows the principal matters relative to the proper consideration of his respectful submissions.

- (1) That I am a displaced person from West Pakistan (Montgomery).
- (2) That according to the records of Municipal Committee, Montgomery, (now forming part of West Punjab), I was born on 01.1.1931.
- (3) That I passed the Matriculation Examination of Punjab University, Lahore, held in March 1947. Prior to the receipt of Matriculation Certificate, my father, with his family including myself, migrated to India on partition of the Country during 1947.
- (4) That on 18 March 1948, I was supplied with the Matriculation Certificate of East Punjab University SOLAN (instead of Punjab University Lahore) wherein no date of birth was notified. It may be stated here that East Punjab University, Solan, is a new University established after partition in lieu of the pre-partition University of Lahore.
- (5) That at the time of initial appointment in Station Workshop EME, Ludhiana, on 01 Mar 1950, I was in possession of Matriculation Certificate of East Punjab University, Solan. Since, this Certificate contained no date of birth, hence my true date of birth viz 01.1.1931 was entered in the 'Record Card' on production of necessary document to the satisfaction of the appointing authority, with an endorsement:

"Date of birth recorded on the basis of an extract from the records of Municipal Committee Montgomery, West Punjab."

The Medical Examination Certificate needed for actual appointment also indicated the same date of birth, viz 01.1.1931.

- (6) That in 01 March 1953, my 'Service Book' was opened and some of the entries mentioned in the 'Record Card' were also transferred

[Signature]

[Signature]
Adv.

458

to the said 'Service Book', including the date of birth as 01.1.1951.

- (7) That with effect from 15 July 1957, I was declared Permanent. Subsequent to my confirmation, I was provided on 12 Oct 1957, with an extract from the 'Service Book' wherein my date of birth was shown as 01.1.1951. A copy of the extract is attached as Annexure 'B'.

Annexure 'B'

- (8) That after protracted correspondence of about 14 years, my Matriculation Certificate of Punjab University Lahore was supplied to me under Min of Education, New Delhi, letter No. F.21-54/50.31-5 (Pak) dated 24 Aug 1960, wherein to my misfortune, a wrong date of birth viz 01.4.1950 was found exhibited instead of actual date of birth recorded in the Municipal records, that is '1.1.1951.'
- (9) That on 00 Sep 1960, I wrote back to the authorities concerned, under intimation to Station Workshop LHB, Ludhiana, that my date of birth shown as 01.4.1950 in the Matriculation Certificate of Punjab University Lahore was altogether wrong; that the correct date was 01.1.1951 as stated in the Matriculation admission form of Punjab University, Lahore.
- (10) a. That in Dec 1966, an audit objection was raised by the Local Audit Officer that three different dates of birth viz 1.1.1951, 29.3.1950 and 01.4.1950 had been entered in the Service Book of Shri S.P. Khurana, on different occasions without authentication. The Audit Officer suggested that the matter be investigated.
- b. That the aforesaid audit objection was referred to the Controller of Defense Accounts Ludhiana for final audit report. That Officer, in his letter dated 16 Nov 1967, pointed out that Shri SP Khurana may be contacted and asked to intimate the basis on which the date of birth was initially produced by him and recorded in Service Book at the time of appointment.
- (11) That in compliance with the above cited directions, I submitted

[Signature]

[Signature]
Adv.

AS9

Annex. 100

INDEXES. 10

(11) Service Book Vol I of Shri SP Khanna indicates that three dates of birth viz 01.1.1931, 20.8.1930 and 01.4.1930 stand noted. The first two dates stand deleted without any attestation. The first date i.e. 01.1.1931 appears to have been made at the time of appointment on the basis of birth certificate as intimated by the individual in his affidavit, as also by the Unit. How the 2nd date i.e. 20.8.1930 has crept in, is not forthcoming. The 3rd date i.e. 01.4.1930 has been recorded on the basis of naturalisation Certificate produced by the individual some time in 1960 or afterwards. Neither of the three dates stand attested and have been objected to in audit.

(112) The individual as per affidavit has contended that the date of birth i.e., 01.1.1931 was declared by him on the basis of an extract of records of Municipal Committee Montgomery and that no other date of birth is genuine. The Unit has submitted copies of Central Administrative Tribunal, Madras and Hyderabad decision on the subject which forms the part of the statement of case.

(iv) Since, the date of birth which was declared by the individual at the time of recruitment in 1950, which was accepted by the appointing authority, could not be changed in 1960 after confirmation of the individual in 1957 or afterwards -- or cannot be changed now agreeably to the provisions of Min of Finance

[Signature]

Done
Adv

A66

(Dept of Expenditure) Notification No. 7(7)LV(A)/74 dated 07 Feb 1978, sanction of Govt of India, if recorded for acceptance of date of birth as 01.1.1951 i.e. one originally recorded would be in order and in tune with the Central Administrative Tribunal decision.

Note: Underlinings above are mine.

(C.D.A.'s report ends)

(15) That after protracted correspondence the Ministry of Defence conveyed on 01 Nov 1988 their ~~ex-post-facto~~ sanction to the change of the memorialist's date of birth from 01.1.1951 to 01.4.1950, that is, pre-posting his date of retirement to 01.4.1990 instead of 01.1.1991. In the said order it was also held that all other entries made in the Service Book of the memorialist against the entries of date of birth will be treated as cancelled/deleted.

(14) That subsequent to the receipt of the Defence Ministry's order dated 01 Nov 1988, in question, the memorialist made a representation dated 28 Feb 1989. The same was rejected by Army Headquarters vide order dated 04 April 1989. (Copy enclosed as Annexure 'E')

Annex. 'E'

(Narrative ends)

III. Grounds of the memorial

4. In the light of the aforesaid narrative, the memorialist respectfully begs to submit the following grounds in support of the prayer made in this memorial, that is, the date 01.1.1951 be allowed to stand unaltered as his correct date of birth:

Ground No. 1

5.(1) Defence Ministry's unilateral decision without giving opportunity to memorialist is opposed to natural justice. One of the rules of natural justice is that no order adversely affecting the interest of an individual (government servant included) can be passed by any authority without giving him a "reasonable opportunity" of showing cause why the contemplated order be not passed. In my case no such opportunity

[Signature]

[Signature]
Adv.

A61

was given and the Defence Ministry's order changing the date of birth to my disadvantage was passed so to say, ex-parte. This makes the Defence Ministry's impugned order, it is respectfully submitted, ultra vires.

(2) Moreover, as shown in the subsequent grounds, the impugned change is not justified on merits. Also, the true date of my birth is 01.1.1951 and not 01.4.1950 as shown in sub-para (1) to (14) of para 5 (narrative) and ground No. 10.

Ground No. 2

3. Benefit of doubt to be resolved in favour of the memorialist. - It is respectfully submitted that as brought out in the "Narrative", the true date of birth is 01.1.1951 and that it was under an erroneous misconception that the other two dates i.e. 29.8.1950 and 01.4.1950 came to be recorded in the Service Book, and even that without authentication. The point was succinctly expressed as follows in para (4) of C.D.4. Lucknow's report to Central Command, Lucknow dated 25 Nov 1987, vide para 3(12) above;

" sanction of the Govt of India, if accorded for acceptance of date of birth as 01.1.1951 i.e. one originally recorded would be in order and in tune with the Central Administrative Tribunal's decisions." (Refer to in para 3 (12) above)

Thus, there remains no doubt that my true date of birth is 01.1.1951 and that the other two unauthenticated dates in the Service Book are patently incorrect. However, if an element of doubt arises, then my respectful submission is that the doubt should be resolved in favour of the memorialist who is the weaker party in the controversy.

Ground No. 3

7. Appeal to Government of India's generosity - As a displaced person from West Pakistan, I most respectfully claim the generosity of the Govt of India - a generosity of which there are abundant proofs. This generosity is well-merited because the displaced persons (like myself) have not

[Signature]

[Signature]
Adv.

only lost their ancestral homes, but also immoveable and moveable property worth large amounts. In my own case a further link in the aforesaid generosity is related to my date of birth. The position is that if my date of birth is allowed to stand as 01.1.1931 and not changed to 01.4.1930, I would be due for superannuation on 01.1.1991 instead of on 01.4.1990 as per changed date. This will enable me to earn pay for a period of 9 months and will go, in some measure, to ameliorate my misfortune and financial difficulties. I am making this submission with humility in the hope that the Defence Ministry will accommodate me in this matter, irrespective of any technical considerations.

Grounds No. 4

- 8.(1) Hardship to the memorialist:- The memorialist has an immature family involving education, marriage, etc., of children. He is a displaced person from Pakistan having come to India with his parents during 1947. He had to give up his property of considerable asset value in Pakistan. Although, he has been given some compensation by the Govt, still he has been in financial difficulties because of his low-paid post. He could, therefore, make no provision for his future retirement which he believed to commence from 01.1.1991. A detachment of 9 months from the Service would cause additional financial hardship. The Govt. has committed itself to advance the welfare of their low-paid employees and the grant of the memorialist's prayer will be in keeping with that policy.
- (2) It is to be added that my retention in Service upto the correct date of retirement i.e. 01.1.1991 will not involve any additional financial burden on Govt. The reason is that only one person will be holding this post in any eventuality and that I will be doing service to Govt in lieu of the pay to be received.

Grounds No. 5

- 9.(1) Honesty of the memorialist:- The memorialist should not be penalised for his honest action in the submitting the Matriculation Certificate

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of Punjab University Lahore. The memorialist could easily have withheld it and in that event my original date of birth (01.1.1951) would have stood un-changed.

- (2) The factual position is that I tried my best to procure the original copy of Matriculation Certificate from Pakistan through the Government of India, Ministry of Education. The same was supplied to me 10 years after my appointment. As the date of birth indicated in this Certificate viz 01.4.1950 was incorrect, I requested the Ministry of Education, Govt of India, to have it corrected. Accordingly, in fulfilment of my moral duty, I, voluntarily, gave information about the aforesaid developments to the appointing authority. There was no question of any correction in the date of birth already recorded in the Service Book.

Ground No. 6

10. Date which has stood unchallenged for over 10 Years SHOULD NOT BE QUESTIONED; - The date of birth as 01.1.1951 was entered in a bonafide manner in the Service Card, which was opened in 1950. It remained unquestioned for as long as 10 years. In the circumstances, I acquired an absolute interest in the above date. Its change after such a long time is opposed to the law of natural justice. It is also respectfully added that the Supreme Court ruled some years ago that the Court's decision which has held the ground for a number of years, should not be over-ruled even if it is later on found that the same was not entirely correct. The Law Ministry will confirm my submission if the point is referred to them. This principle is an additional reason for not disturbing the original date of birth viz 01.1.1951. The law of status quo is also applicable and is in my favour.

Ground No. 7

11. Matriculation Certificate is not absolute proof; - Regarding the date of birth the usual practice is to accept the date as entered in the Matriculation Certificate. But this is not an absolute practice and

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a different date can be accepted as the true date on proper grounds such as have been brought out in the foregoing paragraphs. There have been cases in which a different date than the one appearing in the Matriculation Certificate, has been accepted as the genuine date of birth.

Ground No. 8

12. Binding nature of date of birth as accepted on first appointment:- According to the orders noted below, every person newly appointed to a service or post shall at the time of appointment declare the date of birth by the Christian era. The declared date of birth is to be accepted by the appropriate authority on production of confirmatory evidence :-

- (a) G I F D No. 7455 P dt 24.12.1907;
- (b) Min of HA Memo No. F9/1/61-Est(A) dt 17.11.1962
- (c) Min of Fin (D of E) Notification No. 7(7) EV(A) 74 dt 07.2.1975.
- (d) Dept of personnel & administrative reforms :-
 - i) Memo No. 19017/2/76-Estt(A) dt 29.11.1976.
 - ii) Memo No. 19017/1/76-Estt(A) dt 10.10.1977.
 - iii) Notification No. 19017/7/79-Estt(A) dated 30.11.1979.
 - iv) Memo No. 19017/6/80-Estt(A) dt 28.11.1980.

In view of the above, there is no justification for changing it to the memorialist's disadvantage. In fact, it was unlawful to do so.

Ground No. 9

13. Date of birth accepted on first appointment to remain unchanged:- The date of birth declared by a Government servant pursuant to the provisions of the preceding para (para 12) and accepted by the appropriate authority shall not be subject to any alteration except upon a request in this regard being made by the government servant himself within 5 years of entering the service. No. such request was made by me, hence, the change made to my disadvantage is legally invalid.

Ground No. 10

14. (1) Confusion caused by two Matriculation Certificates: Here, it is to be clarified that there are two Matriculation Certificates as shown below:-

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- (a) Matriculation Examination Certificate dated 18.3.1948 (that is after partition) issued by the East Punjab University, Solan. This is a new University established after partition in lieu of the pre-partition University of Lahore. This certificate contained no date of birth as will be seen from its copy reproduced below :-

East Punjab University

Serial No. 1707

Solan, 18-3-1948.

Certified that according to the Notification supplied to this Office by the Registrar, Punjab University, Lahore Sewak Parkash Khurana (Roll No. 2/152) has been declared successful in the Matriculation Examination 1947, securing 363 marks.

Sd. x x x x x
Deputy Registrar (L)

- (b) Matriculation certificate dated 01.11.1947 of the Punjab University, Lahore, was received by me on 27.8.1960. In it, the date of birth was erroneously recorded as 01.4.1930 instead of the correct date 01.1.1931.

- (2) It was after 3 years of my appointment that is, ^{March} in ~~April~~ 1958, that my Service Book was opened and some of the entries made in the Service Card including the date of birth 01.1.1931 were transferred to the Service Book. Thereafter, in 1960, the Matriculation Certificate of Punjab University, Lahore, was also received and brought on record. As already stated, the date of birth was under some mis-apprehension, recorded as 01.4.1930 instead of 01.1.1931. This error was apparently caused by the confusion created by the two certificates aforesaid.

- (3) It is to be added that the said certificate was brought on record as long afterwards as 10 years and that too on my own honest initiative. In these circumstances, the date in the said certificate has no strength and ought not to have been made the ground for ex-parte change in my date of birth.

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(4) Here, it is also respectfully submitted that the date of birth was correctly recorded on 01.8.1950 by the appointing authority and that there existed no clerical or other error in so recording the date of birth. This goes to prove that the appointing authority was duly satisfied by the relevant documents and had obtained further confirmation through Medical Examination. Hence, the question of changing it to my disadvantage ten years afterwards (that is in 1960) ought not to have been raised. Doing so is opposed to the principles of natural justice.

IV Residuary Points

15. Memorial admissible under the Memorial Rules of Central Government:-
This memorial to the Hon'ble President is being submitted agreeably with the provisions of Instruction No. 2 (1) of :

"Instructions for the submission, receipt and transmission of petitions addressed to the President in respect of matters arising out of civil employment under the Government of India, or the termination of such employment."

Hence, the memorial is entertainable. The Hon'ble President is the ultimate authority for safeguarding the interests of government servants and in that capacity the memorialist has ventured to approach the Hon'ble President.

16. Limitation:- Subsequent to the receipt of Defence Ministry's order dated 01.11.1988, in question, the memorialist made a representation dated 28.2.1989. The same was rejected by an order dated 04.4. 1989 (Copy with Annexure 'E'). The memorial is thus within the time limit of six months - vide para 6 (2) of the said Instructions.

Annex. 'E'

17. Transmission of the memorial:- The memorialist has complied with all the instructions contained in memorial rules (Instruction aforesaid). There is thus no occasion for with-holding the memorial; hence its transmission to the Hon'ble President is called for.

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V. PRAYER

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18. With these respectful submissions, it is dutifully prayed as follows:-

(a) that the Defence Ministry's Order (Annexure 'A') dated 01.11.1988 changing the memorialist date of birth from 01.1.1931 to 01.4.1930 be set aside, and

(b) that, as a result, the memorialist true date of birth^{be} allowed to stand as 01.1.1931.

And for this, the memorialist, shall as is duty bound, be every remain grateful to the Hon'ble President.

Respectfully,

[Signature]

(S.P. Khurana)
Master Craftsman,
Station Workshop, LME,
Lucknow - Cantt.
(Memorialist)

Inclosures :

Annexures 'A' to 'E'.

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COMPARATIVE CHART OF MEMORIAL ANNEXURES
AS ANNEXURES TO APPLICATION.

Memorial:	Annexure-A	Same as Ann.8 of applicati ion.
	Annexure-B	Same as Annexure A-44 of application.
	Annexure-C	Same as Annexure A-6 of application.
	Annexure-D	Same as Annexure A-7 of application.
	Annexure-E.	Same as Annexure A-11 of application.

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Signatures of the Applicant.

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In the Central Administrative Tribunal.
Additional Bench, Lucknow.

.....

S.P.Khurana

..Applicant.

Versus.

Union of India & others

..Respondents.

Annexure -13.

Attached with Application (Compilation-I)

at Page - 25,

(Order dated 4.10.89 of Army H.Q.)

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In the Central Administrative Tribunal
Additional Bench, Lucknow.

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S.P.Khurana

...Applicant.

Versus.

Union of India & others

...Respondents.

Annexure No. 14.

Copy of Army Hqs. MGO's Branch DHQ PQ New Delhi-11
letter No. 92960/II/EME CIV dated 28 Feb 70,
addressed to the Commandant 510 Army Base Wksp
Meerut. Cantt.

CHANGE IN DATE OF BIRTH: P-2302 DAFTRY SHRI
BALWANT SINGH.

Reference your letter No. 20614-BST of 11 Feb 70.

2. The case has been examined. The change of date of birth in the case of Permanent/Quasi permanent and those employees who have completed probationary period is not permissible.
3. In view of the above, the date of birth already recorded in the service documents of P-2302 Daftry Shri BALWANT SINGH, viz 22 Feb 1932 will be taken as correct for all purposes.
4. The service documents and School Leaving Certificate of the individual are returned herewith.
Please acknowledge.

SD/- KUL BHUSHAN
LT.Col.
A D E M E (CIV & Coord)
For D E M E.

True Copy

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In the Central Administrative Tribunal at Allahabad,
Circuit Bench, Lucknow.

Misc. Application No. 112 of 1990. C1

On behalf of Respondents.

In.

Registration No. O.A. 330 of 1989 (L)

S.P. Khurana

Applicant.

Versus.

Union of India & Others

Respondents.

To,

The Hon'ble Vice Chairman and his other Companion
Members of the aforesaid Tribunal.

The Humble application on behalf of the respondents
most respectfully sheweth as under :-

1. That the full facts and reasons have been set out
in the accompanying Counter-affidavit.
2. That for the facts and reasons stated in the
accompanying Counter-affidavit, it is expedient in the
interest of justice that the petition may be dismissed
with costs.

P R A Y E R

It is, therefore, most respectfully prayed that this
Hon'ble Tribunal may kindly be pleased to admit the accompa-
nying MRR Counter affidavit & to dismiss the petition with
costs.

Dated :

Addl. Standing Counsel Central Govt.
Counsel for the Respondents.



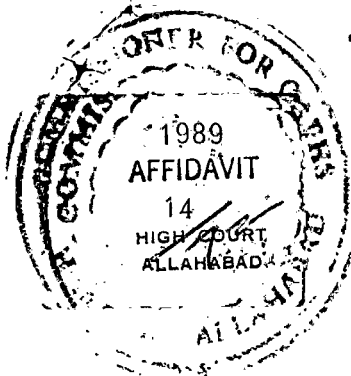
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In the Central Administrative Tribunal at Allahabad,
Circuit Bench, Lucknow.

Registration No. O.A. 330 of 1989 (L)

S.P. Khurana Applicant
Versus.
Union of India & Others Respondents.

COUNTER AFFIDAVIT ON BEHALF OF ALL THE RESPONDENTS



Major N.K. Gupta
Affidavit of *Lt Col. A.H. Roohani*,
aged about 35 years, son of
Sh. Om Prakash Gupta
Admin. Officer
Offg. Commanding Officer, Station
Workshop EME, Lucknow.

Deponent.

I, the deponent above named do hereby solemnly
affirm and state on oath as under :-

1. That the deponent is posted as *Admin. Officer*
Offg. Commanding
Officer, Station Workshop, E.M.E., Lucknow and has
read over the contents of the application and has
understood the contents thereof.
2. That the deponent is well conversant with the
facts of the case deposed hereinafter.
3. That the deponent is competent to swear this
affidavit on behalf of all the respondents.
4. That the contents of paras 1 to 2 of the application
need no comments.
5. That the application is barred by limitation under

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Section 21 of the Administrative Tribunal Act, 1985. The applicant for the first time represented against his changed date of birth of 1.4.1930 on 17.11.1987 and the present application was filed before the Hon'ble Tribunal in December 1989 i.e. after a period of two years. As far back as 1960 when the applicant authenticated his changed date of birth of 1.4.1930, the applicant should have raised the question of his date of birth much earlier.

6. That in reply to para 4.1 it is stated that the date of birth of the applicant was corrected on 9.9.1960 on the basis of the Matriculation Certificate submitted by the applicant. The changed date of birth of 1.4.1930 has been authenticated by the applicant himself in his Service Book.
7. That the contents of para 4.2 to 4.10 need no comments. The applicant has deliberately introduced the question of Admission Form knowingly full well that the averment in this regard cannot be checked up.
8. That the contents of para 4.11 are admitted to the extent that the applicant was appointed on 1st March, 1950. Rest of the contents are denied. However, submissions made in para 6 above are re-iterated.
9. That in reply to para 4.12 it is submitted that the Record Card after the opening of the Service Book had become obsolete and the same is not available, being a 40 years old document. The petitioner has not filed a copy of the Montgomery Municipal Committee certificate in which his date of birth was indicated and on the basis of which the petitioners date of birth of 1.1.1931 was endorsed in his Record Card. Rest of the contents are admitted.



