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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6837/2019 and CM APPL. 28537/2019

MUKESH KUMAR SRIVASTAVA

..... Petitioner

Through: Mr Prateek Tushar Mohanty,
Ms Payal Mohanty and Mr
Tushar Ranjan Mohanty,
Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr Bhagvan Swarup Shukla,
CGSC with Mr Sarvan Kumar
Shukla and Mr Mukesh Kumar
Pandey, Advocates for UOI.

Mr Rahul Mehra, Standing
Counsel for State with Mr
Chaitanya Gosain and Mr
Anand, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.07.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the e-mail dated 03.04.2019, whereby respondent no.2 (The First Secretary (CPV), Embassy of India, Rome) had rejected the petitioners request to change the date of birth of the petitioner in the petitioner's passport. The petitioner further prays for issuance of

directions to the respondents to change the date of birth of the petitioner in the petitioner's passport.

2. The petitioner joined the Indian Statistical Service as a Direct Recruit of the 1981 batch through the Union Public Service Commission and joined the post on 01.09.1981. The petitioner was selected and joined the Food and Agriculture Organization (FAO) of the United Nations on 11.05.2004. The petitioner took Voluntary Retirement from the Government of India on 09.06.2009.

3. In April, 2018, the petitioner made attempts to apply for an immigration/ permanent residency abroad and came to understand that a birth certificate and a passport was required for the same. Since the petitioner did not possess a birth certificate, he applied to Municipal Corporation of Lucknow for the issuance of a birth certificate for his known date of birth (i.e. 10.04.1957).

4. It is contended that the Municipal Corporation of Lucknow (Lucknow Nagar Nigam) informed the petitioner that there was no record of the petitioner's birth on 10.04.1957. The learned counsel appearing for the petitioner contends that the Corporation informed the petitioner that as per their records, the correct date of birth of the petitioner is 04.07.1957 at 1.10. hours at Lady Kinnaird Hospital.

5. The petitioner was issued a Birth Certificate on 19.09.2018 reflecting his date of birth as 04.07.1957.

6. On the basis of the new Birth Certificate, the petitioner applied for a change in his date of birth to 04.07.1957 with reference to his Aadhar Card, PAN Card, driving license, voter identity card and the same were duly processed. The petitioner also applied to the Board of Secondary Education, Uttar Pradesh to change his date of birth in the Matriculation Certificate. On 02.01.2019, the Board of Secondary Education, Uttar Pradesh, informed the petitioner that it was not possible to change the date of birth in the Matriculation Certificate in terms of the extant Rules and Regulations.

7. The petitioner applied to the Former Cadre Controlling Authority, the Ministry of Statistics and Programme Implementation, Government of India for change of date of birth in the service record of the petitioner. On 11.04.2019, while enclosing the letter dated 22.02.2019, the Ministry of Statistics and Programme Implementation informed the petitioner that it was not possible to change the date of birth of the petitioner in the service record.

8. The petitioner applied to respondent no.2 for change of date of birth in the passport issued by the respondent. On 03.04.2019, respondent no.2 rejected the request of the petitioner vide mail on the ground that the date of birth on the petitioner's passport cannot be changed till the same change is not effected in the official government service records and the school certificate of the petitioner.

9. On 16.04.2019, the petitioner filed an appeal against the e-mail dated 03.04.2019 before respondent no.1. The petitioner states that no

action was taken by respondent no.1 with reference to the said appeal. Thereafter, the petitioner filed the present petition.

10. The Office Memorandum (F. No. 19017/1/2014-Estt (A-IV)) dated 16.01.2014 as issued by the Ministry of Personnel, Public Grievances and Pensions, clearly states that an alteration of date of birth of a Government servant can only be made with the sanction of a Ministry of Department of the Central Government under which the Government servant is serving, provided that the request in this regard is made within five years of his entry into the Government service. Concededly, the petitioner had failed to apply for the change in his date of birth within five years of service. The relevant portion of the abovementioned Office Memorandum reads as hereunder:

“2.... An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry of Department of the Central Government, or the Comptroller and Auditor General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if-

- (a) a request in this regard is made within five years of his entry into Government service;
- (b) It is clearly established that a genuine bona fide mistake has occurred; and
- (c) the date of birth so altered would not make him ineligible to appear in any School or University of Union Public Service Commission 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 in which he entered Government service.”

11. The petitioner had joined the Indian Statistical Service through the Union Public Service Commission on 01.09.1981. However, prior to 2019, the petitioner has not made any effort to change his date of birth as reflected in the petitioner’s service record. The petitioner has taken voluntary retirement from the Government of India on 09.06.2009. It is important to note that the petitioner’s passport; Matriculation Certificate as issued by the Board of Secondary Education, Uttar Pradesh; and service records reflect the petitioner’s date of birth as 10.04.1957. There is an inordinate delay of about thirty-eight years (i.e. from 01.09.1981), on the part of the petitioner to seek the necessary correction in his date of birth as reflected in the service records and other government documents.

12. In *Union of India v. Harnam Singh* :(1993) 2 SCC 162, the Supreme Court has held as under:

“15.Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of Note 5 to FR 56 in 1979 either. His inaction for all this period of about thirty-five years from the date of joining service, therefore precludes him from showing that the entry of his date of birth in service record was not correct.

