

(1998) 10 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 912/1994

Suresh Chander Sharma

APPELLANT

Vs

State of J&K and Another

RESPONDENT

Date of Decision : 14-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) KashLJ 232

Hon'ble Judges : O.P.Sharma, J

Bench : Single Bench

Advocate : Subash Bhat, P.S.Dutta, Navneet Dubey, Advocates appearing for the Parties

Judgement

1. The petitioner was appointed orderly in June 1966. In SMGS Hospital, Jammu. He retired on 31 81991 on attaining the age of 60 years. While

processing his case for pension, the Accountant General pointed out that his date of birth should have been verified from his discharge certificate

issued by the Army. On verification, it was found that his date of birth recorded in the Army discharge certificate was 21121928. Accordingly, the

Government has changed his date of birth from 1181931 to 21121928. When this decision was communicated to the Accountant General, the

latter sought clarification as to how the period for which the petitioner overstayed was to be treated.

The petitioner has moved this petition for quashing the Government Order No. 875 HME of 1993 dated 1121993 by virtue of which the date of

birth of the petitioner was changed from 1181931 to 21121928 on the ground that neither any enquiry was held nor he was heard before the

impugned order was issued. It is bad because principles of natural justice have

been violated.

No counter has been filed on behalf of the State Government. In the Counter filed by the Accountant General, it is stated that some excess

payments and his over stay in service has delayed the settlement of payment of pension.

The question involved is whether the date of birth of the petitioner has been changed arbitrarily. Admittedly, the petitioner was appointed orderly in

June 1966, it is also admitted that as per the First page of the Service Book, his date of birth has been recorded as 1181931, on the basis of

School Leaving Certificate issued by the Headmaster, R. S. M High School, Rahya. This entry was attested by the Superintendent SMGS

Hospital, Jammu on 1161966. However, the Accountant General appears to have entertained some doubts about the genuineness of his date of

birth and asked the Department to furnish his discharge certificate from the Army. While furnishing the discharge certificate, the then

Superintendent of SMGS Hospital wrote the following letter to the Principal, of the College on 2391992 which reads as under :

The then Medical Superintendent who has signed the 1st page of Service Book has since retired on superannuation. The case is as old as about

as about three decade back. There is nothing on record to indicate the circumstances under which the date of birth was not recorded according to

Army discharge certificate which too interestingly is wrong because the date of birth as per said certificate is 21 121948 and date of birth is

21121928 which indicates that the age of Exincumbent was 20 years (21121948 () 21121928) at the time of enrolment whereas age on enrolment

in the army discharge certificate has been recorded as 19 years (Photostat copies enclosed)

In view of the foregoing recommendations made vide your letter No. AHJ/345960 dated 631992 may kindly be up hold and period got decided

accordingly to avoid unnecessary harassment to the Exorderly particularly in the prevalent economic hardships. Otherwise too there appears no

other alternative but to settle the case in favour of the Exorderly who has physically worked for the period in question.

This letter was forwarded by the Principal to respondent2, who issued the Government order No. 875HME of 1993 dated 1121993 which reads

as under:

Whereas Shri Suresh Chander orderly SMGS Hospital Jammu was due for superannuation on 31 81991 as per the date of birth recorded in his

Service Book i.e. 1181931.

Whereas the pension case of the orderly was sent to the Accountant General for finalisation of his pension case.

Whereas the Accountant General J and K Jammu pointed out that the orderly has overstayed for two years and 8 months being exserviceman.

Whereas the matter was taken up with the Principal Medical College Jammu who pointed out that at the time of appointment of the orderly he

produced his School Leaving Certificate and accordingly date of birth entry was made in his service Book, whereas his date of birth was to be

recorded from his discharge certificate being an exserviceman which he had not produced at the time of his appointment as orderly :

Whereas in pursuance of the date of birth viz 21121928 as per Army discharge certificate, the orderly was due to superannuation on 31121988;

Whereas the case has been examined in the Adm; Department and it was concluded that the date of birth recorded in the service book viz.

1181931 as per School leaving certificate is incorrect and needs to be corrected on the basis of date of birth recorded on the basis of date of birth

recorded in the Discharge certificate issued by the Army Viz. 21.12.1928;

Now, therefore, in pursuance of para 6,4 of the J and K Financial Code Vol.1, sanction is accorded to the correction in the date of birth of Shri

Suresh Chander ExOrderly SMGS Hospital Jammu from 11 81931 to 21 121928 on the basis of Discharge Certificate issued by the Army.

By order of the Government of Jammu and Kashmir.

5. Obviously, this order has been issued unilaterely without holding any internal enquiry. No notice was issued to the petitioner before correcting

the date of birth. Assuning that the discharge certificate from the Army indicated a different date of birth, the petitioner was entitled to be heard

before the date of birth recorded at the time of his appointment and duly attested by the Appointing Authority was changed. Moreover, while the

date of birth recorded in the Service Book is based on the School Leaving Certificate. The discharge certificate is silent about the basis on which

the date of birth was recorded. Further the genuineness of the date of birth

recorded in the Army discharge certificate was doubtful for the reasons stated by superintendent SMGS Hospital in his letter dated 23/9/1992. This doubt could be removed only by holding a full dressed enquiry could be removed only by holding a full dressed enquiry after giving proper notice to the petitioner. However, Government order impugned was issued without holding an enquiry and since this order has changed the date of birth unilaterely which has affected the service rights of the petitioner, the same is liable to be quashed being arbitrary. Accordingly, Government order dated 11/2/1993 is quashed. The respondents are directed to treat the date of birth of petitioner as 11/8/1931. The date of birth recorded in his Service Book on the basis of which the order of superannuation dated 28/8/1991 was issued superannuating him with effect from 31/8/1991 is infact his correct date of birth.

6. Since respondents¹ to 5 have not justified the impugned order changing the date of birth of the petitioner, it follows that the date of birth recorded in the discharge certificate was wrong while his correct date of birth is 11/8/1931 as recorded in his Service Book. Consequently, the respondent⁴ is directed to authorise the pension of the petitioner treating his date of birth as 11/8/1931 within a period of two months. I make the order accordingly.