

RESERVED

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

Original Application No. 135 of 2020

Tuesday, this the 05th day of October, 2021

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

Suneel Kumar son of late NC (E) Mewa Lal (800482), resident of Village & Post-Mohgaon, District-Kaushambi.

.... Applicant

Ld. Counsel for the: **Ms Ruby Singh**, Advocate.
Applicant

Versus

1. Union of India through Secretary Department of Air Force, Ministry of Defence, Government of India, New Delhi.
2. The WOIC Dir-III A (Wel) Dte of AV, Air Headquarters, Subroto Park, New Delhi.
3. The Wg Cdr JDAV-III (Wel) Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi.
4. Air Officer Commanding, 7 Air Force Hospital, Kanpur.

... Respondents

Ld. Counsel for the: **Shri Ashish Kumar Singh**, Advocate
Respondents. Govt Standing Counsel.

ORDER

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

(a) To issue an order or direction to the opp. parties to immediately consider the case of the applicant for compassionate appointment as per his qualification on the appropriate post due to the reason that his father late Ex NC(E) Mewa Lal (800482) died during his service on 14.10.2014.

(b) That any other relief which may be considered fit and proper in the facts and circumstances of the case may kindly be granted to the applicant, including cost of the application.

2. Brief facts of the case are that Shri Mewa Lal (800482) was enrolled in Indian Air Force as Non Combatant (Enrolled) on 12.03.1982 and during service he died on 06.10.2014. Smt Brijrani Devi, widow of deceased NC (E) submitted representation dated 03.11.2014 for compassionate appointment of her son under the provisions of 'Employment Assistance Under Indigent Circumstances Scheme'. This scheme provides 5% compassionate appointment to the dependents in group 'C' posts whose parents die while in service. In response to application dated 03.11.2014 respondents permitted applicant Suneel Kumar (elder son of Brijrani Devi) to submit application to the department which on

submission was received on 18.10.2017 and forwarded to Air Headquarters, Subroto Park, New Delhi. The application having certain defects was returned to applicant on 27.03.2018 which he never re-submitted to respondents duly rectified. In this regard the respondents vide letter dated 14.02.2019 intimated applicant to re-submit corrected application and instead of re-submitting corrected application, he filed this O.A. for compassionate appointment.

3. Learned counsel for the applicant submitted that application for compassionate appointment submitted by applicant has not been considered even after submitting various representations to authorities concerned. His further submission is that impugned action on the part of respondents for not considering his compassionate appointment is illegal and arbitrary. He pleaded for issue of directions to respondents for his compassionate appointment vide 'Employment Assistance Under Indigent Circumstances Scheme'.

4. Learned counsel for the respondents on the other hand submitted that on receipt of completed application from applicant it was scrutinised by the respondents and on account of there being some discrepancies/errors, it was returned to applicant vide letter dated 27.03.2018 for rectification and return but it has not been received back even after issuing a reminder dated 14.02.2019 in this regard. His further

contention is that there is mismatch in name and date of birth recorded in educational certificates and Personal Occurrence Report dated 09.09.1991 maintained by the respondents. On the basis of educational certificate and service record, it can easily be held that there is forgery with regard to date of birth as applicant being elder was born on 05.07.1992 (as per Educational Certificate) and his younger brother Deepak Kumar was born on 20.02.1992 i.e. prior to birth of his elder brother. He pleaded for dismissal of O.A.

5. We have heard learned counsel for both the sides and perused the material placed on record.

6. It is not disputed that applicant is son of deceased NC (E) Mewa Lal who, while serving in Air Force, died on 06.10.2014. After his death applicant submitted an application under the provisions of 'Employment Assistance Under Indigent Circumstances Scheme' for service which was returned with some observations vide letter dated 27.03.2018 and as per records it was never re-submitted to the respondents duly rectified. Applicant has also pleaded that there are certain mismatch between his name and date of birth of his educational certificates and records held by the respondents which needs correction. Name and dates of birth recorded in service documents and educational certificates in respect of applicant are as under:-

Elder Son who filed O.A.

