
(1986) 11 DEL CK 0031

In the Delhi High Court

Case No : Civil Writ Petition No. 1454 of 1975

Raya Govind Gaonkar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-11-1986

Acts Referred:

Citation : (1987) 12 DRJ 99

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : R.B. Datar and Binu Tamta, for the Appellant;

Judgement

Sananda Bhandare, J.

(1) The petitioner joined the Fifth Royal Maratha Light Infantry in the year 1939 at the age of about 18 years. Later on, he was discharged and transferred to the Royal Air Force on 3/11/1942 when his apparent age was recorded as 21 years because at that time he did not produce the School Leaving Certificate. Later on, however the petitioner obtained the School Leaving Certificate and filed the same in the year 1945 and the petitioner was given an enrollment certificate on 8/1/1945. This enrollment certificate was signed by the Enrollment Officer as well as the petitioner and his date of birth was accepted as 2/8/1921. Accordingly, the petitioner was issued an identity card which indicated his date of birth as 2/8/1921. On 15/7/1974 a discharge order was issued by the Officer in charge, Air Force Record Officer that the petitioner should be discharged from service on 3/11/1975 because on that date he would be attaining 55 years of age which was the date of superannuation. The petitioner felt aggrieved by this discharge order and filed the present petition under Article 226 of the Constitution of India.

(2) It was contended by the learned counsel for the petitioner that on the petitioner's furnishing the School Leaving Certificate in the year 1945, his date of birth was accepted as 2/8/1921 and accordingly he was issued an enrollment

certificate and identity card and this position was accepted by the respondents all through out and in fact after the discharge notice was issued on 31/7/1974 the Commanding Officer made a query with the Air Force Record Room as to how the date of birth of the petitioner was shown differently when the record card signed on 8/1/1945 showed his date of birth as 2/8/1921. To this, a reply was given by the Record Officer that this date of birth mentioned as 2/8/1921 was only for departmental purposes. Learned counsel, Therefore, submitted that this itself shows that there was no basis for changing the date of birth of the petitioner in the discharge certificate to 3/11/1920. Learned counsel further submitted that in any event if the respondents wanted to change the date of birth of the petitioner or had any doubt regarding the date of birth given by the petitioner it was incumbent upon them to give him a notice before affecting the change and this having not been done the discharge certificate was vocative of principles of natural justice. Learned counsel referred to I.N. Saksena v. The State of Madhya Pradesh AIR 1967 1264 in support of her contention.

(3) Though, no one appeared for the respondents at the time of the hearing, from the counter-affidavit filed by the respondents I find that when the petitioner joined the Army his approximate age was given as 18 years. However, what is stated is that when he joined the Air Force in the year 1942 since his certificate of date of birth was not available, his date of birth was taken on the basis of apparent age and thus apparent age in the year 1942 was shown as 22 years. The respondents however have not denied anywhere that the petitioner had in fact furnished a School Leaving Certificate in the year 1945 on the basis of which he was issued the identity card. "As regards the question, of compliance with the rules of natural justice, it is stated in the affidavit that by various broad-casts issued by the respondents, all those officers who had not furnished documentary proof of their age at the date of enrollment were given an opportunity to do so. They were further informed that if they failed to do so, the date of birth will be determined as per apparent age. Since the petitioner did not furnish any documentary proof after the broad-cast his date of birth was fixed on the basis of apparent age.

(4) I see no force in the contention of the respondents. It is obvious that since the petitioner had already submitted his certificate in 1945 and he had also get the identity card on the basis he could not have responded to the broad-casts referred to by the respondents had always accepted the date of birth of the petitioner as 2nd August 1921 and continued to do so till the year 1974 when the discharge certificate was issued, in my opinion, it was incumbent upon the respondents to hear the petitioner before they changed the date of birth. The apparent age fixed by the respondents and the basis on which it was fixed was never communicated to the petitioner and in my view this was clearly vocative of the rules of natural justice. The order of discharge deserves to be quashed on that ground alone.

(5) In the result the petition is allowed. The discharge order dated 15/7/1974 is

quashed. However, even if the date of birth of the petitioner is held to be 2/8/1921 he would have retired one year thereafter i.e. during the pendency of the petition and thus he would be entitled to only difference in salary and pensionary benefits. No costs.