

(1982) 11 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Appeal No. 1265 of 1982

S.S. Sandhu

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 12-11-1982

Acts Referred:

Citation : (1983) 5 DRJ 40 : (1983) RLR 313 : (1983) 1 SLJ 475

Hon'ble Judges : D.K. Kapur, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : E.X. Joseph and Rekha Sharma, for the Appellant;

Judgement

D.K. Kapur, J.

(1) We had allowed this petition per short order dated 20th August, 1982, as the matter was an urgent one. We had stated in that order that we would give our reasons later.

(2) The petitioner is an Assistant Commandant in the Central Reserve Police Force. He had joined this service as a Sub-Inspector on 1st August, 1956. Earlier he had been in the Indian Navy as a young boy.

(3) He joined the Indian Navy in November, 1942 when he was about 14 years old and was a school student. He left the Navy in 1946 and resumed his studies. In consequence of his war service, he was deemed to have passed the matriculation. He graduated in 1951, and joined the Central Reserve Police Force in 1956. Thus, there was a ten year gap between his release from the Navy and his joining the Police.

(4) The petitioner's matriculation Certificate gave his date of birth as 20th April, 1928, according to him his Service Book in the Reserve Police also recorded his date of birth as 20th April, 1928, and he was, Therefore, to retire on 30th April, 1983. Up to 7th April, 1982, he was posted in Mizoram, but he was allowed to be posted thereafter in Delhi which was his choice as a retiring station. On 18th

March, 1982, he was informed that his date of birth had been amended from 20th April, 1928 to 20th April, 1927. A representation was made against the change, but he was informed on 26th April, 1982, that the amendment of the date of birth had been correctly made and thus he had to retire on 30th April, 1982.

(5) This Court was moved shortly afterwards and we treated this petition as extremely urgent and heard and decided the same within a few months.

(6) The case of the respondents regarding the change of date is set out in the affidavit of Shri A.K., Suri which was filed in opposition to the petition. It was claimed that the date of birth had been wrongly recorded on 1st August, 1956, as being 20th April, 1928, in the petitioner's service book on the basis of the matriculation Certificate dated 20th October, 1944. The mistake regarding the date was only discovered when the documents were sent to the Joint Assistant Director (Pension) for verification. The Naval Discharge Certificate of the petitioner recorded his date of birth as 2)th April, 1927. It was claimed that under Rule 80(3) read with Rule 79(2) of the General Financial Rules, a person who had been in Military Service and was subsequently employed in a Civil department would have the same date of birth as was stated by him at the time of his attestation. The affidavit also states that if there had been a genuine bona fide clerical mistake in recording the date of birth, the same can be amended under Fundamental Rule 56.

(7) The petitioner filed a rejoinder affidavit, in which it was pointed out that even in the Naval Discharge Certificate, the initial date entered was 30th April, 1927, which was corrected to 1928 and then scored out again and 20th April, 1927, was recorded. It was stated by the petitioner that he was very young and he could not give any Explanation why a wrong date had been recorded in the Naval Discharge Certificate. However, he claimed that his matriculation Certificate issued by the University of Punjab was correct because it gave the date of birth in accordance with the school records. The petitioner had apparently been studying in a school in district Jhang now in Pakistan, so the same cannot be verified. However, the fact remains that the consequence of retiring the petitioner earlier than his actual date of retirement would have serious consequences, and so it is stated in the rejoinder affidavit. Therein, some details of the loss of salary and other privileges which a retiring person can get, are listed.

(8) We are now principally concerned with the effect of the Rules contained in the General Financial Rules which have been relied upon by the respondents for altering the date of birth as well as Fundamental Rule 56, which contains certain restrictions regarding the change of retiring date.

(9) The relevant portion of the General Financial Rule 79(2) reads as hereunder :--

"RULE79(2)-The actual date or the assumed date determined under rule 80 shall

be recorded in the history of service, service book, or any other record that may be kept in respect of the Government servant's service under Government and once recorded, it cannot be altered except in the case of a clerical error without the previous order of the Department of the Central Government or an Administrator."

On the other hand. Rule 80(3) reads as hereunder :-

"RULE 80(2)-when a person who first entered Military service is subsequently employed in a civil department, the date of birth for the purpose of civil employment shall be the date stated by him at the time of attestation or if at the time of attestation, he only stated his age, the date of birth shall be deduced with reference to that age according to sub-rule (2) of this rule".

According to these Rules, if a person has been in Military service and is then employed in a Civil department, then the date of birth stated by him shall be kept in fact in the civil department. Assuming that the date of birth recorded in the Naval documents at the time of attestation was 20th April, 1927, then the effect of these rules would be to continue that date even in the civil department. At the same time. Rule 79(2) states that once the date is recorded in the service book, it cannot be altered except if there is a clerical error.