13. The Central Government has also provided a five year period of limitation from the date of issue of the first passport for seeking a change in the date of birth. Paragraph 6.1 of Chapter III of the Compendium of Instructions/Guidelines relating to issue of passports in India/ abroad is set out below:

“6.1 Requests are frequently received by PIAs for change in the date of birth. This is due to the fact that many countries insist that date of birth (or place of birth) in all documents of a person be the same for purposes of immigration, long term resident/student visas, employment, retirement etc. The Kerala High Court, on 23rd June 2015, in a case WP No. 9073 of 2015 (Jayakumar vs RPO Trivandrum), while dismissing a bunch of similar petitions seeking direction to PIA for change of date of birth, delivered a landmark judgment elaborating upon the fact that the personal particulars entered in the passport cannot be modified at will, without any sustainable cause and without any explanation as to why such a change is sought after many years. The Court also set aside the existing procedure for change in date of birth by PIAs if the difference is less than two years and directed that irrespective of period of difference between correct and given dates of birth, any bona fide change in date of birth shall be effected within a reasonable limitation period. The Government accordingly set a five year limitation period from the date of issue of first passport to an adult, based on GOI policy for govt employees for change of their date of birth. Accordingly, the following revised procedure shall be adopted by all PIAs in India and abroad for change of date of birth/place in passports:”

14. The Guidelines also provide for rectifying the date of birth in cases where the passport holder claims a clerical/technical mistake in the entry relating to the date of birth. This is permissible only when the passport holder is able to establish a bonafide mistake. Paragraph 6.2 and 6.3 of Chapter III of the Compendium of Instructions/Guidelines for issue of passports in India/ abroad are set out below:

“6.2 Where an applicant claims clerical/technical mistake in the entry relating to birth/place of birth in the passport and seeks rectification

In all such cases, the documents produced earlier as proof of date of birth/place of birth at the time of issue of passport may be perused (if not already destroyed) by the issuing PIA. In case, it is a mistake either by the applicant or a clerical mistake by the issuing PIA, date/place of birth correction may be allowed by issue of fresh booklet without any limitation of time. In case of mistake by the applicant, fee for fresh passport to be charged and in case of mistake by the PIA staff, fresh passport to be issued on 'gratis' basis [as mentioned in Ministry's circular No. VI/401/2/5/2001 dated 29/10/2007].”

6.3 If an applicant applies for correction of date of birth in the passport on the basis of a fresh or corrected birth certificate (the original BC was submitted earlier for issue of the first passport), the following procedure be followed:

a) In case of furnishing of a new amended BC with the same date of issue and registration number of the old BC by the same authority, application for change

in DOB be processed subject to physical verification of the new BC;

b) In case of furnishing of a new BC by a different authority in replacement of old BC by another authority, the PIA shall insist on cancellation of the old BC and after physical verification of the cancellation certificate and the fresh BC from issuing authorities, application for change in DOB be processed;

c) In case of furnishing of a new BC where the first passport was obtained using other documents like educational school certificates etc., application for change in DOB be processed subject to physical verification of the new BC and other supplementary documents (if required);

15. The petitioner is precluded from applying for correction of date of birth in his service records due to the inordinate delay in making such an application. Further, the Board of Secondary Education, Uttar Pradesh by the order dated 02.01.2019 has rejected the petitioner's application to change the date of birth of the petitioner in his matriculation certificate. It is apparent from the abovementioned facts that the petitioner has failed to satisfy the conditions as stipulated for change in the date of birth of the petitioner's passport, as laid down by respondent no.2 in its letter dated 03.04.2019. (i.e. change in date of birth to be reflected in the official government service records and the school certificate of the petitioner).

16. The contention that the petitioner's date of birth had been recorded as 04.07.1957 in the records maintained by Municipal Corporation of Lucknow and the petitioner was informed of the same on approaching the concerned authority is incorrect. The Birth Certificate annexed with the present petition indicates the date of registration as 18.09.2018. This, clearly, indicates that the entry relating to the petitioner's date of birth was been made just one day prior to the issuance of the Birth Certificate. It is, thus, obvious that the petitioner had in the first instance applied for registration of his date of birth as 04.07.1957. Plainly, the Birth Certificate which had been obtained by the petitioner by furnishing his date of birth as 04.07.1957 to the concerned authority is of little value. Concededly, all other records right from the time when the petitioner had joined schooling had reflected his date of birth as 10.04.1957. There was, thus, clearly no occasion for the petitioner to have secured a Birth Certificate by furnishing his date of birth as 04.07.1957.

17. The learned counsel appearing for the petitioner had earnestly contended that the petitioner had discovered his correct date of birth on applying for a Birth Certificate from the concerned authority (Nagar Nigam Lucknow). This is, as stated above, a palpably incorrect statement considering that the petitioner's date of birth as 04.07.1957 had been entered in the records of Nagar Nigam Lucknow on 18.09.2018, which is one day prior to the issuance of the Birth Certificate relied upon by the petitioner. This Court is unable to

accept that there was any bonafide clerical/technical mistake in recording the date of birth in the passport issued to the petitioner.

18. In the light of the above, the present petition is unmerited and is, accordingly, dismissed. It is, however, clarified that the petitioner will not be precluded from seeking rectification of his date of birth as recorded by the concerned authority (Nagar Nigam Lucknow), on the basis of the School Leaving Certificate and his service records.

19. The pending application is also disposed of.

JULY 16, 2019
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VIBHU BAKHRU, J