

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 556 OF 2009

Wednesday, this the 30th day of September, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

T.K. Joshi,
SC No.22393,
Senior Technician-B,
Computer Division, CNG/AVN,
Vikram Sarabhai Space Centre,
Thiruvananthapuram-695547.

... Applicant

(By Advocate Mr. P.N. Santhosh)

versus

1. Union of India represented by
the Secretary, Department of Space,
Government of India, Anthareeksha Bhavan,
New B.E.L. Road, Bangalore-560 094.

2. The Controller,
Vikram Sarabhai Space Centre,
Valiamala P.O.,
Thiruvananthapuram-695 022.

3. The Administrative Officer,
Vikram Sarabhai Space Centre,
Valiamala P.O.,
Thiruvananthapuram-695 022.

... Respondents

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

The application having been heard on 30.09.2009, the Tribunal on the same day delivered the following:

ORDER

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

The applicant joined the services of the Respondents in 1976 and at the time of his joining the services, he had given his date of birth as 26-09-1949. It is this date of birth that has been reflected in the service Book,

and various other documents maintained by the respondents. It is the case of the applicant that his actual date of birth is 09-05-1951 and in order to effect the correction as to his date of birth, he took steps with the competent authority which resulted in issue of a fresh certificate dated 31-12-1988 by the Taluk Panchayat Officer, Shertalali vide Annexure A-1 and corresponding alteration in the SSLC Book, vide Annexure A-2 and as regards correction of date of birth in the service records, he had requested by letter dated 01-03-1990 (Annexure A-3) enclosing copies of Annexure A-1 and A-2. According to the applicant, *"it was informed by the Department that the same will be endorsed at the appropriate time. Hence, the applicant was under the impression that his date of birth would be corrected in the service records as per Annexure A-1 and A-2"*. However, it was only when the department advised the applicant to fill up the pension papers, that he knew that the department had not effected the correct date of birth and accordingly, vide Annexure A-4 letter dated 24-04-2009 he had requested for effecting the correct date of birth in the service records. The request of the applicant was rejected, vide Annexure A-5 impugned order as the request was not received within 5 years of his entry into Government Service. Hence this OA for a direction to the respondent to effect correct date of birth in the Service Records as per Annexure A-1 and A-2 and to allow him to continue in service on the basis of the same till the date of his superannuation as per the correct date of birth.

2. Respondents have contested the O.A. According to them, the rules are specific that any request for effecting correction in the date of birth in the service records should be within five years of the entry into Government Service as per note under Rule 56 of the Fundamental Rules and at the fag

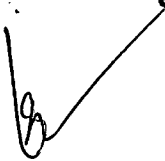
end of the service career the applicant has approached with such a request, which cannot be permitted as per the Rules. They had also denied receipt of Annexure A-3 request for such a change in the date of birth. A number of authority had been quoted by the respondents in support of their contentions.

3. The applicant had filed his rejoinder, in which he had enclosed a copy of his representation dated 01st March 1990, which reflected the office seal and initials to confirm receipt by the respondents of Annexure A-3.

4. Counsel for the applicant submitted that the applicant had taken all actions on time and it is on account of delay on the part of the respondents that due change in the service records as to the correct date birth of the applicant had not been carried out. The applicant cannot be faulted for the same nor can he be penalized for no fault of his.

5. Counsel for the respondents submitted that the applicant has the full knowledge as to the fact that his date of birth has been taken as 26-09-1949 only and he had failed to make proper request within five years of his entry into service as per the extant orders dated 30-11-1979.

6. In order to ascertain as to whether the applicant himself had reflected the date of birth/date of superannuation on the basis of his date of birth as originally entered (26-09-1949) in any of his application, counsel for the respondents had been advised to ascertain the same and on instructions, the counsel for the respondents stated that the identity card, which was renewed in January 2009 reflected the date of birth as 26-09-1949 and that the application submitted by the applicant for making final withdrawal from his



Provident Fund also contained the date of retirement as 30th September 2009.

7. Arguments were heard and documents perused. *Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No. 19017/79/Estt-A dated 30-11-1979 published as S.O. 3997 in the Government of India Gazette dated 15-12-1979.* The said note reads as under:

"5. 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."

8.

Admittedly, the applicant had not preferred any representation as to

the correction to be effected in his service records regarding the date of birth within the permissible period of five years of his entry in the service. In fact, the Apex Court has in one case stated that in respect of those who had entered the government service prior to November 1979 such a request could be made within five years from the date of the very notification, i.e. By December 1984. However, in the instant case, since the very correction in the date of birth by the competent authority was obtained only in 1988, there is no question of complying with the above condition. It is not known as to when did the applicant apply to the competent authority for effecting change in the date of his birth. It is only in 1988 that the competent local authority gave the revised birth certificate in 1988 and corrections in the SSLC book effected in February 1990.

