Sr. No.5

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINGAR

CM(919/2026) IN WP(C) 188/2026
CM(434/2026)

UNION TERRITORY OF J AND K AND ANOTHER (HOME / POLICE) …Petitioner(s)/appellant(s)

Through: Mr. Mohsin S. Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

Vs.

FAYAZ AHMAD BANDAY ...Respondent(s)

Through: Mr. R. A. Jan, Sr. Advocate with
Mr. Ubaid Ahmad, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE YASH PAUL BOURNEY, JUDGE

O R D E R
29.10.2026

1. Learned counsel for the appellant submits that the respondent-Fayaz Ahmad Banday was initially appointed in the J&K Police as Junior Assistant-cum-Typist in the year 1983 in terms of PHQ Order No. Estt(APH) 82-89/PHQ dated 18.04.1983.

2. Mr. Qadri, learned counsel for the appellant, further submits that at the time of his entry into service, the respondent's date of birth was recorded as 28.02.1963. Thereafter, the respondent was absorbed in the executive cadre, whereuponthe respondent raised an issue in the year 2015, after a lapse of three decades, claiming that his date of birth should be treated as 28.04.1965 as per his matriculation certificate.

3. Mr. Qadri further submits that the representation was examined by a Committee, which recommended that the date of birth to be accepted as 28.04.1965 on the strength of the matriculation certificate. He submits that admittedly, the matriculation certificate reflects the date of birth as 28.04.1965, but the respondent was bound by Rule 193 of the Police Rules, which requires a character roll to be prepared in his presence.Rule 193 reads as under:

193. Attestation of recruits and preparation of character rolls.

When the formalities required by Rule 185 have been completed, and the recruit has served for one month and received the instruction prescribed in rule 794 his character roll shall be prepared in his presence. When the roll is otherwise complete the recruit shall be taken before a gazette officer and required to sign the agreement printed as item 4 in the roll and the rolled impressions of the thumb and fingers of his left hand shall be taken in the space provided for the purpose. The gazette officer before signing the roll shall satisfy himself that the recruit understands the purpose of his agreement and shall explain to him the purport of rule 117 and give him the opportunity of claiming alternation in is recorded age on production of documents in support of his contention.

4. Mr. Qadri further submits that the character roll reflected the date of birth as 28.02.1963. He further submits that Regulation 35-AA(c) of the Jammu and Kashmir Civil Services Regulations, 1956, deals with alteration of date of birth, and prohibitssuch alteration beyond the prescribed limitation period of five years.35-AA(c) reads as follows:

(c) Alteration of Date of Birth :

The date of birth so declared by the Government servant and accepted and once recorded by the appropriate authority (as specified in clause (b) above) in the service book or any other record of service of the Government servant, as the case may be, shall not be subject to any alteration, except in the case of a clerical error without the orders of the Government. No alteration of date of birth of a Government servant shall be made by the Government (Administrative Department) unless a request in this regard is made by the concerned Government servant within a period of five years of his/her entry into Government service and it is clearly established that a genuine/ bonafide mistake has occurred.

Provided that in case of Government servant in service on the date of issue of this Notification, a request for alteration of his/her date of birth may be considered by the Government, for reasons to be recorded in writing, if an application to this effect is made within a period of six months from the date of issue of this Notification:

Provided further that the date of birth so altered would not make him/ her ineligible to appear in any school or University/Board or 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 on which he entered Government service.

5. Mr. Qadri further submits that the respondent cannot be allowed to approbate and reprobate. He cannot choose one date of birth for entry into service and a different date of birth for exit from service, particularly when the earlier date i.e., 28.02.1963 entitled him to enter into service, whereas the later date i.e., 28.04.1965 which he now seeks to adopt, would disentitle him as he would have been a minor on the date of appointment, thereby barring his entry into service under the rules.

6. On the other hand, learned Senior Counsel appearing for the respondent, assisted by Mr. Ubaid Ahmad, submits that the rule position would not impact the change of date of birth, as the appellants themselves initiated the process of constituting an administrative committee. After due application of mind, the Committee recommended changing the date of birth from 28.02.1963 to 28.04.1965.The learned counsel relies upon the communication dated 20th January, 2015 issued by Police Headquarters, J&K, Jammu, wherein the Committee's examination and findings are on record. He further submits that a matriculation certificate is an authentic proof of the date of birth, and therefore the Administrative Committee rightly recommended adopting the date of birth given in the matriculation certificate. He further submits that school and matriculation certificates continues to hold the highest sanctity regarding date of birth. Thus, learned CAT was right in adopting the date given in the matriculation certificate and granting all consequential benefits accordingly.

7. This Court, upon hearing the submissions, finds that in the present case the respondent was appointed in the appellant department on 18.04.1983 vide PHQ Order No. Estt(APH) 82-89/PHQ, wherein his date of birth was recorded as 28.02.1963. He also had a character roll reflecting his date of birth as 28.02.1963. It is also noted that he was subsequently absorbed into the executive cadre.

8. The main bone of contention is the two dates of birth: the first,28.02.1963,the date utilized by the respondent at the time of entry into

service and the second, 28.04.1965, which he claims to be his actual date of birth on the basis of the matriculation certificate, and which would entitle him about two additional years of service.

9. Although the Police Rules and Regulation 35-AA(c) of the J&K CSR, 1956 prescribe a statutory mechanism for laying down the details of the employee so much so even alteration of date of birth has been dealt with limitation prescribed, but this Court is not convinced that such legal barriers strictly apply against the respondent here. It was the appellants themselves who chose to form an administrative committee across the board for several employees to examine date of birth issues, exercising their administrative discretion and the same cannot be read against the present respondent.

10. However, the fact that impacts the decision in this case is that if the respondent is allowed to take his date of birth as 28.04.1965 as per his matriculation certificate, he would have been a minor at the threshold/entry point on 18.04.1983, rendering him disqualified to serve at the time of appointment. Perhaps, this is the reason why the date of birth of 28.04.1965, would not have come on record and the date of birth 28.02.1963 would have prevailed in the original record as it would only entitle the employee to remain in service on the date of joining i.e., 18.04.1983.

11. This Court is of the firm opinion that if the matriculation date is crystallized now for granting extended service benefits, then the original appointment itself would come under a cloud, as the respondent would be deemed a minor on the appointment date 18.04.1983 under the date of birth of 28.04.1965.Therefore, in this peculiar factual matrix, the date of birth reflected in the original character roll (28.02.1963) has to be accepted; or else, this Court would be compelled to arrive at a conclusion of examining the unlawful entry of the respondent at the threshold itself.

12. However, without going into that perspective, this Court finds that consequence of date of birth 28.04.1965 leads to initial disqualification, whereas, the result the date of birth already recorded i.e., 28.02.1963 would entitle him a lawful employment but the consequential date of retirement would be of 28.02.2023.

13. Taking into account his prolonged service, an equitable resolution to conclude this controversy is to treat his date of retirement as 28.02.2023 based on the original recorded date of birth of 28.02.1963.

14. Accordingly, the order passed by the learned Central Administrative Tribunal (CAT) is quashed and set aside. It is directed that the consequential pensionary/retiral benefits of the respondent be calculated and paid with effect from 28.02.2023, treating his date of birth as 28.02.1963.

15. However, this Court takes note of the fact that by virtue of interim orders, the respondent continued to serve up to 28.04.2025. Since he has already discharged his duties for that period, the actual salary paid or he is entitled to be paid shall be paid to him. It is, however, made clear that the computation of retiral and pensionary benefits shall strictly be made from the deemed date of superannuation declared by this Court, i.e., 28.02.2023.

16. The balance of salary and the retiral benefits shall be paid to the respondent within a period of three months from today.

(YASH PAUL BOURNEY)
JUDGE

(DR. PUSHPENDRA SINGH BHATI)
CHIEF JUSTICE

SRINAGAR
29.10.2026
Aadil

Whether the order is reportable. **Yes.**