

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 24371 of 2016 (O&M)

Date of Decision: 6.12.2016

Mahal Singh

....Petitioner.

Versus

Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others
...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Barjesh Mittal, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 27.10.2016 (Annexure P-2) passed in OA No. 060/00976/2016 by respondent No.1-Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”).

2. Put shortly, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner joined the Indian Army as Sepoy in the year 1974 and was discharged from the Army on 28.8.2000 vide discharge certificate/identity card (Annexure A-2) after putting in 26 years service. His date of birth in Army service record was got recorded as 11.10.1956 by his parents on the basis of medical report.

During Army service, in the year 1984, the petitioner passed middle

standard examination and in the year 1986 he passed matriculation/secondary school examination from Punjab School Education Board vide certificates dated 17.10.1984 and 30.10.1986 (Annexure A-2 Colly). Thereafter, the petitioner applied to the Army Authorities for change of his date of birth in service record from 11.10.1956 to 23.4.1959. However, his request was declined on the ground that the same was made after a gap of five years from the date of joining service. Respondent No.2 issued a public notice in the year 2008 for recruitment to the post of Nursing Orderly in Employees' State Insurance Corporation, Model Hospital, Ludhiana. In response thereto, the petitioner applied for the said post under Ex-Serviceman category. The petitioner was called for interview vide letter dated 27.10.2008 (Annexure A-4). As such, the petitioner appeared in the office of respondent No.2 for interview on 27.11.2008 along with relevant documents. The petitioner remained successful and was issued appointment letter dated 31.12.2008 (Annexure A-5) by respondent No.2 for the post of Nursing Orderly in Employees' State Insurance Corporation, Model Hospital, Ludhiana. He accordingly joined the said post on 9.1.2009. At the time of said appointment, the petitioner submitted his matriculation certificate as well as discharge record of Army. His date of birth in service record with the respondents was entered as 23.4.1959. A show cause notice dated 5.8.2016 (Annexure A-6) was issued to the petitioner for changing his date of birth to 11.10.1956. The petitioner submitted reply dated 3.9.2016 (Annexure A-7) to the said show cause notice. Respondent No.3 vide order dated 13.10.2016 (Annexure A-1) ordered that the date of birth of the petitioner in the service record with the respondents be entered as 11.10.1956. Thereafter, respondent No.3 issued a charge sheet dated

15.10.2016 (Annexure A-8) to the petitioner. According to the petitioner, as per the letter dated 19.5.1993 (Annexure A-9) issued by Government of India, Department of Personnel & Training OM that the date of birth can only be corrected within five years from the date of appointment and not thereafter by the Government servant. Further, as per Rules (Annexure A-10) incorporated in the Swamy's Manual on Establishment and Administration, the new entrant to Government service should declare his date of birth at the time of initial appointment with documentary evidence, i.e. Matriculation certificate/Municipal Birth Certificate or in the absence thereof, he may declare the approximate age or year or month and year of birth and then the assumed date of birth can be arrived at. The actual date or assumed date of birth once recorded/entered cannot be altered without prior order of Head of Department/except in case of clerical error. After issuance of show cause notice, Annexure A-6, by respondent No.2, the petitioner approached the Principal, Government Senior Secondary School, Kirtowal, Tehsil Patti, District Tarn Taran, Punjab, where he was studying prior to his recruitment in the Army in the year 1974, who issued a certificate dated 20.8.2016 (Annexure A-11) that as per school record, his date of birth is 23.4.1959. Thereafter, respondent No.2 issued a communication dated 22.10.2016 (Annexure A-12) to the office of respondent No.1 to the effect that the petitioner has submitted his appeal to the appellate authority and that a meeting with the representative of respondent No.3 in the presence of Member, Employees' State Insurance was held wherein it was stated that the petitioner had never hidden the fact regarding his two different date of birth and sought further necessary direction. Respondent No.2 vide order dated 26/27.10.2016 (Annexure A-

13) ordered for the retirement of the petitioner from the service of respondent No.3 on attaining the age of superannuation w.e.f. 31.10.2016. Further, the appeal filed by the petitioner was rejected by the appellate authority vide order dated 31.10.2016 (Annexure P-14). Feeling aggrieved by the order dated 13.10.2016 (Annexure A-1), the petitioner filed OA No. 060/00976/2016 before the Tribunal who vide order dated 27.10.2016 (Annexure P-2) dismissed the said OA. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. The Tribunal has noticed that the petitioner had joined Army service in the year 1974 and his date of birth in his service record with the Army was recorded as 11.10.1956. He got re-employment with the respondents as Ex-serviceman and got recorded his date of birth in service record with the respondents as 23.4.1959 which was ordered to be recorded as 11.10.1956. If the correct date of birth of the petitioner is taken as 23.4.1959, then he would not have been entitled to join Army service in the year 1974 as at that time he would have been 15 years of age only. The petitioner taking the benefit of his date of birth as 11.10.1956 joined the Army service in the year 1974 and now he cannot be permitted to say that his date of birth should be recorded as 23.4.1959. Further, his application for correction of date of birth in Army service record was also rejected by the Army authorities. It was further noticed that even if the matriculation certificate was not false, forged or fabricated, it would not entitle the petitioner to get his date of birth recorded as 23.4.1959 in service record with the respondents because his date of birth already recorded in his Army service record was 11.10.1956 on the basis thereof he got entry into Army

service. The relevant findings recorded by the Tribunal read thus:-

“7. We have carefully considered the matter. Admittedly date of birth of the applicant in his service record with the Army was entered as 11.10.1956. He got reemployed with respondents as Ex-serviceman. Consequently his date of birth in service record with the respondents has also been rightly ordered to be recorded as 11.10.1956 instead of 23.4.1959. In this context, it is significant to notice that the applicant joined Army service in the year 1974. If his correct date of birth is 23.4.1959, he would not have been entitled to join Army service in the year 1974 at the age of 15 years only. Thus, the applicant taking benefit of his date of birth as 11.10.1956 joined the Army service in the year 1974. Now the applicant cannot turn around and say that his date of birth should be recorded as 23.4.1959. There is no birth entry of the applicant depicting his date of birth as 23.4.1959. There is also no basis for entering the applicant's date of birth as 23.4.1959 in his matriculation certificate. His application to correct the said date of birth in Army service record was admittedly rejected by the Army Authorities. At the risk of repetition, it has to be highlighted that if correct date of birth of the applicant is assumed to be 23.4.1959, he would not have been entitled to join Army service in 1974 at the age of 15 years only.

8. Entry of applicant in service with respondents cannot be said to be his new entry into service for the purpose of recording his date of birth. On the other hand, it is re-employment of the applicant with the respondents on the ground of the applicant being ex-serviceman. Consequently, his date of birth recorded in Army record as 11.10.1956 has been rightly ordered to be recorded in his service record with the respondents as well. The date of birth of the applicant recorded in Army service record

cannot be said to be incorrect keeping in view his entry into Army service in the year 1974. Even if the matriculation certificate is not false, forged or fabricated, it would not entitle the applicant to get his date of birth recorded as 23.4.1959 in service record with the respondents because his date of birth already recorded in his Army service record is 11.10.1956 on the basis of which he got entry into Army service. He could not have entered into Army service with his date of birth as 23.4.1959.”

5. No illegality or perversity could be pointed out by the learned counsel for the petitioner in the aforesaid findings recorded by the Tribunal, which may warrant interference by this Court. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

December 6, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes