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

Date of decision: 13.09.2019

+ W.P.(C) 9869/2019

SH. TARA CHAND

..... Petitioner

Through: Mr. T.D. Yadav, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Shreya Sinha, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

The petitioner is aggrieved by order dated 06.05.2019 passed by the Central Administrative Tribunal ('Tribunal').

2. In this case, the petitioner joined the services of the respondent as a peon on 27.09.1982. Just prior to his date of superannuation *i.e.* 30.04.2019, the petitioner made a representation on 12.03.2019 for issuance of necessary directions for rectification of date of birth in the service records. Rectification was declined ; the O.A. moved before the Tribunal was also rejected.

3. At the outset, we are constrained to observe that this is yet another matter which needlessly adds to the burden of pending cases before the judiciary. We have cautioned the petitioner that in case judicial time is wasted on a meritless case, the petition will be dismissed with costs. Learned counsel for the petitioner however insists that the petitioner wants

the matter argued; and the petitioner considers his grievance *bona-fide* since he only came to know of his incorrect date of birth in the records in the year 2019.

4. Counsel has drawn this court's attention to the date of birth certificate obtained by him, according to which the date of birth of the petitioner is 02.07.1960 and not 30.04.1959. We have repeatedly asked counsel for the petitioner as to why the petitioner made efforts to search for his correct date of birth only a few months prior to his retirement, to which no answer is forthcoming.

5. We also note that the petitioner has filed a suit for declaration for the same relief alongwith an application for interim injunction. Copy of the plaint has been placed on record. The prayers made in the suit are reproduced below:

“(A) a decree of declaration by declaring the plaintiff's name as “Tara Chand” instead of Ram Kishan in the Birth Certificate issued by defendant no. 1

(B) A decree of declaration by declaring the plaintiff's Date of Birth as 02-07-1960 instead of 30-04-1959 in the School record and School Certificate issued by defendant no. 2 & 3

(C) A decree of declaration by declaring the plaintiff's Date of Birth as 02-07-1960 instead of 30-04-1959 in the Govt. Job/Service record of defendant no. 4.”

and the prayer made in the interim application for injunction :

“It is, therefore prayed that this Hon'ble Court may graciously be pleased in granting ex-parte ad-interim injunction by restraining the respondent-defendant no. 4 from retiring the applicant/plaintiff till final decision of this suit.

Or any relief deemed to be fit and proper also be granted in favour of applicant-plaintiff.”

6. After hearing counsel and considering the matter, at the insistence of counsel, we have no doubt that the learned Tribunal has correctly applied the law laid down by the Supreme Court in ***Punjab and Haryana High Court at Chandigarh vs. Megh Raj Garg & Anr.*** reported as (2010) 6 SCC 482, which in turn relies *inter-alia* upon ***Union of India v. Harnam Singh*** reported as (1993) 2 SCC 162 and ***Union of India v. C. Rama Swamy*** reported as (1997) 4 SCC 647. In the case of ***Megh Raj Garg*** (supra), the Supreme Court has held as follows :

“17. This Court has time and again cautioned the civil courts and the High Courts against entertaining and accepting the claim made by the employees long after entering into service for correction of the recorded date of birth. In Union of India v. Harnam Singh this Court considered the question whether the employer was justified in declining the respondent's request for correction of the date of birth made after thirty-five years of his induction into the service and whether the Central Administrative Tribunal was justified in allowing the original application filed by him. While reversing the order of the Tribunal, this Court observed: (SCC pp. 167-68, para 7)

“7. A government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service

*stands decided by its entry in the service record. A government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a government servant can be entertained. A government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, 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. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. Indeed, as held by this Court in *State of Assam v. Daksha Prasad Deka* a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of*

birth claimed by him. This Court said: (SCC pp. 625-26, para 4)

‘4. ... The date of compulsory retirement under F.R. 56(a) must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record and may apply for correction of the record. But until the record is corrected he cannot claim that he has been deprived of the guarantee under Article 311(2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of birth entered in the service record.’ ”

(emphasis supplied)

18. In Home Deptt. v. R. Kirubakaran this Court considered the question whether the Tamil Nadu Administrative Tribunal had the jurisdiction to entertain an application made by the respondent for correction of his date of birth just before superannuation. While answering the question in the negative, the Court observed: (SCC pp. 158-59, para 7)

“7. An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many

officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, 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. Before any such direction is issued, 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 the time, which can be held to be reasonable. 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 the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief

for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.”

(emphasis supplied)

19. In *Union of India v. C. Rama Swamy* this Court, after an in-depth analysis of Rule 16-A of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, reversed the order passed by the Hyderabad Bench of the Central Administrative Tribunal which had directed alteration of the date of birth of the respondent and observed: (SCC p. 659, para 25)

“25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This

being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.”

20. By applying the ratio of the abovenoted judgments, we hold that the suit filed by Respondent 1 for correction of the date of birth recorded in his service book after twelve years of his joining the service was clearly misconceived and the trial court committed a serious error by passing a decree in favour of Respondent 1 and the lower appellate court and the High Court repeated the same error by refusing to set aside the decree passed by the trial court.”

7. Applying the law as aforesaid to the facts of the present matter, we find no infirmity with the order passed by the Tribunal.

8. Further, it has been held in various circulars issued by the Department of Personnel and Training that an application for change of date of birth should be made within the first five years of employment. The Fundamental Rule applicable in the present matter is extracted hereinbelow :

“F.R. 56. (b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.”

Note 6 to F.R. 56 provides as under :

“NOTE 6. – 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 production, as far as possible, of confirmatory documentary evidence such as High School or Higher 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 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 served, if –

(a) a request in this regard is made within five years of his entry into government service ”

9. In the present case, the application for rectification of the date of birth having been made some 37 years after joining government service, is clearly delayed beyond all reasonable standards.

10. Accordingly, we find no merit in the present petition.

11. The petition is dismissed with costs of Rs. 5,000/- to be deposited with the Juvenile Justice Board.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 13, 2019/uj