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10. That in reply to para 4.13 it is submitted that the applicant was required to be medically examined to ascertain as to whether the applicant was suffering from any disease which might have debarred him from employment. It was not required to be conducted to assess his age or date of birth.
11. That in reply to para 4.14 it is stated that in the Service Book of the applicant his date of birth is indicated as 1.4.1930 which has been duly authenticated by the applicant on 9.9.1960 and no objection was raised by him before his representation dated 17.11.1987, though the entries in the Service Book were checked by him every five years.
12. That the contents of para 4.15 are admitted, except that an extract of the Service Book was never provided to the applicant.
13. That the contents of para 4.16 need no comments.
14. That in reply to para 4.17 it is stated that the correspondence relating to year 1960 is not available on account of which no comments are offered.
15. That the contents of para 4.18 are admitted.
16. That in reply to the contents of para 4.19 it is admitted that on 9.9.60 the applicant authenticated his altered and correct date of birth i.e. 1.4.1930 as indicated in the Service Book on the basis of his matriculation certificate. There was no occasion to lodge any protest against it when the same was authenticated by the applicant himself & when the factual date of birth was based on documentary evidence.
17. That the contents of para 4.20 are not admitted and hence denied. There is no evidence on record in



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- A circular stamp from the Commissioner for Oaths. The text "COMMISSIONER FOR OATHS" is curved along the top inner edge. The date "28/2/00" is stamped in the center. The words "SIRE" and "DE LA HAUTE" are partially visible at the bottom.

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supported by documentary evidence. It may also be mentioned that ex-post-facto sanction of the Ministry of Defence was also received to change the date of birth of the applicant as 1.4.1930 instead of 1.1.1931.

24. That the contents of para 4.26 are admitted to the extent that the Ministry of Defence vide their letter dated 1.11.88 gave ex-post-facto sanction to change the date of birth of the petitioner as 1.4.1930 instead of 1.1.1931. All other entries of the date of birth were treated as cancelled/deleted. There is no illegality in changing the date of birth to 1.4.1930 which is based on documentary evidence. The correct date of birth was entered as early as on 9.9.60 on the production of Matriculation Certificate.

25. That in reply to the contents of para 4.27 it is submitted that the letter from Dy. Controller of Defence Accounts dated 23.11.87 (Annexure - 7 of the application) is a sort of Audit Note to the Deptt. and the same was to be examined by the Deptt. taking into consideration other relevant factors which might have escaped the attention of the Audit. The final decision rests with the department. The date of birth of the applicant was changed on the basis of the Matriculation certificate of 1.11.47 produced by the applicant himself under his letter dated 9.9.1960; hence the question of affording an opportunity of hearing does not arise.

26. That the contents of para 4.28 are admitted.

27. That in reply to para 4.29 it is stated that the date of birth of the applicant was changed on the basis of the Matriculation Certificate furnished by the applicant in September, 1960.

28. That in reply to the contents of para 4.30 it is



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stated that the correct date of birth of the applicant is 1.4.1930 which is supported by his Matriculation Certificate. The other dates become irrelevant and are to be deleted.

29. That in reply to the contents of para 4.31 and 4.32 it is stated that in the letter dated 4.4.89 referred to by the applicant it has been already clearly mentioned that "all the points raised by the individual (T/No. 2 MC (TCM) Shri S.P. Khurana of Station Workshop EME, Lucknow have already been considered while taking a decision in the Case."
30. That the contents of para 4.33 and 4.34 are admitted.
31. That in reply to the contents of para 4.35 it is stated that para 3 of the Army Instructions No.200/55 stipulated that the date of birth as recorded in accordance with these Rules shall be held to be binding and no alteration of such date shall be permitted except where a prima facie evidence is reproduced that the date of birth recorded in service records is incorrect. Accordingly the date of birth of the applicant was changed to 1.4.30 as the applicant had himself produced the irrefutable evidence in the form of Matriculation certificate of 1.11.47 wherein his date of birth has been shown as 1.4.1930.
32. That in reply to para 4.36 it is submitted that the date of birth of the applicant has been changed on the basis of the matriculation certificate submitted by him and in doing so there has been no violation of the principles of natural justice.
33. That in reply to the contents of para 4.37 & 4.38 it is stated that the averments of the applicant are

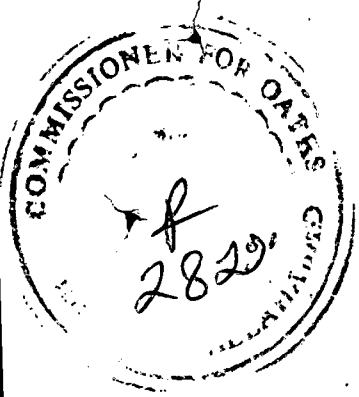


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misconceived in view of the submission made in paragraphs 31 and 32 above. Any correction, change or alteration in the date of birth brought ^{about} on the basis of reliable documents can in no way amount to inflicting any penalty.

34. That in reply to para 4.39 and 4.40 it is stated that the case of Shri Balwant Singh is different from that of the applicant. In the case of applicant, the date of birth was changed on the basis of his matriculation certificate which he himself produced under his letter dated 9th. sept. 1960.
35. That in reply to para 5.1 it is stated that the Matriculation certificate produced by the applicant ~~is~~ is the only authentic document to certify his correct date of birth. The applicant has not furnished a copy of the Birth Register of the Municipal Committee, Montgomery to ~~ask~~ establish his alleged date of birth.
36. That in reply to the contents of para 5.2 and 5.3 it is stated that the date of birth of the applicant was changed as indicated in the matriculation certificate. In the absence of any documentary evidence to the contrary, the matriculation certificate date cannot be challenged.
37. That in reply to the contents of para 5.4 and 5.5, the submission made in paragraph 25 are reiterated.
38. That in reply to para 5.6 it is stated that the order changing the date of birth of the applicant was in conformity with the rules and Govt. orders on the subject and there has been no denial of natural justice.
39. That the contents of para 5.7 are admitted.
40. That in reply to the contents of para 5.8 it is submitted that under the circumstances explained in the



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Paragraphs foregoing, the date of birth can be changed even after confirmation.

41. That in reply to para 5.9 to 5.11 it is stated that the duration of five years has been prescribed for the employees and not for the Govt.
42. That in reply to para 5.12 it is submitted that no documentary proof has been filed in support of the averments made.
43. That the contents of para 5.13 need no comments.
44. That in reply to para 5.14 it is submitted that the date of birth of the applicant was changed to 1.4.1930 on the basis of the date of birth as indicated in the matriculation certificate produced by the applicant.
45. That in reply to para 5.15 it is submitted that the averments made in this para cannot be verified and commented upon at this stage.
46. That the contents of para 5.16 and 5.17 need no comments.
47. That in reply to para 5.18 it is submitted that no enquiry was called for in the face of indontravertible evidence available about the date birth of the applicant from his matriculation certificate.
48. That in reply to the contents of para 5.19 to 5.25 it is stated that submissions in the above paragraphs have already been made on the points raised in these paras.
49. That the contents of paras 6.1 and 6.2 are admitted.



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50. That the contents of para 7 of the application need no comments.

51. That in view of the submissions made in the above paragraphs, the relief sought in para 8 of the application is not tenable in law and fact.

52. That the contents of para 9 to 12 need no comments.

P R A Y E R

In view of the submissions made in the above paragraphs it is respectfully prayed that the Hon'ble Tribunal may be pleased to dismiss the present application with costs.

Lucknow ;

Dated : 28 Feb 1990

NK Gupta
Deponent. *May*

VERIFICATION

I, the above named deponent do hereby verify that the contents of paragraphs 1 To 3 of this Counter Affidavit are true to my personal knowledge and those of paras 4 To 52 are believed by me to be true based on records and as per legal advice of my standing counsel. That nothing material fact has been concealed and no part of it is false, so help me God.

Signed and verified this the 28th day of Feb , 1990 within the court compound at Lucknow.

Lucknow ;

Dated : 28 Feb 1990

NK Gupta
Deponent. *May*

I identify the deponent who has has signed before me

(Signature)
Advocate.



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Solemnly affirmed by the deponent 28-2-9
at 10-30 a.m./p.m. who has been identified by
Shri D. Enamdas ., Advocate, High Court
of Lucknow Bench

I have satisfied myself by examining the deponent
that he understands the contents of this affidavit which
has been read over and explained to him by me.

Oath Commissioner.



Rajendra Kumar Mishra
(s) Rajendra Kumar Mishra
OATH COMMISSIONER
High Court, Allahabad
Lucknow Bench

No. 14112-5-
Date 28-2-9

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In the Central Administrative Tribunal at Lucknow.

Circuit Bench, Lucknow.

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Registration No. O.A. 330 of 1989 (L)

S.P.Khurana

...Applicant.

Versus.

Union of India & others

..Respondents.

Rejoinder/Replication.

The applicant humbly submits:

1. That in reply to para 1,2 and 3 of the counter affidavit, it is stated that Major N.K.Gupta, the deponent of the counter affidavit was not impleaded as one of the opposite parties/respondents nor has he been duly authorised by the respondents; as such he is not competent to depose and to file the counter affidavit on behalf of all the respondents.

2. That para 4 of the counter affidavit needs no comments. since paras 1 and 2 of the application have not been disputed.

3. That para 5 of the affidavit is denied, and para 3 of the application is reiterated. The plea of

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limitation raised is misconceived and not tenable.

3.1 That it is reiterated that the present application was filed within the limitation period prescribed under Section 21 of the said Act 1985, as there was no ground, necessity or occasion to make any representation on 17.11.87, and none whatsoever on 9.9.60, as there existed no adverse orders against the applicant. The first adverse order was passed on 1.11.88 and communicated vide letter dated 9.12.88.

3.2 That however, the above points raised by the respondents are clarified below:

3.3 Issue No.1.

- a) That the letter dated 17.11.87 was not a representation as alleged by the respondents; that in Nov 87, the Controller of Defence Accounts Lucknow had asked respondent no. 3 to explain the circumstances under which the "alteration" about date of birth could not be attested in 1960, " or can not be done now", and had also advised respondent no. 3 that the applicant be asked to intimate about the circumstances under which the D.O.B. (1.1.31) was initially recorded at the time of appointment; that in turn, respondent no. 3 directed the applicant to do the needful and, in compliance, the applicant submitted this clarificatory letter dated 17.11.87; that audit authorities had not objected to 1.1.31

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as the correct D.O.B. and in fact have ~~been~~ recommended its retention and, as such there was no need for the applicant to represent against any thing on 17.11.87; that the cause of grievance against which the applicant is seeking redressal arose from Army HQ letter dated 9.12.88 (Annexure-9) which for the first time conveyed Govt. order dated 1.11.88 (Annexure-8): issued at the fag end of applicant's retirement; that the respondents also have accepted the fact of these orders being the ground of applicant's grievance as explained in para 4 of the counter; and thus the limitation period does not commence from 17.11.87 but from 9.12.88 as explained in detail in the succeeding paragraphs.

b) That the applicant has all along maintained that his Date of Birth is 1.1.31 as recorded in his Record Card, at the time of his appointment on 1.3.1950 as also originally recorded while opening his Service Book and this was his position right upto 9.12.88; till then applicant's date of birth was not changed from 1.1.31 and no communication in the matter had been conveyed to the applicant; nor any action whatsoever adverse to the applicant was taken by the respondent no.3.

c) That in September 1987 the Audut authorities also held that " as the original D.O.B. entry viz: 1.1.1931 recorded at the time of

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appointment has been amended after confirmation of the individual on 15.7.1957. Hence the change of D.O.B. in opinion of audit would not be justified and accordingly 1st D.O.B. viz: 1.1.1931 as recorded in Service Book is to be approved instead of two subsequent dates shown 29.8.1930 and 1.4.1930".

- d) That in Nov^r 1987 the Controller of Defence Accounts, Lucknow, recommended that " since the D.O.B. which was declared by the individual at the time of recruitment in 1950, which was accepted by the appointing authority could not be changed in 1960 after confirmation of the individual in 1957 or afterwards or can not be changed now agreeably to the provisions of Ministry of Finance Notification No. 7(7) EV(A)/74 date 7.2.1975, sanction of the Govt. of India ^{For acceptance of DOB as 1.1.1931 is one originally recorded} if accorded/would be in order and in tune with the C.A.T. decisions".
- e) That the appointing authority (Respondent no.3) also stated his position in this matter of D.O.B. in his letter dated 17.3.88 sent to the Govt. of India through Departmental channels, in which he wrote that " it is requested that his first D.O.B. viz: 1.1.1931 as recorded in the Service Book at the time of initial appointment may be accepted as final and Govt. sanction be obtained to expunge all other cuttings and alterations made in the Service Book of the individual".

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- f) That the appointing authority (Respondent no.3) once again recommended in favour of the same D.O.B. (1.1.31) stating that viewed in the light of the observations and recommendations of the Controller of Defence Accounts (CC) Lucknow and relevant rules, there appears little justification for changing the D.O.B. i.e. 1.1.31 as originally recorded in the Service Book of Shri S.P.Khurana, for the purpose of his retirement".
- g) That the above mentioned facts, particularly the quotations make ~~and~~ one important point manifestly clear. It is that all the authorities viz the appointing authority (Respondent no.3) and the Audit Authorities (who are supposed to be the watch dogs of proper observation of Govt. rules and orders) were agreed that 1.1.31 should remain the D.O.B. of the applicant. Till that period there was no conflict of opinion and therefore, there was no occasion of any representation on the part of the applicant on 17.11.87 or earlier thereto or after^{it} right upto 9.12.88;
- h) That the clarificatory letter dated 17.11.87 was submitted by the applicant in compliance with the directions given to him by Respondent no.3. In their letter No. P/VII/2010 dated 16.11.87, the C.D.A. Lucknow had, among others, asked the respondent no.3 that " the individual may also be contacted and asked to intimate the basis on which the D.O.B. was initially produced by him

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and recorded in Service Book at the time of appointment".

- i) That the aforesaid communication of the C.D.A. Lucknow was conveyed to the applicant by Respondent No.3. As the original extract from the Records of Municipal Committee Montgomery was not available with the applicant, having been submitted to respondent no. 3 at the time of initial appointment and the applicant did not have the duplicate copy of the same, the applicant was left with no course except furnishing an Affidavit, which he submitted to respondent no. 3 with the said covering letter dated 17.11.87, explaining the facts leading to recording of 1.1.1931, as D.O.B. at the time of initial appointment; which was done in compliance of the directions of the audit received through respondent no.3.

- j) That in turn, the Respondent no.3 in his letter No. 20602/Audit dated 20.11.87 addressed to C.D.A. Lucknow stated that " As desired by you, a copy of the application (not representation) as now alleged) of the individual alongwith photostat copy of an Affidavit is also sent herewith"; while doing so, the respondent no. 3 did not dis-agree with the facts explained by the applicant in that letter of 17.11.87.

- k) That it is thus amply clear that such a



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clarificatory letter dated 17.11.87 can not be termed as "Representation". By its very nature, a representation has to be against any action or decision of an authority detrimental to the interest of the representationist but in Nov 87, viz the observations of the Audit were not adverse to the interest of the applicant, which merely pointed out the defects in the maintenance of the Service Book of the Applicant by respondent no.3. On the contrary the opinion of the Audit throughout remained that the applicant's D.O.B. i.e. 1.1.31, as initially recorded should remain as it can not be changed under the rules.

3.4

Issue No.2:

on

a)

That, 9.9.60, the applicant submitted a copy of application ~~address~~ alongwith his Matriculation Certificate (received from Pakistan through Govt. of India) in the office of the respondent no.3, wherein it was mentioned that as incorrect date of birth of the applicant has been recorded in it, the same ^{is} ~~may~~ got ^{to} be corrected from Punjab University, Lahore. The Clerk without authority changed the D.O.B. in Service Book from 1.1.31 to 1.4.30, and applicant was made to ~~signature~~ on 9.9.60, but this was done under protest; it was as a consequence of this protest that the Respondent no.3, who, under the provisions of the rules on this subject, is required to attest the change, did not attest the changed D.O.B. entry, although his

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rubber stamp had been affixed on the 1st page of the Service Book for that specific purpose; that having satisfied himself after scrutiny of the Record Card and the extract of birth certificate attached thereto, Respondent no. 3 undertook to get the applicant's D.O.B. mentioned in the Matriculation Certificate ^{Contracted} before attesting the said entry dated 9.6.60 in Service Book (as disclosed in para m+n); that so far as the Applicant is concerned this matter remained in that suspended animation till the Audit happened to look at the first page of the Service Book in Dec 1986; that in responding to the Audit and later while approaching the Govt. of India; Respondent no. 3 continued to hold that the Applicant's D.O.B. should be 1.1.31 as originally recorded at the time of appointment; that Respondent No. 3 remained seized of the matter and never authenticated the entry regarding revised D.O.B. in the Service Book; that the Respondent no. 3 never took any conclusive action to change the D.O.B. of the Applicant nor ever conveyed any decision to that effect; it is, therefore, most surprising and un-fair to state now that- " the Applicant should have raised the question of his D.O.B. much earlier".

- b) That describing the case in detail, the Applicant was appointed on 1.3.50. A Service Card (I A F O 2436) (Annexure-3) was prepared and maintained by the Respondent No.3. This Card contains the personal and Service particulars,

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in

including the D.O.B. At that time the Applicant had a Matriculation Certificate of Solan (Annexure-1) which did not contain the D.O.B. The applicant was however in possession of an "Extract from the Records of Municipal Committee Montgomery indicating his correct D.O.B. viz: 1.1.1931. On the basis of this authentic documentary evidence his D.O.B. was entered as 1.1.1931 in the Service Card (Annexure-3) by the Appointing Authority (Respondent no.3). Under that entry an endorsement was also recorded to the effect that " the D.O.B. recorded on the basis of Extract from the Records of Municipal Committee Montgomery (WP)". The original document (Extract of Birth Register) was retained by the Appointing Authority (Respondent no.3) with the Service ~~Card~~ Card (Annexure-3).

c)

That Respondent no. 3 has admitted that a Service Card (Annexure-3) was made at the time of appointment but has come out with two astounding assertions; first that the entry regarding D.O.B. of the Applicant at the time of appointment was made ' as informed by him; second that the said Service Card is not forthcoming.

d)

That according to the provisions of the relevant orders on the subject - - ' in the

- K** case of literate staff the D.O.B. shall be invariably supported by the documentary evidence' and the Respondents have confirmed this rule position in para 23 of the counter affidavit.
- e) That the entry regarding D.O.B. could not have been made without a documentary evidence and in the absence of a Matriculation Certificate indicating the D.O.B., the Extract from the Records of Municipal Committee Montgomery was accepted as evidence of the Date of Birth of the applicant.
- f) That the Respondent no. 3 has not claimed any other document as the basis for recording D.O.B. on initial appointment of the Applicant. Respondents' stand in para 19 of Counter Affidavit that the D.O.B. was entered 'as informed by him' is factually incorrect and not maintainable under the specific requirements of the relevant rules, which have been admitted by the Respondents.
- g) That during March 1953, the Applicant's Service Book was opened and the particulars contained in the Service Card (Annexure-3) prepared at the time of appointment on 1.3.50, were recorded in the relevant columns of the Service Book Volume I. The D.O.B. of the Applicant was recorded as 1.1.1931 (the same as initially recorded in the Service Card). It was not perhaps considered significant at that point of time, to record the basis of D.O.B. particularly

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because the original Service Card as also the original extract of Municipal Birth Register were made part of the Service Book.

h)

That the Respondents have stated (para 9 of the counter affidavit) " that the Record Card after the opening of the Service Book had become obsolete and the same is not available, being a 40 years old document". The Applicant is unable to find suitable ^{words} ~~to~~ to articulate his protest against the off hand manner in which the Respondents have washed their hands off the responsibility of preserving the Record Card of the Applicant. It is a crucial and basic document and specific instructions exist for its preservation. These instructions stipulate that;

" The existing service sheets etc, should^w securely placed inside the Service Book.. .. It has been represented that the Service sheets, etc which have been placed in the Service Books are already worn out and are likely to deteriorate further in course of time, with the result that it may become difficult to decipher the entries recorded therein at the time of verification of qualifying service for pension, gratuity, etc. In ~~order~~ order that such difficulties may be obviated at that stage, it has been decided that the entries in the existing service sheets etc. should be incorporated in the Service Book and verified by the Head of Office and the fact of such verification recorded therein under his signature".

