

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH



No. OA 350/01307/2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

MRITYUNJOY GHOSH

VS

UNION OF INDIA & ORS.

For the applicant : Mr.P.C.Das, counsel  
Ms. T.Maity, counsel

For the respondents : Mr.R.Roychoudhury, counsel

Order on : 23.6.16

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Aggrieved by an order dated 2.9.14, issued by Under Secretary, Govt. of India, Ministry of Culture, New Delhi rejecting the applicant's prayer for alteration of date of birth in his Service Book on the basis of the rectification made by West Bengal Board of Secondary Examination in the Admit Card and Certificate of Madhyamik Pariksha, this application has been filed seeking quashing of the memo dated 2.9.14, speaking order dated 23.7.15, order dated 14.12.10 (Annexure A/8) and a direction upon the respondent authorities to record the actual date of birth of the applicant as 2.1.1960 in place of 3.9.1957, as already recorded.

3. The respondents have vehemently opposed the claim on the ground that the correction if permitted would make the entry age of the applicant as 16 years 9 months and 3 days making him ineligible for appointment as on 5.10.1956. Further the respondents have averred that the applicant, having signed below the entries made in the Service Book, would be estopped from seeking the claim as "ignorance could never be taken as excuse in execution of

any rule/law/act of the country and the same tantamount to misrepresentation in all respect".

4. Ld. Counsel for the applicant urged that if the correction was permitted and it was found that the applicant was a minor (below 18 years of age) as on the date of appointment, the service rendered before attainment of majority could be treated as "Boy Service" <sup>only</sup> and benefit of the said service would not be count for retirement benefits towards qualifying service for pension. Ld. Counsel cited the following provisions of CCS (Pension) Rules in support :

**"13. Commencement of qualifying service**

*Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :*

*Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post :*

*Provided further that -*

- (a) *in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and*
- (b) *in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.*
- (c) *the provisions of clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19."*

5. The legal position in regard to request for alteration of date of birth could be noted in the following :

- (i) In *Union of India -vs- Harnam Singh* [1993 (2) SCC 162] the Hon'ble Apex Court considered the question whether the employer was justified in declining the request of the employee for correction of the date of birth made after 35 years of his induction into the service and whether the Central Administrative Tribunal was justified in allowing the Original Application filed by him. While reversing the order of the Tribunal the Hon'ble Court observed as under : (extracted with supplied emphasis for clarity)

"A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispersed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that right to continue in service stands decided by its entry in the service record. 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 the 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. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. 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. Indeed, as held by this Court in State of Assam & Anr. v. Laksha Prasad Deka & Ors. [1971] 2 SCR 687 a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he can not claim to continue in service on the basis of the date of birth claimed by him.

(emphasis supplied)

- (ii) In **Home Department -vs- R.Kirubakaran [1994 Supp (1) SCC 165]** Hon'ble Apex Court considered the question whether Tamil Nadu Administrative Tribunal had the jurisdiction to entertain an application made by the respondents for correction of his date of birth just before the superannuation. While answering the question in the negative the Hon'ble Court observed as under:

"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,

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may lose their promotions 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 possible. Before any such direction is 3 1993 Supp (1) SCC 763 : 1993 SCC (L&S) 276; (1993) 23 ATC 4 (1993) 2 SCC 162; 1993 SCC (L&S) 375 : (1993) 24 ATC 92 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, then such application must be filed within the time, which can be held to be reasonable. 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 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 for 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 merely caused injustice to his immediate junior. (emphasis supplied)

(iii) In **Union of India -vs- C. Rama Swamy [1997 (4) SCC 647]** the Hon'ble apex Court after an in-depth analysis of Rule 16(A) of the All India Services (Death cum Retirement Benefits) Rules, 1958, reversed the order passed by the Hyderabad Bench of the Central Administrative Tribunal which had directed alteration of the date of birth of the respondent, but observed as under :

"In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing office. In fact, where maturity is a

relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.

(emphasis supplied)

(iv) In *State of Madhya Pradesh & Ors. -vs- Prem Lal Shrivastava* [2011 (3) SCC 664] wherein the Hon'ble Apex Court held that change of date of birth in service record at lag end of career is to be permitted only in exceptional cases on irrefutable proof.