	<u>Name</u>	<u>Date of Birth</u>
Edn documents	Suneel Kumar	05.07.1992
Service Records	Sunil	27.03.1990

Younger Son

Education documents	Not applicable	Not Applicable
Service Records	Deepak Kumar	20.02.1992

7. During the course of hearing, learned counsel for the respondents submitted that the aforesaid name and date of birth on record are exactly as per declaration given by father of applicant and same was notified by personal occurrence No. 15 FBSU/44/1991 dated 09.09.1991. We have perused the records and found that respondents contention is correct.

8. Applicant had applied for a job in place of his deceased father's post under 'Employment Assistance Under Indigent Circumstances Scheme' and the same could not be processed due to mismatch of applicant's name and date of birth in educational certificates and service records.

9. In this regard, we would like to refer to policy letter dated 27.01.2014 with regard to correction of name and change of date of birth in respect of children of Central Govt Employees which is reproduced as under:-

"6. Where a date of birth should undergo correction in service document consequent to typographical/clerical error, the case will be referred to Record Office. Upon receipt of such case, the

matter will be checked with supporting documents already provided by individual at initial stage of declaring the occurrence, declaration given by individual and Part II Order published originally. In case, it is found and proved from the documents that the error has taken place solely due to typographical/clerical reasons necessary approval of OIC Records will be obtained for correcting the error through Part II Orders to be published by Record Office. However, cases where service documents have already been destroyed, will not be entertained."

10. From the aforesaid, it is clear that if there is a typographical error while publishing Part II Order/Personal Occurrence Report, it can be corrected by approval of Officer-in-Charge, Records but in the instant case names and dates of birth published through Personal Occurrence Report dated 09.09.1991 are entirely different to that of educational certificate. The typographical error may be in date or month or year but complete date of birth cannot be totally different which creates a doubt in mind that there is other motive for change in complete date of birth. The Hon'ble Apex Court in the case of ***Bharat Coking Coal Ltd & Ors vs Shyam Kishore Singh***, Civil Appeal No. 1009 of 2020 has held on 05.02.2020 that while spelling in name can be corrected being a typographical error, date of birth as entered in service register of an employee cannot be changed at the fag end of the service even if there is good evidence to establish that the recorded date of

birth is erroneous, the correction cannot be claimed as a matter of right.

11. In addition to above, a perusal of records indicates that applicant's date of birth as per educational certificate is 05.07.1992 whereas as per record his date of birth is 27.03.1990. If we take date of birth recorded in educational certificate of the applicant as correct i.e. 05.07.1992 and date of birth in respect of his younger brother being 20.02.1992 as per service records, one can imagine as to how it could be possible that an elder brother comes to this world later than his younger brother.

12. We have also observed that it has become a trend that parents are getting recorded lesser age of their children in school certificates than the actual age to get undue advantage of age. When the children grow up, they try to get it corrected either by submitting applications or by approaching before the court. In this regard, we are of the opinion that correct date of birth is that which is declared by parents and notified by Part II Orders/Personal Occurrence Report published as per declaration made by parents.

13. In view of the above, we decline to interfere in the matter of correction in date of birth in respect of applicant. However, we direct Air Force authorities to make correction of name in respect of applicant as under:-

For : Sunil

Read : Suneel Kumar

14. We also direct Board of High School and Intermediate Education, U.P. to make correction in date of birth in respect of applicant which is recorded in service documents of his deceased father as under:-

Date of birth : 27.03.1990

15. Applicant is directed to submit corrected application to Air Force authorities for processing. Respondent authorities (Air Force) are directed to consider his application on merit.

16. In view of the above, the O.A. is disposed off.

17. No order as to costs.

18. Pending applications, if any, are disposed off.

19. Let a copy of this order be forwarded to the Board of High School and Intermediate Education, U.P. for making necessary correction with regard to change of name and date of birth in respect of aforementioned applicant.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 05.10.2021

rathore