(10) There are three apparent difficulties in applying these rules, Firstly, learned counsel for the respondents had not been able to show us when and how these General Financial Rules were made. The petitioner was discharged from the Navy in 1946. We do not know what the R, were at that time, if there were any. He joined the Central Reserve Police in 1956. We are unable to find what were the General Financial Rules at the time. Assuming there were General Financial Rules, we have also not been able to determine what the effect of these Rules is. Even if we overcome this objection, and hold that the General Financial Rules are of a statutory effect and were in existence in 1946, and also in 1956, there is other difficulty regarding the absence of any clerical error in the present case. The date of birth has to be recorded at the time of joining service. The petitioner had a matriculation Certificate which showed his date of birth as 20th April, 1928. Even if we assume that his Naval discharge certificate showed the date 20th April, 1927, it would be open to the department to consider which of these two dates was correct. There can be a clerical error in the Naval discharge certificate which would lead naturally to an inquiry as to the which was the correct date of birth. In as much as, the date given in the matriculation Certificate was accepted and entered in the Service Book, there does not seem to be any clerical error. It cannot be that a wrong date entered in the Military Service Book, is binding on any one. Even incorrect date recorded in any document can be corrected. When two documents contain two different dates of birth, it is bound to lead to inquiry as to which is the correct date. As all this inquiry must have been in 1956 at the time of making entry in the service book, we do not see how the date of birth can be altered a few days before the proposed date of retirement. It is extremely odd that from 1956 to March, 1982,

no protest at all regarding the petitioner's date of birth was made and the first intimation of the action regarding the change of date of birth was contained in the letter dated 18th March, 1982, Annexure "A" to the petition, which informed the petitioner that his date of birth had been amended from 20th April, 1928 to 23rd April, 1927. Even if there is a mistake, it has to be inquired into and evidence has to be taken to determine which is the correct date. There is no rule to the effect that the date of birth recorded in the Military service book or record is the correct date. There is only a rule of procedure that that date would be taken in the civil department. If that happens to be wrong, it can be altered as any other wrong date. In our view, the respondents have not been able to establish any clerical error which would justify the change of date.

(11) This is only one aspect of this case. The main question involved is the application of Fundamental Rule 56 to the petitioner. This rule provides that except as provided in the Rule, every Government servant shall retire from service on the afternoon of the last date of the month in which he attains the age of 58 years. It appears that as far as the petitioner is concerned, his retiring age is 55 in accordance with Rule 43 of the Central Reserve Police Rules, 1955. So, Fundamental Rule 56 has to be read as if the petitioner's retirement date was when he attained the age of 55 years. No Government servant can be asked to retire before he attains the age of superannuation. It was, Therefore, imperative for the respondents to determine the actual age of the petitioner rather than proceed on the basis of what was provided in the General Financial Rules. This Rule, i.e., Fundamental Rule 56 has several notices appearing under it and one of these notes, being note No. 5 gives the procedure for altering the date of birth as recorded in the Service Book. The note reads :-

"NOTE-5.-THE date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of his appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as matriculation Certificate or extracts from Birth Register. The date of birth so declared by a Government servant and accepted by the appropriate authority shall not be subject to any alteration after the preparation of his service book and in any event, after the completion of probation period or declaration of quasi-permanency. whichever is earlier. An alteration in the date of birth of a Government servant can be made at a later stage only with the sanction of a Ministry or Department of the Central Government or an administration of a Union territory under which the Government servant is serving, if it is established that a bona fide clerical mistake has been committed in recording the date of birth in the service book".

An analysis of this Note will show that the documentary evidence required for entering the date of birth is the matriculation Certificate or an extract from the Birth Register. It so happens that the petitioner produced his matriculation Certificate which recorded his date of birth as 20th April, 1928. The Service Book

recorded the same date. The procedure then contained in the Note shows that this date is not to be altered except in the circumstances set out in the Note. The procedure is that there must be a sanction from the Ministry or Department of the Central Government with which the person is serving and it must be established that there is a bona fide clerical mistake in recording the date of birth. No such error exists in the present case and nor is there apparently any sanction from anyone. Apparently no inquiry at all was made regarding the correct date. It is obvious that the procedure contained in the Note has not been followed and an ex-parte decision was recorded that the date was wrong. In fact, the onus would fall heavily on any one who wanted to say that the date entered in the matriculation Certificate was wrong. It would have to be eventually proved that the said date was wrong. No attempt has been made by the respondents to establish that the date of birth entered in the matriculation Certificate is wrong. We, Therefore, fail to understand how the date can be said to be wrong merely because of some entry made in the Naval documents.

(12) It may also be noted that the petitioner joined the Central Reserve Police in 1956. It was fully known that he had been in the Navy. If any attempt to disturb the date contained in the matriculation Certificate had to be made, it should have been at the time of his entry into the service or shortly afterwards and not at the time when he was about to retire. This is not only for the sake of the service of the person concerned, but also; because it is much easier to establish the actual date of birth when a person is quite young than when he is 55 years or so old. All the witnesses or persons likely to be present at the time of birth are not easily available 54 or 55 years later, but when he was 28 or 29 years, i.e., when he entered service such evidence was likely to be easily available.

(13) We have no doubt that the alteration in the petitioner's date of birth has been made contrary to the rules of natural justice and is not based on any clerical error. Nor is there any evidence pointed out to us to show that he was born on 20th April, 1927. We have, Therefore, granted the Writ and struck down the order altering the petitioner's date of birth from 20th April, 1928 to 20th April, 1927. The petitioner will now retire on 30th April, 1983, as held by us in our short order of 20th August, 1982. These are the reasons in support of that order.