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From the instructions it will be evident that:

- i) The Applicant's Service Card had not become obsolete on the opening of Service Book, and it needed to be preserved carefully;
 - ii) The Head of Office erred in not transporting the endorsement, regarding the D.O.B. having been biased on Birth Register, from Service sheets etc to the Service Book; and
 - iii) It was the duty of Head of Office to incorporate this entry in Service Book and also in order to eliminate any possibility of omission, to record a certificate in the Service Book under his signature that all entries in Service sheets etc had been duly recorded in Service Book.
-
- 1) That the Applicant was declared permanent with effect from 15.7.57 and the service particulars of the Applicant including his D.O.B. viz; 1.1.1931 were duly verified by the Appointing authority (Respondent no.3), before issuing the confirmation order.
 - j) That on 12.10.57, the applicant was provided with an Extract entitled " Service particulars as per Service Book in respect of Civilian Telecom Mech. Shri S.P.Khurana", wherein the applicant's D.O.B. was shown as 1.1.1931. This certificate was issued and signed by Capt. M.A. Cherian, the then Offg. OC, Station WKSP. EME Lucknow under his signature and the official

seal of the Station WKSP EME Lucknow, Capt M A Cherian, ^{who} Commanded Station WKSP EME Lucknow during the period from 29.6.54 to 24.11.57 was the Head of the Office and the Appointing Authority in respect of the Applicant. The Respondents now allege that this "Extract of the Service Book was never provided to the Applicant, which is false apparently. It is pertinent to note that respondents have not denied the correctness of entries and facts in this certificate. The case of the Applicant does not hinge on this particular document, because according to the Respondents also the originally recorded D.O.B. (viz: 1.1.31) had not been modified till 1957 when this was issued. However, the applicant begs to point out the selective way in which the Respondents are denying the existence or availability of certain crucial documents essential for making a correct assessment of this case by the Hon'ble Tribunal.

- k) That the Applicant had appeared at the Matriculation Examination held by the Punjab University Lahore in March 1947 but had to migrate to India; alongwith his family, soon thereafter on partition of the country. The Applicant continued to endeavour to obtain the original Matriculation Certificate from the Punjab University Lahore (Pakistan) through the channels prescribed by the Govt. of India in this behalf. After chasing the matter for
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about 14 years, the Applicant's Matriculation Certificate dated 1.11.47 of Punjab University Lahore was supplied to him under Ministry of Education, New Delhi letter No. F 21-34-58-S.W.5 (Pak), dated 24.8.60, wherein to applicant's misfortune, a wrong D.O.B. viz: 1.4.1930 was found mentioned instead of the actual D.O.B. viz; 1.1.31 as recorded in the School Records, in the admission Form and in the Municipal Records of Montgomery (Pakistan).

- 1) That on 9.9.60, the Applicant wrote back to the authorities concerned pointing out the mistake that had crept in the certificate and requesting them to issue a fresh Matriculation Certificate with the correct D.O.B. on the basis of the School/University records.
- m) A copy of this letter dated 9.9.60 (Annexure-5) was submitted, for information only, to the Respondant No.3. The Applicant was under no compulsion to endorse a copy of his letter dt. 9.9.60 to him or even to show the Matriculation Certificate (Annexure 4A) to the Respondent No. 3 as the Certificate had been obtained through the Applicant's own efforts and own volition. The Applicant thought that the respondent no. 3 could be helpful in getting the Matriculation Certificate corrected and he indeed did undertake to do so on hearing the Applicant's protest as contained in applicant's letter dated 9.9.60.

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- n) That in his letter dated 9.9.60 (Annexure 5) the Applicant had not requested for any modification in his D.O.B. as recorded in the Service Book but an unfortunate development did take place on receipt of this Matriculation Certificate in his office; the dealing Clerk scored out the original entry of D.O.B. (1.1.31) in the Service Book and, in its place, recorded the incorrect D.O.B. (1.4.1930) affixed the rubber stamp of the Head of Office (Opposite party no.3) under the fresh entry and made the Applicant to sign ~~signature~~ alongside these alterations despite the Applicant's protest. Thereupon the Applicant protested to the Head of office that it was extremely un-fair to make the proposed changes in the Applicant's D.O.B. at that interim stage, while efforts were being made to get the wrong D.O.B. in the Matriculation Certificate corrected from the Punjab University, Lahore. As a result of the aforesaid protest the then Head of Office appreciated the point urged by the Applicant & agreed not (Maj. Durlabh Singh) to attest and authenticate the alteration in the D.O.B. of the Applicant from 1.1.31 to 1.4.30 till this matter was sorted out. Accordingly, the Head of Office recorded this decision on the original letter dated 9.9.60 and did not sign, the alteration made in the Service Book, and vide his letter No. 20601/PC/SPK dated 12.9.60 also wrote for corrections of incorrect D.O.B. in the Matriculation Certificate.

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- o) That a third D.O.B. viz 29.8.30 (in figures and words) also mysteriously appears on the first page of Service Book Volume I. Neither recording of this entry nor its deletion has been authenticated by the Head of Office. In spite of the persistent query of the Audit, respondent no. 3 has not explained how, when and why this third D.O.B. was recorded in the Service Book of the applicant.
- p) That the respondents' allegation that the applicant authenticated the alterations in the Service Book on 9.9.60 is unfounded, which suggests that the signatures of the applicant authenticated the entries in the Service Book of the Applicant and the alterations as it appears in the Service Book becomes valid by virtue of the applicant's signatures therein, though the Head of Office with held his signatures and never attested or authenticated the said alterations. On the contrary Article 818 of Civil Service Regulations un-ambiguously fixes the responsibility on the Head of Office (respondent no.3) to see that all entries in the Service Book are duly made and attested. There should be no erasures or over-writing, all corrections being neatly made and properly attested. It may thus be seen that in the said Article it is nowhere provided that the signatures of the employee will authenticate the entries in the Service Book. It is stated that the Head of Office is deciding authority and under the rules, he alone is competent and is obliged to attest each and

every entry/alteration in Service Book. Mere signature of the applicant appearing in the Service Book, without authentication and attestation by the Head of Office are of no consequence at all and absolutely immaterial, and it does not validate the alteration wrongly made.

q) That Audit Authorities, during the course of their normal functioning, had an occasion to see the Service Book of the Applicant. They forthwith raised an objection (No. 21 circulated under LAO(A) Letter No. LK/1/634/10-12/86 of May 87) that "at the time of initial appointment his D.O.B. as recorded in his Service Book Vol. I was 1.1.1931, Subsequently his D.O.B. has been amended twice as 29.8.30 and then 01.4.30 without any attestation by an officer nor supported with D.O. Part II ".

r) That it is pointed out that prior to any entry being made in the Service Book, the Head of Office issues a D.O. Part II order. An important alteration in the matter of D.O.B. can not be made without first issuing a D.O. Part II, order and Respondent no. 3 never issued such an order in this regard. This was pointed out by the Audit which further confirms the applicant's contention that the Head of Office had decided on 9.9.60 to wait for further development before finalising the alteration in D.O.B. from 1.1.31 to 1.4.30,

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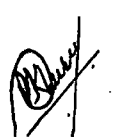
meaning thereby that no change in D.O.B. was approved by the respondent no.3.

- s) That in his letter No. P/VII/2010 dated 16.11.87 the Controller of Defence Acctt. Lucknow, recorded, interlia, as follows:

" When the High School Certificate was available through the Ministry of Education, Indian High Commissioner in Pakistan, the D.O.B should have been altered and attested by the Unit. The Circumstances under which the same could not be done in 1960, when High School Certificate was produced or can not be done now, may be intimated".

- t) That in his letter No. P/VII/2010 dated 23.11.87 (Annexure 7) the Controller of Defence Accounts (CC) Lucknow reiterated as under:

" The Service Book Vol I indicates that three dates of birth viz 1.1.31, 29.8.30 and 1.4.30 stand noted in the Service Book. The first two dates stand deleted without any attestation. The first date i.e. 1.1.31 appears to have been made at the time of appointment on the basis of Birth Register Certificate as intimated by the individual in his Affidavit as also by the Unit. How the 2nd date i.e. 29.8.30 has crept in, is not forthcoming. The 3rd date



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date i.e. 1.4.30 has been recorded on the basis of Matriculation Certificate produced by the individual some time in 1960 or afterwards. Neither of the three dates stand attested and have been objected to in Audit".

- u) That from the above quoted observation of the Audit, the following points clearly emerge:
- i) It is essential for the Unit (i.e. the Head of Office, which is Respondent no.3 in this case) to attest each and every entry/alteration in the Service Book;
- ii) Any entry/alteration which has not been so attested by the Unit is non-est under the rules on the subject, and invalid in the eyes of law
- iii) Despite the anomaly of the non-attestation by Head of Office of the deletion of the originally recorded D.O.B. (viz: 1.1.21) and its substitution by another date (viz; 1.4.30), having been pointed out by the Audit, the Head of Office did not take the long postponed action of attesting this deletion and the new entry;
- iv) The Head of Office (Respondent no.3) was not even competent to alter the D.O.B. as late as 1960 and an expost,-facto sanction has been issued by Govt. of India in Nov/Dec 1988 to alter the D.O.B. of the Applicant, which is the

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first and the only order changing the applicant's date of birth;

- v) Most significantly, the Audit did not take even cognizance of the Applicant's signature appearing alongside the alteration made on 9.9.60 as indeed it is of little consequence, since the said signatures could not validate the deletion.
- vi) The Stand taken by the Respondents to make the fact of appearance of signatures of the Applicant on 9.9.60, as the key point of their case is not supported either by the rules on the subject, or of the observations of the Audit on this specific point on of natural justice. By virtue of the Applicant's signatures^{near} the substitution of the D.O.B. on the first page of the Service Book, the change was not authenticated or validated as the important point is that the Head of Office restrained himself from attesting this alteration and 1.4.30 had therefore, at no stage remained as the D.O.B. of the Applicant in the official records. There was, therefore no reason for the Applicant to raise the question of D.O.B. much earlier or prior to the impugned order.

3.5 That from the foregoing submissions it would be evident that:



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- i) Respondent No. 3 did not take any conclusive action on 9.9.60 or afterwards to change the D.O.B. of the Applicant against which the applicant could represent earlier;
- ii) Likewise till Nov 1987, the Respondents had not taken any final action which warranted any protest from the Applicant and the Applicant's letter dated 17.11.87 was not a Representation, but explanation of facts regarding recording of D.O.B. at the time of appointment;
- iii) The cause of Applicant's grievance is the recent order passed unilaterally by the Ministry of Defence on 1.11.88 (Annexure 8) changing the Applicant's D.O.B., retrospectively from 1.1.31 to 1.4.30; which order was circulated with Army Headquarters, New Delhi letter dated 9.12.88 (Annexure-9);
- iv) This was the first occasion that the Applicant's employer (viz: respondent no.3) had ever issued any communication or order altering the D.O.B. of the Applicant;
- v) This was the only adverse order passed for the first time giving cause to applicant to protest in the matter of the change of his Date of Birth and the Applicant moved his application before the Hon'ble Tribunal within the prescribed time limit.

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3.6 The Application is, therefore, not ~~xxx~~ time-barrèd under Section 21 of the Administrative Tribunal Act 1985, and the plea of the Respondents made in para 5 of their Counter Affidavit is baseless and merit-less.

