
(1993) 08 CAL CK 0039
In the Calcutta High Court
Case No : C.O. No. 2018 (W) of 1987

Subhas Chandra Basu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-08-1993

Acts Referred:

Air Force Act, 1950 — Section 17
Air Force Act, 1964 — Section 17
Air Force Regulations, 1964 — Regulation 239
Air Force Rules, 1969 — Rule 15, 15(2), 18, 8
Evidence Act, 1872 — Section 35
Howrah Municipal Corporation Act, 1980 — Section 18

Citation : (1994) 1 CALLT 305 : 98 CWN 672

Hon'ble Judges : Samaresh Banerjea, J

Bench : Single Bench

Advocate : Sudipto Moitra and Subhasish Pachhal, for the Appellant; Pradip Tarafdar, for the Respondent

Final Decision : Allowed

Judgement

Samaresh Banerjea, J.—The subject-matter of challenge in the instant writ petition is an order of discharge issued by the Commanding Officer, Workshop Training Institute, Indian Air Force, Tambaram, Madras being Memo No. IA FF(P) 53 discharging the petitioner from service of the Indian Air Force, under Rule 15 (k) of the Indian Force Rules.

2. The facts relevant to the present case are as follows :-

The petitioner applied for an employment under the Indian Air Force in the category of airmen. Pursuant to the said application the petitioner was called to appear for preliminary screening test which is a written examination and having succeeded in the same he was further called to appear for final selection test which is also written test, which the petitioner also duly qualified. Thereafter, the petitioner was called at an interview by the Squadron Leader and succeeded in

the interview. The petitioner was also found medically fit by the Recruiting Medical Officer after thorough medical examination and was declared fit for appointment as airmen. Thereafter the petitioner was sent to Tambaram at Madras to undergo a training for a period of 15 months, the first part of which is physical training. After completion of a part of training while the petitioner was undergoing the rest of the period of training, he was served with the purported order of discharge on 21st May, 1986 discharging the petitioner from service on the ground of unsuitability of the petitioner for retention in the force. The petitioner was so discharged without holding any disciplinary enquiry and no charge-sheet was given to him. He was never given any reasonable opportunity of hearing although according to the petitioner he is entitled to hearing under the provisions of the Air Force Act and Rules made thereunder. Although the petitioner was discharged on the ground of unsuitability no reason was disclosed as to how he was found unsuitable. According to the petitioner there cannot be any basis for holding the petitioner to be unsuitable for retention in the Air Force and the order of discharge has been passed in colourable exercise of power illegally and arbitrarily. Although the petitioner made a representation to the Commanding Officer against the aforesaid order of discharge requesting the Commanding Officer to disclose the reasons for his alleged unsuitability, such representation was of no avail and the respondents never disclosed any ground as to such alleged unsuitability. According to the petitioner the impugned order of discharge is also in violation of provision of the Air Force Act and Rules inasmuch as none of the conditions upon which an order of discharge can be made was fulfilled in the instant case and the impugned order is also in violation of the Article 16 of the Constitution.

3. The stand of the respondents as it would appear from the affidavit-in-opposition, is that the order of discharge of the petitioner was quite valid and proper; that as a matter of routine, before a recruit is sent for training, his antecedents are verified and during such verification it transpired that the petitioner's actual date of birth was 20th January, 1957 which was suppressed by the petitioner and he made a false declaration by declaring his date of birth as 1st November, 1965 at the time of enrolment and therefore, the petitioner at the time of his recruitment was about 29 years of age and accordingly he was unsuitable to be retained in the Air Force as he was not in the range of 16 to 20 years age group which is the pre-condition of enrolment as per paragraph 241 (a) of the Air Force Regulation. Further contention of the respondents is that petitioner was issued with an oral Show Cause to which he submitted his reply being Annexure "Z2" to the affidavit- in-opposition, which was considered by a Review Board and was rejected and the petitioner, therefore, had an ample opportunity of hearing.

