

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 98 of 2003
with Misc. Application No. 193/2003

Jabalpur, this the 17th day of December, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Shri C.N. Gopalakrishnan, aged 64 years,
Son of Shri Narayanan Ezhuthachan, Resident
of Cherukulangara House, Poovakkode, P.O.
Kannadi, Palakkad, Kerala Pin-678 701,
Ex-UDC of Regional Medical Research Centre
for Tribals (Indian Council of Medical
Research), Nagpur Road, P.O. Garha, Jabalpur
(MP) Pin 482 003.

... Applicant

(By Advocate - Shri M.P. Singh)

V e r s u s

1. Union of India, through the
Health Secretary, Ministry of
Health & Family Welfare, Government
of India, Nirman Bhawan,
New Delhi - 110011.
2. The Director General, Indian Council
of Medical Research, Ansari Nagar,
Post Box 4911, New Delhi-110 029.
3. The Director, Regional Medical Research
Centre for Tribals (Indian Council of
Medical Research), Nagpur Road, P.O.
Garha, Jabalpur (MP) 482003. ... Respondents

(By Advocate - Shri A. Adhikari on behalf of respondents Nos.
2 & 3)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has
claimed the following main reliefs :

"(b) to quash and set aside the impugned retirement
order and reinstate the applicant in the service from
1.7.1994,

(c) to issue a writ in the nature of command or any
other appropriate writ, order or directions, directing the
respondents to

(i) consider the case of the applicant in the
right prospective for alteration/change of date of
birth as 8.5.1939 as per General Financial Rules,
rule 80(3),

(ii) consider the case of the applicant in right
prospective and grant him all consequential bene-
fits such as pay and allowances, promotions,
increments, fixation of pay w.e.f 1.1.1996 based on
the report of V Central Pay Commission and approval



of Government of India,

(iii) issue directions to respondents to regularise the services rendered by him from 3.1.1995 to 31.5.1997 with Malaria Research Centre, S&T Project at Field Station, Jabalpur on adhoc basis, as regular service,

(iv) issue a fresh formal retirement order on superannuation with effect from 31.5.97(AN) with service pension for the period from 9.10.86 to 31.5.97 (10 years, 7 months & 23 days), retirement gratuity and commutation value. (If directed by the Hon'ble Tribunal, the applicant will refund the gratuity, leave encashment and general provident fund paid to him on premature retirement)."

2. The brief facts of the case are that the applicant was in the Army Service from 8.5.1954 to 30.9.1986 and on completion of Army terms of engagement he retired on 30.9.86 with military pension. He was of 15 years of age at the time of his appointment in Army and joined their as a Sapper Boy on 8.5.1954. In the light of the decision by Army authorities, the date of birth of the applicant during his lengthy Army service for 32 years and 4 months, was considered as 8.5.39. On retirement from Military service, the applicant was allowed military pension, gratuity and other retiral benefits based on his recorded age of 15 years as on 8.5.1954 (date of enrolment) thus date of birth as on 8.5.1939. On retirement from military service, the applicant was re-employed with Regional Medical Research Centre for Tribals (Indian Council of Medical Research), Jabalpur in the post of Upper Division Clerk with effect from 9.10.1986. At the time of re-employment, the applicant had produced his SSIC certificate in proof of his educational qualification, based on which his date of birth on re-employment was recorded as 15.6.1936 in his service book by the respondents. Since there cannot be two different dates of birth for a person during two consecutive services and the provisions of GFR Rule 80(3) was amply clear, the applicant requested the respondents to amend his date of birth in his service records as 8.5.1939 to conform with his Military records. He moved an application dated 29th May, 1989 for

