

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.584/08

Tuesday this the 31st day of March 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

S.Padmanabhan,
S/o.Shanku,
Working as Postal Assistant,
H.P.O., Vaikom.
Residing at Sree Lakshmi,
Udayanapuram, Vaikom.

...Applicant

(By Advocate Mr.N.Unnikrishnan)

Versus

1. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram.
2. The Senior Superintendent of Post Offices,
Kottayam Division.

...Respondents

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

This application having been heard on 19th February 2009 the
Tribunal on 31st March, 2009 delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is that his request for alteration of date of birth has been rejected by the respondents vide Annexure A-8 letter dated 12.8.2008 in terms of Annexure A-12 Government of India, Department of Personnel & Training, Office Memorandum dated 19.5.1993 which reads as under :-

“ Belated claims for alteration in date of birth to be rejected.



1. As Ministry of Finance, etc., are aware, the DP & AR Notification No.19107/7/79-Estt. (A) dated the 30th November, 1979 (incorporated as Note 6 below FR 56), which was published as S.O.3997 in the Gazette of India, dated 15.12.1979 and came into force from that date provides, inter alia that a request for alteration in date of birth can be made by a Government servant only within 5 years of his entry into Government Service. Further, while incorporating the condition of 5 years time limit for making a request for alteration in the date of birth in the service records, no distinction was made in respect of Government servants already in service vis-a-vis the future recruits. Despite the clear rule position, references continue to be received in this Department from various Ministries/Departments seeking clarification regarding applicability or otherwise, of the provisions relating to time limit of 5 years to employees who were appointed to civil posts prior to the date of effect of the Notification, ie., 15.12.1979. In a recent judgment given by the Supreme Court on 9.2.1993 in Civil Appeal No.502 of 1993 (Union of India Vs. Harnam Singh), the Supreme court has inter alia observed that in regard to the Government servants who had joined service prior to 1979, the correction of date of birth should be made within a period of 5 years from 1979. Relevant extracts from the said judgment are reproduced below :-

"It would be appropriate and in tune with harmonious construction of the provisions to hold that in the case of Government servants who were already in service before 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979 but in any event not later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule making authority."

2. References are also frequently received in this Department recommending belated requests from Government servants for alteration in date of birth giving some justifications or other in support of the request. The observations made by the Supreme Court in the case cited in para 1 above on this point are reproduced below :-

"Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979, the earlier delay would not have non suited him but he did not seek correction of the



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date of birth during the period of five years after incorporation of Note 5 to FR 56 in 1979 either. His inaction for all this period of about thirty five years from the date of joining service, therefore, precludes him from showing that the entry of his date of birth in service record was not correct."

3. The Government policy regarding rejection of belated claim for alteration in date of birth is thus reinforced by the observations made by the Supreme Court in the judgment in Civil Appeal No.502 of 1993 (Union of India Vs. Harnam Singh). The Ministry of Finance, etc., is, therefore, requested to keep this position in view while considering any request from a Government servant for alteration in his date of birth. In other words, it will not be appropriate to consider any request for alteration in date of birth if the conditions stipulated in Note 6 below FR 56 are not strictly fulfilled.

4. It is requested that these instructions may also be duly brought to the notice of the Attached/Subordinate Offices under the Ministry of Finance, etc., for information and compliance.

2. The applicant initially joined the Postal Department as Extra Departmental Mail Carrier (EDMC) with effect from 9.2.1970 and continued to work in the said capacity up to 17.2.1981. He was appointed as Postman with effect from 18.2.1981. According to him, he submitted Annexure A-1 representation dated 6.2.1986 ie., before the expiry of 5 years from the date of his regular appointment, to the Superintendent of Post Offices, Kottayam Division stating that his date of birth is actually 4.12.1949 as recorded in the Death and Birth Register of Vaikkom Municipality, but at the time of admission in the school, due to mistake, it was wrongly showed as 30.11.1948 and recorded the same in his service book also. In the said representation, it was also stated that he was taking necessary action to get his date of birth corrected and as and when it is allowed his office will be informed accordingly. Again, vide Annexure A-3 letter dated 15.7.1992 he requested the Senior Superintendent of Post

