

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No. 243 of 2020**

Wednesday, this the 9<sup>th</sup> day of December, 2020

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt. Pinki Devi, Daughter of No. 7101740 Ex Naik (Late)  
Dhiraj Singh, Resident of Village & Post : Nirsukha,  
District – Bulandshahar (UP), PIN – 245411.

..... Applicant

Ld. Counsel for the: **Shri R Chandra**, Advocate  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence Government of India, New Delhi.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ Post Office New Delhi – 110011.
3. The Officer In- Charge, EME Records, PIN – 900453.
4. Zila Sainik Kalyan Evam Punarvas Karyalaya,  
Bulandshahar (UP) - 203001

..... Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**  
Respondents Central Govt Counsel

**ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

*(I). The Hon’ble Tribunal may be pleased to set aside the order dated 20/08/2016 (Annexure No A-1) and Order dated 01/08/2017 (Annexure No A-1).*

*(II). The Hon’ble Tribunal may be pleased to direct the respondents to publish personal occurrence regarding her birth in Part II Order and her name be entered in her late father’s service records as daughter.*

*(III). Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Facts giving rise to Original Application in brief are that father of the applicant late Nk Dhiraj Singh was enrolled in the Army on 05.01.1966. Son named Sanjay Pal was born to him on 12.10.1974 and order regarding his birth was published vide Part II Order No EME/39/18/79. His second son named Manoj Kumar was born on 01 Jan 1994 and casualty of his birth was published vide Part II Order No. 0560/NE-1 & PG/005/2010. Applicant Pinki was born on 10.01.1978, but part II order regarding her birth could not be published by her late father. Applicant’s father was discharged from service on 06.01.1982 and granted service pension. Applicant Pinki was married with Shri Dharmendra on 13.04.1995. Her husband

Dharmendra died on 12.10.2010. Mother of the applicant died on 04.04.2011. Father of the applicant Nk Dhiraj Singh died on 02.02.2016. After death of Nk Dhiraj Singh, family pension was granted to his son Manoj Kumar w.e.f. 03.02.2018 to 31.12.2018. Applicant approached respondent No. 3 time and again for publication of Part II order of her birth so that her name could be entered in the service document of her late father Nk Dhiraj Singh, but the same was rejected stating Ex Service Man (ESM) and Next of Kin (NOK) having not approached during their life time, for publication of birth Part II Order, now it was not possible. Aggrieved with denial to publish Part II Order, applicant has approached this Tribunal for publication of part II Order of her birth.

3. Learned counsel for the applicant submitted that applicant requested Respondent No 3 in the year 2016 for publication of Part II Order of her birth but the same was denied. Applicant again requested in the year 2017 through Zila Sainik Kalyan Evam Punarvas karyalaya, Bulandshahar, but the same was again rejected stating ESM never declared about her birth and, now after the death of her father, it was not feasible to ascertain the facts. Learned counsel for the applicant, in the given facts, submitted that Zila Sainik Board be directed to ascertain and check the facts from pariwar register, Brith Certificate, Adhar Card, School Certificate, and administrative authorities and Part II Order of her birth be published.

4. Per contra, learned counsel for the respondents submitted that there is no dispute that in army record details of family members are recorded, including their age, birth place etc. In the instant case father of the applicant has two sons, one Sanjay Pal whose date of birth is 12.10.1974 and, second son Manoj Kumar whose date of birth is 01.01.1994. Ex soldier Nk Dhiraj Singh and his wife died on 02.02.2016 and 04.04.2011 respectively. After the death of Nk Dhiraj Singh, family pension was granted to his son Manoj Kumar w.e.f. 03.02.2018 to 31.12.2018. Applicant's request for publishing part II Order of her birth was considered by the respondents and was suitably replied. Since applicant approached for publication of Part II Order of her birth with inordinate delay, the same being not possible was rightly rejected, which needs no interference.

5. We have heard Shri R. Chandra, learned counsel for the applicant as well as Shri Ashish Kumar Singh, learned counsel for the respondents and perused the record.

6. The controversy in question runs in a very narrow compass. Admittedly, applicant approached the respondents for publication of Part II Order regarding her birth in accordance with Pariwar Register, Birth Certificate, Adhar Card and School Certificate in the year 2016. Respondent No.3 denied the same stating publication of Part II Order was not possible at belated stage. Since both ESM and NOK were died, EME Records forwarded family pension claim

documents to Mr. Manoj Kumar, son of the deceased ESM and family pension was granted to him.

