

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.11023 of 2016

Date of Decision: May 28, 2016

Union of India and othersPetitioners

versus

Central Administrative Tribunal, Chandigarh Bench and another
.....Respondents

**CORAM:HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE A.B.CHAUDHARI.**

Present: Mr.P.C.Goyal, Advocate, for the petitioners.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

Union of India and its authorities have laid challenge to the order dated 29.01.2016 passed by the Central Administrative Tribunal, Chandigarh Bench, whereby Original Application filed by respondent No.2 regarding change of his date of birth from 10.01.1956 to 21.06.1958 has been allowed.

[2] The Tribunal was conscious of the fact and so is this Court that there are catena of judgments rendered by the Hon'ble Supreme Court and this Court, deprecating the practice of seeking to change the date of birth near the fag end of one's service career. It is a well settled principle of law that the correct date of birth is essentially a question of fact and it may not be prudent to venture

into such like issues in the proceedings like before the Tribunal or this Court where points in issue are decided solely on the basis of pleadings and documents on record.

- [3] (a) In Union of India vesus Harnam Singh [1993] 2 SCC 162, the Supreme Court ruled that description of five years period in Note 5 of FR 56, for those who are already in government service prior to 1979 to seek correction in the date of birth, was fair and reasonable. The claim of the employee to change the date of birth was turned down in view of unexplained and inordinate delay;
- (b) In State of T.N. V.T.V.Venugopalan [1994] 6 SCC 302, it was held that once the date of birth has been recorded while entering into service and is duly counter-signed by the government servant, ordinarily he should not be permitted to change such entry;
- (c) In Burn Standard Co. Ltd. V. Dinabandhu Majumbar [1995] 4 SCC, 172, it was held that where an employee of the Government or its instrumentality voluntarily makes a declaration of his date of birth at the time of entry into service and when such date of birth is duly authenticated by him, the High Court should not ordinarily, in exercise of its discretionary writ jurisdiction, entertain a writ petition filed by such an employee seeking correction of his date of birth;

- (d) In State of Punjab v. S.C.Chadha [2004] 3 SCC, 394 a direction issued by this Court regarding correction in date of birth was set aside by the Apex Court, holding as follows:-

“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 filed 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 to his date of birth, in his service book.”

- (e) In State of M.P. And others versus Premlal Shrivastava, 2011 [9] SCC 664, the Hon'ble Supreme Court disapproved the High Court decision for correction of date of birth, 25 years after induction into service. It was held that delay of over two decades in applying for correction of date of birth is *ex-facie* fatal;
- (f) Eastern Coalfields Limited and others versus Bajrangji

Rabidas, 2014 [13] SCC 681, holds that if a person has taken undue advantage by giving a particular date of birth for entering into Government service, the Court in its extra-ordinary jurisdiction would be within its domain to deny the discretionary relief when such employee seeks correction in his date of birth, even if such correction is sought on the basis of matriculation certificate.

[4] Though fully aware of the cited case-law, the Tribunal has nevertheless allowed the claim of respondent No.2 and in our considered view, for valid, justifiable and exceptional reasons and circumstances as can be well demonstrated herein-above.

[5] The 2nd respondent joined as a Chowkidar in the Military Engineering Service on 19.01.1978. His name was sponsored by the Employment Exchange. At the time of his entry into Military service, his date of birth was recorded as 10.01.1956. It is an admitted fact that the aforesaid date was determined by the Authorities on the basis of medical examination of respondent No.2. Neither the 2nd respondent nor anyone from his family gave the above-mentioned date of birth. There was no document supporting the said date of birth.

[6] In the year 1992, order (Annexure P-7) was issued and it contains the names of employees alongwith their dates of birth. The 2nd respondent came to know that his date of birth has been

shown as 10.01.1956. He immediately presented his Middle/Secondary School Examination certificates in which his date of birth was recorded as '21.06.1958'. The representation dated 06.04.1992 seeking correction in date of birth was entertained by the petitioners and the office of petitioner No.3 vide order dated 11.05.1992 corrected the date of birth of respondent No.2 from 10.01.1956 to 21.06.1958.

[7] The 2nd respondent however, received a letter dated 05.10.2015 issued by the office of petitioner No.2 and addressed to petitioner No.3 observing as follows:-

“....1. It is observed that date of birth in respect of above named indl as mentioned in service book is 10 Jan 1956 which was amended to 21 Jun 1958 vide GE(AF) Suratgarh PTO No.19/4/92. Entry to this effect has not been found recorded in service book and copy of PTO No.19/4/92 is not held with this HQ. Hence, he is to retire from service on 31 Jan 2016. Accordingly, pension papers of the indl should have been initiated by now.

2. As such, you are requested to initiate pension papers of the individual immediately and investigate the matter of variation of date of birth of the individual and initiate disciplinary action against concerned staff in the chain of command with intimation to this HQ.....”

[8] It may thus be seen that the petitioner-authorities acknowledged the fact that date of birth of respondent No.2 was amended as 21.06.1958 but they reversed their decision after almost

22 years without hearing the 2nd respondent and when he was near retirement.

[9] It is in these circumstances that the Tribunal has intervened and directed the petitioner-authorities to allow the 2nd respondent to attain the age of superannuation on the basis of corrected date of birth, i.e., 21.06.1958.

[10] The educational certificates which the 2nd respondent relied upon in the year 1992 are on record. These certificates are not of a private institution, rather have been issued by the Education Department, Government of Rajasthan. It was not a case where the 2nd respondent suddenly woke up and applied for correction of date of birth when he was near the age of retirement. He was still left with over 23 years of service when he represented in the year 1992.

[11] Furthermore, the date of birth as 10.01.1956 was admittedly not given by the 2nd respondent at the time of his recruitment and he took no undue advantage by not disclosing the correct date of birth, for either way he was eligible for the Class-IV post.

[12] For the reasons afore-stated, we do not find any ground to interfere with the order passed by the Tribunal.

[13] Dismissed.

**[SURYA KANT]
JUDGE**

May 28, 2016
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**[A.B.CHAUDHARI]
JUDGE**