

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

**Present :-
The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

**J U D G M E N T
-of-**

Case No. O.A. - 813 of 2019

Subir Kumar Das Applicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Sujit Kumar Mitra,
Advocate.**

**For the State Respondent:- Mrs. Sunita Agarwal,
Advocate.**

Judgment delivered on : 20th April, 2022

**The Judgment of the Tribunal was delivered by:-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following relief(s):

“ (a) A order of quashing and/or setting aside the impugned order dated June 3, 2019 passed by the Director, Directorate of Brick Production, Government of West Bengal being Respondent no. 3 herein thereby rejecting the prayer of correction of date of birth of the applicant;

(b) An order so as to command and direct the respondent and each of them by themselves and also through their agents, subordinates, agents and/or assigns to rectify and/or correct the date of birth of the applicant as 22.01.1962 in place of 22.01.1961 and record the same in the service book and other records of service of the applicant immediately;

(c) An order so as to command and direct the respondent and each of them by themselves and also through their agents, subordinates, agents and/or assigns to certify and transmit before this Hon’ble Tribunal all the records connected with the matter and to show the reasons for such erroneous delay in taking the decision before the impugned order dated June 3, 2019 is passed particularly only when the applicant approached the respondent authorities in the year 2005;

(d) An order of costs of and/or incidental to this application.

(e) Any further or other order or orders as to your Lordships may deem fit and proper”

2. As per the applicant, he had joined his civil service on 25th March, 1996 as Lower Division Clerk under the Directorate of Brick Production, Housing Department, Govt. of West Bengal. At the time of entry into the service, the applicant put his date of birth as 22.01.1961 and in support of his date of birth (Annexure ‘A’), the applicant submitted his admit card of Madhyamik Examination issued by the West Bengal Board of Secondary Examination. However, after passage of time, while he is in service, the applicant found his birth certificate issued by the Controller of Birth and Death, wherein the date of birth of the applicant was found as 22.01.1962. Therefore, on the basis of such date of birth, he made an application before the concerned authority of the West Bengal Board of Secondary Education asking for rectification of his date of birth in the admit card of the Madhyamik Examination. Subsequently, the admit card of Madhyamik Examination was rectified by the authority changing his date of birth in the admit card on 29.06.2005 (Annexure ‘B’). After correction of date of birth by the West Bengal Board of Secondary Education, the applicant made representation before the Deputy Director, Brick Production, Govt. of West Bengal through proper channel, wherein it has been stated that his date of birth was wrongly recorded as 22.01.1961 instead of 22.01.1962 in his admit card and certificate issued by the West Bengal Board of Secondary Education, which has been reflected in the service book. However, as rectified admit card has been issued by the Board of Secondary Education, therefore, he has prayed for rectification of his date of birth.

3. The Deputy Director, Akra Division vide Memo no. 554/1 dated 25.07.2005 (Annexure 'C') forwarded the representation of the applicant to the Director, Brick Production requesting early disposed of the issue of rectification of date of birth of the applicant. Subsequently, the Director of Brick Production vide his Memo dated 28.09.2005 (Annexure 'D') forwarded the representation of the applicant along with the documents to the Deputy Secretary, Government of West Bengal, Housing Department (A & E Branch) for taking decision by Administrative Department. Thereafter, the Deputy Secretary, Government of West Bengal vide his Memo no. 1205/E – 374 dated 25.12.2005 had requested the Director, Brick Production to submit original certificate and admit card with the observation that the said correction has been made on the certificate without any official stamp. As per the direction of the higher authority, the applicant duly met the Deputy Secretary, Housing Department on 18.01.2006 with his original certificate and admit card showing the correction made by the West Bengal Board of Secondary Education. Thereafter, as per the advice of Deputy Secretary, Housing Department, the applicant submitted his written reply dated 30.01.2006 in this regard to the Director, Brick Production for taking necessary action. The Assistant Director, Akra Division forwarded the same to the Deputy Director on 31.01.2006 (Annexure 'F').
4. In the meantime, vide letter no. 538/3/E – 118 dated 16.10.2007, a draft gradation list of upper division clerk was published. In the said gradation list, as the applicant found that his date of birth is incorrect, and thereafter, he made an application through proper channel for rectification of date of birth in the final gradation list. The applicant wrote a letter dated 10.12.2007 (Annexure 'G') to

