

*Before Tejinder Singh Dhindsa, J.*

**NIRMAL PAL SINGH—Petitioner**

*versus*

**STATE OF PUNJAB & OTHERS—Respondents**

**CWP NO. 5095 OF 2011**

7th August, 2012

*Constitution of India, 1950 - Art. 226 - Punjab Civil Service Rules Vol. I Part I, - Note 3 RL 2.5 - Births & Deaths Registration Act 1969 - S. 12/17 - Petitioner joined as Assistant District Attorney on 19.5.1992 - He submitted written request/claim dated 9.5.1994 for necessary correction of date of birth from 1.2.1962 to 17.11.1964 in his service record - Rule envisages that an employee can apply for change of date of birth within 2 years of entry into service - Upon application special inquiry is conducted - No correction to be done where employee has derived undue advantage on the basis of original date - Held that impugned order rejecting application is non speaking and does not disclose reason for rejection - Writ Petition allowed.*

*Held, That the claim/representation seeking correction of the date of birth had been submitted by the petitioner within the stipulated period of two years from the date of entering into service. The special inquiry as envisaged under Rule 2.5 Annexure 'A' was duly conducted by the District Attorney, Ludhiana and report dated 4.10.1997 (Annexure P-13) had been furnished recommending the claim of the petitioner as regards correction of date of birth. Furthermore in terms of the instructions dated 10.5.1995 (Annexure P-24) the designated Inquiry Officer as regards the claim of the petitioner was the Deputy Commissioner, Patiala. Even such designated Inquiry Officer upon inquiry submitted a report dated 13.8.2008 (Annexure P-21) recommending the correction in the date of birth. The petitioner had based his claim/representation for change and correction of his date of birth on the basis of revised certificates issued by the Punjab School Education Board reflecting his date of birth to be 17.11.1964. Still further reliance has been placed upon the date of birth certificate issued by the Additional Registrar, Births & Deaths i.e the designated authority under Section 12/*

17 of the Births & Deaths Registration Act, 1969. Such documents would clearly have presumptive value and the same had been taken cognizance of in the special inquiry as also the inquiry conducted by the designated Inquiry Officer. It would also required notice that by virtue of the initial date of birth i.e 1.2.1962 the petitioner had not derived any undue advantage in terms of gaining entry into service. This was the specific pleaded case of the petitioner before this Court and the State has not refuted the same.

(Para 14)

*Further held,* That I find that the claim of the petitioner is squarely covered in terms of the relevant statutory provisions governing the subject regarding a claim seeking correction of the date of birth. There can be no plausible justification for issuance of orders dated 19.7.2010 (Annexure P-25) and 26.7.2010 (Annexure P-26) in not accepting the claim/representation of the petitioner. A perusal of the impugned orders (Annexures P-25 & P-26) would reveal that the same are totally non-speaking and cryptic. The impugned orders do not even disclose the basis for not having accepted the claim of the petitioner. The action of the respondent-authorities is clearly arbitrary and suffers from a non application of mind.

(Para 15)

D.V. Sharma, Sr. Advocate with Shivani Sharma, Advocate, *for the petitioner.*

Suvir Sehgal, Addl. A.G., Punjab.

**TEJINDER SINGH DHINDSA, J.**

(1) I have heard learned counsel for the parties at length.

(2) The petitioner by way of filing the present petition under Article 226 of the Constitution of India has impugned the orders dated 19.7.2010 as also the order dated 26.7.2010, whereby his claim seeking correction in his date of birth in the service record from 1.2.1962 to 17.11.1964 has not been accepted.

(3) The petitioner joined the Prosecution & Litigation Department, State of Punjab as Assistant District Attorney on 19.5.1992. At the initial stage of appointment he had submitted his matriculation certificate in which

his date of birth was mentioned as 1.2.1962. Thereafter, upon inquiries having been made from the office of the Additional Registrar, Births & Deaths, Patiala the petitioner became aware that his actual date of birth is 17.11.1964. The requisite Date of Birth Certificate was also issued by the competent authority under the Births & Deaths Registration Act, 1969, wherein his date of birth was reflected as 17.11.1964. Placing reliance upon the same the petitioner submitted an application to the Punjab School Education Board for correction of his date of birth in the matriculation certificate. Consequently, revised certificates of Middle and Matriculation were issued by the Punjab School Education Board in which the date of birth of the petitioner stood corrected as 17.11.1964. Against such backdrop the petitioner submitted a written request/claim dated 9.5.1994 through proper channel addressed to the Director, Prosecution & Litigation Department, Punjab for the necessary correction of date of birth in his service record.

(4) There is no dispute as regards the fact that vide letter dated 16.1.1997 issued by the department, the District Attorney, Ludhiana had been directed to conduct a special inquiry under Rule 2.5 of the Punjab Civil Services Rules Vol. I Part I. Such inquiry was submitted on 4.10.1997 clearly recommending the correction of the date of birth of the petitioner from 1.2.1962 to 17.11.1964. It appears that thereafter a lot of correspondence transpired and clarifications were even sought from the school from where the petitioner had studied and the file was kept shuttling between the respondent-department and the Department of Home Affairs and Justice. Apparently, opinion was also sought from the Legal Remembrancer under the Department of Legal & Legislative Affairs, Punjab. Vide memo dated 10.1.2008 issued by the department even the Deputy Commissioner, Patiala had been called upon to conduct an inquiry as regards the actual date of birth of the petitioner. The inquiry findings conducted by the Deputy Commissioner, Patiala were submitted vide memo dated 13.8.2008, wherein again the recommendations came in favour of the petitioner as regards the correction of his date of birth in the service record from 1.2.1962 to 17.11.1964. It would be apposite to notice that in the special inquiry conducted by the District Attorney, Ludhiana as also in the inquiry conducted by the Deputy Commissioner, Patiala apart from other evidence having been discussed, cognizance had been taken of the

certificate issued in favour of the petitioner from the office of the Additional Registrar, Births & Deaths (Civil Surgeon), Patiala as also the certificate issued by the Punjab School Education Board showing the corrected date of birth as 17.11.1964.

(5) The petitioner is presently aggrieved of the orders dated 19.7.2010 (Annexure P-25) as also 26.7.2010 (Annexure P-26), whereby his claim seeking correction of the date of birth in his service record has not been accepted.

(6) Learned senior counsel appearing for the petitioner has submitted that the decision of the respondent-department in terms of issuance of orders at Annexures P-25 & P-26 is wholly arbitrary, illegal and without any justification. Learned senior counsel would strenuously argue that the request/claim seeking correction in the date of birth was made within the stipulated period of two years from the date of initial entry into service and as such his claim was required to be accepted in terms of the statutory rules governing the subject. Counsel has further submitted that the claim of the petitioner was based on conclusive and clinching material and the same could not have been discarded.

(7) Per contra, Mr. Suvir Sehgal, learned Additional Advocate General, Punjab has submitted that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India should not interfere with a decision of the employer, wherein discretion has been declined while entertaining a plea seeking correction of the date of birth. Towards making such submission learned State counsel would place reliance upon a judgement of the Hon'ble Apex Court in case of **G.M. Bharat Coking Coal Ltd., West Bengal versus Shib Kumar Dushad and others (1)**.

(8) The claim of the petitioner seeking correction of the date of birth would require adjudication in the light of the statutory rules governing the subject. Rule 2.5 of the Punjab Civil Services Rules, Vol.I Part I, Note 3, Annexure 'A' would be relevant and reads in the following terms:-

*"2.5. AGE.*

*Note 1. xxx xxx xxx*

*Note 2. xxx xxx xxx*

*Note 3.- For administrative instructions in respect of alterations in the date of birth see Annexure 'A' to this Chapter.*

*Annexure 'A'*

- 1. In regard to the date of birth a declaration of age made at the time of or for the purpose of entry into Govt. service shall, as against the Govt. employee in question, be deemed to be conclusive unless he applies for correction of his age as recorded within two years from the date of his entry into Govt. service. Govt., however, reserves the right to make a correction in the recorded age of a Govt. employee at any time against the interests of the Govt. employee when it is satisfied that the age recorded in his service book or in the history of service of a Gazetted Govt. employee is incorrect and has been incorrectly recorded with the object that the Govt. employee may derive some unfair advantage therefrom.*
- 2. The order of this Annexure have effect from the 4th July, 1928. With regard to persons in Govt. service on that date, one year from that date was allowed within which they could apply for correction of their recorded date of birth.*
- 3. When a Govt. employee, within the period allowed; makes an application for the correction of his date of birth as recorded a special enquiry should be held to ascertain his correct age and reference should be made to all available sources of information such as Certified copies of entries in the municipal birth register, University or School age Certificate, Janam Patris or horoscopes. It should, however, be remembered that it is entirely discretionary on the part of the sanctioning authority to refuse or grant such application and no alteration should be allowed unless it has satisfactory been proved that the date of birth as originally given by the applicant was a bonafide mistake and that he has derived no unfair advantage therefrom."*

(9) The Punjab Civil Services (First Amendment) Rules, Vol. I, Part-I, 1994 Annexure 'A' Rule 2.5 Annexure 'A' to Rule 2.5 after amendment reads as under:-

***“Annexure ‘A’***

*(Referred to in Rule 2.5 and Note 3 thereunder)*

1. *In regard to the date of birth a declaration of age made at the time or for the purpose of entry into Govt. service shall, as against the Govt. employee in question, be deemed to be conclusive. The employees already in the service of the Govt. of Punjab on the date of coming into force of the Punjab Civil Services (First Amendment) Rules, Vol. I, Part-I, 1994 may apply for the change of date of birth within a period of two years from the coming into force of these Rules on the basis of confirmatory documentary evidence such as matriculation certificate or municipal birth certificate, etc. No request for the change of date of birth shall be entertained after the expiry of the said period of two years. Govt., however reserves the right to make a correction in the recorded age of a Govt. employee at any time against the interests of the Govt. employee when it is satisfied that the age recorded in his service book or in the History of service of a Gazetted Govt. employee is incorrect and has been incorrectly recorded with the object that the Govt. employee may derive some unfair advantage therefrom.*
2. *When a Govt. employee, within the period allowed makes an application for the correction of his date of birth as recorded, a special enquiry should be held to ascertain his correct age and reference should be made to all available sources of information such as certified copies of entries in the municipal birth register; University or School age Certificate, Janam Patris or horoscopes. It should, however, be remembered that it is entirely discretionary on the part of the sanctioning authority to refuse or grant such*

*application and no alteration should be allowed unless it has satisfactory been proved that the date of birth as originally given by the applicant was a bonafide mistake and that he has derived no unfair advantage therefrom.*

3. *The result of every such enquiry should, in the case of gazetted, non-Gazetted Govt. employee be briefly stated in their service cards, service books, and if a correction is sanctioned, the fact should be reported to the Accountant General."*

(10) A bare perusal of Rule 2.5 Note 3 Annexure 'A' as also the amended Rule 2.5 would make it clear that an employee can apply for the change of date of birth within a period of two years from entry into service. Upon an application having been made a special inquiry is envisaged under the rule to ascertain the correct age and in such inquiry a reference is required to be made to all available sources of information in the nature of entries in the municipal birth register, University or school age certificate etc. It is further the mandate of the rule that no alteration/correction of date of birth shall be permitted in a situation, where an employee may have derived an unfair advantage on the basis of the original date of birth that he had disclosed.

(11) The State of Punjab, Department of Personnel & Administrative Reforms even issued instructions dated 10.5.1995 (Annexure P-24) on the subject of change in the date of birth of Punjab Govt. employees. In terms of such instructions and in reference to Rule 2.5 of the Punjab Civil Services Rules Vol. I Part-I, it has been decided to designate the Deputy Commissioner concerned of the district in which the birth place of the concerned employee falls as the Inquiry Officer.

(12) The Hon'ble Apex Court in case of **G.M. Bharat Coking Coal Ltd., West Bengal** (supra) has observed in the following terms:-

*"15. Before entering into the question of validity and sustainability of the judgment passed by the single Judge and the Division Bench of the High Court in this case we would like to make the observation that in a case where the controversy over the date of birth of an employee has*

*been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by following the procedure prescribed under Service Rules or General Instructions issued by the employer and it is not the case of the employee that there has been any arithmetical mistake or typographical error patent on the face of the record, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer."*

(13) The Hon'ble Apex Court had cautioned the High Court as regards interference with the decision of the employer on the subject of correction of date of birth in its exercise of jurisdiction under Article 226 of the Constitution of India in situations, where the employee had raised the claim as regards date of birth long after joining the service and such issue having been considered by the authorities concerned and determined upon following the procedure prescribed under the service rules and the general instructions issued on the subject.

(14) The facts of the present case are otherwise. The claim/representation seeking correction of the date of birth had been submitted by the petitioner within the stipulated period of two years from the date of entering into service. The special inquiry as envisaged under Rule 2.5, Annexure 'A' was duly conducted by the District Attorney, Ludhiana and report dated 4.10.1997 (Annexure P-13) had been furnished recommending the claim of the petitioner as regards correction of date of birth. Furthermore in terms of the instructions dated 10.5.1995 (Annexure P-24) the designated Inquiry Officer as regards the claim of the petitioner was the Deputy Commissioner, Patiala. Even such designated Inquiry Officer upon inquiry submitted a report dated 13.8.2008 (Annexure P-21) recommending the correction in the date of birth. The petitioner had based his claim/representation for change and correction of his date of birth on the basis of the revised certificates issued by the Punjab School Education Board reflecting his date of birth to be 17.11.1964. Still further reliance has been placed upon the date of birth certificate issued by the Additional Registrar, Births & Deaths i.e the designated authority under Section 12/17 of the Births & Deaths Registration Act, 1969. Such documents would clearly have presumptive value and the same had been taken cognizance of in the



special inquiry as also the inquiry conducted by the designated Inquiry Officer. It would also require notice that by virtue of the initial date of birth i.e. 1.2.1962 the petitioner had not derived any undue advantage in terms of gaining entry into service. This was the specific pleaded case of the petitioner before this Court and the State has not refuted the same.

(15) I find that the claim of the petitioner is squarely covered in terms of the relevant statutory provisions governing the subject regarding a claim seeking correction of the date of birth. There can be no plausible justification for issuance of orders dated 19.7.2010 (Annexure P-25) and 26.7.2010 (Annexure P-26) in not accepting the claim/representation of the petitioner. A perusal of the impugned orders (Annexures P-25 & P-26) would reveal that the same are totally non-speaking and cryptic. The impugned orders do not even disclose the basis for not having accepted the claim of the petitioner. The action of the respondent-authorities is clearly arbitrary and suffers from a non application of mind.

(16) For the reasons recorded above, the impugned orders at Annexures P-25 & P-26 are set aside. The respondent-authorities are directed to make the necessary corrections in the service record of the petitioner as regards the date of birth from 1.2.1962 to 17.11.1964.

(17) Petition allowed in the aforementioned terms.