

AFR
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 1
(List -B)

Original Application No. 279 of 2015

Thursday, this the 11th day of May, 2017

Hon'ble Mr. Justice Devi Prasad Singh, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

JC-761274N Subedar Satya Pal Singh
Son of Shri Kamal Singh, 99 AD Gp (SP)
Wksp, Pin 906099 C/o 56 APO - Applicant

Versus

1. Union of India, through the Secretary
Ministry of Defence, Govt. of India,
New Delhi.
2. Chief of the Army Staff,
Integrated Headquarters of
Ministry of Defence (Army),
DHQ Post Office,
New Delhi -110011.
3. The Officer-In-Charge
EME, Records,
PIN-900453 C/o 56 APO
4. Officer Commanding
99 AD Gp (SP) Wksp
PIN-906099 C/o 56 APO

- Respondents

Learned counsel appeared - Shri R. Chandra, Advocate
for the applicant

Learned counsel appeared - Mrs Deepti Prasad Bajpai, Advocate,
for the respondents - assisted by Maj Soma John, OIC
Legal Cell

ORDER

Per Hon'ble Mr. Justice Devi Prasad Singh, Member(J)

1. Being aggrieved with the denial by the respondents to correct the date of birth of applicant's son in terms of entry made in High School Certificate, applicant has preferred the instant petition under Section 14 of the Armed Forces Tribunal Act, 2007.
2. We have heard learned counsel for the applicant Shri R. Chandra as well as learned counsel for the respondents Mrs. Deepti Prasad Bajpai, assisted by Maj Soma John, OIC Legal Cell and perused the record.
3. The controversy in question runs in narrow compass. Applicant was enrolled in the Indian Army in EME Corps on 12.12.1985 and retired from service on 31.12.2015 (Afternoon), after completion of 30 years of service. There is no dispute that in army record in accordance to information communicated by an incumbent, details of family members are recorded, including their age, birth place etc.
4. It was in March, 2015, applicant approached the respondents for correction of date of birth in accordance with High School Certificate of his son Devendra Singh. Respondent no.3, vide his letter dated 25.03.2015 intimated to reconcile the date of birth of applicant's son at his end and also forward copy of birth certificate and declaration of the individual in IAFF-958 form.
5. Applicant forwarded affidavit and all the documents i.e. birth certificate issued by the Government of Uttar Pradesh, Aligarh Municipal Corporation Aligarh, Secondary School Examination Certificate, Adhar Card, PAN Card and family details in accordance with instructions/ format

of the Signal Records website. Date of birth of applicant's son is recorded as 10.04.1996 but in the sheet roll the date of birth is mentioned as 10.04.1994, which according to the applicant is incorrect.

6. The applicant had forwarded the following documents with other relevant information in accordance to pleading on record which shows his son's date of birth as 10.04.1996 :-

- a. Discharge book issued by respondents,
- b. Dependent identity card,
- c. ECHS card receipt,
- d. Adoption of Mother Unit Concept to Foster Esprit-De-Corps issued by EME Depot Battalion,
- e. Electronic sheet roll,
- f. Aadhar card,
- g. Grade sheet cum certificate of performance of Secondary School Examination (Session : 2010-12),
- h. Student Register Transfer Certificate of N.D.M. Public School, Aligarh of Class VI, VII and VIII,
- i. Transfer Certificate of Army Public School, Hisar of Class X,
- j. Birth Certificate issued by Aligarh Municipal Corporation,
- k. PAN card.

7. By letter dated 26.05.2015 respondent no.4 requested the respondent no.3 to forward the family details in respect of applicant keeping in view the entry made in the Army record at the time of discharge. The respondent no.3 vide his letter dated 30.05.2015, replied by the signal that as per Para 36, 272 and 280 of Documentation Procedure for JCOs/OR, it is the responsibility of the Units to maintain IAFF-958 of the individual. However, in the aforesaid letter it is mentioned that same data is

available in EME records website. On website of EME Records, the date of birth of the applicant's son Devendra Singh is mentioned as 10.04.1996 but in sheet roll it is mentioned as 10.04.1994. Even in some of documents issued by the respondents to applicant, such as discharge book, dependent I Card & ECHS Card receipt the date of birth mentioned is 10.04.1996.