4. Mr. Sudipta Moitra, the learned Counsel for the petitioner has assailed the order of discharge firstly on the ground that the same was not even in consonance with the provisions of Rule 15 of the Air Force Rules as according to Mr. Moitra, there is no provision in the said rules for discharge of a trainee

airmen on the ground of unsuitability.

5. Such contention of Mr. Moitra requires scrutiny of Rule 15 of the Air Force Rules. Rule 15 of the Air Force Rules 1969 indicates the different authorities competent to discharge different classes of Air Force personnel as also the cause for which such order of discharge can be passed. The same will appear from a table appended to said Rule 15. The said table is appended hereinbelow:

TABLE

					Class	Cause of	Competent	Special
					discharge Authority to Instructions	authorise discharge		
					1	2	3	4

(a) Persons enrolled under the Act who have been found medically unfit for further service. (b) On fulfilling the conditions of his enrolment. (c) Having been found medically unfit for further service. (d) On transfer to the pension establishment or on discharge Officer Commanding Air Force Record otherwise than Office. at his own request or under item (c). (e) Having been found inefficient in his rank or trade and being unwilling to accept reduction or remustering. Air Officer i/c Administration An Airmen reported as inefficient will, as far as vacancies allow be permitted to remuster and/or accept reduction in any rank and trade for which he is reported as suitable. If no such vacancy exists or if he declines to accept such remustering or reduction he will be discharged under this item. (f) At his own request before fulfilling the conditions of his enrolment. Director of Personnel (Airmen) (g) His services no longer required. (i) Due to reduction in establishment or to reorganisation. Director of Personnel (Airmen). Officer i/c. Administration. (ii) Unsuitable for retention in the Air Force. (h) All other classes of discharge. Do Persons enrolled under the Act who have not been attested.

(b) On fulfilling the conditions of his enrolment.

(c) Having been found medically unfit for further service. (d) On transfer to the pension establishment or on discharge Officer Commanding Air Force Record otherwise than Office. at his own request or under item (c).

(e) Having been found inefficient in his rank or trade and being unwilling to accept reduction or remustering. Air Officer i/c Administration An Airmen reported as inefficient will, as far as vacancies allow be permitted to remuster and/or accept reduction in any rank and trade for which he is reported as suitable. If no such vacancy exists or if he declines to accept such remustering or reduction he will be discharged under this item. (f) At his own request before fulfilling the conditions of his enrolment. Director of Personnel (Airmen) (g) His services no longer required. (i) Due to reduction in establishment or to reorganisation. Director of Personnel (Airmen). Officer i/c. Administration. (ii) Unsuitable for retention in the Air Force. (h) All other classes of discharge. Do Persons enrolled under the Act who have not been attested.

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(i) At his own request before fulfilling conditions of his enrolment. (i) Air or other Officer i/c. of Command. The competent authority mentioned in the preceding column will exercise this power only when he is satisfied as to the bona fides of the application and that the total strength of the Air Force will

not thereby be unduly reduced.

(ii) Director of Personnel (Airmen) in case of under Air Headquarters.

(j) Unlikely to make an efficient Airman. Commanding Officer. Applicable to Airmen undergoing training for Airmen.

(k) All other classes of discharge. Do

6. It will appear from the aforesaid rules and the table that separate provisions have been made in respect of persons enrolled under the Air Force Act who have been attested and in respect of persons enrolled under the Act who have not been attested. It will appear from said rule that although under Rule 15(2) (g) (ii) unsuitability for retention in the Air Force has made a ground of discharge for the class of persons enrolled under the Act who have been attested, the same has been specifically excluded as a ground of discharge in case of persons enrolled under the Act who have not been attested.

7. Mr. Pradip Tarafdar, the learned Counsel for the respondents has submitted, however, that the impugned order of discharge would be covered under Rule 15(2) (k) which is a residuary clause and include "all other classes of discharge".

