

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 510 of 2022**

Friday, this the 14th day of October, 2022

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

Smt Shashibala divorced daughter of No 1429456 Ex Spr (late) Madan Pal Singh, R/o Vill-Nagla Madaripur, P.O.-Unchagaon, P.S.-Narsena, Teh-Syana, Distt-Bulandshahr (UP)-202398.

.....Applicant

Learned counsel for: **Shri Ravi Kumar Yadav**, Advocate
the Applicant

Versus

1. The Union of India, Rep by the Secretary, Govt of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post-DHQ, New Delhi-110011.
3. The Officer-in-Charge, Bengal Engineer Group Records, PIN-908779, C/o 56 APO.
4. PCDA (P) (Army), Draupadi Ghat, Allahabad (UP)-212114.

.....Respondents

Learned counsel for the : **Shri Alok Kumar Mishra**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

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

(i) To quash and set aside the respondent No 3 letter No 1429456/DR/R/NE-6 (P) dated 25 Mar 2021 (Annexure A-1 of instant O.A. & impugned order).

(ii) To issue/pass an order or direction of appropriate nature to the respondents to publish personal occurrence regarding her correct name and date of birth in Part II Order (divorced) and issue the relationship certificate to the applicant.

(iii) to issue/pass an order or direction of appropriate nature to the respondents to grant the family pension to applicant from next date of death of her deceased father Ex Spr Madan Pal Singh (died on 25 Dec 2018) and pay the arrears of family pension along with suitable rate of interest.

(iv) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

2. The salient facts in nutshell are that applicant's father was enrolled in the Indian Army and after retirement he was granted service pension w.e.f. 01.01.1979. On 27.04.2006 applicant was married with Ajeet Singh. Both husband and wife were living separately w.e.f. 05.05.2011. On the basis of mutual consent divorce decree was passed vide order dated 03.02.1017. After death of applicant's father on 25.12.2018 she applied for family pension through Zila Sainik Board, Bulandshahr to which she was informed that in service record her name is recorded as Sasi Kumari (DOB-06.01.1975) and not Shashibala (DOB-15.03.1975). Thereafter, she submitted application along with supporting documents for correct publication of Part-II Order but it was denied on the ground

that she approached the authorities after death of her father. Applicant has filed this O.A. for correction of her name and date of birth in service record of her deceased father and grant of family pension being divorced daughter.

3. Learned counsel for the applicant submitted that the applicant being divorced daughter of her deceased father is entitled to family pension in terms of policy letter dated 15.05.2015 and 04.05.2020. He further submitted that applicant's mother died on 09.06.2016 and thereafter, her father died on 25.12.2018. It was further submitted that since at the time when her father died, she was wholly dependent on her father being divorced daughter and was living with her father, therefore, she is entitled to family pension.

4. Learned counsel for the applicant further submitted that applicant's correct name is Shashibala and her date of birth is 15.03.1976 but erroneously her name and date of birth was recorded in service book of her father as Sasi Kumari (date of birth-06.01.1975). He pleaded for correction of her name and date birth in service record of her deceased father to enable her to receive family pension which she is entitled to. In support of his contention learned counsel for the applicant has placed reliance on order dated 09.12.2020 passed by this Tribunal in O.A. No. 243/2020, ***Pinki Devi vs Union of India & Ors.***

5. On the other hand, learned counsel for the respondents submitted that No. 1429456L Ex Spr (late) Madan Pal Singh was enrolled in the Army on 14.12.1962 and he was discharged

from service on 31.12.1978 (AN). After discharge he was granted service pension vide PPO No. S/14097779 (Army) dated 02.04.1979. He further submitted that father of the applicant died on 25.12.2018 as per death certificate No 03090 dated 23.02.2019 and her mother died on 09.06.2016 as per death certificate No 17510 dated 03.11.2018.

6. Learned counsel for the respondents further submitted that applicant claiming to be divorced daughter of No. 1429456L Ex Spr (late) Madan Pal Singh submitted an application dated 29.08.2020 requesting for endorsement of her corrected name in sheet roll by publishing Part II Order and grant of family pension being divorced daughter. He further submitted that since her name and date of birth was not matching with the records endorsed in sheet roll, she was advised to submit copy of Aadhar Card and PAN Card. Thereafter, applicant submitted another application dated 14.12.2020 through Zila Sainik Kalyan Evam Punarvas Karyalaya, Bulandshahar requesting for correction of name and date of birth but in turn she was denied stating that after death of her father it is not possible. She was instead advised to apply for correction of her name and date of birth in civil records as per entries made in sheet roll.

7. Learned counsel for the respondents further submitted that as per Para 2 of IHQ of MoD (Army) letter dated 13.11.2014 amendment/correction in name and date of birth may be corrected if there was any initial clerical error but in the

instant case applicant's name and date of birth are different and the deceased soldier had never approached BEG Records, Roorkee for change of name and date of birth of his daughter during service period/after discharge, therefore it is not feasible to correct the same at this belated stage. He pleaded for dismissal of O.A.

8. Heard Shri Ravi Kumar Yadav, learned counsel for the applicant and Shri Alok Kumar Mishra, learned counsel for the respondents and perused the record.

9. No. 1429456L Ex Spr (late) was in receipt of service pension and he died on 25.12.2018. Prior to his death, in the year 2016 his wife Suwdra Devi died on 09.06.2016. It is not in dispute that the applicant is a divorced daughter of the deceased soldier. There is a dispute that applicant's name and date of birth is not as per entries recorded in sheet roll of the deceased soldier.

10. We observe that in matriculation certificate her name and date of birth is recorded as Shashi Bala (DOB-15.03.1976) whereas in service records her name and date of birth is recorded as Sasi Kumari (DOB-06.01.1975) which was published vide Part II Order No 60/31/1975.

11. After considering her application dated 14.12.2020 and documents submitted by the applicant for correction of name and date of birth, Records Office rejected applicant's plea vide letter dated 25.03.2021 (Annexure A-1) stating that as per policy letter dated 13.11.2014 correction in name and date of

birth in service documents is not permissible at this 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.

12. In regard to this we are of the considered opinion that correction of date of birth and name etc. of the family members in the Army record even after retirement/death 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 the applicant has been recorded as name-Shashi Bala and DOB-15.03.1976 respectively in her matriculation certificate.

13. 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."

14. The analogy may be drawn that the date of birth entered in 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 Aadhar Card and letter issued by District Magistrate, Bulandshahr dated 11.08.2020.

15. We find that on request made by the applicant vide application dated 14.12.2020, the Army should have done necessary correction keeping in view the entry made in matriculation certificate, subject to verifying its genuineness, but it was declined on the basis of the policy letter dated 13.11.2014. In our opinion the date of birth should have been corrected as per matriculation certificate.

16. The Hon'ble Apex Court in ***Shah Nawaj vs. State of U.P. and another***, (2011) 9 SCR 859, has 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.

17. 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.

18. In view of above, we are of the considered opinion that name and date of birth of the applicant should be corrected on the basis of matriculation certificate i.e. name – Shashi Bala and date of birth – 15.03.1976 by deleting the earlier entry,

subject to verification of genuineness of matriculation certificate.

19. For the aforesaid reasons, O.A. deserves to be allowed, hence **allowed**. The impugned order dated 25.03.2021 (Annexure A-1) passed by the respondents is set aside. The respondents are directed to correct the name and date of birth of the applicant in accordance with entry made in matriculation certificate and thereafter, issue 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. After publication of necessary casualty regarding correct name and date of birth, applicant is held to be entitled to grant of family pension in accordance with policy letter dated 04.05.2020 which the respondents shall pay within a period of four months from today. Default will invite interest @ 8% p.a. However, due to law of limitations, applicant shall be entitled for family pension w.e.f. three years preceding the date of filing of this O.A. This O.A. was filed on 29.06.2022.

20. No order as to costs.

21. Miscellaneous applications, pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 14.10.2022

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