

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

M.A. No. 259 of 2021 Inre : O.A. No. 252 of 2021

Col. P. Yesudian Sugumar
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.05.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p><u>M.A. No. 259 of 2021</u></p> <ol style="list-style-type: none">1. On the case being taken up for hearing Shri Yashpal Singh, Ld. Counsel for the applicant and Shri Sunil Sharma, Ld. Counsel for the respondents are present.2. Objection to application for interim relief filed today in Court by the respondents is taken on record.3. By means of this application a prayer has been made allowing applicant to continue in service treating his date of birth 28.06.1965 in place of 23.05.1964 and to stay the Board proceedings of Promotion Board (AFMS) No. 2 : AMC (NT) contained in letter dated 12.05.2021, Annexure 1 to second application for interim relief.4. Heard Shri Yashpal Singh, Ld. Counsel for the applicant and Shri Sunil Sharma, Ld. Counsel for the respondents.5. According to applicant, he was born on 28.06.1965 in a rural village in District Tuticorin of Tamil Nadu. At the time of admission in 1st Standard in a Primary School of native place applicant's date of birth was mistakenly recorded as 23.05.1964 which continued in Secondary School Leaving Certificate (SSLC) and Higher Secondary Course Certificate (HSCC). Applicant was enrolled in Army Medical Corps (AMC) of Indian Army as Havildar on 29.12.1986 and was subsequently granted Commission in AMC on 20.01.1993 and same date of birth, as mentioned in his educational documents, was recorded at both occasions. He came to know about his incorrect date of birth being recorded in his educational documents and service records through his mother in 2001, whereafter he obtained copy of his Birth Certificate from the Department of Registration and approached the concerned authorities for correction of his date of birth in Service records. He also filed a Civil Suit in City Civil Court of Chennai (O.S. No. 4595 of 2004, P. Yesudian Sugumar Versus Secretary to the Government of Tamil Nadu and others) against State of Tamil Nadu, Education Department and Army Authorities which was decreed exparte on 23.07.2007. State of Tamil Nadu and Education Department had filed application along with application for condonation of delay to recall the exparte decree which was dismissed on 01.02.2016 and, consequently, his date of birth was corrected in educational documents. After

educational documents being corrected applicant again applied to respective authority for making correction in his service record but no action has been taken on that till now rather applicant has been informed that he is due to retire on 31.05.2021.

6. Ld. Counsel for the applicant submitted that applicant's case is fully supported with Birth Certificate and decree passed by a City Civil Court, Chennai, Annexure No. 2 and Annexure No. 4 respectively filed along with Original Application, which clearly establishes the applicant's correct date of birth as 28.06.1965, and not as 23.05.1964 which was earlier recorded in educational documents due to mistake. He submitted that Birth Certificate, which has been issued by the Office of Department of Registration where births and deaths are registered, belongs to applicant as he is the only son of his parent and there being no chance of any manipulation in it as applicant's birth was registered only two days after his birth, there is no reason to doubt it. He further submitted that decree of Civil Court, declaring the correct date of applicant's birth as 28.06.1965 is binding upon respondents as respondent Nos. 2 and 3 were party in the Suit in which decree was passed and are therefore under legal obligation to carry necessary amendment in date of applicant's birth in Service records after the date of birth being corrected in educational documents.

7. Ld. Counsel for the applicant further submitted that applicant started raising his grievance since 2001 through various representations seeking amendment in his date of birth in Service records but the respondents are not listening to him without any justifiable reason. He submitted that if no interim relief is granted then not only applicant will be retired on 31.05.2021 on the basis of incorrect entry in date of birth in his Service records but he will also be deprived a valuable right of promotion to the post of Brigadier in AMC (NT) which is to fall vacant on 01.08.2021.