Offices, Kottayam to take up his case of revision of date of birth as a valid issue as his effort to get the date of birth corrected was still going on and he was likely to get the birth certificate from the Municipal Corporation shortly. The Vaikkom Municipality issued Annexure A-2 certificate dated 9.10.1992 showing his date of birth as 4.12.1949 and on the basis of the same, vide Annexure A-4 representation dated 22.12.2005, he informed the respondents that he had initiated action for getting the date of birth corrected in his educational certificates also. Thereafter, vide Annexure A-6 letter dated 14.7.2008 the applicant submitted the Annexure A-5 order dated 10.4.2008 from the Joint Commissioner for Government Examinations, Trivandrum informing him that his date of birth has been corrected in terms of Rule 3 in Chapter VI of the KER from 30.11.1948 to 4.12.1949 in school records and qualification certificate issued to him. However, the 2nd respondent rejected his request vide Annexure A-8 letter dated 12.8.2008 which reads as under :-

“ This is to inform you that your claim for alteration of date of birth is rejected as the same is belated. This is as per orders contained in G.I. Department of Per. and Trg. OM No.19017/2/92-Estt (A) dated 19.5.1993.”

3. The applicant challenged the aforesaid impugned orders of the 2nd respondent on the ground that it was in violation of Note 6 of FR 56 which 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

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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.

4. The applicant has also relied upon the order of the Madras Bench of this Tribunal in A.T.Durai Kumar Vs. Union Public Service Commission, New Delhi dated 22.4.1997 in O.A.1109/96. The short point for consideration in that OA was with regard to the interpretation of Note 2 to Rule 6 of the Notification of the Ministry of Personnel, Public Grievance and Pension (Department of Personnel and Training), dated 9.12.1995 which reads as under :-

“ Note 2 – Candidates should also note that once a date of birth has been claimed by them and entered in the records of the Commission for the purpose of admission to an examination, no change will be allowed subsequently or at any other examination of the Commission.”

The Tribunal allowed the O.A holding that once the date of birth has been altered in SSLC certificate the aforesaid Note has to be given a liberal construction.



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5. In Manohar Dutt Vs. Secretary, Ministry of Defence, New Delhi and others decided by the Principal Bench of this Tribunal in O.A.1782/98 on 3.6.1999 the question of limitation of five years for correction of date of birth under Note 6 of FR 56 was held to be not applicable to a case of rectification of a mistake apparent from the record. In Kshitish Chandra Das Vs. Union of India and others decided by the Guwahati Bench of this Tribunal in O.A.195/02 on 24.1.2003 it was held that the correction of date of birth of an employee is possible even after he has rendered five years of service if it is clearly established that genuine bona fide mistake had occurred and the employee had not gained any undue advantage.

6. The applicant has, therefore, sought a direction to the respondents to declare that he is entitled to get his date of birth corrected as 4.12.1949 as against the entry in his service records as 30.11.1948 and also to issue necessary orders correcting his date of birth accordingly. He has also sought an interim direction from this Tribunal to the respondents staying the operation of aforesaid Annexure A-8 order pending disposal of the OA. Considering the aforesaid interim relief, this Tribunal vide order dated 28.11.2008 made it clear that impending retirement of the applicant on 30.11.2008 shall be subject to outcome of the OA.

7. Respondents in their reply statement has stated that the applicant has not produced any evidence to show that Annexure A-1 letter dated 6.2.1986 was sent to the respondents. They have also produced the Annexure R-3 letter dated 22.7.1992 informing the applicant that in terms of FR 56 he should have made his request within five years of entry into

Government service for alteration of date of birth. The applicant has never made any representation against it. They have also submitted that they have considered the Annexure A-4 representation dated 22.12.2005 and informed him vide Annexure R-4 letter dated 27.12.2005 that his request for change in date of birth was not acceptable as his request was not within five years of his entry into Government service. Further, they have submitted that Annexure A-13 representation dated 9.9.2008 was an appeal to the Chief Postmaster General, Kerala Circle, but the same was not entertained as it was a belated one. According to them, the date of birth of the applicant was entered in his service book based on the relevant entries in his SSLC book and the proper course of action was to apply for alteration of date of birth with the relevant page of the SSLC book containing date of birth within five years from the date of entry into Government service. They have also relied upon the judgment of the Hon'ble High Court of Kerala in WPC No.12826/07 in which it was held as under :-

“ Counsel submitted that the application submitted in the year 1991 was a proper one and should have entertained. Facts would indicate though the application was filed in 1991 no supporting document had been produced and there is no proper application in the eye of law.”

