

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 181/00257/2018

Friday, this the 13th day of April, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Koya Kunnamgalam, aged 56,
 S/o. Attakoya Pokkayoda,
 Kunnamgalam, Kiltan Island,
 W.C. Beldar, PWD Sub Division,
 Kiltan Island.

..... **Applicant**

(By Advocate : Mr. P.V. Mohanan)

V e r s u s

1. The Administrator,
 Union Territory of Lakshadweep,
 Kavaratti – 682 555.
2. Superintending Engineer,
 Lakshadweep Public Works Department,
 Lakshadweep Administration,
 Kavaratti – 682 555.

..... **Respondents**

(By Advocate : Mr. S. Manu)

This application having been heard on 13.04.2018, the Tribunal on the same day delivered the following:

O R D E R(Oral)

Per Hon'ble Mr. U. Sarathchandran, Judicial Member –

The applicant is a member of the Scheduled Caste and is a person with 80% multiple disability. He has approached this Tribunal seeking a direction to the respondents to correct his date of birth in the service records in terms of Annexure A1 certificate issued by the medical board and to

direct respondents not to superannuate/retire him from service on 30.4.2018 by reckoning the date of birth entered in the service records.

2. When this OA came up for admission hearing, Shri Manu, learned standing counsel for the Lakshadweep Administration took notice for the respondents and prayed for time for getting instructions. We posted the matter to this date for furnishing the reply statement in view of the impending retirement of the applicant on 30.4.2018. We have heard both sides on the admissibility of the OA. Perused the records.

3. Shri P.V. Mohanan learned counsel for the applicant submitted that there was no official records relating to the applicant's date of birth with the Registrar of Birth and Death of Kiltan Island and as the parents of the applicant were illiterate the need for obtaining record relating to the his age was not felt. The applicant relies on Annexure A4 - a certificate issued by the school indicating the date of birth of his elder brother. As per Annexure A4 school register the applicant's elder brother's date of birth is 1.6.1958 and hence the applicant necessarily is having a date of birth much later than him.

4. Shri Mohanan submitted that applicant too is illiterate and disabled and that he came to know about the mistake crept in his service records only when he obtained the certificate of his elder brother from Government High School, Kiltan. He submitted an application dated **26.9.2017** to the 1st respondent seeking to correct the date of birth. The applicant is aggrieved

by the communication rejecting his request, without the approval of the Administrator. Relying on the medical certificates issued by the government doctors Annexures A9 and A10 he states that his date of birth may be corrected in terms of Annexure A1 certificate issued by the medical board.

5. Shri Manu submitted that as per the administrative instructions issued by Government of India which have been approved by the Supreme Court of India in several cases, correction of date of birth has to be made within five years of entry into service and not later than it.

6. Applicant was admittedly appointed as WC, Beldar in the Lakshadweep Public Works Department in June, 2009. The age of the applicant was recorded in the service book as 1.7.1958 by the controlling officer which was later seen scored off and re-written as 28.4.1958.

7. OM No. 19017/2/92-Esst.(A), dated 19.5.1993 issued by the DoP&T, Government of India deals with alteration of date of birth in service records.

It reads:

“Subsequent alteration of Date of birth – An alteration of date of birth can be made with the sanction of a Ministry/Department or the C & A.G. in case of IAAD or an Administrator of a Union Territory, if-

- (a) an employee makes a request within five years of his entry into Government service;
- (b) it is clearly established that a genuine bona fide mistake had occurred and
- (c) 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, or for entry into Government service on the date on which he first appeared as such examination or on the date on which he entered Government service.”

In *Home Department v. R. Kirubakaran* – (1994) SCC (L&S) 449 the Hon'ble Supreme Court of India observed:

“An application for correction of the date of birth should not be dealt with by 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. According to us, this is an important 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, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, 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, than such application must be filed within the time, which can be held to be reasonable.”

However, in *Union of India v. Harman Singh* – 1993 SCC (L&S) 375 the apex court held that the government servant should have initiated steps for correcting his date of birth in the service record at least within five years time of entry into service. The apex court in that case held:

“A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age.”

8. Here the applicant states that he came to know that his date of birth has been wrongly recorded in the service book only when a school certificate showing the date of birth of his elder brother was obtained. The applicant states that his age indicated in the medical certificates produced in this case can be relied on. However, we are not impressed by such submissions

because medical certificates so produced are not relating to the determination of his age. His age is merely written in those medical certificates without any indication that evaluation of his age was done by employing the scientific methods prescribed in the medical science. Even in Annexure A9 the age recorded is based on the applicant's own words. In Annexure A10 what has been written is only an estimated age by appearance. We are of the view that such documents cannot be used for alteration of the date of birth of the applicant in the service records. The belated approaching of this Tribunal by the applicant on the eve of his retirement itself is a circumstance which goes against him.

9. In view of the clear provisions and in the light of the Hon'ble apex court judgment in *Harman Singh's* case (*supra*) we are not inclined to admit this OA and is dismissed at the threshold itself.

10. The Original Application is dismissed. No order as to costs.

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

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APPLICANT'S ANNEXURES

Annexure A1 – True copy of the medical certificate F.No. 2/3/2000-Medl. Dated 13.11.2000 issued by medical board.

- Annexure A2** – True copy of the certificate F. No. 9/4/2007-GSSS(KLT) (2) dated 15.1.2016 issued by Principal Senior Secondary School, Kiltan.
- Annexure A3** – True copy of non-availability certificate of age dated 25.1.2016 issued by Registrar of Birth and Death, Kiltan Island.
- Annexure A4** – True copy of the certificate dated 2.6.79 issued by headmaster Government High School, Kiltan.
- Annexure A5** – True copy of service certificate F. No. G2/JEKn/210/93-94 dated 4.8.93 issued by Junior Engineer, PWD UT of Lakshadweep, Kiltan Island.
- Annexure A6** – True copy of the relevant page of service records issued by Assistant Engineer, LPWD Sub Division Kiltan.
- Annexure A7** – True copy of the representation dated 26.9.2017 submitted to the 1st respondent.
- Annexure A8** – True copy of the proceeding F. No. 3/4/2013-C3/2321, dated 22.11.2017 issued by 2nd respondent.
- Annexure A9** – True copy of the medical certificate F. No. 6/2/82 dated 28.4.82 issued by Dr. N.K. Sayed Mohammed Medical Officer, Kiltan.
- Annexure A10** – True copy of the certificate F. No. 7/2/2010-MOK dated 18.1.2016 issued by Dr. Mohammed Khan Medical Officer, Primary Health Centre, Kiltan Island.

RESPONDENTS' ANNEXURES

Nil

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