

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2326 of 2019

Subodh Paswan, S/o Late Kapileshwar Paswan, Resident of Village and P.O.-
and P.S. Pandaul, District-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Director General-cum-Commandant General Bihar, Home Guard Battalion, Bihar, Patna.
3. Dy. Commandant General, Bihar Home Guard Battalion, Patna.
4. The District Commandant, Bihar Home Guard, Madhubani.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 17-02-2025

Heard the parties.

2. The petitioner is aggrieved with the order dated 25.12.2018 (Annexure-11) issued by the District Commandant, Bihar Home Guard Battalion, Madhubani, whereby the petitioner has been made to retire w.e.f. 31.12.2018 after completion of 60 years of age as per the record/documents available in the Home Guard Office. The petitioner further prayed for issuance of a writ in the nature of mandamus seeking a direction upon the respondents to consider the date of birth of the petitioner as 15.02.1970 recorded in the Admit Card, School



Leaving Certificate, submitted at the time of appointment and allow him to discharge duty as Home Guard Constable till 28.02.2030 and grant all the consequential benefits.

3. Briefly stated, the case of the petitioner is that the petitioner was duly appointed as a Home Guard on 06.11.1989 by the District Commandant, Bihar Home Guard, Madhubani. At the time of selection of the petitioner, he had submitted his Admit Card and the School Leaving Certificate, wherein his date of birth was duly mentioned as 15.02.1970. In support of the aforesaid contention, the copies of the Admit Card and the School Leaving Certificate have been placed on record. It is further contended by the learned counsel for the petitioner that after expiry of every four years, a bond paper was required to be filled up by him, wherein at all the relevant time he noted his actual date of birth as 15.02.1970. There are other documents in support of the aforesaid contention suggesting the date of birth of the petitioner as 15.02.1970, such as driving licence. To the utter dismay, for the first time, the petitioner came to know on 28.08.2018 that notwithstanding his date of birth as 15.02.1970, in the nomination roll, an incorrect and an imaginary date of birth has been inserted showing his age to be of 30 years.

4. Aggrieved with the aforesaid action, the petitioner



immediately submitted representation for making necessary correction, based upon the Admit Card, School Leaving Certificate and other relevant documents. On receipt of the application, the matter was forwarded to the District Commandant, Madhubani to do the needful and finally the matter was placed before the D.G. of Police-cum-Commandant General, Bihar Home Guard. In the aforesaid premise, the Deputy Commandant General, Bihar, Home Guard, Battalion, directed the District Commandant Bihar, Home Guard, Madhubani to make an enquiry in the matter of date of birth of the petitioner and submitted a report in this regard. The petitioner was asked to appear before the concerned respondent. Pursuant thereto, the petitioner appeared and submitted all the relevant necessary documents to support his claim. Despite the aforesaid fact, no correction in the date of birth of the petitioner was effected. The grievance has been raised before all the authorities concerned but it was rather unfortunate, the impugned order came to be passed allowing the petitioner to superannuate on 31.12.2018 by treating an imaginary date of birth of the petitioner, compelling him to approach this Court.

5. Adverting to the aforesaid facts, learned counsel for the petitioner further contended that in the nomination record,



an imaginary date of birth has been inserted without the consent of the petitioner and it has only been mentioned 30 years at the time of selection as a Home Guard. Had the petitioner been knowing this fact, he would have definitely approached the authority concerned and rather before this Court but on all the occasion, at the time of submitting bond paper, though he inserted his date of birth as 15.02.1970 but at no point of time any objection has been raised. Reliance has also been placed on a decision of this Court passed in the case of **Ram Shobhit Rai v. The State of Bihar and Others [1989 0 BBCJ 141]**. Referring to the aforesaid report, learned counsel for the petitioner, thus contended that since the petitioner came to know at the fag end of his service that the entry of his date of birth in the record had wrongly and incorrectly been mentioned, therefore, the delay and laches would not arise; in fact, the laches, if any, that is on the part of the respondent authorities who have not entered the date of birth of the petitioner on the basis of the Admit Card and the School Leaving Certificate, which were furnished at the time of selection.

6. Learned counsel for the State, dispelling the aforesaid contention has submitted that for the purposes of selection of Home Guard, at the relevant time, the required



qualification was only 5th standard passed with the minimum age of 19 years as required under Rule 4(a) of the Bihar Home Guard Rules, 1953 (for short 'the Rules, 1953'). The date on which the selection took place; had the date of birth of the petitioner been taken into consideration, he would have been ineligible for even consideration for selection as on the date of selection, the petitioner was only 18 years 10 months and 17 days. In the light of the aforesaid facts, the case of the petitioner was duly considered and came to be rejected. It is also the contention of the learned counsel for the State that law is well settled, correction of date of birth at the fag end of service is not permissible unless in exceptional circumstances.

7. At this stage, learned counsel for the petitioner has placed an order of the Hon'ble Supreme Court rendered in the case of **Hari Singh v. The State of Bihar & Others [Civil Appeal No. 6067 of 1999/(2000) 10 SCC 284]** and contended that in the said case the authorities have found that the date of birth entered in the service record if taken into consideration, the appellant found to be minor; nonetheless, when the matter came up for consideration before the Hon'ble Supreme Court, the Court held that *the impugned order of Government cannot be sustained as the Government never put the employee on*



notice to indicate that the date of birth as entered in the Service Book is incorrect, though it could have done so and accordingly, the Hon'ble Court set aside the order of the High Court, affirming the order of the authorities.

8. This Court has heard the learned counsel for the respective parties and also perused the materials available on record.

9. The matter was taken up on 25.11.2024, in order to put quietus to the litigation, this Court directed the concerned respondent(s) to produce the original service record in relation to the petitioner on 09.12.2024. In pursuance to the order of this Court, the record is placed; after going through the records, this Court finds that in the nomination register, the age of the petitioner was only mentioned as 30 years, likewise the other candidates with different respective ages. The record does not contain the actual date of birth as has been submitted by the petitioner. True, it is that at no point of time, when the bond was submitted by the petitioner with his date of birth as 15.02.1970, there had never been any confrontation by the authorities concerned nor the petitioner has been put to notice, but this fact alone cannot wash out the nomination record which was duly prepared at the time of selection of the petitioner where his age



was entered as 30 years: Suffice to observe here, there was no interpolation and overwriting. Had the petitioner been aggrieved that his date of birth was not mentioned as per the certificate/documents referred by him rather, the age has been mentioned as 30 years, the petitioner should immediately approach before the authorities concerned at the earliest.

10. This Court also finds substance that in pursuant to Rule 4(a) of the Rules, 1953, the minimum age for selection of Home Guard was prescribed up to 19 years and had the contention of the petitioner is accepted, he would become ineligible for selection to the post of Home Guard.

11. With due regard to the order of the Hon'ble Supreme Court in the case of **Hari Singh** (supra), the order was passed in the premise where in the service book the date of birth was correctly mentioned as per the concerned Home Guard, but he was forced to prematurely retired on the ground that if such date of birth is accepted the petitioner had not even completed 19 years of age. Hence, the matter in hand is juxtaposite to the referred decision. Further in the case of **Ram Shobhit Rai** (supra), while the petitioner was working as a Sub Inspector of Police, the Home Department through its notice dated 26.02.1976, invited application from those police officials,



where date of birth was wrongly recorded contrary to the Matriculation certificates, within one year from the said circular. But the petitioner could avail the remedy belatedly, however, the claim of the petitioner came to be rejected finally by Inspector General of Police that there was no provision for making a correction in the service book on the basis of matriculation obtained after entering the service. The Court placing reliance upon a decision in the case of **Murli Manohar Tiwary v. The State of Bihar [1986 PLJR 1180/ 1986 SCC Online Pat 223]** has finally observed that the circular would be available for both, who passed the matriculation examination before entering the service and one who had not passed the matriculation examination, if the officer concerned is able to show his case is genuine. The learned Court finally set aside the order of the concerned authority and observed that the petitioner's representation was not considered in accordance with law and, thus, directed as follows:-

“16. Having considered the case and the contentions raised before me, I have no hesitation in holding the petitioner's representation was not considered in accordance with law by the respondents, the order contained in annexure'10' is not sustainable in law and it is, accordingly, quashed.



“17. It, however, is not a case in which this Court can issue mandamus to correct the date of birth of the petitioner in the service book. As such correction will require satisfaction as to the correctness of the statement of the petitioner about the correctness of the date of birth in the admit card of the Patna University, the respondents can legitimately verify its correctness from the Patna University and satisfy themselves about the same.”

The facts of the, afore-noted, case is also not identical to the present, where the claim has been made at the fag end.

12. The law with regard to the correction of date of birth at the fag end of service has been duly considered by the Hon’ble Apex Court on various occasions. In the **State of T.N. v. T.V. Venugopalan [(1994) 6 SCC 302]**, the Hon’ble Court has observed that the government servant should not be permitted to correct the date of birth at the fag end of his service career. It would be worth benefiting to encapsulate the relevant observation.

“7. ... The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service



register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for, gets expired. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground.”

13. In **Secretary and Commissioner, Home Department and Others v. R. Kirubakaran [1994 Supp (1) SCC 155]**, the Hon’ble Supreme Court while reiterating the legal position that the Courts have to be extremely careful when application for alteration of the date of birth is filed on the eve



of superannuation or near about that time, has succinctly observed that whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier.

14. In **State of Uttaranchal and Others v. Pitamber Dutt Semwal [(2005) 11 SCC 477]**, the Hon'ble Supreme Court has denied the relief to the government employee on the ground that he sought correction in the service record after nearly 30 years of service with an observation that the High Court ought not to have interfered with the decision after such a long period.

15. Recently, the Hon'ble Supreme Court in the case of **Karnataka Rural Infrastructure Development Limited v. T.P. Nataraja and Others with other analogous cases [(2021) 12 SCC 27]**, after reiterating the various decisions, covering the issue on this point, has summarized the law on the issue of correction of date of birth in para-11 of the decision, which is quoted hereunder.

“11. Considering the aforesaid decisions of this Court the law on change of date of birth can be summarised as under:



(i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;

(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;

(iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag-end of service and/or when the employee is about to retire on attaining the age of superannuation.”

16. In view of the aforesaid facts and the position obtained in law, especially the fact that in the nomination register, there is no whisper with regard to the date of birth of the petitioner as claimed by him in the writ petition as also the delay and laches in approaching the authority and the Court at the fag end of service, this Court does not find any merit in the writ petition. Accordingly, the writ petition stands dismissed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28-02-2025
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