(v) In *Md. Yunus Khan -vs- U.P. Power Corporation Ltd. & Ors.* [2009 (1) SCC 80] the Hon'ble Apex Court noticed that there was still a period of about four years before appellant was to retire on the basis of his uncorrected date of birth. Hence it held

"his request for correction should have received favourable consideration".

(vi) In *State of Punjab -vs- Mohinder Singh* [Appeal (Civil) 3739 of 2005] [S.L.J. 2005 (2) pg 477] the Hon'ble Apex Court held

As observed by this Court in *Umesh Chandra v. State of Rajasthan* (1982 (2) SCC 202), ordinarily oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it can be prepared at any time to suit the needs of a particular situation. Entries in the school register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official book should be kept only by a public officer and all that is required under Section 35 of the Evidence Act is that it should be regularly kept in discharge of official duty. In the instant case the entries in the school register were made ante litem motam.

(emphasis supplied)

(vii) In *Kamta Pandey -vs- M/s BCCL through its Chairman cum Managing Director, Koyla Bhawan, Dhanbad & Ors.* [2007 (3) JLR 7216] Hon'ble High Court of Jharkhand at Ranchi found that "Matriculation Certificate issued by recognised Educational Board has

been obtained by an employee before his employment, and the date of birth as per Matriculation Certificate having been mentioned in I. Card issued by Company, immediately after appointment? The Hon'ble Court held that "the respondents cannot claim that only service register should be taken note of for determination of date of birth even though instructions No. 76, a product of Bilateral Agreement is binding on their Company". Hence, correction of date of birth at the fag end of service was found permissible on the condition expressed in the words infra :

"if the Court is fully satisfied that there has been real injustice to the person concerned and his claim for correction has been made in accordance with the procedure prescribed and when a clear case, relating to date of birth is made out on the basis of clinching materials, necessary direction to make a declaration of said date of birth can be given".

(emphasis supplied)

(viii) In **Ramanand Tiwary -vs- Indian Iron & Steel Co. Ltd. [LPA 493 of 2000]** the Hon'ble High Court of Jharkhand at Ranchi considered the following facts :

"The petitioner-appellant was appointed as a General Mazdoor in the company of the respondents on 20.2.1970. After 10 years, on the basis of his Matriculation Certificate containing his date of birth as 31.12.1950, he was promoted to the post of Attendant Clerk on 23.5.1980. Though the appellant submitted his Matriculation Certificate and other Certificates containing his date of birth to be 31.12.1950 the respondents asked him to appear before the Medical Board. Accordingly he was subjected to the medical test. The Medical Board on 29.9.1989 on physical assessment of the appellant, found him to be 40 years of age. As per the report of the Medical Board his date of birth was 29.9.1949".

The Hon'ble Court therefore held as under :

"We are of the considered opinion that the respondent authorities committed grave illegality in issuing the letter impugned treating his date of superannuation as 31.1.2006, since as per the Matriculation Certificate he is to retire on 31.12.2010. Accordingly, the impugned letter is quashed, the order of the learned Single Judge is set aside and the respondents are directed to correct the petitioner-appellant's age in their records in terms of the Matriculation Certificate and pass consequential orders, like reinduction into service with all the benefits and allow him to continue till he attains superannuation."

(emphasis supplied)

(ix) In *Home Department -vs- R.Kirubakaran* [1994 Supp (1) SCC 165] Hon'ble Apex Court considered the question whether Tamil Nadu Administrative Tribunal had the jurisdiction to entertain an application made by the respondents for correction of his date of birth just before the superannuation. While answering the question in the negative the Hon'ble Court observed as under :

"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 their promotions 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 3 1993 Supp (1) SCC 763 : 1993 SCC (L&S) 276: (1993) 23 ATC 4 (1993) 2 SCC 162: 1993 SCC (L&S) 375 : (1993) 24 ATC 92 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, then such application must be filed within the time, which can be held to be reasonable. 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 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 for 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 merely caused injustice to his immediate junior.