8. After considering the representation and documents supplied by the applicant for correction of date of birth of his son in the Army record, by the impugned order dated 09.07.2015 as contained in Annexure No.A-1, respondent no.3 rejected applicant's representation and declined to correct the date of birth. The impugned order as contained in Annexure No.A-1 in its totality is reproduced as under :-

“	REGD SDS EME Records PIN- 900453 C/O 56 APO
Tele: 2774187	
JC-761274N/SR/T 24ER-5	09July 2015
99AD GP(sP)WKsp Pin: 906099 C/O 56 APO	

REQUEST FOR RELATIONSHIP CERTIFICATE

- 1- Refer to :-
 - (a) IHQ of MoD (Army)AG's Branch,MP-8(1of R)(a)dt. 13Nov 2014 (copy att)
 - (b) This office letter No JC-761274N/SR/T 24ER-5 dt.25March 2015(Copy att)
 - (c) Your letter No 41102/Est dt 22 June 2015 and even no.03 July 2015.

- 2- With ref to your office letter mentioned at para 1(c) above, it is intimated that change of date of birth in r/o Devendra Singh s/o J C -76274N /Sub/Ref Mech Satya Pal Singh of your unit is rejected with ambit of the policy under ref at para 1(a) above. As per the ibid policy , IHQ of MoD(Army), AG's Branch , M P 8(1 of R) letter No A/20105/MP-8(1 of R) (a) dt 27 Jan 2014 is not a policy for amending a recorded date of birth in the service docu

consequent to any amdt carried out by Registrar of birth or in school records at a belated stage.

- 3- Therefore encls recd vide your letter under ref at para 1(c) are returned herewith.

Sd/-
Lt
Asst Record Officer
OIC Records ”

9. A plain reading of the impugned order shows that the respondents declined to take any action with regard to correction of date of birth on the ground that under the policy correction regarding date of birth in service document is not permissible at the belated stage. Learned counsel for the applicant invited our attention to policy dated 13.11.2014. The policy provides that the basic aim of the policy is to rectify any initial clerical level mistake and also to address genuine cases where a bonafide date of birth has been inadvertently got recorded. Para-7 of the policy letter has been reproduced in the Head Quarters letter dated 13.11.2014, filed with the O.A. For convenience same is reproduced as under :-

“ Para 7 of the policy letter clearly brings out the purpose. However the fwg pts are reiterated:-

- (a) OIC Records is the competent auth to approve a change request . If any case is found to be doubtful, the approval can be denied within the ambt of the policy.
- (b) Record Offices have been permitted to inslt any level of verification in case any apparent doubtful case.
- (c) The provision is for enabling a person to get the dt of birth amended in conformity to the genuine actual date of birth originally recorded in the prescribed docu. It is not sa policy for amending a recorded dt of birth in the service doc consequent to any amdt carried out by Registrar of Birth or in school records at a belated stage after issue of the above policy.
- (d) Dt of birth recorded in the school ert issued by any school/board of edn not recognized by the State Edn Bd/ CBSE/ICSE not to be accepted.

3. In view of the above, each case is required to be examined as infl case and decided by the competent auth accordingly. Where any case is found to be doubtful or not free from ambiguity, the same may be rejected after recording the reason in the case noting and the concerned applicant may be informed. ”

10. There is one interesting issue, which seems to have missed from the eyes of the respondents while rejecting applicant’s claim to correct the date of birth of his son. The whole policy seems to carry on or deny the correction in the service record of the members of the serving or retired Army personnel. It does not seem to speak of correction of record with regard to particulars of family members, like in the present case, the date of birth of applicant’s son Devendra Singh.

11. Of course as held by Hon’ble Supreme Court in catena of judgments, at the fag end of career, date of birth or date of superannuation may not be corrected and reliance should be placed ordinarily on the entry made in the service record. Steps should be taken at earliest available opportunity to approach for correction of record, vide (1994) 6 SCC 302 **State of T.N. vs. T.V. Venugopalan**, (1995) 4 SCC 172 **Burn Standard Co. Ltd. Vs. Dinabandhu Majumdar**, (1997) 4 SCC 181 **State of Orissa vs. Ramanath Patnaik**, (2003) 6 SCC 483 **State of U.P. vs. Gulaichi**.

12. Even for the serving Government servants, in the case of **Gulaichi** (supra) Hon’ble Supreme Court held that the Court or Tribunal must be fully satisfied that there has been real injustice to the person concerned and his or her claim for correction of date of birth has been made in accordance to procedure prescribed within the time fixed by any rule or order and in the absence of any rule or order application must be moved within a reasonable time. Burden shall be on the applicant to produce the evidence

in support of such claim, which may amount to irrefutable proof relating to his date of birth. Onus shall be on the applicant to prove about the wrong recording of his date of birth in his service book.

13. Similar view has been taken in (2005) 6 SCC 49 **State of U.P. vs. Shiv Narain Upadhyaya**, (2006) 6 SCC 537 **State of Gujarat vs. Vali Mohd. Dosabhai Sindhi**, (2009) 1 SCC 80 **Mohd. Yunus Khan vs. U.P. Power Corpn Ltd.**

But fact remains that all the cases deal with the serving incumbents and not the family members. Undoubtedly, correction is necessary to avail the benefit of employment in the Armed Forces or at other places in pursuance to relationship certificate issued by the Armed Forces, in the present case Army, which contains date of birth of son (supra) and other family members.

14. We are of the considered opinion that correction of date of birth, name etc. of the family members in the Army record even after retirement should be held to be permissible, in case the prayer is based on genuine and bonafide grounds. In the present case applicant's son's date of birth has been recorded as 10.04.1996 from Class-I to Class-X and onwards in his school record. Though the respondents tried to submit that even the place of birth of Devendra Singh was not at Aligarh but was somewhere else, but it may not come in the way to correct the same on the basis of High School Certificate for the reason that in collateral dispute based on genuine document while dealing with the issue with regard to date of birth, the question with regard to place of birth may not be raised.

15. Hon'ble Supreme Court in the case reported in (2001) 2 SCC 524 **Updesh Kumar vs. Prithvi Singh** affirmed the correction of date of birth

on the basis of the Matriculation certificate holding that it must be presumed that everything has been done in accordance with law, to quote:-

“12. Prithvi Singh obtained the Birth Certificate in February 1986 and his date of birth shown in that certificate is 26.12.1965. This very much tallied vis-à-vis the dates of birth of his siblings. Prithvi Singh submitted an application for correction of his date of birth in the Matriculation Certificate and the Haryana School Education Board corrected his date of birth in the school certificate issued to him. The correction of the date of birth in the certificate is an official act and it must be presumed to have been done in accordance with law. Updesh Kumar could not produce any evidence to show that there was any irregularity in the process of correcting the date of birth of Prithvi Singh in school record. Strangely, the appellate court has observed that Updesh Kumar was not given notice or heard when the correction in the date of birth of Prithvi Singh was done in the school records and hence there is violation of the principles of natural justice. It was not necessary for the authorities to issue any notice to Updesh Kumar in the matter of correction of the date of birth of Prithvi Singh. There was no violation of the principles of natural justice on that score. The denial of signature by PW 3 Smt Bhatia on Ext. PW-2/B certificate is also of not much consequence. She must have deposed so because the original records kept in the Office of the Chief Medical Officer were found tampered with. The pages had been found torn and replaced. It was noticed by the trial Judge that the entries in the register for the year 1965-66 were in Urdu script while those on the relevant pages were in Hindi. The corresponding leaf of the sheet containing Entries 74 to 85 in the register was found removed and another paper was pasted. As the original register was found tampered with, PW 3 Smt Bhatia had no other go but to deny her signature on Ext. PW 2/B certificate issued from her office. This aspect was not carefully taken note of by the appellate court. It may also be noticed that in the electoral roll published on 1.1.1986, the name of Prithvi Singh had been entered as he had attained more than 21 years of age as on 1.1.1986. The Oil Selection Board considered all these aspects and held that the date of birth of Prithvi Singh must be 26.12.1965 and that as on the date of application for allotment of the retail outlet he had attained the age of more than 21 years.

13. There is overwhelming evidence to prove that Prithvi Singh had attained the age of 21 years as on the date of his application for allotment of the retail outlet and the appellate

court was not justified in reversing the decision of the trial court. The learned Single Judge also did not advert to these points while confirming the decision of the appellate court. In the result, we set aside the judgement of the appellate court and that of the learned Single Judge and hold that the suit filed by Updesh Kumar shall stand dismissed. Consequently, the appeals filed by Prithvi Singh and Indian Oil Corporation Limited are allowed. The appeal filed by Updesh Kumar shall stand dismissed and he being a physically-handicapped person, we make no order as to costs. All th parties shall bear their respective costs.”

The correction of date of birth in Matriculation certificate by Haryana School Education Board was an official act and it must be presumed to have been done in accordance with law.

16. The analogy may be drawn that the date of birth entered in the Matriculation certificate (High School) must be treated as final and presumed to have been done in accordance with law, subject to objection regarding fraud or forgery in the record. The entry made in the Matriculation certificate cannot be questioned on the ground of place of birth, that too in collateral proceedings. Accordingly, the date of birth of applicant shown in the High School certificate must be presumed to be correct one, that too under the teeth of entry made in the school records from Class I to Class X.

17. While declining to consider applicant's case for correction of date of birth of his son Devendra Singh, respondents have placed reliance on the policy of serving/ retired member of the Army and not the family members, in the present case son. Thus, the Record Officer failed to apply mind and his finding and observations based on unfounded ground and policy are not sustainable under the facts and circumstances of the present case. The respondents must have taken into account that the correction with regard to date of birth and relationship of the family members in the service record,

even after retirement may not be denied for the reason that it may cause irreparable loss and injury to the children and other members of the family of Army personnel.

18. While considering the non application of mind and denial to consider the correction of date of birth on genuine ground, Hon'ble Supreme Court in the case of **Mohd. Yunus Khan vs. U.P. Power Corpn. Ltd.** (supra) held that the opportunity should have been given in the matter of correction of date of birth and if there is any ambiguity or doubt over it, error should be verified from the record and other documents. The employer is obliged to rectify the bonafide mistake even without complying the principles of natural justice in appropriate case.

Denial to rectify the error seems to be hit by Article 14, read with Article 21 of the Constitution of India.

19. In one another case relating to serving employee, rendered in (2014) 16 SCC 434 **Iswarlal Mohanlal Thakkar vs. Paschim Gujarat Vij Co. Ltd.**, their Lordships of the Supreme Court held that the birth certificate is the conclusive proof of age, same being an entry in the public record in accordance with Section 35 of the Evidence Act, 1872. To quote relevant portion:-

“ The respondent should have accepted the birth certificate as a conclusive proof of age, the same being an entry in the public record as per Section 35 of the Evidence Act, 1872 and the birth certificate mentioned the appellant's date of birth as 27.6.1940, which is the documentary evidence. Therefore, there was no reason to deny him the benefit of the sme, instead the respondent Board prematurely terminated the services of the appellant by taking his date of birth as 27.6.1937 which is contrary to the facts and evidence on record.”

20. In the present case gross injustice has been done by the respondents by not applying mind to the documents furnished by the applicant (supra) for correction of date of birth of son and by declining to accept the same under the teeth of policy made for serving / retired members of the Army. For any commission or omission on the part of parents, next generation, in the present case (applicant's son) cannot be put to suffer. It is constitutionally protected fundamental right to enjoy life on the basis of date of birth and other records and the same cannot be obstructed by any person, whosoever on account of commission and omission of parents on unfounded grounds.

21. To ensure the required entry in service record, to establish relationship was applicant's (father's) duty and failing to do so may fatal to next generation (son) and any such failure in discharge of duty may be corrected at earliest opportunity to secure and protect the constitutional right of young generation, that too for which they are not at fault.

22. Army should have done necessary correction keeping in view the entry with regard to date of birth in the High School certificate, subject to verifying its genuineness.

23. In a judgment (2011) 9 SCR 859 **Shah Nawaj vs. State of U.P. and another** Hon'ble Supreme Court reiterated that entry made in Matriculation certificate should be accepted and in its absence even High School certificate may be relied upon as proof in determining the age of a person.

24. In (2005) 12 SCC 201 **Coal India Ltd and another vs. Ardhendu Bikas Bhattacharjee and others** their Lordships of Hon'ble Supreme Court in the event of conflict with regard to date of birth in service record relied upon the entry made in Matriculation certificate. Their Lordships

approved the date of birth on the basis of Matriculation certificate over and above the entry made in service book on the basis of other documents/ affidavit and directed to ascertain the real benefit on the basis of date of birth entered in the High School certificate but without any recovery of the amount already paid.

25. In view of above, we are of the considered opinion that the date of birth of applicant's son Devendra Singh should be corrected on the basis of High School certificate i.e. 10.04.1996 by deleting the earlier entry, subject to verification of genuineness of Matriculation (High School) certificate. Let generation to come not suffer on account of fault, if any on the part of the parents.

26. For the aforesaid reasons, O.A. deserves to be allowed.

ORDER

The impugned order dated 09.07.2015 as contained in Annexure No.A-1 to the O.A. is set aside. The respondents are directed to correct the date of birth of the applicant's son Devendra Singh in accordance with entry made in High School certificate and thereafter to issue the relationship certificate keeping in view the observations made in the body of present order. Let necessary exercise be done within a period of two months from the date of communication of present order. O.A. is allowed accordingly.

No order as to cost.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

JPT