amendment of date of birth in service records submitted to the respondents. During the audit of accounts held in July, 1994 the audit officer had raised an objection on the applicant's service book that, the change of date of birth from 15.6.1936 to 8.5.1939 was incorrect. According to the audit authority, on re-employment in the civil department the applicant's date of birth ought to be 15.6.1936 as per his school certificate and as such he should have retired from service on 30.6.1994. Incidentally, no such observation was made by the previous audit for 1992-93 held in July, 1993 although the service records of the applicant was specifically checked by the previous audit for 1992-93. The audit objection in question was raised on 27.7.1994 and on the same day the Director, RMRCT, Jabalpur summoned the applicant and informed him in the presence of the audit officer that the matter can be referred to the Director General, ICMR, New Delhi for decision/orders, provided the applicant is willing to give an undertaking to the effect that the decision of the Director General will be acceptable to him and in case it goes against his interests, he will refund the pay and allowances, medical claims, etc. which was paid to him for the period beyond 30.6.1994. The applicant had also requested to regularise his services from 1.7.1994 to 11.11.1994 which has been nullified vide the impugned retirement order. The retirement order was issued on 11.11.1994 which was to be effective from 30.6.1994. The applicant had handed over his charges to the nominated clerk on 14.11.1994. The applicant after quitting RMRCT service on 11.11.1994 was employed as UDC purely on temporary ad-hoc basis and on consolidated pay scale from 3.1.1995 till 30.11.1997 as a project employee under Malaria Research Centre, Delhi, under ICMR, New Delhi with their S & T Project at Field Station, Jabalpur. Thus from 9.10.1986 to 30.11.1997 except for a small break from 12.11.1994 to 2.1.1995 the applicant had been practically serving under respondent No. 2 in the same post of

UDC but on different pay scales. The applicant's resignation was accepted by MRC (ICMR) Delhi vide letter dated 27.2.1998.

3. Heard the learned counsel for the parties and perused the records carefully.

4. The learned counsel for the respondents raised the issue of limitation, wherein he has stated preliminary argument/that the applicant served in the Indian Army from 8.5.1954 to 30.9.1986 and in the light of the decision of the Army authorities during his lengthy Army service of 32 years and four months his date of birth was considered as 8.5.1939. Subsequently, after retirement from military service the applicant was re-employed in the department of the respondents on 9.10.1986. At that time he produced the certificate of SSLC as proof of age in which his date of birth was mentioned as 15.6.1936. The applicant had not produced any document regarding his date of birth before the Army authorities. The date of birth of the applicant by the Army authorities was considered on the basis of length of service in the Army. The applicant retired from the present service by the respondents on 30.6.1994. He has filed this present OA challenging the impugned order passed in the year 1994 i.e. after about 9 years of his retirement. The applicant produced the SSLC certificate before the present respondents in proof of his educational qualification and based on the date of birth recorded in the same as 15.6.1936, the applicant moved the application for amendment in his date of birth as 8.5.1939 as recorded in the records of the Army. This application of the applicant submitted before the present respondents for change of date of birth is against his own document i.e. SSLC certificate, which is submitted before the respondents. The learned counsel for the respondents further argued that



the applicant has not produced any documents regarding his date of birth as 8.5.1939 before the Army authorities, while he could have produced this document before the said authorities. Thus this Original Application is liable to be dismissed on the ground of limitation only.

5. The learned counsel for the applicant argued that the applicant has moved a MA No. 193/2003 for condonation of delay, which is submitted with the affidavit of the applicant and in which it is mentioned by the applicant that the applicant has submitted his representation to the respondents on 11.11.1994 immediately when he received the impugned retirement order. He requested to review and reconsider his case keeping in view the rules applicable to re-employed ex-servicemen. Even after his premature retirement, the applicant continued to work under RMRCT, Jabalpur as a fresh re-employee till 11.11.1994 and later with Malaria Research Centre, as a project employee on temporary adhoc basis on consolidated monthly pay scale from 3.1.1995 to 30.11.1997. Inspite of timely reminders, the applicant was not heard by the respondents regarding cancellation of the disputed retirement order. The last reminder of the applicant was sent on 23.12.2002. It was also not considered.

6. So far as the application for condonation of delay is concerned we find that the applicant continuously moved representations to the respondents as he sent his last reminder on 23.12.2002. This was also not considered by the respondents. Thereafter, he has filed the present OA on 11.2.2003 i.e. within the limitation. Considering all the facts mentioned by both the parties on MA, the Misc. Application No. 193/2003 is allowed and the delay is condoned.