9. The respondents have rightly relied upon the decisions by the Apex Court in the case of *Harnam Singh* and other judgments as referred to in para 6 of the counter. The Apex Court has consolidated a number of judgments in its judgment in *State of U.P. v. Shiv Narain Upadhyaya*, (2005) 6 SCC 49, wherein it has been held as under:-

"7. *Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of State of Assam v. Daksha Prasad Deka (1970) 3 SCC 624 this Court said that the date of the compulsory retirement*

"must in our judgment, be determined on the basis of the service record and not on what the



respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure".

In the case of Govt. of A.P. v. M. Hayagreev Sarma(1990) 2 SCC 682 the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the Rules framed by the State Government referred to above. It was, inter alia, observed by this Court:

"7. The object underlying Rule 4 is to avoid repeated applications by a government employee for the correction of his date of birth and with that end in view it provides that a government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth."

8. In Executive Engineer v. Rangadhar Mallik 1993 Supp (1) SCC 763 Rule 65 of the Orissa General Financial Rules, was examined which provides that representation made for correction of date of birth near about the time of superannuation shall not be entertained. The respondent in that case was appointed on 16-11-1968. On 9-9-1986, for the first time, he made a representation for changing his date of birth in his service register. The Tribunal issued a direction as sought for by the respondent. This Court set aside the order of the Tribunal saying that the claim of the respondent that his date of birth was 27-11-1938 instead of 27-11-1928 should not have been accepted on the basis of the documents produced in support of the said claim, because the date of birth was recorded as per document produced by the said respondent at the time of his appointment and he had also put his signature in the service roll accepting his date of birth as 27-11-1928. The said respondent did not take any step nor made any representation for correcting his date of birth till 9-9-1986. In case of Union of India v. Harnam Singh(1993) 2 SCC 162 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."

9. *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, 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 clinching 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 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*

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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.

10. *The position was succinctly stated by this Court in the above terms in Secy. and Commr., Home Deptt. v. R. Kirubakaran 1994 Supp (1) SCC 155.*

11. *As observed by this Court in State of T.N. v. T.V. Venugopalan (1994) 6 SCC 302 and State of Orissa v. Ramanath Patnaik (1997) 5 SCC 181 when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence. The view expressed in R. Kirubakaran case was adopted.*

12. *These aspects were also reiterated in State of U.P. v. Gulaichi (2003) 6 SCC 483 and State of Punjab v. S.C. Chadha (2004) 3 SCC 394."*

10. With the above decisions in mind, if the case of the applicant is analyzed, it would be clear that the applicant was fully aware that the respondents had not effected any change in the date of his birth in the service records and he himself had filed the application for final withdrawal from Provident Fund Account indicating his date of superannuation as 30th September 2009 and this has taken place as recently as in January 2009. The renewal in January 2009 of Identity card, which also carries the date of birth would not have been lost sight of and the applicant was thus fully aware that his date of birth as reflected in the service records was September 1949 only. In fact, though in the OA the applicant has stated that he was informed by the authorities that the changes would be effected at the appropriate time, vide para 4(iv), in contra-distinction to the same, vide para 5 of his representation dated 24-04-2009 at Annexure A-4, he has stated, "**Unfortunately my request was turned down with the reason that it can't be considered under rules.** I have not received any reply in writings for

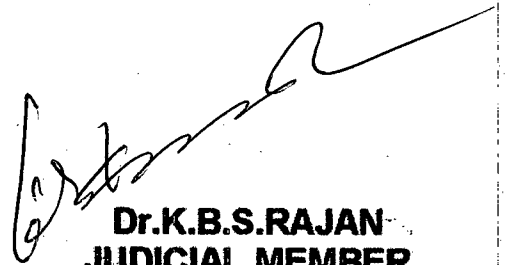
denying my genuine request." Thus, that he has full knowledge of the fact that the respondents stuck to his original date of birth i.e. 26-09-1949 much earlier cannot be denied by him and he had not chosen to move the Tribunal immediately on coming to know the stand of the department. The Apex Court has clearly held that request for correction in the date of birth should be made within the time limit calendared. The applicant has failed to act on time.

11. In view of the above, there is no merit in the O.A. and the same stands dismissed. No cost.

(Dated, the 30th September, 2009.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K. B. S. RAJAN
JUDICIAL MEMBER

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