4. That para 6 of the counter affidavit is wrong and denied and para 4.1 of the application is reiterated. It is stated that a detail reply has been given in this respect in para 3 above. It is wrong to say that D.O.B. was changed on 9.9.60. The fact is that the change was made vide order dated 1.11.88 passed by Ministry of Defence, However, it is pointed out that various material facts have been suppressed and concealed by the respondents, such as there is no explanation how and when the third date of birth namely 29.8.30 , was recorded; that ^{how} the appointing authority verified and became satisfied and recorded 1.1.31 at initial appointment; that non-production of Record Card (IAFO-2436) prepared at initial appointment; that why ex-post-facto sanction was necessiated in November, 1988 to effect change in D.O.B.; that as to why applicant's D.O.B. till passing of the impugned order dated 1.11.88, was being reckoned as 1.1.31; that what for respondent no. 3 recommended for retention of 1.1.31 as the applicant's D.O.B. vide its letters dated 12.9.60 and 11.3.89, which were written by respondent no. 3 on the ~~application~~ applicant's request vide 9.9.60 and 28.2.89 respectively. Respondent no. 3 even after the order dt. 1.11.88 wrote to M.O.D. for restoring the date 1.1.31, and that why discriminatory has been accorded to

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applicant than in the case of Sri Balwant Singh.

5. That para 7 of the counter affidavit does not deny the averments made in para 4.2 to 4.10 of the application, and hence same stand admitted, and are reiterated. However, the allegations made against the applicant are denied. It is stated that the fact of Admission Form and Municipal Record was mentioned in application dated 9.9.60 (Annexure 5) and these facts were never~~y~~ disputed.

6. That para 8 of the counter affidavit needs no comments to the extent it admits the contents of para 4.11 of the application. Rest of the contents are denied, and para 4.11 of the application is reiterated.

7. That para 9 of the counter affidavit to the extent it does not admit the contents of para 4.12 of the application are denied and para 4.12 of the application is reiterated. It is further denied that the Record Card which is a basic document became obsolete (reasons detailed in para 3 above). The Record Card is part of the Service Book of the applicant, who is still in service and hence it can not be alleged that the same became obsolete. It is apparent that the respondents are suppressing and withholding the same As already submitted that the applicant filed the Municipal Birth extract at the time of his appointment, which was kept in the

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Office with Record Card, and on its basis the D.O.B. 1.1.31 was entered therein, and so the applicant can not produce it. The respondents are in possession of it, but are withholding the same on plea of non-availability. In this connection a copy of G.O.I's decision incorporated in Army Instruction No. 129 of 1950 and 185 dated 9.7.55 are relevant and material, which will be produced at the time of hearing.

The rule for recording the date of birth is laid down in para 1(ii) of the Min of Defence Memo No. 14311/D-12 of 11.1.1950 which clearly provides that 'in case of literate staff, the date of birth shall be invariably supported by documentary evidence and be entered in the record of Service. Accordingly the appointing authority recorded in the Record Card (IAFO 2436) his date of birth as 1.1.1931 with the remarks that " date of birth recorded on the basis of an extract from the records of Municipal Committee Montgomery, West Punjab."

That all this suggests that the plea of non-availability is obviously self contradictory and is putforth to suppress the material facts. It is therefore submitted that both the documents viz: Record Card (IAFO 2436) and the Birth Certificate are available with the respondents.

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denied that medical examination was not for assessing the age/D.O.B. of the applicant. Contents of para 4.13 of the application are reiterated. The contention of the respondents that medical examination is not meant to assess either the age or the date of birth, is factually incorrect. The Correct position is altogether different and is explained below:

- a) Article 49 of Civil Service Regulations
Proforma of MEDICAL Certificate inter alia
defects.

" Shri..... age is according to his own statements.....years and by appearance about..... years".

Signature of Commissioned
Medical Officer

or

Medical Officer I/C Civil
Station.

- b) Article 14 of Civil Service Regulations
Para 2(C) of Govt of India's decision No.3.

" Where the person concerned is unable to state his age or where the age as stated by him is obviously incorrect it should be assessed by the Medical Officer and the age so assessed entered in his record of service."

- c) Article 51 of Civil Service Regulations
GIMF UO No.5168 EV/53 dated 18.7.1953.

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" The age in Medical Certificate should be deciding factor and mere statement of the individual without any proof should not be accepted."

9. That para 11 of the counter affidavit as stated is denied, and the contents of para 4.14 of the application are reiterated. It is stated that detail facts have already been explained in para 3 above regarding 9.9.60 and 17.11.87. It is denied that every five years the Service Book entry was shown to applicant who is not a Gazetted Officer. It is pointed out that 5 year rule is applicable in the case of Gazetted Officers circulated under G.I.M.F. endorsement No. F.18(2)-Est-IV(A) dated 7.4.1970.

10. That para 12 of the counter affidavit to the extent it admits the corresponding para of the application needs no comments. Rest is denied and para 4.15 of the application is reiterated. It is pointed out that the correctness of extract is ~~denied~~ admitted, and the signatures of the officer have also not been denied.

11. That para 13 of the counter affidavit need no comments.

12. That para 14 of the counter affidavit is denied and para 4.17 of the application is reiterated. It is pointed out that in paras 25 and 34 of the

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counter the said letter dated 9.9.60 of the applicant is admitted to have been given as a covering letter with Matriculation Certificate. It is unbelievable that the certificate is on record and the said letter is not available. The same is being suppressed and so adverse inference is to be drawn in this regard. It is further stated that Respondent no. 3 made an endorsement thereon for taking up the matter by Unit for correction of date in Matriculation Certificate, whereafter letter No. 20601/SPK/PC dated 12.9.60 was written to the Education Ministry.

13. That para 15 of the counter affidavit need no comments.

14. That para 16 of the counter affidavit as stated is denied and para 5.19 of the application is reiterated. It is pointed out that Matriculation Certificate was given with letter dated 9.9.60, the receipt of which is admitted in para 25 and 34 of counter affidavit and the contents whereof prove the protest. It is ^{further} stated that signing by the applicant is not authentication, as entries in Service Book can only be authenticated by Head of Office and not by employee ^{as} provided in Article 818 of C.S.R.. However, detailed reply was been given in para 3 above.

15. That para 17 of the counter affidavit is denied and para 4.20 of the application is reiterated. The reply is vague and does not specify

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the evidence . It is pointed out that the Admission made in para 22 ~~above~~ of the counter affidavit proves that the entire record is available.

16. That para 18 of the counter affidavit needs no comments.

17. That para 19 of the counter affidavit as stated is denied and paras 4.22 and 4.23 of the application are reiterated. It is again stated that at the time of appointment as per rules the Municipal extract was given on the basis of which D.O.B. was entered as 1.1.31, and was so noted in the Record Card. It is pointed out that ~~expost-facto~~ sanction by the Ministry on 1.11.88, itself shows that the D.O.B. has been changed in 1988, and without any opportunity to the applicant.

18. That para 20 of the counter affidavit is denied and para 4.24 of the application is reiterated. It is pertinent to note that neither the letter dt. 9.9.60 nor the affidavit dt. 17.11.87, were disputed by any authority when filed, and were admitted correct by the appointing authority, The respondents now are estopped from challenging the same. The D.O.B. recorded in Matriculation Certificate is incorrect for the reasons ^{already} explained.

19. That paras 21 and 22 of the counter affidavit need no comments.

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20. That para 23 of the counter affidavit is denied that there is absence of birth certificate from Municipality, and paras 4.25-C and D of the application are reiterated. The Municipal extract of birth was submitted at the time of appointment on 1.3.50 as already stated above, and the respondents are not producing the same deliberately for obvious reasons.

21. That para 24 of the counter affidavit to the extent it admits corresponding para need no reply. Rest of the contents are denied and para 4.26 is reiterated. The averments prove that prior to Ministry's order dated 1.11.88, there was no change in the D.O.B. of the applicant in the Record. The order is otherwise also invalid being a non-speaking order; and having been passed without any opportunity to the applicant.

22. That para 25 of the counter affidavit is denied that Annexure 7 is simply an audit note as alleged, and para 4.27 of the application is reiterated. It is stated that the letter dt. 23.11.1987 (Annexure 7) is not a sort of audit note but a detailed letter with comprehensive recommendation to retain 1.1.1931 as final date of birth and to discard the remaining two more dates of birth viz 1.4.1930 and 29.8.1930 recorded in the Service Book of the Applicant.

The ~~above~~ said contention of the respondents,

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itself is an enough proof to establish conclusively that the date of birth was disturbed wrongly in hot haste without reading the contents of letter dt. 9.9.60 (Annexure 5) wherein it was requested for correction of incorrect date of birth entered in the said Matriculation Certificate. Similar position was also explained under Station Workshop EME Lucknow letter No. 20601/SPK/PC dated 12.9.1960 addressed to the Ministry of Education New Delhi and the recommendations contained in letter No. 20602/CIV dated 11.3.1989, issued by respondent no.3. Moreover, the incorrect date of birth mentioned in the said Matriculation Certificate was redundant immaterial and of no evidentiary value in view of the date of birth admitted in the records as supplied by the applicant and also verified and accepted by the respondents for 38 years and that irrespective of it the applicant did never request to alter the already entered and admitted date. However, it is stated that the rules of natural justice demand that the date of birth, which has stayed for such a long period of 38 years, can not be disturbed at the fag end of retirement to the disadvantage of the applicant without holding a proper inquiry and affording a reasonable opportunity of hearing to the applicant that which out of the three dates of birth recorded in the Service Book should be accepted and retained.

23. That para 26 of the counter affidavit needs no comments.

24. That in reply to para 27 of the counter

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affidavit it is stated that without proper enquiry the change in D.O.B. is invalid. Para 4.29 of the application is reiterated.

25. That para 28 of the counter affidavit is denied and para 4.30 of the application is reiterated. The correct date of birth is 1.1.1931.

26. That in reply to para 29 of the counter affidavit it is denied that the relevant points raised have been considered. Paras 4.31 and 4.32 of the application are reiterated.

27. That para 30 of the counter affidavit needs no comments.

28. That para 31 of the counter affidavit is denied, ~~It is stated that in~~ and para 4.35 of the application is reiterated. It is stated that in Matriculation Certificate there is incorrect date of birth. The said rule has incorrectly applied and its application is misconceived, and can not be applied at the far end of Service career to disadvantage of applicant. Reply given above to para 8 of the counter affidavit is also relevant.

29. That para 32 of the counter affidavit is denied and para 4.36 of application is reiterated. It is stated that Government is at liberty to correct bonafide errors by following established procedure and

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norms but has no right to cure an illegality by committing another illegality. The contention of the respondents is thus opposed to the principles of date of birth unilaterally without holding any enquiry. natural justice as they have altered the the accepted. In this connection the reply of the applicant given against paras 24 and 25 of the counter affidavit is also relevant.