7. As regards the merits of the case the learned counsel for the applicant argued that he joined the Army service on 8.05.1954 in the age of 15 years as a Sapper Boy and retired from their on 30.9.1986. His age was recorded in the Army records as 8.5.1939 on the basis of the length of his service of 32 years and 4 months. He was allowed for military



pension, gratuity etc. After his retirement from the Army service he joined the department of the respondents on 9.10.1986. At the time of re-employment he had produced the SSLC certificate in proof of his educational qualification and on which his date of birth was mentioned as 15.6.1936. This was recorded in the service book of the applicant. The audit team did not make any observations for the year 1992-93 but subsequently in July 1994 the audit officers raised the objections on the applicant's service book about the change of date of birth from 15.6.1936 to 8.5.1939 as there can be no two date of births. The applicant's date of birth was actually 8.5.1939 according to the Army records. The action of the respondents is against the law.

8. In reply the learned counsel for the respondents argued that the date of birth of the applicant was recorded in the Army records according to his own contention only on the basis of his length of service of 32 years and 4 months, as 8.5.1939. He did not produce any document regarding proof of his date of birth before the Army authorities. The applicant on his re-employment with the department of the respondents as UDC himself filed the SSLC certificate in which his date of birth was recorded as 15.6.1936. It is his own admission about the date of birth, which is supported by his own document. He did not correct the same within 5 years from 9.10.1986 and also had not made any effort in this regard. Now the applicant cannot take the benefit of the fact that the audit of 1992-93 could not make any observations about the date of birth of the applicant. According to the Government of India policy the date of birth should have been corrected within a period of 5 years from the date of joining into the service. The applicant files this Original Application after his retirement, wherein he is seeking correction of his date of birth, which is not permissible under the rules and law, and hence, this Original Application is liable to be dismissed.

A handwritten signature in black ink, appearing to read 'P.P.' followed by a stylized line.

9. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the applicant had joined the Army Service in the age of 15 years on 8.5.1954 and he was retired from their on 30.9.1986 and his date of birth was recorded in the Army records as 8.5.1939 according to the length of his Army service i.e. of 32 years and 4 months. He did not produce any documentary proof in support of his date of birth before the Army headquarters. At the initial stage of his appointment in Army he joined as a Sapper Boy. After his retirement from the Army service the applicant joined as UDC with effect from 9.10.1986 in the office of the respondents. At the time of his re-engagement he has produced the certificate of SSLC in proof of his educational qualification and age and in which his date of birth is recorded as 15.6.1936. This age has been recorded in the service book of the applicant with the respondents. The argument advanced by the applicant that earlier the audit teams of 1992-93 could not observe about the question of his date of birth and subsequent audit team of 1994 raised this objection about his date of birth, has no force, as the subsequent audit team had detected the discrepancy of the date of birth of the applicant and corrected the same as 15.6.1936. According to the own admission of the applicant he did not file any documentary proof of age before the Army authorities at the time of his joining till his retirement from there. The date of birth of the applicant on his re-engagement was recorded as 15.6.1936 on the basis of his own SSLC certificate, which was produced by the applicant. This document is produced by the applicant himself in support of his age and educational qualification. The applicant cannot deny this document. Thus the respondents have rightly retired the applicant with effect from 30th June, 1994 vide order dated 11.11.1994 on the basis of his date of birth as recorded in the service book as 15.6.1936.

10. Considering all the facts and circumstances of the case we are of the opinion that the applicant has failed to prove his case and this



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Original Application is liable to be dismissed as having no merits.
Accordingly, this Original Application is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

“SA”

पूर्णांकन सं ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि आवश्यकः—
(1) संस्था, उच्च विद्यालय दर एवं विद्यालय, जबलपुर
(2) अदेशक श्री/श्रीमती/कु..... त्रै नामांकन
(3) प्रकाशी श्री/श्रीमती/कु..... त्रै नामांकन
(4) दैवित, कोपाल, जबलपुर ज्यादातीत
मुद्रना एवं आवश्यक कार्यवाही हेतु
इप्प रजिस्ट्रार

M.P. Singh
20/200
A. D. Mukherjee
20/202

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BB