(emphasis supplied)

A sum up of legal propositions enumerated hereinabove would be as under :

- (1) A Government servant who has declared his age at the initial stage of the employment is not precluded from making a request later on for correction of his age ... xxx... xxx... xxx... if he is in possession of an irrefutable proof relating to his date of birth as different from the one earlier recorded and even if no period of limitation was prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. (**Harnam Singh** supra)
- (2) 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. (**R.Kirubakaran** supra)
- (3) A Tribunal or a Court must be "fully satisfied that there has been real injustice to the person concerned and his claim for correction can be made in accordance with the procedure prescribed and within the time fixed by any rule or order". (**R.Kirubakaran** supra)
- (4) Correction of date of birth can be allowed even at the fag end of service when a clear case, relating to date of birth is made out on the basis of clinching materials. (**Kamta Pandey** supra)
- (5) The onus is upon the applicant to prove the wrong recording of his date of birth in his service book.
- (6) The date of birth entered in the school record is the source of materials for making entry in the service records. (**T.V.Venugopalan** supra)
- (7) Entries in school register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official book should be kept only by a public officer and all that is required under Section 35 of the Evidence Act is that it should be regularly kept in discharge of official duty particularly those made 'ante litem motam'. (**Mohinder Singh** supra)

6. That apart, it could be noted that in **Gendalal -vs- UOI [(2007) 15 SCC 553]** an employee made a representation for change of date of birth on the basis of school certificate within six years his joining the service in 1964 followed by another. It was rejected after 21 years on the ground that

correction was sought for at the lag end. Tribunal dismissed his application on the ground that he approached the Tribunal at the lag end.

Hon'ble Apex Court held in favour of the employee in view of his representation that

*"he could not be said to have not acted diligently."*

7. While claim for correction may be defeated by delay (**State of Tamil Nadu -vs- T.V. Venugopalan** [(1994) 6 SCC 302]) this Tribunal cannot lose sight of the fact that an entry in Municipal Births and Deaths Register prevails over the entry in school register as held in **CIDCO -vs- Vasudha Gorakhnath Mandevlekar** [(2009) 7 SCC 283].

8. The Date of Birth certificate issued by Municipality in terms of entry would be in the nature of a Public Document in terms of **Mohinder Singh** (supra) and **R. Jayalakshamma -vs- Election Tribunal -cum-Senior** [(2004) 5 ALD 525, (2004) 5 ALT 400] decided on 27.8.04 by Hon'ble High Court of Andhra Pradesh.

9. The respondents however, cited the decision of **Eastern Coalfields Ltd. & Ors. -vs- Bafraangi Rabidas** [2015 (1) SLR 254 SC] wherein it was decided that once he had availed the benefit by not stating the correct fact, equitable jurisdiction under Article 226 of the Constitution of India should not be extended to him. While referring to **UOI -vs- C. Rama Swamy & Ors.** [1997 (4) SCC 647] the Hon'ble Apex Court observed that the finding of the DB of the Hon'ble High Court that, respondents could not have been allowed to participate in the examination without production the Matriculation certificate, was based on assumption and arrived at totally being oblivious of the enquiry report which recorded the statement of the respondents. Hon'ble Apex Court opined as follows :

*"As is manifest, in the case at hand the respondent stated this on the higher side to gain the advantage of eligibility and hence, we have no trace of doubt that principle of estoppels would apply on all fours. It is well settled in law that jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary",*

and set aside the judgment passed by the Division Bench of the Hon'ble

High Court.

10. In the aforesaid legal backdrop, it could be noted that in the present case the applicant had not intentionally suppressed the Matriculation Certificate issued in 1976 at the time of his entry into service in 1977. Rather this is a case where the Matriculation Certificate of 1976 was corrected on the basis of materials in 1983, i.e. long after his entry into service, and the applicant had sought for correction of his service record on the basis of "clinching materials" i.e. the corrected educational qualification certificate and therefore the factual matrix of the present case did not fit into that of the decisions cited by the respondents, or all fours.

11. In the aforesaid backdrop the speaking order is quashed and the OA is disposed of with a direction upon the concerned respondent to consider the prayer for consideration afresh on the basis of corrected certificate and provisions of CCS (Pension) Rules cited supra and pass appropriate orders within two months. No order is passed as to costs.

(BIDISHA BANERJEE)  
MEMBER (J)

In