30. That para 33 of the counter affidavit is denied and paras 4.37 and 4.38 of the application are reiterated. It is strange that the Matriculation Certificate even with absolute incorrect date of birth, which has also been challenged by the respondent no.3 and the applicant on 9.9.1960 is still a reliable and authentic document.

31. That para 34 of the counter affidavit is denied and paras 4.39 and 5.50 of application are reiterated. The plea that the case of Shri Balwant Singh is different from that of the applicant is wrong. In fact both the cases are identical in nature and there is absolutely no distinction between them except that two cases have been accorded different treatment by the respondents. The facts are:

- a) After confirmation, Shri Balwant Singh requested for alteration of his recorded date of birth from 22.2.1932 to 23.7.1932 on production of School Leaving Certificate. Respondent no. 2 ordered vide his letter No. 92960/11/EME CIV dated 28.2.1970

[Handwritten signature]

A114

-33-

(Annexure 14) that change of date of birth of an employee after confirmation is not permissible.

- b) On the same analogy, CDA_C Central Command Lucknow vide his letter No. P/VII/2010 dated 23.11.87 (Annexure 7) accordingly decided the case of the Applicant in the following words:

" Since the date of birth which was declared by the applicant at the time of recruitment in 1960 which was accepted by the appointing authority, could not be changed in 1960 after confirmation of the applicant in 1957 or afterwards - or cannot be changed now agreeably to the provisions of Ministry of Finance (Deptt of Expenditure) Notification No. 7(7) EV (A)/74 dated 7.2.1975. But the respondent no. 1 shelved all these norms and ordered vide his letter No. B/03580/PC/EME CIV-2/2685/D (Appts) dated 1.11.1988 (Annexure 8) that the date of birth of the applicant shall be altered even after his confirmation. ~~from the above~~

- c) From the above it would be obvious that in one case the respondents say that alteration in date of birth is permissible even after confirmation but in another case ~~case~~ they say that alteration is not permissible after confirmation.

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AIS

-34-

32. That paras 35 to 48 of the counter affidavit are denied and paras 5.1 to 5.25 of the application are reiterated. It is further stated that these paras are legal grounds of claim and hence need no ~~more~~ rejoinder. Moreover, detailed facts on earlier paras have already been replied.

It is stated further that authentic documents was Municipal Certificate furnished; that the change is not as per rules and; that the five year period bar is for the Govt. also. It is stated that the applicant did not request for change but the respondents did themselves and so enquiry was must as per decisions of the Hon'ble Supreme Court. The evidence of birth extract produced at the appointment is reliable, irrefutable, incontrovertible and authentic.

33. That paras 49 and 50 of the counter affidavit need no comments.

34. That para 51 of the counter affidavit is denied. The applicant is entitled to the reliefs claimed in para 8 of the application.

35. That para 52 of the counter affidavit needs no comments.

It is, therefore prayed that the application

[Signature]

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be allowed as prayed.



APPLICANT.

Lucknow

THROUGH

Ved Prakash

Dated March 14, 1990.

(VED PRAKASH)
ADVOCATE.

VERIFICATION.

I, S.P.Khurana, applicant, working as Master Craftsman, in the Office of Station Workshop, E.M.E., Lucknow Cantt., do hereby verify that the contents of paras 1, 2, 3.1 to 3.5, 4 to 28, 30, 31, 33 and 35, are true to my personal knowledge and those of paras 3, 3.6, 29, 32 and 34 _____ are believed to be true on legal advise, and that I have not suppressed any material facts.

Verified this 14 day of March, 1990, at Lucknow.



APPLICANT.

In the Central Administrative Tribunal,
Additional Bench, Lucknow.

AMT

....
CM 97/9069

Case No. 330-89.

S.P.Khurana

...Applicant.

Versus.

Union of India & others

...Respondents.

APPLICATION FOR INTERIM RELIEF.

The applicant humbly submits:

1. That the above mentioned application was filed against the reduction of the applicant's date of birth wrongly from 1.1.1931 to 1.4.1930, after 38 years of Service, and thereby pre-poning the retirement of the applicant from 31.12.1990 to 31.3.1990.

2. That the last order impugned is dated 4.10.89, and the applicant filed the present case with utmost promptitude, so that the issue may be decided by this Hon'ble Tribunal before 31.3.1990, on which date the respondents are bent upon the retire the applicant.

-2-

(MLO)

3. That for this was pleased to grant 4 week filing Counter Affidavit, and 2 w Hon'ble Tribunal for Rejoinder Affidavit, and fixed 20 respondents for hearing.

4. That for the aforesaid reason no interim order was prayed for earlier.

5. That 8 week have passed but the respondents did not file the Counter Affidavit and are delaying the decision of the application, to render the relief claimed as infructuous.

6. That in case the applicant is retired on 31.3.90, in pursuance of the impugned order, the applicant shall suffer irreparable loss beyond restitution.

7. That the facts and reasons stated in the main application are relied upon for the purpose of the present application but are not repeated for purpose of brevity.

It is, therefore, prayed that the respondents be restrained from retiring the applicant on 31.3.1990, on the basis of altered date of birth, pending decision of the case, and an ad-interim order to the same effect be also passed pending

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disposal of the present application, and such other orders as the merit of the case may admit of be also passed.

Lucknow Dated
20 Feb , 1990.


Signature of the
Applicant.

Through


Ved Prakash
ADVOCATE.

I, S.P. Khurana, the applicant above named, do hereby verify that the contents of paras 1 to 7 of the application are true to my personal knowledge and that I have not suppressed any material fact.

Verified this 20th day of Feb, 1990,
at Lucknow.

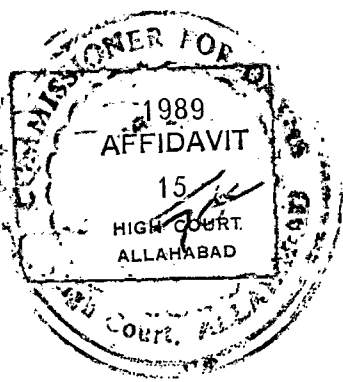
Dated: 20.2, 1990.

Place: Lucknow.


Signature of the
Applicant.

In the Central Administrative Tribunal at Allahabad,
Circuit Bench, Lucknow.

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Counter Affidavit on behalf of Respondents in Support of Application

to oppose Interim Relief

In

Case No. 330 of 1989

S.P. Khurana ..

Applicant

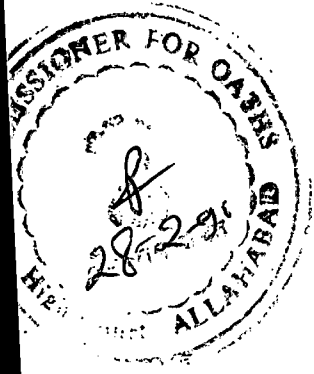
Versus

Union of India & Others. ..

Respondents

I, Major N.K. Gupta, Administrative Officer, Station Workshop,
E.M.E., Lucknow, do hereby solemnly affirm and state as under:

1. That the deponent is posted as Administrative Officer in Station Workshop, E.M.E., Lucknow and has read over the contents of the application and has understood the contents thereof.
2. That the deponent is well conversant with the facts of the case deposed hereinafter.
3. That the deponent is competent to swear this affidavit on behalf of all the respondents.
4. That in response to para 1 of the application for Interim Relief it is stated that the date of birth of the applicant was corrected from 1.4.1931 to 1.4.1930 on the basis of the Matriculation Certificate submitted by him.
5. That in response to para 2 of the said application it is stated that the date of birth of the applicant was corrected in his Service Book on 9.9.1960 which has been duly authenticated by the applicant himself. There was, therefore, no occasion for him to make any representation in this regard. However, the applicant for the first time represented against his correct date of birth of 1.4.1930 on 17.11.87, after a lapse of more than 27 long years. According to the changed date of birth the applicant is to retire on 31.3.1990.
6. That in reply to para 3 of the application it is stated that the Hon'ble Tribunal has fixed 28th February 1990 for final hearing.



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7. That in reply to para 4 of the application it is stated that no prayer for Interim Relief was made in the original claim petition.

8. That in reply to para 5 it is stated that on receipt of the para-wise comments on the original claim petition, the counter-affidavit was drafted by the deponent's counsel which was sent to Ministry of defence through the Army Headquarter, New Delhi, and thereafter it is to be vetted by the Ministry of Law. The Counter-affidavit has not yet been received from New Delhi. Thus the delay is genuine and deliberate.

9. That in reply to para 6 and 7 it is stated that according to the correct date of birth the applicant is to retire on 31.3.1990. The applicant should have filed the present claim petition within the time limit prescribed by the Administrative Tribunal Act of 1985.

Prayer

In view of the submissions made in the above paragraphs, it is most respectfully prayed that the application for Interim Relief may be dismissed with costs.

NK Gupta
Deponent may

Verification

I, the deponent above named do hereby verify that the contents of paragraphs 1 to 3 of this Counter-affidavit are true to my personal knowledge and those of paras 4 to 9 are believed by me to be true based on records and as per legal advice. That nothing material has been concealed and no part of it is false. So help me God.

Signed and verified this day of 28th Feb 1990 within the court compound at Lucknow.

NK Gupta
Deponent may

I identify the deponent who has signed before me and is personally known to me

J. G. S.
Advocate

Solemnly affirmed by the deponent, 28-2-90 at 2.30 pm who has been identified by Shri. Dinash Chandra, Advocate, High Court of Lucknow Bench. I have satisfied myself by examining the deponent that he understands the content of this affidavit which has been read over to him and explained to him by me

Oath Commissioner.



For me
Shri. Dinash Chandra
Advocate
High Court, Allahabad
Lucknow Bench

No. 1517-5
Date 28-2-90

A
122

— Will of Cernern' Can lie against a
Jadh order or grain order

— ~~my will case~~

OA 1-330/88

1. 11. 88

Joined 1. 3. 1950

Recard Card

1. 1. 1931

Berkel Register

Medical Certificate

60 years

Confined 15. 7. 57

[Mat Certificate through Ministry of Education
on 24. 8. 60
wherein date of birth was recorded as 1. 4. 1930]

✓ 9. 9. 60

✓ 12. 9. 60 regarding

(a) ~~off~~ ~~and~~ not granted

(b) Recard Card is most authentic not produced

(c) 1960 Correspondence not being produced.

(d) Date of birth as recorded in Mahiculakar Certificate

not final & not actual

(e) note 5 of FR 6 5 years

(f) discrepancy in Balwant's Case

Documents: Ans 2
Ans 3 (Proof of Recard Card)
" 11 (page 33 of Completion ")

SR. 199 — Submitted

1. 1. 1931

— 1. 4. 1930 = 9. 9. 60.

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

Cause Title Police 259 of 1990 (W)
O.A. 330 of 89 W

Name of the parties

Applicant:

Versus

Respondents:

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3. Petition with annexures

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(A) (A/2)

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
		<p>A. CM. (Review)</p> <p>An. No. 259/90 (L)</p> <p>has been filed</p> <p>in O.A. 330/89.</p> <p>T.A.</p> <p>The case bearing</p> <p>NO. O.A. 330/89..</p> <p>T.A.</p> <p>was decided by the</p> <p>Bench of Hon'ble</p> <p>Mr. D.K. Agrawal</p> <p>.....</p> <p>Hon'ble. Mr. K. Chandra</p> <p>.....</p> <p>on dated. 23/3/90</p> <p>The author of the</p> <p>judgement is</p> <p>Hon'ble. Mr.</p> <p>D.K. Agrawal</p> <p>Submitted for</p> <p>orders. 20/4/90</p> <p><u>540</u></p>

Dinesh

J.M.L.
By Post
10/1/91

(A)
(B)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.
CIRCUIT BENCH AT LUCKNOW.

Review Application No. 259 of 1990 (L)

IN

Registration (O.A.) No. 330 of 1989 (L)

S.P. Khurana

....

Applicant.

Versus

Union of India & others

....

Respondents.

Hon'ble D.K. Agrawal, J.M.

Hon'ble K. Obayya, A.M.

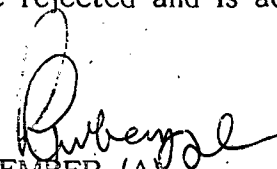
(By Hon. D.K. Agrawal, J.M.)

This review application, filed under Section 22(3)(f) of the Administrative Tribunals Act, 1985, is against the judgment and order dated 23.3.1990 passed in O.A. No. 330 of 1989 (L), S.P. Khurana v. Union of India & others, and has come before us for decision on circulation.

2. We have gone through the review application. By means of this application the applicant has urged that this Tribunal has erred and the order dated 21.3.1990 passed in O.A. No. 330 of 1989(L) be reviewed and recalled.

3. A review of an order can only be made for correction of a patent error of fact or law which stares one in the face without any elaborate arguments being needed for establishing it. Thus the scope for reviewing an order is limited.

4. Since there is no patent error of fact or law in the order passed on 23.3.1990, the review application, in our opinion, is liable to be rejected and is accordingly rejected.


MEMBER (A).


MEMBER (J).

Dated: ~~September~~ ¹³ 13, 1990.

PG.

X
A/B

Before the Central Administrative Tribunal
Lucknow Bench, Lucknow.

.....

Review Application No. 259 of 1990

In re:

O. Application No. 330 of 1989.

(Decided on 23.3.1990)

S.P. Khurana

..Applicant.

Versus.

1. Union of India, through Secretary
Ministry of Defence, Govt. of India, New Delhi-
110011.
2. Director General of EME, Army Head Quarters
HQPO, New Delhi- 110011.
3. Officer Commanding, Station Workshop EME,
Lucknow Cantt, Lucknow.

..Respondents.

Review Application Under Section 22 of
the Administrative Tribunals Act, 1985,
against the decision dated 23.3.1990, in
O.A. No. 330 of 1989, titled as S.P.
Khurana Vs. Union of India & others,
whereby the application was dismissed,
on the following amongst other:

G R O U N D S

1. Because the petitioner had specifically

pleaded violation of principles of natural justice as he was neither afforded any opportunity or heard nor any enquiry was held by the respondents while changing the petitioner's date of birth to his prejudice, which fact was not denied in the Counter Affidavit. It is submitted that this fact was on record but has not been considered though arguments were advanced on this point supported with rulings.

2. Because the petitioner had also specifically pleaded discriminatory treatment meted out to him in changing his date of birth and had cited the similiar case of Sri Balwant Singh, whose date of birth was not changed on the ground that it can not be changed after confirmation, but in petitioner's case his date of birth was changed after confirmation, and the decision in Sri Balwant Singh's case was not denied in the Counter Affidavit. It is submitted that this fact was on record but has not been considered though arguments were advanced on this point also.

3. Because the petitioner impugned the order dated 1.11.1988 (Annexure-8), which was the first and the only order changing his date

of birth and he did not impugn the alteration made unauthorisedly on 9.9.1960, as the said alteration was no alteration as per service rules and was non-est in law, because it was admittedly not attested by the Head of the Deptt, without which attestation it was invalid and so the necessity arose for orders from Ministry of Defence, which were passed on 1.11.88. It is submitted that this fact was on record but was considered differently by considering as if the entry dated 9.9.1960 was impugned and this change was made by the employer or the Head of the Deptt.

4. Because in Audit note dated 23.11.1987 (Annexure-7), various Service Rules and Orders have been referred according to which the date of birth of the petitioner could not be changed after his confirmation, but the same was not considered that the impugned change was in violation of the said orders and rules.
5. Because it is on record that on the protest of the applicant the Head of the Deptt did not attest the change and it is proved by Service record produced by the respondents.
6. Because the above facts and reasons show that

there is error apparent on the face of the record and necessitate review of the decision in the interest of justice.

It is, therefore, respectfully prayed that the Review Application be admitted, and the Original Application be re-heard and decided on merits, and such other orders as the merit of the case may admit of be also passed.

Lucknow

4 April 20, 1990.


[S. P. KHURANA]
APPLICANT.

THROUGH

Ved Prakash.
[VED PRAKASH]
ADVOCATE.

Reservy !

Central Administrative Tribunal, Lucknow Bench
Lucknow.

Registration O.A.No. 330 of 1989 (L)

S. S. Khurana Applicant.

Vs.

Union of India and others Respondents

Hon. D.K. Agrawal, JM
Hon. K. Obayya, AM

This Application u/s.19 of the Administrative Tribunals Act (III) of 1985 has been made by the abovenamed Applicant aggrieved with the alteration in his date of birth made in the service book on 9.9.1960.

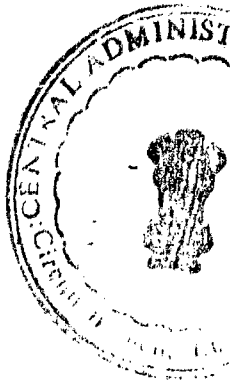
2. The facts are that the Applicant was appointed as CIV RCM in the Station Workshop EME, Lucknow on 1.3.1950 and his date of birth was recorded as 1.1.1931 at the time of entering into service. The contention of the Applicant is that his High School certificate was not available at the time of joining service. Therefore, he had submitted extract of birth register wherein his date of birth was recorded as 1.1.1931, which was accepted by the employer. Later on Matriculation Certificate dated 1.1.1947 issued by Punjab University, Lahore was supplied under the Ministry of Education letter dated 24th April, 1960 wherein his date of birth was recorded as April 1, 1931. The Applicant, therefore, made a representation to the Secretary, Govt. of India, Ministry of Education New Delhi on 9.9.1960 under intimation to the Station Workshop, EME Lucknow that the Applicant's date of birth shown as April 1, 1930 in the Matriculation Certificate of Punjab University Lahore was wrong and that the correct date of birth was 1st January 1931. The said letter



was never replied to. There is no document available on record to indicate that the Applicant pursued the matter any further. On the other hand, the employer, on the basis of the above information, made a change in the date of birth of the Applicant in his service book, i.e. the date of birth was altered from 1.1.1931 to 1.4.1930. The Applicant was also made to sign the altered date of birth in the service book. It is clearly admitted by the Applicant in para 4.1 that he was made to sign the altered date of birth in the service book. However, his contention is that he did so under protest. His letter of protest is also not available on record. The Applicant failed to file any document to show that any protest was made by him at the time he was made to sign the altered date of birth or at any subsequent stage.

3. The present Application was filed on 1.2.1988, allegedly on the ground that the alteration in date of birth was ratified by the Ministry of Defence in the year 1988.

The facts in this regard are that an audit objection was raised by the Auditor while auditing the Station Workshop that the alteration in date of birth should have been attested by an officer after approval of the Ministry and in order to remove the objection, the department made correspondence and obtained the ratification of Ministry of Defence vide letter dated 1st November 1988. (annexure B to the Application). We are of opinion that it is difficult to accept the proposition that the date of birth was altered on the basis of letter dated 1.11.1988. The matter of fact is that the date of birth was altered on 9.9.1960. Due to an internal audit objection, it was ratified by the Ministry of Defence on 1.11.1988. Consequently, the Applicant's



3.

claim, in our opinion, is barred by delay and laches. The date of birth having been altered on 9.9.1960, it is not open to the Applicant to agitate the matter in the year 198 when he was due to retire on 31st March 1990 according to the altered date of birth. The Application must be deemed to be barred by delay and laches.

4. We may observe that even assuming that the date of birth as recorded at the time of entering into service was 1.1.1931 and the same date was reflected in the birth register, the date of birth as recorded in the Matriculation Certificate will over-ride, i.e., the date of birth as recorded in the Matriculation Certificate will be deemed to be authentic in case of conflict with the entry of date of birth in the birth register. The date of birth as recorded in the Matriculation Certificate will be presumed to be correct unless otherwise proved. In the circumstances, we find no merits in the Application and the same deserves to be dismissed.

5. In view of our foregoing discussion, the Application is dismissed without any order as to costs.



Member (A)

MEMBER (J) 23.3.90

Dated: 23.3.1990
kbb.

Alloster
[Signature]
Deputy Registrar
General Administrative Tribunal
Lucknow Bench,
Lucknow

Copy Attested

[Signature]



CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.
CIRCUIT BENCH AT LUCKNOW.

Review Application No. 259 of 1990 (L)

IN

Registration (O.A.) No. 330 of 1989 (L)

S.P. Khurana

....

Applicant.

Versus

Union of India & others

....

Respondents.

Hon'ble D.K. Agrawal, J.M.
Hon'ble K. Obayya, A.M.

(By Hon. D.K. Agrawal, J.M.)

This review application, filed under Section 22(3)(f) of the Administrative Tribunals Act, 1985, is against the judgment and order dated 23.3.1990 passed in O.A. No. 330 of 1989 (L), S.P. Khurana v. Union of India & others, and has come before us for decision on circulation.

2. We have gone through the review application. By means of this application the applicant has urged that this Tribunal has erred and the order dated 21.3.1990 passed in O.A. No. 330 of 1989(L) be reviewed and recalled.

3. A review of an order can only be made for correction of a patent error of fact or law which stares one in the face without any elaborate arguments being needed for establishing it. Thus the scope for reviewing an order is limited.

4. Since there is no patent error of fact or law in the order passed on 23.3.1990, the review application, in our opinion, is liable to be rejected and is accordingly rejected.

MEMBER (A).

MEMBER (J).

Dated: 13 September, 1990.

PG.