IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.29418 of 2016

& W.M.P.No.25475 of 2016

1. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, Harichandra Mathur Lane,
Janpath, New Delhi - 11001.

2. The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
No.89, Millers Road,
Chennai - 600 010.

3. The Sub-Divisional Engineer (Admn),
BSNL, Chengalpet SSA, Chennai Telephones,
10-E, Thiru-vi-ka Industrial Estate,
Guindy, Chennai - 600 032. .. Petitioners

versus

1.B.Baskar,
Telecom Mechanic, BNSL,
Telephone Exchange, Kadambathur,
Pin 631 203.

2. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 104. .. Respondents

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Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of certiorari to call for the records relating to the order dated 27.06.2016 passed by the 2nd respondent in O.A.No.977 of 2015 and quash the same.

For Petitioner : Mr.Y.Bhuvanesh Kumar

For Respondents : Mr.K.Srinivasan

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O R D E R

(The Order of the Court was made by N.Authinathan,J)

This Writ Petition is for issuance of a Writ of certiorari to call for the records relating to the order dated 27.06.2016 passed by the 2nd respondent in O.A.No.977 of 2015 and quash the same.

2. Heard both sides.

3. The first respondent joined the petitioners' Department as Group D staff in the year 1988. The date of birth of the first respondent was recorded as 01.07.1958 in his Service Register on the basis of his date of birth as recorded in his Secondary School Leaving Certificate (SSLC). He made a representation dated 21.10.2014 to his department for alteration of his date of birth from 01.07.1958 to 31.01.1960. Thereafter, he sent a reminders dated 24.10.2014 and 16.01.2015 for alteration of date of birth. The said date of birth (01.07.1958) was entered by his parents at the time of his admission in the school. It is his case that his actual date of birth as per birth certificate is 31.01.1960. His request for alteration of date of birth was rejected by the first petitioner, vide its order dated 26.02.2015.

4. Having failed to get the relief from his department, the first respondent filed O.A.No.977 of 2015 before the Central Administrative Tribunal (CAT), Chennai, with the following prayer:

> "i) to quash the letter No.E506/EC III/Tm/Genel-corr/2014/16 dated at Ch-32 the 26.02.2015 passed by the third respondent who is not competent to take decision in this mater.
> ii) to direct the first respondent to modify the date of birth of the applicant as 31.01.1960 as per the birth certificate issued by the Sub-Registrar, Uthukottai and make necessary corrections in the official records of the applicant."

5. The petitioners herein opposed the application stating that the first respondent's representation for the change of date of birth was out of time. They also contended that there is no evidence to show that the first respondent was born on 31.01.1960. The Tribunal has come to the conclusion that no direction as prayed for could be given. The Tribunal observed that if any person wanted to get the date of birth corrected in his service register, then as a prelude to it, the education certificate should be got corrected by incorporating therein his actual date of birth, and then only, the Government authority concerned would rely upon it for

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effective correction, but in this case, such correction has not yet taken place.

6. The Tribunal has granted liberty to the first respondent for making a suitable representation to the appropriate authority for effective correction by enclosing therewith relevant documents, whereupon, the authority concerned shall consider it and pass suitable orders.

7. Aggrieved by the said order granting liberty as aforesaid by the Tribunal in O.A.No.310/00977/2015, dated 27.06.2016, the present writ petition has been filed by the Department.

8. The learned counsel for the petitioner drew the attention to the fact that the first respondent has approached the department for correction of date of birth after the lapse of 26 years since joining the service. The learned counsel for the petitioners submitted that the representation dated 24.10.2016 for correction of date of birth, is out of time, as it is against Note 5 to Rule 56 of Fundamental Rules. It is further submitted that the order of the Tribunal is erroneous and that it is not in conformity with the various decisions of the Supreme Court and therefore it is liable to be quashed. In this behalf he relied on the decision in Union of India Vs. Harnam Singh (AIR 1993 SC 1367), wherein it has been held thus "A Government servant who makes an application for correction of date of birth beyond the time fixed by the Government, 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."

9. The same preposition has been reiterated in the following decisions.

(ii) Jammu and Kashmir High Court : Z.M.Samnani Vs. State of J & K and another, 2001 (1) J & K Law Reporter 428;

(iii) Supreme Court: U.P.Madhyamik Shiksha Parishad Vs. Raj Kumar Agnihotri: dated 21.04.2005 in Appeal (Civil) No.2798 of 2005;

(iv) Delhi High Court : Brigadier Ashok Kumar Singh Vs. Union of India and others: W.P.(C).No.9850 of 2005, dated 13.07.2006;'

(v) Madras High Court: Md.Ismial Vs. The Chief General Manager, BSNL, Chennai and two others: W.P.No.23653 of 2011, dated 03.08.2012;

(vi) Jharkhand High Court: Sahdeo Prasad Vs. Central Coal Fields Limited and four others: L.P.A.No.99 of 2014; dated 05.02.2015;

(vii) Allahabad High Court: State of U.P. and 3 others Vs. Tej Ram Kashyap: Special Appeal Defective No.160 of 2016, dated 29.02.2016;

(viii) Guwhati High Court: W.A.No.72 of 2006, dated 28.03.2016;

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10. The first respondent, claims that he has sent representations twice one in the year 1988 and another in the year 1991 and to butters this case he has produced before the Central Administrative Tribunal two postal acknowledgements bearing the dates 25.03.1988, 17.09.1991. If reliance to be placed on both the postal acknowledgements those documents should be relatable to the representations alleged to have been made. It is significant to note that three representations 21.10.2014, 24.10.2014, 16.01.2015 have sent to the department by the first respondent and those three representations have been produced before the Central Administrative Tribunal. In all the three representations there is absolutely no reference to sending of the alleged representations of the year 1988, 1991. The mere production of postal acknowledgements would not enable this Court to draw an inference that representations have been made as early as the year 1998, 1991. Viewed in this perspective it has to be necessarily concluded that the representation for the alteration of date of birth has been made only in the year 2014 and not in the year 1988, 1991 as claimed by the first respondent. If so it will be clearly out of time, representations having been made beyond five years, bringing the case within the mischief of Note 5 to Rule 56 of the Fundamental Rules.

11. It is worthwhile to extract the said rule and it reads thus:

> "Note 5- 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 High Secondary or Secondary School Certificate or extracts from birth Register. The date of birth so declared 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 & Audit General in regard to persons serving in the Indian Audit and Accounts department, or an administrator of an Union Territory under which the Government is serving, if -
>
> (a) a request in this regard is made within five years of his entry into Government service;

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(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."

12. The first respondent draws the attention of this Court to two instances wherein representations for alteration of date of birth beyond time have allegedly been entertained. One G.S.Muralidharan, Sr.TOA(G) and L.Ganesan, Draftsman, Office of the Chief General Manager, BSNL are said to have been extended the benefit of alteration of date of birth notwithstanding the limitation prescribed in Note 5 to Rule 56 of Fundamental Rules. The Department has asserted that those cases were decided on the basis of merit and according to rules and in the instant case the representations having been made 26 years after the date of joining, the request has been rejected as it was time barred and belated. Even if the benefit of alteration of date of birth has wrongly been conferred on those individuals, still the petitioners request cannot be considered as it is in conflict with the said rule. Obviously, one mistake cannot be a precedent for another.

13. The CAT has suggested a course of action for the first respondent to get the date of birth corrected and the impugned liberty has been granted in this behalf. The learned counsel for the first respondent submitted that the order of CAT is only a direction and the final decision lies with the competent authority and that there could be no grievance for the petitioners. We are of the considered view that it may not be appropriate to advice the course of action to be adopted by an employee.

14. The liberty that has been granted by the CAT in this case should not be conflict with the rule and thereby defeat the rule requiring the making of the representation for alteration of date of birth within five years. The apprehension of the petitioners is that the liberty given by the Tribunal would open the flood-gates for making similar representations thereby, rendering the Rule 56 nugatory, is quite genuine. The liberty that has been granted by the Tribunal could not be sustained in law and it is liable to be interfered with.

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15.With the above observations, this Writ Petition is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

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Sub Asst. Registrar

pvs

To

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