8. In the rejoinder the applicant reiterated his various contentions in the OA. He has pointed out the contradiction in Annexure R-5 letter of the respondents as against their Annexure R-3 and Annexure R-4 letters. He specifically pointed out that the statement in Annexure R-5 letter that he had applied for the alteration of his date of birth after 27 years of entry in the Government service was not correct. The applicant has also alleged

that there was no proper verification, consideration and application of mind by the respondent. The applicant has produced various documents to show that after submitting the Annexure A-1 letter dated 6.2.1986 to the respondents, he has been making earnest efforts to get his date of birth corrected in the educational certificate.

9. I have heard Shri.N.Unnikrishnan for the applicant and Shri.M.L.George on behalf of Shri.T.P.M.Ibrahim Khan,SCGSC for the respondents. I have also perused the service book of the applicant made available by the respondents. There are documents which are prior to 6.2.1986 and which are dated later. There is no indication in the service records of the applicant that his representation claimed to have been sent on 6.2.1986 was received in the respondents' office. The undisputed facts of the case is that the applicant was working with the respondents' department as EDMC with effect from 18.2.1981. It is not the case of the applicant that he has not submitted his date of birth certificate along with his application for appointment as EDMC in 1981 and he was not aware about the entry in his SSLC certificate regarding his age. It is altogether a different matter that during his service as EDMC there was no need to maintain any service book by the department but it does not mean that he was not aware that his date of birth was wrongly recorded in the SSLC certificate. He had not taken any steps to get it corrected, even according to him, till 6.2.1986, even though he got his regular job on 18.2.1981. Respondents did not admit his claim that he had submitted the Annexure A-1 representation on 6.2.1986. I also did not find any such document in the service record of the applicant. The applicant has not furnished any



documentary proof to the effect that he had submitted the said representation to the respondents. Even if it is assumed that he had made such a representation, it was made just 12 days before the completion of five years period prescribed in the Government of India, Department of Personnel & Training, O.M.F.No.19017/2/92-Estt.(A) dated 19.5.1993. Going by the applicant's own submission, it was for the first time that he had made the request for correction of his date of birth in his service book on 6.2.1986. But there is no reference about that representation in his subsequent Annexure A-3 letter dated 15.7.1992 addressed to the Senior Superintendent of Post Offices, Kottayam. It was in fact sent after six years. Thereafter, he had obtained Annexure A-2 certificate of age from the Vaikom Municipality on 9.10.1992. There is nothing on record to show that he has furnished the same to the respondents and requested for carrying out the correction regarding his date of birth subject to receipt of the order for carrying out the necessary corrections in his educational certificates. On the other hand, the next representation was sent to the respondents after 13 years ie., on 22.12.2005 (Annexure A-4). He has secured Annexure A-5 order from the Joint Commissioner for Government Examinations, Trivandrum on 10.4.2008 and submitted it along with corrected copy of the SSLC certificate only on 14.7.2008. By that time his retirement date was fast approaching and the respondents had the responsibility to settle his retirement benefits within time. The respondents have, therefore, rejected his request on the ground of delay.

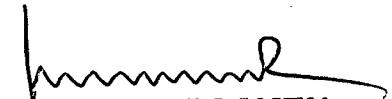


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10. The date of birth of Government servant is entered in the service book and other records on the basis of the educational certificates submitted by the employee concerned at the time of initial appointment as the proof of his age. On the basis of his date of birth, his date of retirement is also pre determined. As per the existing instructions, all the retirement dues of the Government servant have to be settled before his date of retirement itself. Further, the dates of retirement of the employee is also a factor for the effective man power management in the Department. It is for this reason that the rules have been framed by the Government by way of Note 6 under FR 56, according to which, the request for change of date of birth is to be submitted by the employee concerned within five years of his entry into the Government service. Belated application for correction of the date of birth and consequential changes would cause many administrative problems. Therefore, in the absence of any proof that the applicant had submitted the Annexure A-1 representation dated 6.2.1986, his claim to that effect cannot be accepted. As the applicant has already retired from service, there is no question of his re-appointment at this stage.

11. I, therefore, do not find any fault with the decision of the respondents in rejecting his request for correcting his date of birth. Accordingly, the OA is dismissed. There shall be no order as to costs.

(Dated this the 31st day of MARCH, 2009)


GEORGE PARACKEN
JUDICIAL MEMBER

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