CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 14 OF 2008

Thursday, this the 22nd day of January, 2009.

CORAM:

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

Usha Sugunan
Radio Mechanic(HS)
Naval Ship Repair Yard
Naval Base, Kochi - 4
Residing at Kondoor House
Kureekad, Ernakulam ... Applicant

(By Advocate Mr.T.A.Rajan)

versus

1. Union of India represented by the Secretary
Ministry of Defence, New Delhi

2. The Flag Officer Commanding - in Chief
Head Quarters, Southern Naval Command
Kochi - 4

3,. The Commodore Superintendent
Naval Ship Repair Yard
Naval Base, Kochi - 4 ... Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been heard on 19.01.2009, the Tribunal on 22.01.09 delivered the following:

ORDER

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

The applicant has made a request for change in date of birth which has been turned down by the respondents. Hence, this O.A.

2. At the very outset it is to be stated here that the following observation of the Apex Court in the case of **State of Gujarat v. Vali Mohd. Dosabhai Sindhi,(2006) 6 SCC 537** has been kept in mind while dealing with the applicant's claim for correction of date of birth:

"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 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."

3. Now certain details of the case, for better comprehension for adjudication, and the same are as under:-

(a) The applicant joined the services of the respondents as Radio Mechanic initially on temporary basis in 1987 and later on on regular basis in 1989. At the time of entry her date of birth was reflected as 05.06.1959, which according to the applicant was not correct and the correct date of birth is 14.06.1961. This mistake in the date of birth could be noticed by the applicant only after his regular appointment. Accordingly, the applicant made a request for correcting the date of birth in 1991. The Head of Department advised the applicant first to take up the matter with the State Government authorities to effect the correct date of birth in the school records and then only to approach the respondents for incorporating the correct date of birth as per the corrected school records. Accordingly, the applicant submitted an application dated 25.11.1991 to the Commissioner for Government Examinations, Kerala for correcting the date of birth in the school records. This request of the applicant was, however, rejected by the Commissioner vide Annexure A-1 order dated 30.10.1992. The applicant submitted a review application but there was no response. Hence she submitted an appeal against Annexure A-1 order before the Government of Kerala which, by order dated 15.11.1997 (Annexure A-2) directed the Commissioner of Examinations, Kerala to re-examine the case and dispose it of on merits within the time calendered therein vide order dated

01.07.1999 (Annexure A-3). The Commissioner for Government Examinations, Kerala accorded sanction to correct the date of birth of the applicant from 05.06.1959 to 14.06.1961. On receipt of the same, the applicant had requested the respondents to effect necessary changes in the date of birth in the service records of the applicant. Annexure A-4 representation dated 29.10.1999 refers. Referring to order dated 30.11.1979 of the Home Ministry, the respondents had rejected the request of the applicant vide Annexure A-5 order dated 12.01.2000. The applicant has then made Annexure A-8 representation to Respondent No.2 through proper channel. Respondent No. 3 however, vide Annexure A-9 communication dated 22.11.2002 informed the applicant that certain detailed justification is required for considering her case for correction of date of birth. The fact that the applicant had joined in 1987 as a casual employee and applied for correcting the date of birth in 1991 had been duly recorded in the said communication. The applicant preferred Annexure A-10 communication and Respondent No. 3 had confirmed that her representation was under examination at the Ministry of Defence and to process the case further certain additional information were also sought for. The requisite information was furnished by the applicant immediately. However, by the impugned Annexure A-12 order dated 22.12.2005 the applicant's request was turned down. Hence this OA accompanied by an application for condonation of delay, as there was a delay of 375 days in preferring this OA. The reason given by the applicant in respect of delay was that the impugned order was misplaced in her house and after earnest

attempt it was traced only on 27.12.2007. The delay was stated to be not willful.

(b) Respondents have contested the OA. They attacked the application for condonation of delay also. According to them the reason given was fabricated which cannot be supported to condone the inordinate delay of 375 days. As regards, merits of the matter respondents have referred to the general instructions on the subject vide DOPT Memo dated 30.11.1979 (Annexure R/1). They have further contented that the applicant initially did not apply in time and in this regard referred to Annexure R-2 representation dated 25.05.1991 (filed by the applicant in connection with the seniority list) to prove that the applicant did not make any request for change in date of birth. The three conditions to be fulfilled concurrently vide Annexure R-1 order dated 30.11.1979 have been reiterated in the counter.

(c) The applicant filed her rejoinder both to the reply to the OA and to MA. As regards reply to the MA, she denied that the reason given was fabricated one as alleged. She has also stated that as it was felt that the respondents would not give duplicate copy of an order to an employee, she did not apply to the department for certified copy. As regards main merits of the matter, the applicant had stated in the rejoinder that she did apply for correction in date of birth as early as 1991 as it could be seen from Annexure A-9. As regards non mentioning of the same in Annexure R-2, it has been stated that the same is being with

reference to seniority list, and thus, it has nothing to do with the date of birth of the applicant. She had reiterated in the rejoinder that the applicant did apply for change in the date of birth in 1991, however, as the Department advised her to effect necessary changes in the date of birth in the SSLC records, she had approached the State Government and her attempt fructified in her favour after about seven years, in 1991. It was thereafter that the applicant had forwarded a copy of the corrected educational records for effecting necessary changes in the date of birth in the service records.

4. Counsel for applicant submitted that the regulations relating to correction of date of birth in service records as contained in Annexure R-1 stipulate the following three conditions to be fulfilled.

(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 bonafide 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 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."

According to the applicant, the three conditions stated above are thoroughly fulfilled in the case of the applicant. Counsel for respondents with force emphasised the delay aspect in filing the OA.

5. Arguments were heard and documents perused,. It would be appropriate to deal with the delay in filing the OA. Of course, while

dealing with the application for condonation of delay the merit may also have to be kept in view as it is cardinal principle that meritorious cases should not be dismissed purely on technical reasons, such as delay.

6. As regards delay in approaching the Tribunal, the applicant has given the reason that the impugned order has been misplaced and hence the delay. Though the counsel for the respondents submitted that the applicant could have chosen to apply for a copy of the same, the hesitation on the part of the applicant is understandable. That again would have resulted in the same extent of time as it is trite, as observed by the Apex Court in the case of **Charles K. Skaria v. C. Mathew (Dr)**, (1980) 2 SCC 752, that it is not that easy to get copies of orders from the Government Department. The Apex Court has in that case held as under:-

> "In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and Government Orders from public offices."

7. If a case is meritorious, limitation may have to take the rear seat. In the case of **Collector, Land Acquisition v. Katiji**, (1987) 2 SCC 107, the Apex Court has held as under:-

> "It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:
>
> "1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
>
> 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being

defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also

the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

8. In the case of **N. Balakrishnan v. M. Krishnamurthy**, (1998) 7 SCC 123, the Apex Court has held as under:-

"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12 .A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari....

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor..... " (emphasis supplied).

9. The above law relating to limitation if kept in view, it would be very clear that the case of the applicant if meritorious, the same should not be dismissed on account of delay only. The impugned

order is one of the three lines and not a bulky one. Probability of the same being misplaced is certainly more and as such the reason given by the applicant cannot be held to be unreasonable, much less fabricated. As such, I am of the considered view that since the Apex Court has clearly held that "*sufficient cause*" should receive liberal construction so as to advance substantial justice, delay of 375 days is condoned.

10. Now as to the merits of the matter. Counsel for applicant referred to the triple conditions as extracted in Para 4 above that all the three conditions are concurrently fulfilled in the case of the applicant. Admittedly (Annexure A-9), the applicant has moved the Department within five years of her entry. As regards bonafide of the claim since the State Government has effected change in the date of birth, it could be safely held that there is no malafide attempt on the part of the applicant. It is to be observed at this juncture that the Commissioner of Central Excise, Kerala initially rejected the claim of the applicant. Her review application has not been considered at all but undaunted by such results, the applicant kept alive her appeal to the Government and ensured that her case was dealt with by the State Government. Thus, the bonafide attempt of the applicant cannot be questioned nor for that ~~the~~ matter, the bonafide mistake in initially effecting wrong date of birth. As regards, the third contention, it is neither the case of the respondents nor that of the applicant that she had exploited the position prior to her request for effecting change on the date of birth, on the basis of the original date of birth recorded.

11. When the above three conditions are fulfilled and documentary evidence are available, as in the case of **State of Gujarat v. Vali Mohd. Dosabhai Sindhi, (supra)** the claim for correction of date of birth has been made in accordance with the procedure prescribed and within the time fixed by relevant rule and the applicant has produced the evidence in support of her claim which is irrefutable proof relating to her date of birth. Hence rejection of the case of the applicant on technical grounds that it was not on the request for effecting change in date of birth was not preferred in time (which is not based on facts) cannot be legally sustained.

12. In view of the above, **OA fully succeeds.** The impugned order dated 22.12.2005 is quashed and set aside. The respondents are directed to effect suitable entries in the service records of the applicant by reflecting her date of birth as **14.06.1961** in the place of 05.06.1959 and this date of birth shall be the base for calculating her date of superannuation etc. Confirmation as to effecting such a change in the service records should be given to the applicant within four months from the date of communication of this order.

13. In the above circumstances, there shall be no order as to costs.

Dated, the 22nd January, 2009.

Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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