

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

TA No. 43 of 2015

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Narayan Pati, aged about 59 years, S/o Udaya Narayan Pati, resident of Vill.-Mukhura, PO-Govindpur, PS/Dist-Balasore, t present residing at Qrs. No. C/76, Sector-19, Rourkela-5, PS-Sector-19, Dist.-Sundergarh.

.....Applicant

VERSUS

1. Udaya Narayan Pati, S/o Sri Bamadev Pati, resident of Vill-Mukhura, PS-Govindpur, PS-Ramuna, Dist.-Balasore, at present residing at Mukhura, PO-Govindpur, PS-Ramuna, Dist.-Balasore. (dead)
2. The Secretary, Board of Secondary Education, Orissa, Cuttack, At/PO- Cuttack, PS-Mangalabag – Cuttack, Dist.-Cuttack.
3. The Managing Director, Steel Authority of India Limited, Rourkela Steel Plant, Rourkela-769011, PS-Plantsite, Dist.-Sundergarh.

.....Respondents

For the applicant : Mr.A.K.Mishra, counsel
Mr.N.R.Routray, counsel

For the respondents: Mr.T.K.Pattnaik, counsel
Mr.S.N.Nayak, counsel

Heard & reserved on : 28.2.2020

Order on : 06.03.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

This Transfer Application which has been received on transfer from Hon'ble High Court vide order dated 14.9.2015 in which the following directions are given to the Tribunal :

“Even though I find some force in the contention of Mr.Dhal, learned counsel for O.P. 3 that the civil court lacks jurisdiction to try suit in view of the notification, as this Court is in seisin of the matter under Article 227 of the Constitution of India, in order to avoid the multiplicity of litigation and for ends of justice, I allow the application for amendment sought for and direct transfer of T.S.No.15/1992, which is pending before the learned Civil Judge (Junior Division), Rourkela to the Central Administrative Tribunal, Cuttack Bench, Cuttack for disposal of the said Title Suit. The records of T.S.No.15/1992 be transferred to the Central Administrative Tribunal, Cuttack Bench by the learned Civil Judge (Junior Division) Rourkela.”

2. The applicant has filed the consolidated TA No. 43/2015 seeking the following reliefs in para 22 of the said TA :-

- “(i) Decree for declaration that the date of birth of the plaintiff is on 1.7.1957.

- (ii) Decree for declaration that the date of birth as entered in the H.S.C. examination of the plaintiff is wrong and incorrect.
- (iii) Direction to the Defendant No. 3 and 2 for correction of date of birth in the service record and in the H.S.C. certificate respectively of the plaintiff.
- (iv) Let it be declared that the letter of superannuation dtd. 31.10.2013 is illegal, arbitrary and contrary to the policy of the Defendant and the same is not enforceable.
- (v) Let a mandatory injunction be issued to the Defendant No.3 to give effect to the corrections so made in the service records of the Plaintiff.”

3. An objection was raised by the learned counsel for the respondents on the ground that this Tribunal does not have jurisdiction on adjudicating the reliefs claimed in para 22 of the TA. The said objection was considered by the Tribunal and the following order was passed vide order dated 17.2.2020 :-

“Heard Learned counsel for the applicant, Mr. Nayak, Learned counsel for the respondent No.2 (Board of Secondary Education) & Mr. T.K.Pattnaik, Learned counsel for respondent No.1 (SAIL) on jurisdiction of the Tribunal,. It is seen from the consolidated TA filed by the applicant that reliefs sought for vide sub para (iii), (iv) & (v) of the paragraph 22 of the TA are within the jurisdiction of the Tribunal which will be adjudicated by this Tribunal in accordance with the orders of Hon’ble High Court vide order dated 14.9.2015. For the sub para (i) & (ii) will not be adjudicated by this Tribunal on ground of lack of jurisdiction.

Learned counsel for the applicant agreed to the adjudication of the reliefs sought for in sub para (iii), (iv) and (v) of para 22 of his consolidated TA by this Tribunal. It is also submitted by Learned counsels for the parties that the pleadings are complete in this TA.”