8. I am however, unable to accept the aforesaid contention of Mr. Tarafdar that the impugned order of discharge on the ground of unsuitability of the petitioner would come under Rule 15 (2) (k) of the said rules. The fact that the rule making authorities in their wisdom although makes unsuitability for retention in service of a person enrolled under the Act, a ground of discharge, but not so in case of persons who are enrolled under the Act but not yet attested, cannot be overlooked or ignored. Exclusion of such ground in case of persons enrolled under the Act but who have not yet been attested, in my view, appears to have been made by the rule making authorities in their wisdom consciously and for a very good reason. Only after assessment of the performance of an Air Force Personnel for some time the authority concerned can be in a position to form a judgment about his suitability for retention in the service. Such opportunity of assessment in case of an Air Force Personnel is available to the concerned authority only after his attestation, which is done u/s 17 of the Air Force Act 1950 read with Rule 8 of the Air Force Rules 1969 after the persons concerned is reported fit for duty or completed the prescribed period of probation. But in case of an Air Force Personnel who although is enrolled but not yet been attested and therefore have not yet been reported fit for duty, either for non-completion of any training or for period of probation, such opportunity of assessing the performance of the persons concerned for judging of suitability cannot be there. Hence, the exclusion of such ground of unsuitability for retention in service as a cause of discharge in case of persons who although enrolled have not yet been attested.

9. This is not to say that there cannot be cases when before attestation a person is found inefficient during his period of training or probation. But such a situation

has been taken care of by the rule making authorities under Rule 15(2) (j) of the said rules which permits the concerned authority to discharge a person enrolled under the Act but not yet attested and still undergoing training on the ground "unlikely to make an efficient airmen". In fact such provision has been made specifically for Airmen undergoing training for Airmen. In that view of the matter said clause "K" although may be treated as a residuary clause, the same obviously would cover such cases of discharge not specifically provided or contemplated under the other provisions of the said rules and cannot include discharge on the ground of unsuitability or retention in the service in case of persons who have been enrolled but not have yet been attested and are still undergoing training for the reasons stated hereinabove. The impugned order of discharge in my view, therefore, could not have been made on the ground of unsuitability as the petitioner although was enrolled admittedly was. not attested. The impugned order of discharge also cannot be an order of discharge under Rule 15(2) (k) of the said Rules, as claimed by the respondents in their affidavit in opposition. The impugned order of discharge itself will indicate that such order was passed on the ground of unsuitability. But as pointed out hereinbefore the said Rules does not permit discharge of a person not yet attested and still a trainee on the ground of unsuitability. The impugned order of discharge is in violation of Rule 15 of the said Rules.

10. That apart the question whether the petitioner can be discharged on the ground of unsuitability or not in terms of Rule 15 of the Air Force Rules 1969 perhaps become academic because of the stand taken by the respondents in their affidavit-in-opposition.

11. The impugned order of discharge although was apparently passed on the ground of the unsuitability of the petitioner in the service, it appears from the affidavit in opposition of the respondents that reasons for discharge of the petitioner really was on the ground that at the time of recruitment the petitioner suppressed his correct age by making false declaration for the purpose of getting entry in the service although he was over aged. It has been pleaded in paragraph 9 of the affidavit-in-opposition inter alia that as a matter of routine in respect of every trainee who is sent for training, his antecedents, character and conduct are verified before the Trainee is allowed to become a full-fledged Airmen and if on such verification it is found that there has been any suppression of material fact or any false information during his service, his service is liable to be terminated. It has been further pleaded in the said affidavit-in-opposition that it was found by Air Headquarters on verification that the petitioner migrated from Bangladesh and acquired Indian Citizenship through an affidavit and an application where his date of birth was declared as 28th January, 1957 and accordingly, it was evident that on the date of his enrolment on 1st August, 1985 in the Air Force, the petitioner was not in the range of 16 to 20 years age group which was a pre-condition to his enrolment as per paragraph 241 (a) of Regulations for the Air Force and which fact was deliberately suppressed by the petitioner. It was further pleaded in the paragraph 10 of the said affidavit by the respondents that such

