

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 713 of 2020****Tuesday, this the 7th day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Ex Hav No. 14800981-M Santosh Kumar
 S/o Shri Radhey Shyam
 R/o Vill – Tiwanga, PO – Amrougha
 Tehsil – Bhognipur, Distt – Kanpur (UP) – 209112

.... ApplicantLd. Counsel for the Applicant : **Shri Virat Anand Singh**, Advocate.

Versus

1. Union of India and others through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Record Officer, ASC Records (South), Bangalore – 560007.

... Respondents

Ld. Counsel for the Respondents : **Shri Asheesh Agnihotri**,
 Govt Standing Counsel

ORDER

1. The instant Original Application has been filed on behalf of the applicants under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicants have sought following reliefs:-

- I) To pass an order to respondents to correct the name and date of birth of the applicant's son with immediate effect.*
- II) To pass further direction to respondent to issue all relevant certificates (relationship certificate) and Identification proof (ID) with corrected name and date of birth.*
- III) To pass orders which their lordship may deem fit and proper in the existing facts and circumstances of the case."*

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 16.09.1988 and invalided out fro service w2.e.f. 12.07.2011 (AN) under Army Rule 13 (3) III (ii) of Army Rules, 1954. The IMB assessed his disability @ 100% for life as attributable to military service and approved a Constant Attendant Allowance for life. Accordingly, he is in receipt of service pension, disability element and Constant Attendant Allowance (CAA) for life. As per service document family details of the applicant are as under :-

Sr. No.	Name	Relationship	Date of Birth
1.	Madhuri Devi	Wife	01.07.1971
2.	Sadhana Devi	Daughter	30.05.1991
3.	Kumar Sourabh Singh	Son	07.10.1999

Final review of Sheet Roll in respect of the applicant was carried out by ASC Records, Bangalore before proceeding on discharge from service and applicant was also intimated to peruse it and to intimate if any discrepancies in the service records of the family but no such discrepancy was neither noticed by the applicant nor intimated by the applicant/unit concerned. Accordingly, details of son, Kumar Sourabh Singh with date of birth 07.10.1999 was recorded as per service records in Discharge Book, issued to the applicant. The applicant approached ASC Records (South) through Zila Sainik Kalyan Adhikari, Kanpur Dehat vide letter dated 29.01.2018 to issue relationship certificate in the respect of his son Saurabh Nishad instead of Kumar Sourabh Singh. As per service records held with Record Office, date of birth of his son Kumar Sourabh Singh is recorded as 07.10.1999 as per Part II Order published. Accordingly, ASC Records vide letter dated 16.02.2018

replied to the applicant that as per IHQ of MoD (Army) letter dated 27.01.2014 and 13.11.2014, request for change of name and date of birth does not seem to be genuine and cannot be considered as applicant has malafide intention to get undue advantage for enrolment of his son in the Army. Being aggrieved, the present O.A. has been filed for making correction in name and date of birth of applicant's son in service record and thereafter, to issue a relationship certificate.

3. Learned counsel for the applicant submitted that applicant was invalided out from service in P5 category being 100% disable. The name and date of birth of applicant's son has been erroneously recorded in service records as Kumar Sourabh Singh, date of birth – 07.10.1999 whereas as per Matriculation certificate (annexed with O.A.) name of his son is 'Saurabh Nishad' and date of birth is '07.10.2001'. The applicant's son could not avail any benefit as dependant of ex-serviceman as the relationship certificate issued by Record Office bears different name and date of birth. The applicant sent an application to Record Office through Zila Sainik Kalyan Adhikari, Kanpur Dehat on 29.01.2018 alongwith required documents but Record Office rejected his application for change of name and date of birth of his son vide their letter dated 16.02.2018.

4. Learned counsel for the applicant further submitted that applicant was disable and bed-ridden with 100% disability and thus could not notice to get it corrected while being discharged from service. Determination of date of birth of any individual is considered from his Matriculation certificate and name of any son as culture carries his clan sir-name behind in Indian sub-continent, thus, keeping aforesaid in

mind, change in name and date of birth of applicant's son should be corrected/amended by the Record Office in service records of the applicant and accordingly, a relationship certificate with correct name and date of birth, i.e. Saurabh Nishad, DOB - 07.10.2001 be issued to applicant's son to get benefit of dependant of ex-serviceman for his age.

