

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Acting Chief Justice Sujoy Paul

And

The Hon'ble Justice Partha Sarathi Sen

WPCT 340 of 2024

Anil Kumar Mandal

vs.

Union of India and others

For the Petitioner	: Mr. Jayak Kumar Gupta Mr. Nandadulal Bandyopadhyay Mr. Mahadeb Ghosh
For the respondent	: Mr. Rivu Dutta Mr. Srikumar Chakraborty Mr. Rhitam Chatterjee
Judgment on	: 06.11.2025

Per, Sujoy Paul, A.C.J.

1. This writ petition filed under Article 227 of the Constitution of India takes exception to the order dated 4th November, 2024 passed by the Central Administrative Tribunal (Tribunal) in O.A. 350/248 of 2024, whereby the original application (O.A.) filed by the present petitioner seeking annulment of rejection order dated 30.05.2023 was dismissed.

2. Admitted facts between the parties are that the petitioner's original service record was misplaced by the department sometimes in the year

2008. The department reconstructed the service record and recorded the date of birth of the petitioner as 02.05.1963. The petitioner after preferring representation seeking alteration of said date of birth as 02.01.1970, filed O.A. 1156 of 2019 before the Tribunal. The Tribunal by order dated 19.04.2023 Annexure A-7 disposed of the O.A. by directing the respondents to re-examine the case of the applicant afresh by giving him due opportunity and passed an order within the stipulated time. The petitioner was given such opportunity to represent for the purpose of determination of date of birth.

3. In turn, the speaking order dated 30.05.2023 Annexure A-11 was passed by holding that the petitioner has signed an affidavit which contains the date of birth as 02.05.1963. In the reconstructed service record, the petitioner put his signature on the same page which contains the date of birth as 02.05.1963.

4. In the second visit to the Tribunal in O.A. 350/248 of 2024, the petitioner assailed the rejection order dated 30.05.2023 and contended that on 03.08.1988 transfer certificate of Class VIII was issued by the concerned school. In the teeth of Clause 225 of **Indian Railways Establishment Code** (Volume I), said school leaving certificate should have been given due weightage by entering the date of birth mentioned therein. Section 3 of Evidence Act which talks about “document” is also relied upon.

5. The Tribunal dismissed the O.A. on certain grounds including the ground that in the reconstructed service book which is pregnant with the date of birth as 02.05.1963, petitioner put his signature and did not deny

about availability of his signature on the first page of the said service book. The petitioner although relied on Aadhaar Card, PAN Card, Identity Card issued by department, etc. the Tribunal opined that such documents/cards were based on employee's own declaration and cannot be reason for change of date of birth.

6. Learned counsel for the petitioner submits that the finding of Tribunal is bad in law because the petitioner's signatures are not there in the affidavit, and there is a difference in spelling of surname of the petitioner in the signature of affidavit and in the original name. The PAN Card, Aadhaar Card and Identity Card, etc. contains correct date of birth i.e. 02.01.1970. Same is the date of birth recorded in school leaving certificate. Thus, the Tribunal ought to have accepted the date of birth recorded in school leaving certificate in the light of the mandate ingrained in Clause 225 of the Indian Railways Establishment Code (Code). Lastly, reliance is placed on the judgment of this court in ***Nihar Ranjan Bhowmick vs. State of West Bengal & Ors.*** reported in ***1991(1) CLJ 93.***

7. Learned counsel for the respondents, on the other hand, supported the impugned order of the Tribunal. The parties confined their arguments to the extent indicated above.

8. We have bestowed our anxious consideration on rival contentions and perused the record. In the instant case, admittedly, the original service record of the petitioner was lost. Thus, Clause 225 of the Code cannot be pressed into service. The said Code deals with the entry of date of birth at

the time of “entering railway service”. In the instant case, the petitioner’s service record got misplaced in 2008 and it was reconstructed in 2010.

9. Petitioner could not place any material to establish that while entering employment, he produced above school leaving certificate.

10. The petitioner approached the Tribunal for the first time after 9 years from the date of reconstruction of service record in 2019. The Tribunal directed the department to hear him and decide the matter. In turn, the department heard him and passed a speaking order dated 30.05.2023. It is apposite to quote relevant portion of “speaking order”. The relevant para reads thus:

*“As stated above the Service Record of the employee was reconstructed as the earlier one went missing. The reconstruction was based on available official documents and affidavit submitted by the employee at that material time. The employee himself has signed on the affidavit and states that his date of birth is 02.05.1963. **The reconstructed Service Record of the employee has the same date of birth and employee has also signed on the same page of Service Record which proves that the employee was fully aware of the date of birth being recorded then.**”*

(Emphasis Supplied)

11. A plain reading of this rejection order shows that it is mainly founded upon the reason that the petitioner filed an affidavit wherein he described his date of birth as 02.05.1963. In addition, he has signed on the same page of service book which contains the same date of birth i.e. 02.05.1963. The Tribunal categorically held that the petitioner had not chosen to specifically deny the existence of his signature on the first page of reconstructed service book.

12. During the course of hearing, on a specific query from the Bench, learned counsel for the petitioner could not point out any iota of pleading before the Tribunal wherein the petitioner had assailed the finding of speaking order regarding existence of signature on the first page of reconstructed service book. In absence of any such attack on a finding of fact given in the 'speaking order', we find no reason to disturb the finding of the Tribunal. The Tribunal has taken a plausible view.

13. The matter may be viewed from another angle. In view of the judgment of the Supreme Court in the case of ***Union of India vs. Harnam Singh*** reported in **(1993) 2 SCC 162**, it is trite that if the employee comes to know that his date of birth is wrongly recorded, he must approach the court with quite promptitude. He cannot be permitted to seek alteration of date of birth at the fag end of his career. The relevant part reads thus:

*"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."*

(Emphasis Supplied)

14. A careful reading of this para, makes it clear that even if a very strong proof of date of birth is shown by employee at a belated stage, the same is

not acceptable. Thus, evidentiary value of transfer certificate, even otherwise, pails into insignificance in view of the delay in approaching the Tribunal.

15. In the case of *Harnam Singh (supra)*, there was a statutory time limit for seeking alteration of date of birth. However, in the cases where there exists no such time limit, the Supreme Court in catena of judgments opined that the employee must approach the Court within reasonable time and not at the December of his career. (See 1994 Suppl. 1 SCC 155 Home Deptt. vs. R. Kirubakaran)

16. The relevant portion reads thus:

“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.”

(Emphasis Supplied)

17. The ratio *decidendi* of this judgment was consistently followed by Supreme Court in **GM, Bharat Coking Coal Ltd. v. Shib Kumar Dushad, (2000) 8 SCC 696; State of Punjab and Ors. v. S.C. Chadha, (2004) 3 SCC 394; State of U.P. v. Shiv Narain Upadhyaya, (2005) 6 SCC 49;**

State of Haryana v. Satish Kumar Mittal and Another, (2010) 9 SCC 337; State of M.P. v. Premal Shrivastava, (2011) 9 SCC 664; Bharat Coking Coal Ltd. v. Shyam Kishore Singh, (2020) 3 SCC 411.

18. Pursuant to the order of the Tribunal in the first round, speaking order dated 30.05.2023 was issued. Although this order was assailed promptly, in view of the judgment of Supreme Court in the case of ***Union of India vs. M. K. Sarkar*** reported in **2010 (2) SCC 59** it can be safely concluded that in a matter of approaching the court with delay, this rejection order will not give him a fresh cause of action. The relevant portion reads thus:

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

(Emphasis Supplied)

19. It was also held:

“16. If the court or tribunal deciding to direct “consideration” without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

(Emphasis Supplied)

20. In other words, the petitioner's service book was reconstructed in the year 2010 and the petitioner came to know about entry of date of birth as

02.05.1963 in the year 2010 itself. He waited till 2019 to approach the Tribunal and after getting the rejection order again approached in the year 2024. At the fag end of his career, the petitioner sought alteration of date of birth, which is not permissible.

21. So far judgment of this court in ***Nihar Ranjan Bhowmick*** (supra) is concerned, suffice it to say that it is based on the peculiar factual matrix of the said case. In the said case, the matriculation certificate submitted by the candidate at the time of entry in employment was accepted partially i.e. for the purpose of education qualification, but was disbelieved for the purpose of date of birth/age. This partial acceptance was disapproved by this court and in this peculiar backdrop, ***Nihar Ranjan Bhowmick*** (supra) was decided. This judgment cannot be pressed into service in the instant case.

22. The scope of interference under Article 227 of the Constitution of India is limited. If the impugned order/judgment suffers from a palpable perversity or illegality, interference can be made. Another view is possible, is not a ground for interference. Since the Tribunal, in our considered opinion, has taken a plausible view, interference is declined. The petition sans substance and is hereby **dismissed**.

(Sujoy Paul, A.C.J.)

I agree.

(Partha Sarathi Sen, J.)