actual date of birth was subsequently amended with ulterior motive to 1st November, 1965 which would be evident from his Admit Card to Madhyamik Parikshya as also from an affidavit made by one Shri Monoranjan Basu describing himself as Uncle of the petitioner before the Court of the learned Executive Magistrate, 1st Class, Howrah on 3rd July, 1985 and the same was also recorded in the birth register of Howrah Municipal Corporation on 26th July, 1985. In paragraph 11 of the said affidavit it was specifically pleaded that such change of date of birth of the petitioner was resorted to only with a view to entering in the Indian Air Force and the same was detected by Directorate of Provost Marshall (Vigilance), Air Headquarters and thereafter the petitioner was discharged from the Air Force on 18th May, 1986, under powers vested in the officer commanding under Rule 15 (k) of Air Force Rules, 1969. In paragraph 12 of said affidavit it has been further pleaded that it was established through enquiry that the petitioner passed Secondary Examination "as an External candidate in 1983 from Madhusudan Pal Chowdhury High School, Bantra in the district of Howrah wherein his date of birth was described as 1st November, 1965, whereas about eight years prior to his passing Matriculation Examination, the petitioner was admitted in 1st Year B.Sc. Class in Ananda Mohan College in the year of 1976 wherein the petitioner has stated his date of birth as 28th January, 1957 and the petitioner has further stated in item No. 8A of the application form for admission to said college that the petitioner had passed the Higher Secondary Examination of the Board of Secondary Education, Jessore (Bangladesh) in 1975. It has been further pleaded in the said paragraph that because of the aforesaid reason it was crystal clear that the petitioner passed Higher Secondary! Examination in 1976 and under no circumstances in 1983 mandatory order of discharge issued by the Wing Commander, Commanding Officer was a valid and proper order.

12. Mr. Moitra, therefore has rightly contended that it is clear from the affidavit-in-opposition that the petitioner was not really discharged on the ground of his unsuitability as alleged in the impugned order of discharge, but his service was really terminated on the allegation of a very serious misconduct, namely petitioner made a false declaration as to the date of birth at the time of recruitment and he wilfully suppressed his real date of birth with the motive of showing that he was within the age group of 16 to 20 years and he get entry in the Air Force making such false declaration as to his age. The impugned order therefore, in my view is really an order of termination on the ground of misconduct although sought to be camouflaged as an order of discharge under Rule 15.

13. Mr. Moitra has submitted that service of the petitioner therefore, could not have been terminated in the manner aforesaid without giving an opportunity of hearing and the impugned order is therefore liable to be set aside on the ground of violation of principles of natural justice. Mr. Moitra has relied on a number of decisions in support of his aforesaid contention.

14. Mr. Tarafdar on the other hand has joined issue and has made twofold

submissions. His first contention is that the petitioner is not entitled to any hearing at all as his tenure is at pleasure of the President of India as provided in Article 310 of the Constitution and Section 18 of the Air Force Act, and provisions of Article 311 of the Constitution would not be applicable the petitioner being a member of the Armed Forces. He has relied on the decisions of the Supreme Court in the case of Lekh Raj Khurana Vs. Union of India (UOI), and in the case of Union of India (UOI) and Another Vs. K.S. Subramanian, and also on decision of Delhi High Court in the case of Hazetra Singh v. Union of India and Ors. reported in 1982 (1) SLR 623.

15. I am unable to accept such contention of Mr. Tarafdar. The principles laid down in the aforesaid cases cited by Mr. Tarafdar are well settled and cannot be disputed, namely, the provision of Article 311 of the Constitution are not applicable to the member of the Armed Forces" whose tenure of service are at the pleasure of the President of India under Article 310 of the Constitution and the power to be exercised under Article 310 of the Constitution cannot be curtailed by any other legislative acts or rules. But in my view, the decisions of the aforesaid cases would not be applicable in the instant case at all as admittedly it is not the case of the respondents that the service of the petitioner was terminated in exercise of power either under Article 310 of the Constitution or u/s 18 of the Air Force Act, which also provides that every persons subject to the Air Force Act shall hold the office during the pleasure of the President. On the contrary it is the specific case of the respondents in paragraph 11 of the affidavit-in- opposition that the writ petitioner was discharged from the Air Force under powers vested in the officer commanding under Rule 15(k) of the Air Force Rules, 1969. It will clearly appear from the affidavit in opposition filed by the respondents that specific recourse was taken by the respondents under the provisions of Air Force Rules, 1969 and the Regulations.

16. A case is an authority for the proposition it decides but in none of the cases cited by the respondents the Court was ever called upon to consider the question when an order of termination is made taking specific recourse to the Rules which entitles the employee concerned to an opportunity of hearing, even then whether it can be said that no hearing is called for because of the provision laid down in the Article 310 of the Constitution or u/s 18 of the Air Force Act. In Lekh Raj Khurana v. Union of India (supra) the ratio of the decision was that provision of the Article 311 would not be applicable in case of a member of defence service and accordingly he would not be entitled to opportunity of hearing, but Supreme Court was never called upon to decide the question as to whether service of an employee would be deemed to be terminated under Article 310 of the Constitution even if rules provided for an opportunity of hearing and recourse to such rules actually are taken. In paragraph 7 of the said judgment the Hon"ble Supreme Court rejected the contention of the petitioner that natural justice would be available as the petitioner failed to satisfy the Court as to how he was entitled to an opportunity of hearing in absence of Article 311 of the Constitution. In the case of Union of India v. K.S. Subramaniam (supra) the Supreme Court

held inter alia that the rules framed under Article 309 of the Constitution cannot override the power of the President under Article 310 of the Constitution and framing of such rules do not make disciplinary proceedings under such rules to be obligatory. But the Supreme Court was never called upon to decide the question if the rules provide for an opportunity of hearing and such hearing is denied even after taking recourse to such rules, whether the termination of an employee would be deemed to be terminated under Article 310 of the Constitution. In the case of Hazara Singh v. Union of India and Ors. (supra) a Division Bench of Delhi High Court following the aforesaid decision of the Supreme Court held that the provision of Article 311 of the Constitution would not be applicable to the defence personnel and further held it was not obligatory upon the respondents to follow procedure prescribed under the Army Act and rules for giving hearing. But it will appear from the facts of the said case termination was made invoking provisions of Article 310 of the Constitution and the Delhi High Court was also not called upon to decide the question, if actual recourse is taken to the rules which provides for hearing whether even then termination would be deemed to be termination under Article 310 of the Constitution.

17. In my view, therefore, the decisions in the aforesaid three cases are clearly distinguishable and the principles laid down in the aforesaid cases are not applicable in the instant case.

18. Mr. Tarafdar has also referred to the decision of the Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others, Supreme Court Cases page 398 in support of his contention that whenever an authority exercises the power under the rules framed under Article 309 governing service conditions of the Armed Forces, he is exercising power of the President under Article 310 of the Constitution as a delegate. Tulsiram Patel's case does not appear to be the authority for such proposition put forward by Mr. Tarafdar appearing for the respondents and I am not called upon to decide the question as to whether the authority passing the impugned order acted as a delegate of the President of India under Article 310 of the Constitution, no such case having been made out by the respondents.

19. It is therefore, now become necessary to consider the merit of other grievances of the petitioner namely, that his service has been terminated arbitrarily, illegally and in violation of Rule 20 of the Air Force Rules, as his service has been so terminated without giving any opportunity of hearing.

20. Since I have already held hereinbefore that the impugned order is not an order of discharge in consonance of Rule 15 of Air Force Rules, the impugned order is to be treated either as an order of dismissal or removal on the ground of misconduct or an order of termination on the ground of other than misconduct.

21. Under such circumstances, the petitioner being a person governed under the Act, although not an officer, provisions of Rule 18 of the said Rules, would apply

under which the petitioner was entitled to be informed of the particulars of the cause of action against him and was further entitled to reasonable time to state in writing any reason he may have to urge against his dismissal or removal from the service. In other words, under said rules he was entitled to opportunity to show cause against the termination.

22. Mr. Tarafdar, however has submitted that even if this order can be treated as an order of termination taking recourse to the Act and the rules thereunder even then the order is quite valid and proper inasmuch as the petitioner in fact was given an opportunity of hearing. It has been submitted by Mr. Tarafdar that the petitioner was issued with an oral show cause to which the petitioner submitted his reply which was considered by a Review Board which did not find any reason to alter the order. Therefore, there was no violation of the principles of natural justice as the petitioner had ample opportunity of hearing.

23. It has been pleaded in paragraph 23 of the affidavit-in-opposition by the respondents inter alia that he was given oral show cause to which the petitioner replied through an application dated 5th April, 1976 being annexure "Z2" to the said affidavit-in-opposition. It has been further pleaded that any trainee being discharged from Air Force for any reason has to face firstly an Unit Review Board presided over by Commanding Officer of the Unit followed by Station Review Board presided over by Air Officer commanding of the Station and attended by Commanding Officers of the Units; that during the process of the Review Board Air Officer commanding explained the reasons of discharge of the petitioner and also asked for any points in defence and all due procedures were adhered to ensure principles of natural justice before the petitioner was discharged from service. The petitioner, however, has denied in his affidavit in reply the aforesaid allegation that he was issued with an oral show cause or there was any consideration of his case by the Review Board as alleged. It is the further case of the petitioner in the affidavit in reply that annexure "Z2" to the affidavit of the respondents which is claimed by the respondents as reply of the petitioner to the show cause, is not at all a reply to any show cause but an independent representation made by him. The petitioner further after having denied the allegation that he was given hearing by a Review Board called upon the respondents to produce the records of such Review Board.

24. In spite of such challenge by the writ petitioner and in spite of opportunity given to the respondents by Court to produce the records of such Review Board, the respondents have not been able to produce any records either of such Unit Review Board or of Station Review Board. Mr. Tarafdar has submitted, however, that no records of hearing of such Unit Review Board and Station Review Board are there because everything is done orally and no record in respect thereof is maintained as a practice and the procedure for holding such Review Board orally without maintaining any records is being followed by the authorities all along.

25. I am however, unable to accept such contention of the respondents. Such claim of the respondents that the entire process of hearing was made orally

without maintaining any records in respect thereof and that is the procedure, the respondents follow as a matter of practice, in my view, is wholly misconceived and too far fetched and cannot be accepted. It is inconceivable that when the rules require the authorities terminating the service of an Air Force Personnel to give a hearing, the concerned authority empowered to pass order of termination would not care to maintain any record of the entire process of hearing but would proceed orally throughout. But if that is true, then the same itself is the worst form of illegality and arbitrariness which cannot be permitted. If hearing is given to an Air Force Personnel under the aforesaid provisions of the rules, the record in respect thereof must be maintained so that the same is open to scrutiny either by a Higher Authority competent to scrutinise the same or by Court of law. Even assuming that such a practice of giving hearing orally is being followed by the respondents for a long time, the same cannot be any defence of such illegal and arbitrary action of the respondents as the fact that a wrong is being committed for a long time would not make the same right. I have, therefore, no hesitation to hold that the service of the petitioner has been terminated without giving him any opportunity of hearing in violation of Rule 18 of said Rules, Even assuming annexure "Z2" to the affidavit-in- opposition of the respondents being a letter dated Nov. 21, 1988 written by the petitioner to the Commanding Officer was really in reply to an oral show cause as claimed by the petitioner, even then there is nothing to show that the aforesaid reply or representation was ever considered by the respondents.

26. Under the circumstances, the impugned order passed by the respondents purportedly discharging the petitioner from service is bad being violative of Rules 15 and 18 of the Air Force Rules, 1969 and is liable to be set aside.

27. I am, however not inclined to send the matter back to the respondents after long eight years for a post decisional hearing.

28. Mr. Moitra has submitted inter alia that under the facts and circumstances of the matter should not be sent back to the respondents for a fresh decision and I am inclined to accept such submissions of Mr. Moitra for the following reasons. Such "Post Decisional" hearing, in my view, under the facts and circumstances of this case would not really cure the defect of not affording pre-decisional hearing and ends of justice cannot be met by such "post decisional" hearing after long eight years. As it has been held by the Supreme Court in case of K.I. Shephard and Others Vs. Union of India (UOI) and Others, and in the case of H.L. Terhan v. Union of India reported in AIR 1989 SC 569 that such "Post Decisional" hearing does not always" cure the defect of affording pre-decisional hearing as it is common experience that once a decision has been taken there is a tendency to uphold it and a representation hardly yields any fruitful purpose.

29. It appears from the Supplementary-affidavit filed by the respondents that their finding that the petitioner allegedly suppressed his real date of birth at the time of his enrolment and he was really about 29 years of age at the time recruitment was not at all arrived at during verification of his antecedents which

according to the respondents are made as a matter of routine before a recruit is sent for training but on the basis of an enquiry and/or investigation held behind the back of the petitioner on the basis of a complaint made by one Shri Hira to the Air Force Authorities. But under Paragraph 239 (e) of the aforesaid Regulation of the Air Force, date of birth recorded at the time of enrolment is final and admittedly 1st November, 1965 having been recorded as the date of birth of the petitioner at the time of his enrolment, the same will be final and binding not only upon the petitioner but on the respondents as well if the respondents wanted to alter the same, as it is sought to be done in the instant case, the burden was on the respondents to show that such recording was wrong because of suppression of material facts by the petitioner or because of false declaration made by him, by producing cogent and valid evidence after giving an opportunity of hearing to the petitioner, which was never done.

30. That apart the petitioner apart from denying such allegation has made out a case in the affidavit that the said complainant bears animosity against the petitioner and is inimical to him and the officer concerned who held enquiry and submitted a report also noted the fact that the said complainant bears animosity against the petitioner. It will further appear from the Supplementary affidavit filed by the writ petitioner that date of birth originally recorded with the Howrah Municipal Corporation was cancelled by the Mayor of the Howrah Municipal Corporation on the basis of such complaint of the said complainant which was challenged by the petitioner in a separate and subsequent writ proceedings before this Court and the said application was disposed of finally by directing the Mayor of the Howrah Municipal Corporation himself to review such matter after giving hearing to the petitioner and thereafter the Mayor of the Howrah Municipal Corporation himself reviewed such order after giving hearing to the petitioner and on consideration of the documents as to the date of birth of the petitioner, the Mayor upheld the original recording of date of birth of the petitioner as 1st November, 1965. It appears that such order was passed by the Mayor, Howrah Municipal Corporation inter alia considering the Admit Card of the petitioner for Madhyamik Pariksha and the school register. Such Municipal register regarding date of birth of a person has a legal sanctity u/s 18 of the Howrah Municipal Corporation Act and also is a cogent evidence of date of birth of a person. That apart even under paragraph 239 of the Regulation for the Indian Air Force (1964) referred to by the respondents a recording of the date of birth in the school register inter alia is valid document as proof of age and the aforesaid documents produced before the petitioner show his date of birth as 1st November 1965 which was also originally accepted by the Enrolling Officer, I am therefore, not inclined to send the matter back to the authorities for a post decisional hearing.

31. In the result, the application succeeds, the impugned order of discharge being annexure "D" to the petition issued by the respondent No. 2, the Commanding Officer, Workshop Institute, Indian Air Force, Tambaram, Madras, is set aside.

32. The petitioner will be deemed to be in service from the date of discharge till date as Airman and will be entitled to his full salary and all other benefits. The respondents are directed to permit the petitioner to join his service within a week from date and he shall be paid all arrear salaries and other service benefits within two months from date to which he would have been entitled had he not been discharged from service by the impugned order. Since the petitioner was discharged from service in course of training, after resumption of duties by the petitioner, the respondents, would permit the petitioner to complete his training as an Airman. There will be no order as to costs.

33. Let xerox copies of the operative portion of the judgment be given to the parties on payment of usual charges and on undertaking to apply for and to obtain the certified copy of the judgment.

34. After the judgment is delivered, Mr. Tarafdar, the learned Counsel appearing for the respondent after sometime comes to Court and prays for stay of operation of the order. The prayer is considered and refused.