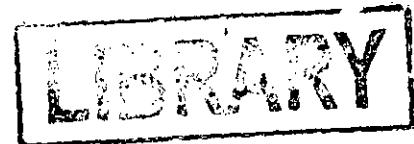


**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**



OA. 1012/2014

Present :Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Pranab Kumar Majumdar, son of late Trilokeswar Majumdar aged about 60 years, retired Joint Director of Census Operations in the Directorate of Census Operations, West Bengal, HQ at O/o the Registrar General and Census Commissioner of India , 2-A, Mansingh Road, New Delhi- 110 011 having permanent address at 686/1, Ashoknagar, District- North 24 Parganas and now residing at B-5f/66, Kendriya Vihar, VIP Road, Calcutta- 700 052.

.....Applicant.

-versus-



1. The Union of India, service through the Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi- 110 001;
2. The Registrar General & Census Commissioner of India, 2-A, Mansingh Road, New Delhi- 110 011.
3. The Director of Census Operations in the Directorate of Census Operations, West Bengal, IB-199, Salt Lake City, Sector III, Calcutta- 700 016.
4. The Department of Personnel & Training, Government of India, service through the Secretary, North Block, New Delhi, Pin- 110 001.

.....Respondents.

For the Applicant : Ms. A. Roy, Counsel

For the Respondents : Mr. B. P. Manna, Counsel

Heard on: 04.12.2019

Date of Order: 12.12.19

ORDER

Per Ms. Bidisha Banerjee, JM:

In his penchant to get the recorded date of birth corrected after the end of his service life on 30.06.2014, the applicant has preferred this OA on 01.08.2014 to seek the following reliefs:

"8(a) Direction do issue quashing and setting aside the communication dated 09.06.2014 of the Under Secretary to the Government of India o/o RG & CCI being Annexure "A-15" hereto and thereupon directing the respondent authorities to record the correct date of birth of the applicant as 24.10.1954 in the service records in pursuance of the birth certificate dated 03.04.2014 issued under the provisions of the Registration of Births and Deaths Act, 1969 and to grant all consequential benefits including promotion to the applicant on the basis of such correction of date of birth in the service records;

(b) Declaration do issue declaring the provisions of FR 56 (Note 6) as promulgated by notification dated 30.11.1979 of the Ministry of Home Affairs, Government of India, Department of Personnel and Administrative Reforms read with DOPT O.M. dated 19.05.1993 as ultra vires the Constitution of India and the provisions of Section 13(3) of the Registration of Births and Deaths Act, 1969.

Or

In the alternative to declare the said provisions to be inapplicable in case of delayed registration of birth under the provisions of the Registration of Births and Deaths Act, 1969;

(c) Injunction do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the communication dated 09.06.2014 of the Under Secretary to the Government of India o/o RG & CCI being Annexure "A-15" hereto;

(d) Direction in the nature of certiorari do issue upon the respondent authorities directing them to produce and/or cause to be produced the entire records of the case and thereupon to pass necessary orders for rendering conscientiable justice;

(e) Cost and costs incidental hereto;

(f) And/or to pass such other or further order or orders as to your Lordships may seem fit and proper."



2. The admitted facts are that the applicant had joined government service on 03.02.1981. He joined the office of the Registrar General and Census Commissioner of India as Assistant Director of Census Operations (T) through UPSC on 29.01.1996 and was posted at different places from time to time in his service and retired on account of his superannuation, from Directorate of Census Operations, West Bengal, on 30.06.2014. According to the respondents the records available with the office shows that his date of birth as 01.07.1954, and that the applicant had applied for the post of Assistant Director of Census Operations (Technical) through UPSC vide his application dated 23.12.1993 with due declaration about correctness of this date of birth. The applicant at the fag end of his service career approached the Executive Magistrate on 12.03.2014 and was issued a Birth Certificate dated 03.04.2014 by the Registrar, Births and Deaths, Habra Municipality, West Bengal wherein the date of birth of the applicant was recorded as 24.10.1954 instead of 01.07.1954. Accordingly, he made a request dated 04.04.2014 requesting for alteration of date of birth in his service records. As per provision under FR 56 (Note 6) the request for change of date of birth should be submitted within five years of entry into Govt. service. As such, the request at such belated stage for change of date of birth just before retirement from Govt. service on superannuation was not acceded to. Accordingly, the applicant was intimated vide letter dated 09.06.2014. As per the provisions of RBD Act, 1969, the normal period of reporting the birth and death is fixed as 21 days in Rule 5(3) framed under