8. Ld. Counsel for the applicant also submitted that applicant was not aware about his correct date of birth till 2001 when his mother told him, during the course of discussion, why incorrect date of birth was entered in his educational documents. Thus, he submitted that applicant's claim seeking correction in date of birth in Service records cannot be negated or ignored on the plea that it (claim) was not filed within two years from the date of his enrolment/commissioning as provided in Para 138 of Defence Service Regulations (Regulations for the Army) and Ministry of Defence Letter No. 35 (13)/A/63/d/Coord dated 21 April, 1964.

9. In reply, Ld. Counsel for the respondents submitted that entry of date of applicant's birth in Service records has been made on the basis of applicant's own declaration made at the time of enrolment/commissioning and, as per rules, any change therein could possibly be made based on representation made in this regard within two years from the date of enrolment/commissioning only, and not thereafter. He also submitted that it is incorrect that respondents are not taking any action on his representations since 2001 rather they are sitting over it without any reason. As a matter of fact applicant's request regarding change in his date of birth in Service records has been considered and turned down by the respondent No. 2 by a reasoned order dated 25.07.2011, copy whereof has been filed as Annexure R-1 to the Objection filed against interim relief application and applicant has also been intimated about the same. He submitted that if applicant was aggrieved with the order he could have preferred a Statutory Complaint against it as provided under Section 27

of the Army Act, 1950 read with Para 364 of Defence Service Regulations (Regulations for the Army), which he consciously did not do and is now raising the issue again just before a month from his retirement.

10. Ld. Counsel for the respondents further submitted that there is nothing in the decree of Civil Court, issuing direction to respondents to do correction in applicant's date of birth in his Service records. He also submitted that process to fill vacancy of Brigadier in AMC (NT) falling due on 01.08.2021 has began along with other vacancies in other cadres and any interference therein by way of interim relief would cause great inconvenience not only to the respondents but to the officers also who are to get promotion on completion of process.

11. Upon hearing respective submissions of Ld. Counsel of the parties we find it incorrect at this stage that applicant's date of birth as 23.05.1964 was mistakenly recorded in his educational documents, as applicant says. Annexure No. 3 to Original Application, which is copy of representation dated 14 April 2001, probably the 1st representation made by the applicant to the respondent No. 2 seeking correction in his date of birth in Service records, clearly states that applicant's date of birth in School Register at the time of admission in 1st Standard was not due to any mistake rather it was consciously made at the instance of applicant's mother. This is an important aspect of the matter and weakens the applicant's case as Civil Court's decree, on which basis correction in date of birth in applicant's educational documents has been made and on account of which correction in date of birth in Service records is being sought, being based on the fact that incorrect date of birth was mistakenly registered in educational documents. becomes doubtful.

12. We also find that at this stage Birth Certificate filed by the applicant cannot be treated as conclusive proof of correctness of his date of birth. Applicant has nowhere stated in the Original Application and most probably in the Civil Suit filed in City Civil Court that only one male child was born to his parent, he has only said himself to be the only son of his parent.

13. Annexure R-1 filed along with objection to application for interim relief makes clear that respondents are not sitting over the matter regarding correction in date of birth in service records since 2001, as applicant is saying. This document shows that applicant's grievance regarding correction in date of birth in Service records has been considered and rejected by a reasoned order dated 25.07.2011.

14. In a similar matter in the case of Brigadier Ashok Kumar Singh Versus Union of India and Others [Writ Petition (C) No. 9850 of 2005], decided on July 13, 2006, a Division Bench of Hon'ble High Court of Delhi wherein also the dispute was in regard to correction in date of birth of petitioner of that case in his Service records on the basis of correction carried out in educational documents under the Judgment passed by the Hon'ble High Court of Calcutta, it has been ruled that discretion is vested in the appropriate authority of the respondents to accept or decline the request of the petitioner for correction of date of birth and unless the discretion is exercised arbitrarily or offends specific rules which are to the benefit of the employee, the Court would not normally disturb such discretion.

15. In view of the aforesaid discussion, we do not find it a fit case for the grant of interim relief as claimed. We are conscious that observations made above are only

prima facie and not final and Original Application is to be disposed of on merit on completion of pleadings. It goes without saying that in the event of any favourable outcome at the time of final adjudication the consequences will follow.

16. With aforesaid, request for the grant of interim relief is refused. Application for Interim Relief stands decided accordingly.

17. Let a copy of this order be provided to the Ld. Counsel of both sides within two days.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

AKD/-

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

O.A. No. 259 of 2021

Gp. Capt. (Dr.) Ajoy Kumar Mishra (Retd.)
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.05.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Shri Asheesh Agnihotri, Advocate filed power today in Court on behalf of the respondents which is taken on record.</p> <p>Heard Wg. Cdr. S.N. Dwivedi (Retd.), Ld. Counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents.</p> <p>It is a fit case for adjudication.</p> <p>Admit.</p> <p>Issue notice to the respondents.</p> <p>Shri Asheesh Agnihotri, Advocate has accepted notice on behalf of respondents and he seeks and is allowed six weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.</p> <p>List the matter before Registrar on 02.08.2021 for exchange of pleadings.</p> <p>List the matter before Tribunal on 25.08.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/-</p>

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{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

M.A. No. 258 of 2021 Inre : T.A. No. 48 of 2017

Union of India & Others By Legal Practitioner for the Applicants	Applicants
Versus	
Surendra Singh Saxena By Legal Practitioner for Respondent	Respondent

Notes of the Registry	Orders of the Tribunal		
	<p><u>27.05.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">On the case being taken up for hearing Shri Ashish Kumar Singh, Ld. Counsel for the applicants-Union of India & Others and Shri Bachchan Singh, Ld. Counsel for the respondent are present.</p> <p><u>M.A. No. 258 of 2021</u></p> <p style="text-align: center;">For the reasons stated in affidavit filed in support of substitution application, substitution application is allowed.</p> <p style="text-align: center;">Let amendment be carried out within two weeks.</p> <p><u>T.A. No. 98 of 2016</u></p> <p style="text-align: center;">List on 12.07.2021.</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</td><td style="width: 50%; text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</td></tr></table> <p>AKD/-</p>	(Vice Admiral Abhay Raghunath Karve) Member (A)	(Justice Umesh Chandra Srivastava) Member (J)
(Vice Admiral Abhay Raghunath Karve) Member (A)	(Justice Umesh Chandra Srivastava) Member (J)		

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

O.A. No. 393 of 2020

Ex. MACP Hav. Tejpal Singh Chand
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.05.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>On the case being taken up for hearing Shri Manoj Kumar Awasthi, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present.</p> <p>Pleadings are complete and the case is ripe for hearing.</p> <p>List on 04.08.2021 for final hearing.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/-</p>

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

Diary No. 927 of 2021 Inre : O.A. No. 267 of 2013

Smt. Gomati Devi Wife of Late Kitab Singh (Deceased)
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.05.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>On the case being taken up for hearing Shri Raj Kumar Singh, Ld. Counsel for the General Reserve Engineering Force (GREF) and Shri Namit Sharma, Ld. Counsel for the respondent No. 1 are present.</p> <p><u>Diary No. 927 of 2021</u></p> <p>Heard.</p> <p>This is an application for correction of order dated 28.09.2020 passed in O.A. No. 267 of 2013 by which Shri Raj Kumar Singh, Advocate has prayed that his name be also shown in the said order as Counsel for the respondent Nos. 2 and 3.</p> <p>For the reasons stated in affidavit filed in support of correction application, correction application is allowed.</p> <p>Name of Shri Raj Kumar Singh, Advocate be added as Ld. Counsel for the respondent Nos. 2 and 3 in the order dated 28.09.2020 passed in O.A. No. 267 of 2013 and Shri Namit Sharma, Advocate be shown as Ld. Counsel for the respondent No. 1 in the said order.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/-</p>