

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 443/2010

Dated this the 2nd day of December, 2010

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Chandran C S/o late A. Raman Nair
Assistant Central Intelligence Office Gr. II
Subsidiary Intelligence Bureau
No. 5/1565-D, Jawahar Nagar, Calicut-6
residing at Athira House
Chelannur PO, Calicut District.

..Applicant

By Advocate Mr. TCG Swamy

Vs

- 1 Union of India represented by the
Secretary to the Govt. Of India
Ministry of Home Affairs
New Delhi.
- 2 The Director
Intelligence Bureau
Ministry of Home Affairs
North Block, New Delhi.,
- 3 Joint Director
Subsidiary Intelligence Bureau
Ministry of Home Affairs
Thiruvananthapuram.
- 4 Assistant Director
Subsidiary Intelligence Bureau
Ministry of Home Affairs
Thiruvananthapuram.

Respondents

By Advocate Mr. Sunil Jacob Jose, SCGSC

The Application having been heard on 29.11.2010, the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, an Assistant Intelligent Officer Grade-II under the respondents, is aggrieved by the refusal of the respondents to correct the mistake in his date of birth entered in the official records.

2 The applicant entered the service as a Constable on 10.3.1972, his date of birth based on the entries in the SSLC Book, was recorded in the Service Register as 15.5.1950. When he noticed mistake in the date of birth entered in the SSLC book, he took steps for correction of the same. While so, when he had to apply for the departmental examination, as the correction of date of birth would take time, he submitted representation to consider his case provisionally (A-2). The corrected copy of the SSLC book was received on 11.2.1991 and he was permitted to participate in the selection process. He submitted another representation to issue necessary orders indicating the correction of date of birth (A-4). Meanwhile, he was sent on deputation to Colombo, Sri Lanka and later to Doha and that he was under bonafide belief that the necessary correction might have been made in his service records. When he realised that the correction has not been carried out, he submitted another representation(A-5) which is now rejected by Annexure A-1. The applicant is challenging Annexure A-1 on the grounds that the mistake in the date of birth was genuine, appropriate action was taken by him, the correction was intimated to the authorities in

January, 1991, in a number of similar cases the respondents referred the matter to the DOPT for correction, the matter was not referred to the 3rd respondent who is the competent authority to take a decision on the matter. In this O.A. the applicant seeks for a declaration that the respondents are liable to correct the date of birth of the applicant in the official records and direct them to do so with all consequential benefits.

3 The respondents submitted in reply that, after joining the Intelligence Bureau on 10.3.1972, the Service Book of the applicant was opened and his personal particulars entered in which his date of birth was shown as 15.5.1950 on the basis of the SSLC Certificate produced by him. He has also affixed his signature on page 1 of the Service Book for having verified the entires. Further, he had appended his signature at various places of the Service Book on 20.9.88, 3.4.2003 as a token of having verified the entires of his Service Book. He has also furnished details of his family along with pension forms wherein also he has shown his date of birth as 15.5.1950 (R-2). On receipt of the representations submitted by the applicant on 31.5.2009 the matter was examined under Note 6 below FR 56 which states that (i) alteration of date of birth of a Government servant can be made if a request in this regard is made within five years of his entry into Government service or (ii) it is clearly established that a genuine bonafide mistake has occurred and (iii) the date of birth so altered would not make him ineligible to appear in any School or University or UPSC examination which he had appeared for entry in to Govt. Service. They submitted that the applicant has no sustainable reason now to apply for a correction of the date of birth on the day prior to his date of retirement. They relied on the judgments

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of the Courts in support of the rejection of his representation.

4 The applicant has filed rejoinder stating that when he happened to see the birth register maintained by the Taluk Panchayat Office, Calicut, he had seen the discrepancies and accordingly taken measures to correct those entries. He noticed that in the birth register the name shown was Krishnan instead of Chandran and the date of birth is shown as 21.10.1951. The applicant took steps to correct the name as C. Chandran instead of Krishnan recorded in the register and the matter was taken up with the Secretary to the Government of Kerala as early as on 4.1.1989 and entry in the SSLC book was got corrected as early as in 1990 and that accordingly, the respondents are bound to make the necessary correction in the service register.

