

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.6062 of 2017 (O&M)
Date of Decision: 20.07.2017

Gurdial Singh

--Petitioner

Versus

State of Punjab and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Raman Goklaney, Advocate for the petitioner.

TEJINDER SINGH DHINDSA.J

Challenge in the present petition is to the order dated 30.10.2015 (Annexure P-10), whereby the S.S.P., Ferozepur has declined the prayer of the petitioner seeking correction of date of birth in the service book.

The petitioner joined service on the post of Constable on 31.3.1985. At the time of joining service, the date of birth of the petitioner was recorded as 4.5.1961 as per the matriculation certificate produced by him. It is pleaded that in the year 2015, the petitioner became aware that his actual date of birth was 14.3.1963 and accordingly he submitted an application dated 4.5.2015 to the S.S.P., Ferozepur for grant of N.O.C to get the date of birth corrected. On 15.5.2015 the N.O.C was issued at Annexure P-3. On the strength of such N.O.C an application was made to the Punjab School Education Board (herein after to be referred as the Board) and after due verification of the documents with the Chief Registrar, Births and Deaths, Health & Family Welfare Department, State of Punjab, a certificate was issued by the Board reflecting the corrected date of birth of the petitioner as 14.3.1963. Based on such corrected certificate issued by the

Board, petitioner sought necessary correction even in the service book and which has been declined in terms of passing of the impugned order dated 30.10.2015 (Annexure P-10).

Learned counsel appearing for the petitioner has vehemently argued that the impugned order is untenable in law inasmuch as the petitioner has not derived any benefit on account of the wrong entry as regards his date of birth at the time of initial entry into service. Counsel would submit that even if the initial date of birth i.e. 4.5.1961 is taken into account, still the petitioner had been eligible for entry into service on 31.3.1985 on the post of Constable. Further contended that the respondent authorities have erroneously brushed aside the conclusive proof furnished by the petitioner as regards his correct date of birth to be 14.3.1963 and which was in the nature of a revised certificate issued by the Board as also the requisite document from the Registrar, Births and Deaths, Punjab. Reliance has also been placed upon a Division Bench judgement of this Court in *Dimpy Sharma Vs. State of Punjab and others, 2006(3), S.C.T, 345* to contend that even if a remedy as per administrative law/rules becomes barred by limitation, still a legal remedy would always be available to an employee as regards seeking correction in his date of birth.

The claim of the petitioner as regards correction of his date of birth would be governed in terms of Note 3 appended to Rule 2.5 of the Punjab Civil Services Rules, Volume I, Part-I and Rule 7.3 of the Punjab Financial Services Rules, Volume I. The aforementioned Note 3 appended to Rule 2.5 of the Punjab Civil Services Rules, Volume I, Part-I (as given in Annexure 'A') reads as under:

*“ANNEXURE (A)**(Referred to in Rule 2.5 and note 3 thereunder)*

1. In regard to the date of birth a declaration of age made at the time or for the purpose of entry into Government service shall, as against the Government employee in question, be deemed to be conclusive unless he applies for correction of his age as recorded within two years from the date of his entry into Government service. Government, however, reserves the right to make a correction in the recorded age of a Government employee at any time against the interest of the Government employee when it is satisfied that the age recorded in his service book or in the History of service of a Gazetted Government employee is incorrect and has been incorrectly recorded with the object that the Government employee may derive some unfair advantage therefrom.

2. When a Government employee, within the period allowed, makes an application for the correction of his date of birth as recorded a special enquiry should be held to ascertain his correct age and reference should be made to all available sources of information such as Certified Copies of entries in the municipal birth register, University or School age certificate, Janam Patris or horoscopes. It should, however, be remembered that it is entirely discretionary on the part of the sanctioning authority to refuse or grant such application and no alteration should be allowed unless it has satisfactorily been proved that the date of birth as originally given by the applicant was a bona fide mistake and that he has derived no unfair advantage therefrom.

3. The result of every such enquiry should, in the case of gazetted, non-gazetted Government employees be briefly stated in their service cards, service books and if a correction is sanctioned, the fact should be reported to the Accountant General.”

Similar is the position under the instructions dated 9.3.1961 issued by the Inspector General of Police, Punjab with regard to making correction in the date of birth of the employees and wherein a time frame of 2 years has been stipulated from the date of recruitment for the employees to seek any correction as regards date of birth.

There is no dispute as regards the fact that the petitioner had gained entry in service in the year 1985. A representation seeking correction in the date of birth was also admittedly made first in point of time in the year 2015. The Hon'ble Apex Court has considered such aspect of an application seeking correction of date of birth having been filed beyond the stipulated period as envisaged under the recruitment rules/instructions in the case of ***Union of India Vs. Harnam Singh, 1993 (3) S.C.T 120(SC)*** and held in the following terms:-

“It could not be the intention of the rule-making authority to give unlimited time to seek correction of date of birth, after 1979, to those government servants who had joined the service prior to 1979 but restrict it to the five year period for those who enter service after 1979. Indeed, if a government servant, already in service for a long time, had applied for correction of date of birth before 1979, it would not be permissible to non-suit him on the ground that he had not applied for correction within five years of his entry into service, but correction of date of birth only after 1979 stands on a different footing. It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those government servants who were already in service after 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979, but in any event later than five years after the coming into force of the amendment in 1979. This view would

be in consonance with the intention of the rule-making authority.”

Similar view has been taken by the Supreme Court in the case of ***Cement Corporation of India Ltd. v. Raghubir Singh and another, 2002 (9) Supreme Court Cases 398*** and ***Hindustan Lever Limited v. S.M.Jadhav and another, 2001(2) SCT 369 (SC): 2001(4) Supreme Court Cases 52.***

Petitioner cannot be permitted to gain any mileage from the N.O.C dated 15.5.2015 (Annexure P-3) granted to the petitioner as regards correction in his date of birth. Perusal of such N.O.C dated 15.5.2015 (Annexure P-3) would in itself clarify that the N.O.C was confined only as regards seeking correction in the records of the Board. It was unequivocally stipulated in the N.O.C itself that in the eventuality of the employee getting a correction in date of birth from the Board, then, the Police Department would not be bound to enter any such corresponding correction in the service record and any action in such regard would be taken in accordance with the directions/instructions holding the field.

Under the instructions as also the relevant rules referred to herein above, the time frame seeking correction in the date of birth is well defined. In terms of the rule position as also the view taken by Hon'ble Apex Court in ***Harnam Singh's*** case (supra) the date of birth of the petitioner could not have been permitted to be changed in pursuance to an application seeking correction in date of birth having been submitted almost 30 years after entry into service.

Reliance placed upon by the learned counsel for the petitioner in the case of ***Dimpy Sharma*** (supra) is of no help to the petitioner as such decision does not refer to the afore-stated decisions rendered by the Hon'ble

Apex Court. The decision in *Dimpy Sharma's* case (supra) also does not take into account the fact that the statutory rules would be of binding nature unless struck down by a writ Court on the plea of unconstitutionality.

Accordingly, for the reasons recorded above, I find no infirmity in the impugned order dated 30.10.2015 (Annexure P-10) declining the request of the petitioner seeking correction of his date of birth.

The writ petition is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

20.07.2017
lucky

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No