4. The facts in brief are that the applicant had joined service on 22.5.1979 under the respondents Steel Authority of India Limited (SAIL) as Executive Trainee under Respondent No.3. It is stated in para 12 of the TA that on 20.12.1990, the father of the applicant swore an affidavit to state that the actual date of birth of the applicant was on 01.07.1957. On 26.09.1990, the applicant submitted a letter to the respondents for correction in date of birth of the applicant as 01.07.1957 instead of 25.01.1954 which was entered in the service records. Thereafter, the applicant was asked to submit a copy of HSC certificate which was duly submitted by him. Thereafter, the Respondent No. 1 vide letter date 14.01.1991 informed the applicant that the request for change of date of birth was not possible to accede. Vide letter dated 16.3.1991, the applicant, sought information from the respondents about the reason for not accepting the request of the applicant for change of date of birth, on which, no action was taken by the respondents.

5. The respondent No.3 (SAIL) had filed written statement in the Title Suit stating that at the time of joining in the service as Executive Trainee under SAIL, the applicant had submitted a declaration called “Attestation Form” as per the extant rules, in which he had declared the date of birth and other details as required and he had recorded his date of birth to be 25.1.1954. It is further submitted that after 12 years of service, he submitted a representation

on 26.9.1990 for change of his date of birth. Since the request made in the representation was contrary to his declaration given in the Attestation Form at the time of joining service and the date of birth recorded in his H.S.C. certificate, the said representation was rejected by the authorities. It is further stated that as per the instructions contained in the Attestation Form, furnishing of false information or suppression of factual information in the Attestation Form would render him unfit for employment.

6. The applicant has also filed MA No. 172/2016 on 9.3.2016 stating that the matter relating to his date of birth was referred to respondent No.2 and it has been stated by the respondent No.2 that no final decision could be taken because of the pendency of this TA. It was therefore prayed that pendency of this TA will not be a bar on the part of the respondent No.2 to take an appropriate decision in respect of the date of birth of the applicant.

7. Respondent No.2 has filed their Counter on 19.10.2016 stating as under:

“That it is most respectfully submitted here that as per Section VI, Rule-39 of the Miscellaneous Regulation of Board of Secondary Education Act, 1953 it clearly states that the date of birth once entered in the Board’s records cannot be changed unless it is of the nature of clerical error or printing mistake. Application for the correction of the date of birth should be made within three years of passing the examination. No change in date of birth recorded shall be made unless the application for correction is received through the head of the institution concerned within three years of passing the examination.

That it is respectfully submitted here that an application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. Since the applicant has only prayer for correction of date of birth as it is a question of fact fit to be determined by the appropriate forum.”

8. The Counter to MA No. 172/2016 has also been filed on behalf of respondent No.3 on 31.3.2016 opposing the prayer stating that if the prayer made is allowed, it will amount to opening another forum for consideration of the matter pending adjudication by this Tribunal as per the direction of Hon’ble High Court.

9. Heard learned counsel for the applicant and for both the respondents who broadly reiterated the averments in their respective pleadings. The applicant avers in the TA (para 4) that at the time of his admission in the school, his date of birth was wrongly recorded to be 25.1.1954 as against the correct date of birth of 1.7.1957 and the applicant, being a minor at that time appeared in H.S.C. Examination in 1972 with incorrect date of birth of 25.5.2014. He joined the service under SAIL on 22.5.1979. It is stated in the TA that although the applicant had given declaration that his date of birth is 1.7.1957, but the service record showed the date of birth to be 25.1.1954 as per the date of birth recorded in the H.S.C. certificate. He moved the SAIL authorities on 26.9.1990 for a decree for correcting his date of birth, which was

rejected. Thereafter, he filed a Title Suit No. 15/1992 for a decree to declare his date of birth to be 1.7.1957 and for direction to the SAIL authorities to change the date of birth in the service record of the applicant.

10. It is noticed that the applicant remained silent about the date of birth in the H.S.C. certificate after passing the H.S.C. examination in 1972. Even when he joined the service on 22.5.1979 with 25.1.2014 as his date of birth, no step was taken to rectify the date of birth till 26.9.1990. When the authorities rejected the request on 1991, the said order was not challenged in appropriate forum and instead, the applicant filed the Title Suit in 1992 which was pending till he was served with the retirement notice on 31.10.2013. Thereafter, he moved the civil court for an interim direction to the respondents not to give effect to the retirement notice. Such prayer was rejected by the court on which the appeal was filed. The said appeal was also dismissed, after which the applicant moved Hon'ble High Court. Thus, the Title Suit for declaration of his correct date of birth was filed in 1992 i.e. after about 20 years from the year of passing the H.S.C. Examination and about 12 years after his joining in service under the SAIL in the year 1979.