5 I have heard learned counsel for both the parties.

6 The question that comes up for consideration is whether the applicant is entitled to alter the date of birth entered in the Service Records, at the fag end of his on the basis of correction made in the SSLC book.

7 Admittedly there is considerable delay on the part of the applicant in seeking correction of date of birth. FR 56 deals with the correction of date of birth of a Government servant. Note 6 below FR 56 which states that alteration of date of birth of a Government servant can be made if

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



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

(iii) 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 in to Govt. Service on the date on which he first appeared at such examination or on the date on which he entered Government service.

8 The learned counsel for the respondents brought to my notice the following judgments and argued that correction of date of birth at the fag end of career should not be permitted:

In State of U.P. Vs. Gulaichi (2003(6)SCC 537), State of Gujarat V. Valid Mohmed (2006 KHC 1066) and in a number of cases the Apex Court has dealt with the question of correction of date of birth of a public servant. In Gujarat Vs. Valid Mohmed Dosabhai Sindhi the Court held as follows:

"An application for correction of the date of birth should not be dealt with by the Courts, 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, in as much as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury as much 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 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 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 date 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

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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."

The Hon'ble Supreme Court in Civil Appeal No. 502 of 1993, in the case of Union of India Vs. Harnam Singh (1993(2)SCC 162) has observed that it will not be appropriate to consider any request for alteration in date of birth if conditions stipulated in Note 6 below FR 56 are not strictly fulfilled. The Apex Court held as follows:

"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"

The dictum laid down by the Apex Court is that the application for correction of the date of birth should not be dealt with by the Court /Tribunal unless a clear case on the basis of materials is made out by the employee, that too within a reasonable time as provided in the rules.

9 In the case on hand as per the extant rules the employee has to make a request within five years of his entry into Government service. A perusal of the materials produced before us would show that the applicant had an occasion to see the birth register maintained in the Taluk Panchayat office, Calicut and found many discrepancies. However, from the averments of the applicant himself I find that the date of birth entered as 21.10.1951 is shown as the date of birth of one Krishnan and the stand of the applicant is that an error has occurred and instead

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of his name, the name of Krishnan was entered. He has also produced copy of a certificate dated 05.07.90 issued by the Village Officer, Nanminda to the effect that the entry made in the name of Krishnan is the person known as Chandran(the applicant) and that his date of birth is 21.10.1951. On the basis of the above certificate, the applicant could get correct the date of birth entered in the SSLC book corrected. However, all these took place 17 years after the entry of the applicant in service.

10 It is seen from Annexure A-2 that he has applied for a change in the date of birth on 23.1.1991 when he was working as IO-II on deputation to Ministry of External Affairs, New Delhi. Since he was working at New Delhi, he had plenty of time and opportunity at his disposal, to follow up his request to get the date of birth altered and get the correction incorporated in all service records. In fact, Annexure A3 is a reference from his office at Bureau of Security, Ministry of External Affairs, to the Joint Commissioner of Government Examinations, Pareeksha Bhavan, Trivandrum, Kerala urging him to despatch the corrected SSLC book. Hence, the moot question arises as to why he did not take up the matter with his superiors,to act on the correction made in the SSLC Book. Instead, he appears to have slept over the matter for the next 18 years. He did not approach this Tribunal when his request was rejected vide Annexure A-1 the impugned order dated 3.8.2009. Instead, he filed this O.A only on 28.5.2010, when there was only one working day left on 31.5.2010 since 29th and 30th May happened to be holidays being Saturday and Sunday.

11 From the extracts of service records produced by the respondents I find that the applicant has signed the service book on

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various dates after submission of the request for correction of date of birth, bu the has not cared to see whether it has been actually carried out or not. Thereafter, he has submitted an application only on 31.5.2009, requesting for alteration of date of birth in the official records. Therefore, I hold that the Application is belated and against the dictum laid down by the Apex Court.

12 In view of the above, I do not find any merit in the Application. It is accordingly dismissed. No costs.

Dated 2nd December, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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