Section 8 of the RBD Act, 1969. However, even after 21 days, the events of birth and death can be registered under the provision of Section 13 of the said act. The following 3 categories are prescribed under delayed registration provisions of Section 13 with certain formalities:

Beyond 21 days but less than 30 days (under section 13 (1))
 Beyond 30 days but less than one year (under section 13(2)) beyond one year (under section 13(3)).

In the instant case, the applicant approached the concerned Magistrate on 12th March, 2014 and obtained the birth certificate on 3rd April, 2014 mentioning the date of birth as 24.10.1954.

 Thus the applicant has approached the registration authority after the gap of 59 years. A person joining government service is governed by the rules, regulations and instructions issued by the Government from time to time. The applicant had failed to comply with provisions of FR 56 (Note 6) which stipulates that the request for change of date of birth should be submitted within five years of entry into Govt. service. Hence, the applicant's request was not covered under the Government instructions. Hence his request for change of date of birth after a gap of 33 years was not acceded to.

3. Note 6 of FR 56 reads as under:

"Note 6 – 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 person 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 bona fide 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."

4. We discern that none of the conditions stipulated in Note 6 to FR 56 is satisfied. Ld. Counsel for respondents invited our attention to a horoscope on the basis of which the applicant obtained certificate from the Magistrate and sought for alteration of recorded date of birth.

5. We are of the considered opinion that such a course is not permissible. We are fortified in our view by the following decisions:

(i) **Home Department -vs- R. Kirubakaran** [1994 Supp (1) SCC 165] that :

".....unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is 3 1993 Supp (1) SCC 763: f 1993 SCC (L&S) 276: (1993)23 ATC 4 (1993) 2 SCC 162: 1993 SCC (L&S) 375 :(1993) 24 ATC 92 issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order....."

(ii) **Union of India-vs- C. Rama Swamy** [1997 (4) SCC 647] that :

"..... it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously,i his



intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing office....."

(iii) **Punjab & Haryana High Court at Chandigarh -vs- Meghraj Garg & Anr.** [(2010) 6 SCC 482] where respondents had sought for correction of date of birth recorded in his service book, after 12 years of his joining the service that the Trial Court committed a serious error by passing the decree in his favour and the Lower Appellate Court and the Hon'ble High Court repeated the same error by refusing to set aside the decree passed by the Trial Court.

(iv) **State of Madhya Pradesh & Ors. -vs- Prem Lal Shrivas** [2011 (9) SCC 664] that :

".....High Court committed manifest error in allowing change of date of birth after lapse of over two decades notwithstanding that no period for filing such application was prescribed."

(v) In **State of U. P. -vs- Shiv Narain Upadhyaya** [2005 (6) SCC 49] while reiterating the aforesaid proposition of law the Hon'ble Apex Court castigated the practice of raising dispute by the public servant about incorrect recording of date of birth in their service book on the eve of their retirement.

(vi) **Eastern Coalfields Ltd. -vs. Bajrangi Rabidas** (2014 (13) SCC 681] the Hon'ble Apex Court found the following: -

"17. On an apposite reading of the instructions there can be no iota of doubt that the date of birth mentioned in Matriculation or Higher Secondary certificate has to be accepted as authentic.

6. In view of the extant provisions and decisions as enumerated supra, the prayer of the applicant is not tenable and therefore the OA is dismissed.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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