11. In this case, the applicant had also moved the Board of Secondary Education, Odisha for correction of his date of birth in the H.S.C. Certificate. It is stated by the respondent No. 2 in their Counter that as per the Board's Regulations, the date of birth entered in the Board's records cannot be corrected unless such a request is made within three years of passing the examination through the head of the institution concerned. It is clear that the date of birth of the applicant as per the H.S.C. certificate continues to be 25.1.2014.

12. Further, as stated in the written statement of the respondent (SAIL) in the Title Suit, the applicant had submitted the Attestation Form at the time of joining service in 1979 declaring his date of birth to be 25.1.1954, knowing fully well the instructions that suppression of actual fact or wrong declaration would render him ineligible for employment. The reasons for not disclosing his date of birth to be 1.7.1957 as claimed by him later in this TA, have not been explained by the applicant in his consolidated TA. There is no whisper in the TA about his own declaration about his date of birth in the Attestation Form submitted to the SAIL authorities at the time of joining service in 1979. There is no explanation in the applicant's pleadings about the reason for waiting more than 11 years after joining in service to move a representation to SAIL authorities to raise his grievance for the first time. Hence, the grounds raised by the applicant in the TA justifying change of his date of birth do not appear to be credible. No document has been furnished by the applicant in support of

his contention in the TA that he had furnished declaration to SAIL that his date of birth was 1.7.1957, except for his representation submitted on 26.9.1990 to the authorities requesting for change of his date of birth. The reasons for declaring his date of birth to be 25.1.1954 in the "Attestation form" to SAIL authorities at the time of joining service in 1979 have not been furnished by the applicant in his pleadings.

13. The settled position of law in this regard is that a public sector employee has to move the appropriate authority for correction of date of birth within five years from the date of joining in service. In the case of **Union of India vs. Harnam Singh, 1993 AIR 1367** Hon'ble Apex Court has held as under:-

"Note (5) to Fundamental Rule 56 governing correction of date of birth in the service record, substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No. 19017/79/Estt-A dated 30th November, 1979 published as SO 3997 in the Government of India Gazette dated 15th of December 1979 limits the exercise of the right by the government servant to seek alteration of his date of birth only within the specified period. The provision reads as under:

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 appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government or the Comptroller and Auditor General in regard to persons serving in the Indian Audit and Accounts Department, or an administrator of a Union Territory under which the Government servant is serving if

(a) a request in this regard is made within five years of his entry into Government service;

(b) it is clearly established that a genuine bonafide mistake has occurred; and

(c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service."

According to the above amendment, it is obvious that the request for correction of date of birth is required to be made by the Government servant within five years of his entry into Government service and his date of birth may be corrected if it is established that, a genuine bona fide mistake had occurred while recording his date of birth at the time of his entry into Government service. The CAT in the instant case was of the opinion that the bar of five years could only apply to such Government servants who joined service after 1979, when the amendment came into force and that the said period of limitation would not apply to Government servants who were in service for more than five years prior to 1979.

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The interpretation has to be the one which advances the intention and not the one which frustrates it. It would not be the intention of the rule making

authority to give unlimited time to seek correction of date of birth, after 1979, to those government servant who had joined the service prior to 1979 but restrict it to the five year period for those who enter service after 1979. Indeed, if a government servant, already in service for a long time, had applied for correction of date of birth before 1979, it would not be permissible to non-suit him on the ground that he had not applied for correction within five years into service, but the case of government servant who applied for correction of date of birth only after 1979 stands on a different footing. It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those government servants who were already in service before 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979 but in any event not later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule making authority.”

With the above interpretation of the rules, the order of the Tribunal directing the authorities for correction of the date of birth of the employee was set aside by Hon’ble Apex Court in the case of Harnam Singh (supra).

14. In view of the above facts and circumstances, I am of the considered view that the applicant has failed to make out a case within a reasonable time from the date of entering the service on 22.5.1979 for correction of his date of birth in his service records and the date of birth in the service records continued to be the same as in his H.S.C. certificate and taking into consideration the grounds and justifications furnished by the applicant in the OA, no interference of the Tribunal in this matter is called for and the reliefs claimed in sub para (ii), (iii), (iv) and (v) of the paragraph 22 of the TA are liable to be rejected and hence, these are rejected. It is made clear that the reliefs claimed at sub para (i) and (ii) of the paragraph 22 of the TA have not been adjudicated due to lack of jurisdiction of this Tribunal.

15. As a result, the TA stands dismissed. There will be no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)