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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA



CPC. 235 of 2016
(O.A. 1307 of 2015)

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Mrityunjoy Ghosh,
Son of Late Kalipada Ghosh,
Aged about 55 years,
Residing at Village – Sahapur, Telipukur,
Post Office – Nalikul,
District – Hooghly, Pin – 712407
And at present working as Assistant Library
& Raja Rammohun Roy Library Foundation,
Block – DD – 34, Sector – I, Salt Lake City,
Kolkata – 700 034
Under the Government of India,
Ministry of Culture.

..... Applicant.

Versus

1. Mr. Narendra Kumar Sinha,
The Secretary, Ministry of Culture,
Government of India,
502-C, Shastri Bhawan,
New Delhi – 110 001.
2. Dr. Arun Kumar Chakraborty,
The Director General,
Raja Rammohun Roy Library Foundation,
Established by the Department of Culture,
Government of India,
Block DD – 34, Sector – I,
Kolkata – 700 064.

..... Contemnors/Respondents.

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

For the respondents : Ms. R. Majumder, Counsel

3.7.11

Reserved on : 08.02.2019

Date of Order : 4.7.19

ORDER

Per : Bidisha Banerjee, Judicial Member

This Tribunal while disposing of the Original Application had discussed the implications of various decision of the Hon'ble Apex Court, threadbare and concluded as under:

"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 office 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 General 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 fag end. Tribunal dismissed his application on the ground that he approached the Tribunal at the fag end.

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

"he could not 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. Jayalakshmamma -vs- Election Tribunal -cum-Senior* [(2004) 5 ALD 525], (2004) 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-Bajrangi 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."

2. This Tribunal passed its order on 23.6.16 wherein it had specifically noted that the date of birth in Matriculation Certificate was corrected in 1983, i.e. long after his entry into Government Service.

3. The speaking order was issued on 28.8.18 i.e. after a delay of more than 2 years. It records as under:

"Note 6 below FR-56 clearly lays down that an alteration of DOB of a Government servant can be made with the sanction of the Ministry or Department, if

- (a) A request in this regard is made within five years of his entry in the government service.
- (b) It is clearly established that a genuine bona fide mistake has occurred.
- (c) The DOB 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 at such examination or on the date on which entered the Government service.

Shri Mritunjoy Ghosh applied for correction of his DOB in the year 2004 which is 28 years after joining the service. The West Bengal Board of Secondary Education had corrected his DOB on 16.12.1983. So from that date the application was made after 21 years had elapsed.

The delay is clearly more than five years which is the time limit provided in the O.M. quoted in above Para 9 and 10 and specifically Para (a) of note 6 of FR-56. Accepting the request would violate this provision of the rules.

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Hence,

It is evident that the request does not fulfil the condition prescribed in Para (c) of Note 6 of FR-56. Assuming, for the sake of argument that the altered DOB, 02.01.1960 is correct the age of Shri Ghosh at the time of entry into service would have been 16 years 09 months and 03 days. This is far below the prescribed minimum age of 18 years. Hence para (c) referred above does not permit change of DOB. Therefore the prayer of Shri Mritunjoy Ghosh is rejected on the aforesaid observation and order passed in this regard on dated 21.11.2016 is also withdrawn."

4. In view of such order although we find no deliberate violation of our directions but there is definitely an attempt to procrastinate, and violate the time

limit for issuing the speaking order, which delay is in explicable. Hence, we penalise the respondents with a fine of Rs. 10,000/- to be paid to the petitioner within 4 weeks.

5. The CPC application is accordingly disposed of.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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