

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 679 of 2014

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

Govinda Charan Moharana, aged about 60 years, s/o Late Charan Moharana at present working as Carpenter Grade-I under Office of Executive Engineer, Eastern River Division, Central Water Commission, Bhubaneswar.

.....Applicant

VERSUS

1. Union of India represented through the Secretary, Ministry of Water Resource, Sharma Shakti Bhawan, Rafi Marg, New Delhi.
2. Chairman, Central Water Commission, Seva Bhawan, R.K. Puram Road, New Delhi-110066.
3. Superintendent Engineer, Eastern River Circle & H.O. Circle, Plot No.13 & 14, Bhoi Nagar, Bani Vihar, Bhubaneswar, Dist/-Khurda.
4. Executive Engineer, Central Water Commission, Mahanadi Division, At.-Doctor Colony, P.O.-Burla, Dist.-Sambalpur, Odisha.

.....Respondents.

For the applicant: Mr. N.R. Routray

For the respondents: Mr. L. Jena

Heard & reserved on : 18.12.2019

Order on : 03.01.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this OA under the section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “a) To quash the order of rejection dtd.31.07.2014 under Ann-A/4;
- b) And to direct the respondents to correct the date of the birth of the applicant as 10.02.1957 as per school leaving certificate;
- c) And to direct the respondents to allow the applicant to continue in service till February, 2017.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice’;

And for which act of your kindness the applicant as in duty bound shall ever pray.”

2. The facts of the case are undisputed. The applicant was initially appointed as Khalasi under the respondents on work charge basis on 25.10.1972 and then he was promoted as Carpenter on 1.7.1976 and as Carpenter Grade-I on 29.9.1987. The applicant avers in the OA that he came to know on 8.7.2014 that his date of birth recorded in his service book was corrected to 10.2.1957 instead of 10.2.1955, which was recorded in the School Leaving Certificate (in

short SLC), copy of which has been enclosed at Annexure-A/1 of the OA. Then he submitted an application dated 17.7.2014 (Annexure-A/3) pointing out such correction in the service book where as his actual date of birth is 10.02.1957 as per his SLC. He also requested to be allowed to continue in service taking 10.02.1957 as his date of birth. The respondent no. 4 rejected the application dated 17.7.2014 by issuing the order dated 31.7.2014 (Annexure-A/4) on the ground that the SLC cannot be accepted for the changing the date of birth in terms of the DOPT OM dated 30.11.1979.

3. It is averred by the applicant in the O.A. that the correction in the service record changing the date of birth to 10.2.1955 has not been authenticated by any official, who had made the correction. Hence, the date of birth originally recorded as 10.2.1957 on the basis of SLC would be valid.

4. Counter has been filed by the respondents stating that the applicant declared his date of birth to be 10.2.1955 at the time of his appointment by filing an affidavit sworn by his father on 25.4.1973, which stated that although the SLC mentioned his date of birth to be 10.2.1957, but as per his horoscope, his date of birth is 10.2.1955. It is stated that based on such affidavit, the date of birth of the applicant was corrected to 10.2.1955 in his service book, and the applicant had also signed on the first page of the service book. It is further stated that the request for change of the date of birth was received from the applicant after completion of 41 years of service and that the applicant had declared his date of birth to be 10.2.1955 in the option form for Central Government Employees Insurance Scheme signed on 26.12.1977 (Annexure-R/2). It is further stated that the seniority lists circulated by the respondents in the years 2004, 2008, 2009, 2011 and 2012 (Annexure-R/1 series) showed the applicant's date of birth to be 10.2.1955 which was never objected by the applicant. It is stated that the applicant has served for 42 years which is the maximum permissible length of service as per the rules. It is further stated that with the date of birth 10.2.1957, his age at the time of entry to government service would be 15 years 9 months. It was lastly mentioned in the Counter that the applicant had submitted his pension papers on 25.9.2014 and 4.10.2014 (Annexure-R/4 and R/5 series) declaring his date of birth to be 10.2.1955.

5. Rejoinder has been filed by the applicant stating that the fact that the affidavit was sworn by his father about his date of birth shows that he was a minor at the time of initial appointment to service and that the date of birth recorded in his NTC certificate was also 10.2.1957. Acceptance of the affidavit

by his father was stated to be an error on the part of the respondents. It was submitted that his SLC was issued on 18.7.1973 after his joining in service and at the time of initial appointment in work charged establishment, he had not submitted any certificate. It is stated that his declaration of his date of birth to be 10.2.1955 was “under compelling circumstances and not at his volition.”

6. Heard learned counsel for the applicant who submitted that the date of birth of the applicant should not have been changed in his service book based on the affidavit of his father as stated in the Counter. It was pointed out by learned counsel for the applicant that as per the Swami's Handbook, 2009 Chapter 26 on Service Book (Annexure-A/5), there should not be any overwriting or erasure of the entries in the service book which need to be authenticated by next higher authority. Since no such authentication has been made, the entry relating to the date of birth of the applicant in the service book is to be ignored. Learned counsel for the applicant also submitted that the objection of the respondents that with 10.2.1957 as the date of birth, the applicant would be a minor at the time of first appointment, is not tenable.

7. Learned counsel for the respondents was heard. Reiterating the contentions in the Counter, he submitted that as per the DOPT OM dated 30.11.1979, any request for correction of the date of birth should be made within 5 year period from the date of joining and the applicant did not apply for correction of his date of birth within that period. It was also pointed out that as stated in the Counter, on a number of occasions the applicant was informed about his date of birth and he did not take any action for correction within the prescribed time period, if there was any mistake in recording of his date of birth in the service records.

8. The pleadings and submissions of the parties are duly considered. The fact that the applicant has applied for correction of his date of birth from 10.2.1955 to 10.2.1957 on 17.7.2014 (Ann. A/3), which was about seven and half months prior to his date of superannuation as per his service record, is undisputed. The applicant contends that he came to know about the wrong recording of his date of birth in his service book after he got a copy of the service book under RTI Act. One, the contentions in the Counter is that the seniority lists of the applicant, in which his date of birth was disclosed to be 10.02.1955, were circulated in different years from 2004 and there were not objected by the applicant such contention has not been contradicted by the applicant. Further, as mentioned in the Counter, the applicant has declared his date of

birth to be 10.2.1955 for Central Govt. Employees Insurance Scheme (Annexure-R/2), and this has been admitted by the applicant with the explanation that he did it under 'compelling circumstances'. What are such compelling circumstances forcing him to declare his date of birth to be 10.2.1955, have not been disclosed by the applicant in his pleadings.

9. The applicant does not accept the affidavit submitted by his father about his age at the time of his initial appointment. That does not explain why he could not apply for correction of the date of birth within five years from the date of joining service as required under the DOPT OM dated 30.11.1979. The explanation that the applicant did not know about his date of birth as recorded in his service book till 2014 is not acceptable, in view of his declaration of age for the purpose of Central Government Employees Insurance Scheme and disclosure of his date of birth in the seniority list from time to time since 2004. Further, there is no averment of the applicant to the effect that he had requested the competent authority to inform about his date of birth in his service book through inspection or otherwise. It is clear that no attempt was made by the applicant to approach the authorities for correction of his date of birth as per his SLC within the time limit as specified by DOP&T. His belated request for correction of the date of birth is not tenable in view of the OM dated 30.11.1979 of the DOPT.

10. In view of the discussions above, I do not find any merit in the OA, which is accordingly dismissed with no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath