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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO. 1102 OF 2006

ALLAHABAD, THIS THE 24TH DAY OF NOVEMBER, 2006

C O R A M :

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

Budhi Ram Son of Late Bachan Ram,
Resident of village and post-Fariha,
District-Azamgarh.

.....Applicant

By Advocate : Sri B.N. Singh

Versus

1. Union of India through Secretary,
Ministry of Communication (P&T),
Dale Bhawan, New Delhi.
2. The senior Superintendent of Post Offices,
Azamgarh Division, Azamgarh.
3. The Inspector, Post Offices Sub-Division,
Phoolpur, Azamgarh.

.....Respondents

By Advocate : Sri S. Singh

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The simple issue involved in this case is whether the applicant could claim his date of birth as 8th July, 1948, while initially his date of birth was recorded as 8-2-1945. The answer would have been no had the authorities



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not effected the change in 2004 accepting the request of the applicant. But now, the respondents come up with the plea that since the applicant ought to have taken action within the period provided for under the Rules (i.e. 5 years from the date of his entry in service) but has taken steps much after, his date of birth as originally reflected alone would be taken into account. Hence this OA by the applicant contesting the decision of the respondents in superannuating him as of 30-09-2006 while according to his date of birth, his services could be upto July, 2008.

2. Not much of factual details need be reflected here to decide the issue involved in this OA. Admittedly, the applicant entered the department as E.D. Runner (there is a dispute over the date of entry, the respondents, on the basis of an earlier OA filed by the applicant contending that as per his own version the applicant joined as ED Runner In 1960, whereas the applicant contending that his date of entry is 1966 and there was a typographical mistake in the application earlier made.) He was appointed in a Group D post only in December 1996. According to the applicant, on coming to know about the reflection of wrong date of birth in the service records, the applicant had made a representation dated 05-12-2001 (Postal Receipt filed with rejoinder) for effecting necessary correction in respect of his date of birth, which actually was 08-07-1948. His request was acceded to and in 2004 necessary correction was directed to be made in the service records vide order dated 23-09-2004 passed by the Senior Superintendent of

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Post Offices and the same was duly effected. However, as per the version of the applicant the Senior Superintendent having retired, his successor had issued the show cause notice dated 04-09-2006 (Annexure A-6) stating that the correction in the date of birth was got made by the applicant purely with a view to deriving the benefit of pension. The applicant filed his reply therefor. However, by the impugned Annexure A-1 order dated 28-09-2006, the senior superintendent had directed that the applicant shall superannuate w.e.f. 30-09-2006. Hence this O.A.

3. Respondents have contested the OA. According to them, the applicant had duly appended his signature as early as in 1997 when the service book was filled up and in the said record, the date of birth of the applicant was duly recorded as 08-02-1945. As such, the applicant cannot have the correction effected subsequently. Again, it has been stated that in the application earlier filed by the applicant, he had mentioned that he was appointed as ED runner in 1960 which would, if the date of birth be taken as 08-07-1948, then mean that he was appointed as ED Runner at the age of 12 !. Thus, according to the respondents the applicant's date of birth was rightly reflected as 8-02-1945 and he was due for superannuation on attaining the age of 60 and he was therefore, to be superannuated by 30.09.2006.

4. Counsel for the applicant submitted that when a conscious decision had



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been taken by ostensible authority, accepting the date of birth as 08.07.1948, the same cannot be changed by the successor of that authority. There was no proof available to establish that the date of birth of the applicant was 08-02-1945 and as per the school leaving certificate produced, the correct date of birth is 08-07-1948 which was duly accepted by the Senior Superintendent.

5. Per contra, counsel for the respondents submitted, as stated in the reply statement that the applicant having signed with his eyes wide open at the time of appointment as Group D, cannot turn around to say that the same was wrong. He had invited the attention of the Bench to Annexure R-2, wherein as per the applicant, he joined as ED Runner in 1960 which would then mean that the applicant joined as ED Runner at the age of 12, which is incredible. The counsel had taken me through para 5, 7 and 11 of the counter to hammer home his contention.