5. Learned counsel for the applicant also placed reliance on the judgment of AFT (RB), Lucknow in O.A. No. 306 of 2017, ***Khalid Hussain Siddiqui vs. Union of India & Others***, decided on 07.09.2018 and O.A. No. 279 of 2015, ***Sub Satya Pal Singh vs. Union of India & Others***, decided on 11.05.2017 and pleaded that applicant's case is squarely covered with these judgments and accordingly, entry in service records of the applicant should also be made and a relationship certificate with correct name and date of birth should be issued to applicant's son to get benefit of dependant of ex-serviceman.

6. On the other hand, learned counsel for the respondents submitted that as per service records family details of the applicant are as under :-

Sr. No.	Name	Relationship	Date of Birth
1.	Madhuri Devi	Wife	01.07.1971
2.	Sadhana Devi	Daughter	30.05.1991
3.	Kumar Sourabh Singh	Son	07.10.1999

But as per matriculation certificate of applicant's son, the name of applicant is shown as Santosh Kumar Nishad and name of wife is shown as Madhuri Nishad which are also not tallying with the service documents of the applicant.

7. Learned counsel for the respondents further submitted that final review of Sheet Roll in respect of the applicant was carried out by ASC

Records, Bangalore before proceeding on discharge from service and applicant was also intimated to peruse it and to intimate if any discrepancies in the service records of the family but no such discrepancy was neither noticed by the applicant nor intimated by the applicant/unit concerned. Accordingly, details of son, Kumar Sourabh Singh with date of birth 07.10.1999 was correctly recorded in Discharge Book, issued to the applicant. The applicant approached to ASC Records (South) through Zila Sainik Kalyan Office, Kanpur Dehat vide letter dated 29.01.2018 to issue relationship certificate in respect of his son Saurabh Nishad instead of Kumar Sourabh Singh. Since, as per service records held with Record Office, date of birth of his son Kumar Sourabh Singh is recorded as 07.10.1999 as per Part II Order published, accordingly, ASC Records vide letter dated 16.02.2018 replied to the applicant that as per IHQ of MoD (Army) letter dated 27.01.2014 and 13.11.2014 request for change of name and date of birth does not seem to be genuine and cannot be considered as applicant has malafide intention to get undue advantage for enrolment of his son in the Army. Hence, applicant's case for change in name and date of birth is not genuine and not tenable in the eyes of law being devoid of merits. He pleaded for dismissal of O.A.

8. We have heard learned counsel for the parties and perused the records.

9. We observe that in Matriculation Certificate of applicant's son (annexed with O.A.), name is recorded as 'Saurabh Nishad' and his date of birth is '07.10.2001'. After considering the application dated 16.01.2018 and documents submitted by the applicant for correction of

name and date of birth of his son in the Army record, Record Office rejected applicant's application and declined to correct name and date of birth of his son vide impugned order dated 16.02.2018 which shows that respondents declined to take any action with regard to correction of name and date of birth on the ground that as per policy letter dated 13.11.2014, correction in name and date of birth in service documents is not permissible at the belated stage as 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.

10. 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 name and date of birth of applicant's son has been recorded as 'Saurabh Nishad' and 07.10.2001 respectively in his Matriculation Certificate.

11. The 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 the parties shall bear their respective costs.”

12. 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 Matriculation 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.

13. To ensure the required entry in service record, to establish relationship was applicant's (father's) duty and failing to do so may be 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.

14. Army should have done necessary correction keeping in view the entry with regard to name and date of birth in the Matriculation certificate, subject to verifying its genuineness.

15. In a judgment (2011) 9 SCR 859 **Shah Nawaj vs. State of U.P. and another**, the 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.

16. In (2005) 12 SCC 201 **Coal India Ltd and another vs. Ardhendu Bikas Bhattacharjee and others** their Lordships of the 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.

17. In view of above, we are of the considered opinion that name and date of birth of applicant's son should be corrected on the basis of Matriculation certificate i.e. name – 'Saurabh Nishad' and date of birth – '07.10.2001' by deleting the earlier entry, subject to verification of genuineness of Matriculation certificate. Let generation to come not suffer on account of fault, if any on the part of the parents.

18. For the aforesaid reasons, O.A. deserves to be allowed, hence **allowed**. The impugned order passed by the respondents is set aside. The respondents are directed to correct the name and date of birth of the applicant's son in accordance with entry made in Matriculation 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 three months from the date of communication of present order. Applicant is also directed to submit requisite documents to Record Office concerned, if asked, for getting necessary casualty published.

19. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated : 7th Sept., 2021
SB

(Justice Umesh Chandra Srivastava)
Member (J)