

**RESERVED**

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

**ORIGINAL APPLICATION No. 252 of 2021**

Monday, this the 09<sup>th</sup> day of August, 2021

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

Col P Yesudian Sugumar (NTR 16636L), son of Pitchaimani Nadar, presently posted as the Commanding Officer, No 1 Military Training Battalion, AMC Centre and College, PIN-900450, C/O 56 APO.

..... Applicant

Ld. Counsel for the Applicant : **Shri Yashpal Singh**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Secretariat, New Delhi-110001.
2. Director General of Armed Forces Medical Services, Ministry of Defence, ‘M’ Block, New Delhi-110001.
3. Director General of Medical Services (Army), Integrated Headquarters of the Ministry of Defence (Army), Adjutant General’s Branch, ‘L’ Block, New Delhi-110001.
4. Commandant and OIC Records, Army Medical Corps Centre and College, Lucknow.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Sunil Sharma**, Advocate  
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:-

- (a) *Issuing/passing of an order setting aside the order/letter dated 17.08.2020 as amended by order/letter dated 01.09.2020 (Annexure No 1) to the extent the same relates to the applicant.*
- (b) *Issuing/passing of an order directing the respondents to consider and decide the issue relating to change of date of birth of the applicant in the service records as 28.06.1965 in place of 23.05.1964, with all consequential service benefits including continuity of service by changing the date of retirement of the applicant from 31.05.2021 to 30.06.2022 and consideration for promotion in the next rank.*
- (c) *Issuing/passing of any other consequential order or direction as this Hon'ble Tribunal may deem fit under the circumstances of the case.*
- (d) *Allowing this Original Application with cost.*

2. Brief facts of the case are that the applicant was born on 28.06.1965 in a rural village in District Tuticorin of Tamil Nadu. As stated by applicant at the time of admission in 1<sup>st</sup> 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. In 2001, applicant came to know his correct date of birth being 28.06.1965 through his mother in the course of family discussion. Thereafter, he obtained copy of his Birth Certificate from the Department of Registration and made representation dated 14.04.2001 to respondents seeking correction in his date of birth in

service records. Later he realised that correction in service record could be possible if date of birth was corrected in educational documents. Therefore, he filed 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 *ex parte* on 23.07.2007. In the aforesaid suit respondent Nos. 4 and 5 were a party who appeared and filed written statement but thereafter absented from the proceedings. State of Tamil Nadu and Education Department had filed application along with application for condonation of delay to recall the *ex parte* decree which was dismissed on 01.02.2016 and, consequently, his date of birth was corrected in educational documents by endorsing his date of birth as 28.06.1965 in place of 23.05.1964. After educational documents being corrected applicant again approached to Director General of Armed Forces Medical Services, Ministry of Defence on several occasions requesting him to make correction in his date of birth in service record but it was not done. On 25.07.2011 respondents issued a detailed order rejecting applicant's representations for making correction in his service record. Applicant superannuated on 31.05.2021. This O.A. has been filed for correction of date of birth in his service records.

3. Ld. Counsel for the applicant submitted that applicant's case is fully supported with (i) Birth Certificate and (ii) decree passed by a City Civil Court, Chennai, Annexure No. 2 and Annexure No. 4 respectively, filed along with Original Application, which clearly

establish 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 parents 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 has been 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. 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 family 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 (later relaxed to five 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.

4. On the other hand, submission of learned counsel for the respondents is 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 (Annexure R-1). 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 at the end of his service.

5. Heard learned counsel for the parties and perused the material placed on record.

6. It is not disputed that applicant's date of birth was mentioned as 23.05.1964 when he was enrolled/commissioned in the Army and by a decree dated 23.07.2007 he has got changed his date of birth from 23.05.1964 to 28.06.1965 and accordingly, his educational certificates were endorsed with 28.06.1965 as his date of birth.

7. It is observed that in Civil Suit No. 4594 of 2004 decreed on 23.07.2007 the main respondents, though were made party but they were absent and the order was passed exparte. Later recall

application filed by respondents was dismissed being filed belatedly. Further, in exparte order dated 23.07.2007, there is no direction to the respondents to incorporate change of date of birth in service record of applicant.

8. Respondents have taken stand that a Govt servant is eligible for correction of his date of birth in his service records within a certain period after enrolment/commission. In this regard, learned counsel for the respondents have relied upon the Hon'ble Supreme Court judgment in the case of ***Union of India & Ors vs Harnam Singh***, (1993) 2 SCC 162. For convenience sake, operative portion of the aforesaid judgment is as under:-

*“It is nonetheless competent for the Govt to fix a time limit, in the service rules, after which no application for correction of date of birth of a Govt servant can be entertained. A Govt servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous.”*

*(underlined by us)*

9. It is also observed that applicant's representation for change in date of birth was rejected by competent authority vide letter dated 25.07.2011 giving cogent reasons for its rejection. Extract of letter dated 25.07.2011 is appended below:-

“ORDER

1. *Whereas, NTR-16636-L Lt Col Y Sugumar P of 431 Fd Hosp has submitted an application dated 23 Mar 2011 requesting for change of date of birth from 23 May 1964 to 28 Jun 1965 in his service record.*

2. *And whereas, NTR-16636-L Lt Col Y Sugumar P has forwarded a copy of City Civil Court Chennai decree dated 23 Jul 2007 in case No OS-4595/2004 for change of date of birth in his service record.*

3. *And whereas, after critical examination of the available documents as well as AO/22/2002/MP, it is found that under the provision of para 22 of the said AO, request for change in date of birth, if any, will be made without any unreasonable delay. It also provides that the maximum time limit for seeking a change in the date of birth will be five years from the date of commission and request for change after the stipulated period will not be entertained, even if the officer has good evidence to establish that the recorded date of birth is clearly erroneous.*

4. *And whereas, NTR-16636-L Lt Col Y Sugumar P was initially enrolled as Sepoy in AMC on 29 Dec 1986 and later granted commission on 23 Jan 1993. The officer, therefore should have applied for change of date of birth either in the period of 1986-1991 after enrolment as Sepoy or in the period from 1993-1998 as a commissioned officer. However, the officer did not apply for change of date of birth within the prescribed time frame either after his enrolment as Sepoy or after his commissioning.*

5. *And whereas, as far as the decree of City Civil Court is concerned, it is an ex-parte decree without prejudice to limitation period for amendment of entries into service record, the same is clearly applicable to civil*

*entries and records and it is not applicable for amending his service record at this belated stage.*

*6. The application of the officer dated 23 Mar 2011 is thus disposed off. The Officer may be informed accordingly.”*

10. Thus, from the above, it transpires that the applicant ought to have applied for change in date of birth in service record within the stipulated period of five years after enrolment/commission which he has failed to do so. In this regard applicant's contention is that he knew correct date of birth from his mother in the year 2001 and since then he is pursuing the matter for change in date of birth in service record. In this connection we observe that after passing of exparte judgment in the year 2007 and thereafter despite order dated 25.07.2011 being passed 10 years prior to filing of this O.A., applicant seems to be kept silent on this point. He preferred this O.A. in the year 2021 knowing well that there is a vacancy of Brigadier on 01.08.2021 and he would retire on 31.05.2021 with date of birth as 23.05.1964.

11. On the point of correct date of birth as told by his mother in the year 2001 during family discussion, it may be deduced that it is a concocted story to remain in organization for some more time for further promotion.

12. In a similar matter titled **Major General Raj Pal Singh vs Union of India & Anr**, (1994) 107 PLR 712, their Lordships of the Punjab and Haryana High Court has held as under:-



*“As regards the contention of Mr. Sarin that decree obtained against Punjab University for correcting matriculation certificate of the petitioner is binding on the defendants, cannot be accepted for the reason that the suit in which decree was obtained against Punjab University, defendants were not a party. In this situation, judgment and decree cannot bind the defendants. It was not a judgment in rem but was a judgment in personem.”*

13. We take note from the above pronouncement that applicant’s exparte judgment cannot be binding on the respondents.

14. Additionally, the applicant has slumbered for over a decade to file the O.A. on the subject which also makes him futile, as process for correction in date of birth should have been completed within the stipulated time.

15. In view of what has been discussed hereinabove and in light of the Hon’ble Apex Court judgment in the case of ***Union of India & Ors vs Harnam Singh*** (supra), we are of the view that applicant has not been able to make out a case and the O.A. is liable to be dismissed.

16. It is accordingly, **dismissed**.

17. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 09.08.2021

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