

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

CWP.No.1108/2006

Date of Decision :30.11.2006..

Narinder Kumar

...Petitioner.

Versus:

Union of India and others.

...Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice S S Thakur, Judge.

Whether approved for reporting?¹

For the petitioner: Mr.Ajay Sharma, Advocate.

For Respondents. Mr.Sandeep Sharma,Assistant
Solicitor General of India.

Deepak Gupta, J (Oral).

This petition is directed against the order of the Central Administrative Tribunal which has dismissed the Original Application filed by the petitioner herein praying for the change of his date of birth in the service record.

The brief facts of the case are that the petitioner joined service on 12.2.1976 as Extra Departmental Branch Post Master at Giora, Branch Post Office, Jassur, Tehsil Nurpur, District Kangra.

The age of superannuation for Extra Departmental Branch Post Master is 65 years. In the service record maintained by the respondents, the date of birth of the petitioner was shown as 2nd December, 1940. The petitioner was thus due to retire on 31.12.2005. It appears

¹ Whether reporters of Local Papers may be allowed to see the judgment?

that somewhere in 2004 or 2005 the petitioner moved an application for correction of his date of birth. According to him, his date of birth had wrongly been entered in the office records as 2nd December, 1940 whereas his actual date of birth is 1.12.1943. The department rejected the claim of the petitioner mainly on the ground that the request for correction has been made at a very belated stage and that as per the existing rules, the request for change the date of birth must be made within five years from the date of joining service.

After rejection of the claim of the petitioner by the department, the petitioner moved the Central Administrative Tribunal. The stand taken by the petitioner before the Tribunal and before this Court is that he has not applied for the correction of his date of birth but he has applied for the correction of the clerical error which occurred while recording his date of birth in the service records. According to the petitioner, he had supplied his school leaving certificate to the department at the time of joining service. According to this certificate, the date of birth of the petitioner is 1st December, 1943. It is submitted on behalf of the petitioner that a perusal of the attestation form filled in at the time when the petitioner joined his service clearly shows that this school leaving certificate must have been produced before the concerned authorities since the date of joining the school and the date of leaving the school is given in the attestation form. On this basis, it is submitted that the date of birth was wrongly mentioned and a clerical error occurred which can be corrected even at this stage.

The stand of the department is that at the time of joining his service, the petitioner had orally informed that his date of birth is 2nd December, 1940. According to the department various seniority lists and inspection reports were issued from time to time and in all these seniority lists and inspection reports, the date of birth of the petitioner is shown as 2nd December, 1940. One of the seniority lists and five inspection reports have been placed on record.

We have heard Shri Ajay Sharma, learned counsel for the petitioner. We are not at all convinced by his argument that the case of the petitioner is only for correction of a clerical error and not for the correction of date of birth. Both amount to the same. The net result of both is that the petitioner wants to change his date of birth as mentioned in the service record so that he may superannuate at a later date.

The instructions in this behalf issued by the Government of India are absolutely clear. A reference to these instructions which have been placed on record clearly shows that the request with regard to the change of date of birth of an employee in government service record must be made within five years of entering into Government service. It is now settled by the apex Court that the request or application for change of the date of birth must be made by the employee within five years of his joining service and no such application can be entertained at a later stage. Reference in this behalf may be made to the judgment of the apex Court in **State of Gujarat and Ors. Vs. Vali Mohmed Dosabhai Sindhi**, JT 2006 (6) SC 468, wherein the apex Court held as follows:

" An application for correction of the date of birth should not be dealt with by the courts, 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 the promotion forever, Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant 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 and that too within a reasonable time as provided in the rules governing the service, the court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only

plausible. Before any such direction is issued or declaration made, 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 within at least a reasonable time. 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 about 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 date of birth in the service books."

A perusal of the aforesaid law as laid down by the apex court clearly shows that the request for change of the date of birth must be made within the time prescribed by the rules or if such time is not prescribed by the rules, then such application must be made within a reasonable time. In the present case the rules prescribe that such request must be made within 5 years of joining service. The request made

at the fag end of the career, a few years before retirement can never be said to be a request made within a reasonable time under any circumstances.

The apex court has clearly laid down that the change in the date of birth of an employee not only affects the employee concerned but it may adversely affect the rights of other employees who are the colleagues or juniors of the person who applies for correction of his date of birth. For this reason, it is imperative that the request for change of date of birth should be made at the earliest stage.

In the present case, we find that when the petitioner first applied for change of date of birth he had clearly stated that at the time of joining the service, his date of birth in the official record had been entered on the basis of the oral information given by him. Now, he has changed his stand and wants this Court to believe that in fact he had supplied his school leaving certificate showing his date of birth but inadvertently wrong date of birth was entered in the record. This story is difficult to believe. Even if we believe this story then also no reason has been given as to why the petitioner kept silent for almost 30 years. Various seniority lists and inspection reports placed on record show that the date of birth of the petitioner was recorded as 2.12.1940. The petitioner never raised any objection at that time. The contention of Shri Ajay Sharma that the petitioner was not aware of the date of birth mentioned in the seniority lists and the inspection reports since the same were not marked to him cannot be believed. It is difficult to believe that any government servant would remain in employment for 30 years and not verify his seniority lists or read the

inspection reports of the seniors which in a normal course would have been marked to him. We are, therefore of the considered opinion that in view of the law laid down by the apex Court, no employee can move his employer for correction of his date of birth at a belated stage.

The Tribunal was right in rejecting the application of the petitioner. We find no error in the order of the Tribunal. The writ petition is, therefore, dismissed.

CMP.No.1740/2006.

Infructuous.

**(Deepak Gupta),
Judge.**

**(S S Thakur),
Judge.**

November 30, 2006(R)