7. The applicant forwarded affidavit and certain documents for publication of her birth Part II Order. Respondent No 3 returned the documents stating there was only 3 months variation between birth of elder son of ESM on 12.10.1974 and the applicant on 10.01.1975 which was never possible. The applicant intimated that her date of birth had erroneously mentioned in her board certificate and also that her correct date of birth was 10.10.1978, and requested to publish Part II Order for her birth. The applicant again approached Respondent No 3, through Zila Sainik Kalyaan Evam Punarvas Karyalaya, Bulandshahar, for publication of her birth part II Order, but the same was again rejected citing variation between certificate dated 25.06.2016 issued by the City Magistrate, Bulandshahar, stating therein applicant being married while in affidavit submitted by the applicant herself she was a widow. Zila Sainik Kalyan Evam Punarvas Karyalaya again resubmitted the documents duly clarifying the aforesaid observations, but the birth Part II Order was not published and the documents were returned to her.

8. The applicant had forwarded the following documents along with other relevant informations to show that her date of birth is 01.01.1978:

- (a). Adhar card,
- (b). Birth Certificate issued by UP Administration.

- (c). Pariwar Register.
- (d). Transfer Certificate of Junior High School Lakhavati, Bulandshahar.
- (e). Pan Card.

9. A plain reading of the impugned order shows that respondents have declined to take action, with regard to publication of applicant's date of birth, on the ground that publication of birth Part II Order is not permissible at the belated stage. The basic aim of policy on the subject is to rectify any initial clerical level mistake and also to address the genuine cases. OIC Records is the competent authority to approve a change request, and if any case is found to be doubtful, the approval can be denied within the ambit of the policy. Each case is required to be examined and decided by the competent authority on its own merits. 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. 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 and (2009) 1 SCC 80, Mohd. Yunus Khan vs. U.P. Power Corpn Ltd. But, the fact remains that all the above mentioned cases deal with the serving incumbents, and not in respect of family members. Undoubtedly, correction is necessary to avail the benefit of pension in pursuance to relationship certificate

issued by the Armed Forces, in the present case Army, which includes date of birth of the applicant.

11. We are of the considered opinion that publication of birth Part II Order, name etc. of the family members in the Army record even after retirement should be held permissible, in case the prayer is based on genuine and bonafide grounds. In the present case applicant's birth Part II Order can be published on the basis of various documents submitted in support of claim.

12. While declining to consider applicant's case for publication of birth Part II Order, respondents have placed reliance on the policy of serving/ retired member of the Army, and not the family members. Thus, the Record Officer appears to have failed to apply mind and his findings and observations based on unfounded grounds and policy are not sustainable under the facts and circumstances of the present case. The respondents ought to have taken into account that publication of birth Part II Order and relationship of the family members in the service record, even after retirement, may not be denied, as this may cause irreparable loss and injury to the children and other members of the family of the army personnel.

13. While considering the non application of mind and denial to consider publication of birth Part II Order on genuine grounds, the Hon'ble Supreme Court in the case of Mohd. Yunus Khan vs. U.P. Power Corpn. Ltd. (supra) has held that opportunity should be 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 mistakes even without complying the principles of natural justice in appropriate cases. Denial to rectify the error seems to be hit by Article 14, read with Article 21 of the Constitution of India.

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

“ The respondent should have accepted the birth certificate as a proof, 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 same, 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.”

15. 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 publication of birth Part II Order of the applicant 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 (daughter), cannot be put to suffer. It is a 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.

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

17. In view of above, we are of the considered opinion that birth Part II Order in respect of applicant Smt Pinki Devi should be published on the basis of Adhar Card, Pan Card, Birth Certificate and Junior High School Certificate, subject to verification of genuineness of the said documents. Applicant's father has served the nation for more than 16 years. She is a poor widow who has no means of livelihood. Let generation to come not suffer on account of fault, if any, on the part of parents.

18. For the aforesaid reasons, O.A. is allowed. The impugned orders dated 20.08.2016 and 01.08.2017, contained in Annexure No.A-2 to the O.A., are set aside. The respondents are directed to publish birth Part II Order of the applicant in accordance with documents produced by her 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 four months from the date of production of certified copy of order.

19. No order as to cost.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : December, 2020  
Ukt/-