

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION No.2105/2020

Dated this ~~Thursday~~ the 10th day of December, 2020

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Prabhakar S/o. Trichinapally Ganpathy Sivaji,
Age 59 years, Occupation-Assistant Audit Officer
at The Accountant General (audit)-II, Maharashtra
State, Nagpur, R/o Tenament No.116, Govind
Gourkhede Complex, Seminary Hills,
Nagpur - 440 006. ... **Applicant**

(By Advocate Shri R. V. Shiralkar)

Versus

1. The Comptroller and Auditor
General of India, 9,
Deendayal Upadhyay Marg,
New Delhi - 110 124.
2. The Accountant General (Audit)II,
Maharashtra State, Civil Lines,
Nagpur - 440 001. ... **Respondents**

(By Advocate R. G. Agrawal)

ORDER

PER: RAVINDER KAUR, MEMBER (J)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 claiming the following reliefs:-

- "8(A) Quash and set aside the order dated 4.7.2019 passed by the respondent no.1 (Annexure A-1) being illegal, arbitrary and contrary to Note 6 below F.R. 56 and consequently;
- (B) Direct the respondent no.1 to correct the date of Birth of the Applicant from 16.10.1960 to 16.10.1961 in service record and grant all consequential benefits arising from the same.
- (C) Direct the Respondents to continue the applicant in service till 31.10.2021 i.e. till corrected date of birth.
- (D) Any other consequential benefits as may be deemed fit and suitable."

2. The applicant was appointed as LDC on 17.06.1983 with the office of Accountant General - II, Nagpur. As per terms of the offer of appointment, for verification, the applicant furnished Sr. Sec. Certificate(SSC) issued on 22.12.1976 whereby his date of birth is mentioned as 16.10.1960. In his application form also, the applicant mentioned his date of birth as 16.10.1960. Consequently, the respondents also recorded his date of birth in the service record as 16.10.1960. On 02.09.1986, the applicant moved application addressed to Dy. Accountant General(Adm.) for correction of his date of birth in the service record from 16.10.1960 to 16.10.1961 describing it as a typographical error. Vide letter dated 22.07.1989(Annex A-10), the applicant was informed by the respondents that unless the date of birth shown in the Maharashtra State Board of Secondary Education(hereinafter referred as Board) is changed, his request for alteration of date of birth cannot be acceded to. Admittedly the applicant did not challenge this order of the respondents though he claims that it is contrary to Note 6 FR-56. Thereafter, the

applicant informed the respondents vide letter dated 09.08.1996 (Annex A-11) that he had approached the Board, however, he got the reply that any alteration in date of birth in the certificates issued by the Board is to be done within two years of passing the SSC examination. Thereafter, the correspondence continued between the applicant and the respondents, however, the stand of respondent no. 1 was throughout that unless the Board revises the date of birth, it was not feasible for them to take any action. The applicant was communicated the decision of the respondent no. 1 vide order dated 28.03.2001 (Annex A-22). After lapse of 14 years the applicant again approached the respondents vide letter dated 16.09.2015 followed by another representation dated 27.07.2016. Since both these representations of the applicant were not disposed off, he approached this Tribunal vide OA No. 2235/2018 seeking directions to the respondents to alter/correct his date of birth in his service record. The applicant claims that during the pendency of this OA, the Respondent no. 2 issued order dated 04.07.2019 whereby his claim for correction of date of birth in service

record was rejected, hence, he has withdrawn OA No. 2235/2018 so as to challenge the aforesaid order dated 04.07.2019.

3. We have heard learned counsels for both the parties on the point of admission. It is observed that since the applicant had already served copy to the respondents, respondents have also placed on record their reply which is also perused.

4. FR 56 Note 6, which is relied upon by the applicant, 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 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 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."

5. Note 6 clearly finds mention that the date on which the Government Servant attains the age of 58 years or 60 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 is accepted by the competent authority on production of documentary evidence such as High School or Higher Secondary or SSC certificate or extracts from Birth Register. It also finds mention that the date of birth declared by the Govt servant and accepted by the appropriate authority is not subject to any alteration except as specified in this note ie. A request in this regard is required to be made by the Government Servant within 5 years of his entry in the establishment and it is established that a genuine bonafide mistake has occurred and also that the date of birth so altered would not make him ineligible to appear in any School or University or UPSC examination in which he had appeared for entry into Government Service on the date on which he first appeared at such examination or on the date on which he entered Govt service. Thus it is clear from the Note 6 that the date of birth recorded in the service record has to be on the basis of documentary evidence. It is further clear that the Date of Birth which is being mentioned in the service record of the Govt

Servant is on the basis of documentary evidence including SSC certificate. In the present case, the applicant had furnished his date of birth in the form of Secondary School Certificate as proof of his date of birth and in the service record, his date of birth was correctly recorded as per this certificate. The claim of the applicant is that in the SSC certificate his date of birth is wrongly mentioned as 16.10.1960, whereas, as per his Primary School Record, his date of birth is 16.10.1961 and that the school had committed mistake by forwarding his wrong date of birth to the Board for SSC examination. Note 6 nowhere speaks that the mistake committed by any other authority in recording the wrong Date of birth is to be corrected by the respondents. The respondents had time and again informed the applicant that they could change the date of birth in the service record only if the Board changes his date of birth in the Sr. Secondary certificate . It is admitted case of the applicant that the Board had refused to change his date of birth in the said certificate for whatsoever reasons. The applicant's claim that since the Board has refused to change the

date of birth in the certificate as it could be done only within the specified period on the issuance of certificate, so therefore, thereafter the respondents are liable to make change in the service record by altering the date of birth from 16.10.1960 to 16.10.1961 in terms of Note 6 to FR 56, is of no consequence as Note 6 does not deal with any such situation.

6. Besides, it is also observed that the respondents had rejected his claim initially on 27.07.1989 but the applicant did not challenge this order and slept over the matter for years altogether. The applicant has not furnished any justification for the delay from 1989 when his claim was rejected. He approached this Tribunal vide OA No. 2235/2018 which was withdrawn by him unconditionally vide order dated 24.01.2020. Though the applicant claims that he had withdrawn this OA on account of issuance of impugned order dated 04.07.2019 as he wanted to challenge this order vide separate OA. However, this fact does not find mention in the order dated 24.01.2020 passed by this Tribunal whereby OA NO. 2235/2018 was dismissed as withdrawn unconditionally. In these circumstances, even

otherwise the applicant is estopped from raising the similar issue again vide present OA. As mentioned above, in terms of FR 56, Note 6, the respondents had rightly recorded his date of birth as 16.10.1960 on the basis of SSC certificate as well as the application form filled by the applicant wherein he himself had mentioned his date of birth as 16.10.1960. Therefore, even if applicant had approached the respondents for correction of date of birth within 5 years, it is beyond the powers of the dept to change the date of birth unless it is changed by the Board . Hence, no case is made out for admission of this matter. The OA is thus dismissed at the admission stage itself. No order as to costs.

(Ravinder Kaur) 14/12/20
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

gm

21/12/2020