6. Arguments were heard and documents perused. That the applicant served as ED runner is not denied but there is confusion in year of joining. According to the respondents, even by the words of the applicant vide Annexure R-2, it was 1960, while the applicant in his rejoinder stated that it was by mistake that 1960 was indicated in the application, while the same was only 1966. The submission of the applicant seems to be correct in this regard. For, the respondent's contention is that when in 1960 the applicant

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was appointed as ED Runner, if 1948 be the year of birth, his age was just 12 and he could not have been appointed as such, whereas, even if the year of birth is taken as 1945, the applicant was just 15 years by 1960 and as such, even at that age he could not have been so appointed. As such, the year in which the applicant was appointed should be only 1966 as submitted by the applicant and not 1960 as contended by the respondents. There has been no documentary proof to corroborate the date of birth of the applicant as 08-02-1945. This has also been duly observed by the respondents in their order dated 23-09-2004. Thus, the date of birth of the applicant, on the basis of the accepted document is 08-07-1948 only. Now the main issue is whether the respondent, who had considered the request of the applicant and effected the change in the Service register, could be permitted to undo the correction effected on the ground that the applicant in 1997 did not object to the recording of his date of birth as 08-02-1945. As per the pleadings, the applicant had made his request on 05-12-2001 for effecting necessary correction in his service records as to his date of birth. Authority to establish his date of birth as 08-07-1948 was the school leaving certificate, a copy of which was annexed to the said communication dated 05-12-2001 (Annexure A-3). To substantiate that he had so sent a letter, the applicant had furnished a copy of postal receipt, vide Annexure RA 1. However, in the order (Annexure A-5) dated 23-09-2004, permitting the correction of date of birth, there was no reference to the said 2001 representation, but reference is made to the subsequent letter dated 13-06-2004 (Annexure A4).



7. In recent decision in the case of **State of Gujarat v. Vali Mohd. Dosabhai Sindhi**, (2006) 6 SCC 537, the Apex Court has held as under :-

In Union of India v. Harnam Singh the position in law was again reiterated and it was observed:

A government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the government servant must do so without any unreasonable delay.

12. An application for correction of the date of birth should not be dealt with by the courts, the Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. **As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the court or the tribunal must be**

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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. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant to prove about the wrong recording of his date of birth in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior.

13. *The position was succinctly stated by this Court in the above terms in Secy. and Commr., Home Deptt. v. R. Kirubakaran.*

(Emphasis supplied)

8. Compared to other cases where the claim of the government employee for change in date of birth would be rejected by the respondents and the individual would approach the Court/Tribunal for effecting the correction in the service book in respect of his correct date of birth, this case is slightly different. Here, the authorities have already effected the correction, but later, they have undone the same. The question then arises

whether the applicant would have actually sent his earlier representation in 2001. The Senior Superintendent has relied upon the school leaving certificate produced by the applicant and it was on that basis that order dated 23-09-2004 came to be passed. There has, however, been no reference in the letter dated 13-06-2004 of the School leaving certificate, much less enclosure of a copy of the same. This would then go to show that the applicant had actually applied for correction as early as in 2001, and having not received any communication, shot out a reminder and it was on the basis of the school leaving certificate that the authority has consciously decided the date of birth as 08-07-1948 and issued direction for effecting necessary correction and the same was actually effected as early as in 2004. As such, the application for correction of date of birth had been made within the stipulated 5 years of the entry of the applicant as Group D employee and correction already having been made, it cannot lie within the domain of the respondents to undo the correction already made.

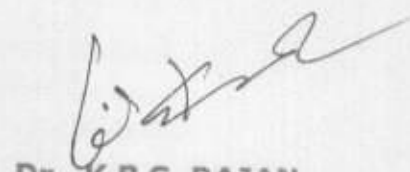
9. Thus, to sum up, as stated earlier, Rules provide for correcting within 5 years of service. This has been complied with. Not only the same; but further, the correction too had been effected as early as in 2004. Thus, undoing the correction already effected would result in a great injustice to the applicant. Keeping in view the decision of the Apex Court, as extracted above, if the case is analyzed, this case comes within the exceptional category, where the correction as to date of birth is fully justified. As such,

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the O.A. succeeds. Respondents are directed to entertain the applicant to resume services within a period of one week from the date of communication of this order and the applicant shall join duty within the said one week. The applicant shall be entitled to have the absence treated as duty for the purpose of qualifying service. He shall be entitled to pay and allowance from the date he joins. And, if he presents himself for duty within one week but if there be delay on the part of the respondents in entertaining the applicant, he shall be entitled to pay and allowance from the date he presents himself or one week from the date of communication of this order whichever is later. The applicant shall continue in service till he attains superannuation on the basis of his date of birth as 08-07-1948.

10. Under the above circumstances, there shall be no orders as to costs.



Dr. K B S RAJAN

JUDICIAL MEMBER