

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16568 of 2013

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BABAN RAY SON OF SHRI BHARAT RAY RESIDENT OF CHOTA
TELPA POLICE STATION CHAPRA TOWN, DISTRICT - SARAN

... .. Petitioner/s

Versus

1. The State Of Bihar (Through The Director General Of Police Bihar, Patna)
2. The Maha Samadesta, Bihar Home Guard, Mukhayalaya, Bihar, Patna
3. The Up - Maha Samadesta Mukhyalaaya, Bihar Home Guard, Patna
4. The Samadesta Mukhyalaya, Bihar Home Guard Patna
5. The District Samadesta, Bihar Home Guard, Gopalganj

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrityunjay Kumar Tiwary
For the Respondent/s	:	Mr. SUBHASH PD. SINGH

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 21-03-2018 This writ petition under Article 226 of the Constitution of India has been filed for a direction to the authorities to allow the petitioner to continue in service according to the date of birth as 05.10.1959 entered in the service book at the time of his appointment and to quash the order dated 25.07.2013 passed by the District Samdesta, Bihar Home Guard, Gopalganj by which he has communicated date of birth of petitioner has been changed from 05.10.1959 to 07.01.1955 on 11.09.1998.

2. Briefly stated the facts of the case is that the petitioner was enrolled and received training on 07.01.1975 as the member of Home Guard in Saran and his age was assessed as 20 years in the age column. Petitioner was appointed as Constable on 29.03.1981 and date of birth was recorded as



05.10.1959 as per date of birth mentioned in his school leaving certificate.

3. It has been submitted that after more than 17 years of service date of birth of petitioner has been changed in service book as 07.01.1955 without any information to petitioner. Petitioner filed an application under Right to Information Act regarding his date of birth and it was communicated that date of birth as in service book has been changed on 11.09.1998. Petitioner preferred an appeal against change of the date of birth as mentioned in service book by filing an appeal before the Up-Mahasamadesta, Bihar Home Guard, Headquarter, Patna and same was dismissed in which it has been stated that if the alleged date of birth of the petitioner i.e. 05.10.1959 is accepted to be true then he would have become ineligible for being enrolled as Home Guard Volunteer at the time of his enrollment on 07.01.1975 and thereafter he could have not been appointed in permanent service in 1981 as Spoy in Bihar Home Guard Organization. The issue has been decided by Patna High Court in a judgment as reported in 2013(2) PLJR 698 and C.W.J.C. No. 1363 of 2013 on 06.03.2013. It has been further submitted that from the information dated 10.02.1996 sent by the District Commandant Home Guard, Vaishali, it transpires that petitioner



was enrolled for training on 07.01.1975 at the age of 20. It has been further stated that the change in petitioner's date of birth was made after giving him due opportunity by issuing show cause dated 05.04.1997 in which it was stated that at the time of basic training dated 07.01.1975 at Chapra in Home Guard Enrollment Register the age of petitioner has been recorded as 20 years. As such on basis of such entry made his date of birth should be 07.01.1955 but suppressing this fact he got his date of birth recorded in service book after regular appointment as 05.10.1959 and as such he was asked to file a reply to show cause that why his date of birth as recorded in service book 05.10.1959 not be changed as 07.01.1955. The petitioner submitted his reply and after considering his reply his date of birth in the service record was changed as 05.01.1955 in his service book and in his reply to said show cause petitioner has stated that the age recorded in nominal roll as 20 years must be recorded on the basis of certificate produced by him. Lastly in his reply he has stated that whatever will be the decision of authority he will accept it.

4. By office order No. 583/98 dated 05.09.1998 passed by Commandant Home guard, Patna the decision of Committee was communicated to the District Commandant Home Guard,



Gopalganj that reply of petitioner pursuant to show cause has been rejected and Committee after considering the same has decided to record the date of birth of petitioner as 07.01.1955 and a copy of same was sent to the Commandant Home Guard, Gopalganj and to the Establishment Section Headquarter, Patna to inform the petitioner accordingly.

5. On the basis of decision the date of birth was changed in the service book of petitioner from 05.10.1959 to 07.01.1955 by his Controlling Authority on 08.09.1989. The School Leaving Certificate as enclosed by petitioner as Annexure-3 in which date of entry in school is shown as 17.01.1976 and date of leaving the school is August 1976 in which date of birth is recorded as 05.10.1959 that is subsequent to his obtaining basic training in Home Guard in 1975 and as per School Leaving Certificate petitioner took admission in the school in Class 11th on 17.01.1976 and left the school in August 1976 and this School Leaving Certificate does not inspire confidence to treat his date of birth as 05.10.1959 and if said certificate is assumed to be correct then at the time of Home Guard training in 1975 he would be 16 years and would be under age to be enrolled for training as minimum age for training is 19 years.



6. The correction of date of birth of petitioner was made in 1998 after issuing notice to petitioner and considering his reply and after 15 years of said correction this Court is not inclined to interfere in the matter. More over he never contested the matter that age recorded in his service book at the time of his regular appointment as 05.10.1959 is correct and age recorded at the time of training 20 years was incorrect in the year 1998.

7. It is true that date of birth as recorded in service book at the time of entry into service is the date of birth of employee and same could not be altered to the disadvantage of employee after 17 years of service but in present case date of birth was altered in 1998 itself after giving opportunity to petitioner and he never seriously contested the issue rather gave an undertaking that decision of authority will be acceptable to him and after 15 years of said decision he cannot be allowed to challenge it. There is no merit in the writ petition and same is accordingly dismissed.

veena/-

(S. Kumar, J)

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