the Director, Brick Production and prayed for rectification of date of birth in the final gradation list. However, after a long gap, the Director, Brick Production vide Memo dated 14.12.2015 sought clarification from the Deputy Director as to why any prior approval had not been taken before modification / correction of date of birth of the applicant as per the Rule 9 of West Bengal Service Rule – Part I (Annexure ‘H’). The applicant again submitted representation dated 21.06.2017 enclosing all necessary documents. Therefore, the applicant served his advocate’s letter dated 20.07.2018 for demanding justice (Annexure ‘I’). In response to the reference letter, the Director, directing Brick Production, Housing Department has sent Memo dated 03.06.2019 disallowing the applicant’s prayer for correction of date of birth. Being aggrieved with he has filed the instant application.

5. The respondents filed their reply, wherein it has been stated that the applicant joined his service on 26.03.1996 however after a long gap of time i.e. in the year 2005, he had made a prayer for correction of date of birth. At the time of joining of the service, the applicant submitted his admit card, wherein his date of birth was recorded as 22.01.1961 and on the basis of the said admit card, the date of birth of the applicant was recorded in the service book. Even thereafter, the applicant was promoted and his name was listed in the gradation list. Now, after a long time in the year 2005, i.e. after almost nine years, the applicant somehow got corrected his date of birth in the admit card issued by the West Bengal Secondary Education and has asked for correction of his date of birth as 22.01.1962 instead of 22.01.1961 with a ulterior motive to lengthen of service for the period of one year. The respondents have further submitted that as per settled principle of law as held by the Hon’ble Apex Court in the case of State of Tamil Nadu –vs- T.V. Venugopalan – reported in 1994 SCC (6)

302, wherein it has been held that date of birth cannot be corrected beyond a reasonable period of time which was subsequently followed by the Tribunals as well as Apex Court and subsequently the Finance Department, Govt. of West Bengal vide Memo no. 707 – F(P) dated 24.01.2012 has stipulated that the change in date of birth in respect of government employees will not be entitled, if the said prayer is not made within the period of five years from the date of joining in the Government service. Therefore, they have prayed for dismissal of the instant application.

6. The applicant has filed his rejoinder, wherein it has been stated that as the applicant received the corrected date of birth in the year 2005, therefore, he has submitted the same before the department. Thus the judgement referred by the respondents are not applicable in this case.

7. I have heard both the parties and perused the records. It is noted that the applicant was appointed initially in the year 1996. At the time of joining of his service, the applicant had submitted his Madhyamik admit card for recording of date of his birth in the service book, wherein the date of birth of the applicant was reflected as 22.01.1961. However, according to the applicant, after long time, he find out his own birth certificate, and thereafter, applied before the West Bengal Secondary Education for correction in his admit card and subsequently had approached the respondents authority for correction of his date of birth. It is well known that the service record would be opened after the government servant entered the service and normally the entry in the service record would be counter signed by the government servant. The date of birth as entered in the record i.e. Madhyamik Secondary School Leaving Certificate or H.S.C. whatever may

be, the name of the certificate from an institution in which the candidate had undergone course of study, be it in the primary or secondary educational institutions, is the source material for making entry in the service record. The object of the Rule or Statutory instruction issued under the proviso to Article 309 or order issued by the Government under Article 162, for the correction of the date of birth entered in the service record is that the government employee, if he has any grievance in respect of any error of entry of date of birth, will have an opportunity at the earliest to have it recorded. The object is also that correction of date of birth beyond a reasonable period of time should not be encouraged. In the instant case, it is very surprising that the applicant declared his date of birth as 22.01.1961 and was not aware of the actual date of birth of himself and continued with a service of more than eight years, and thereafter, he took initiatives to correct his date of birth in the admit card of the matriculation certificate and subsequently approached the respondents for rectification of his date of birth. This is also very surprising when the applicant joined the service he should have his birth certificate with him, however, he had submitted the admit card of the matriculation certificate for entering his date of birth as 22.01.1961. Whereas as per his claim, he was having birth certificate indicating his date of birth as 22.01.1962. Further the Hon'ble Apex Court in the case of T.V. Venugopalan has observed that the inordinate delay in making the application for correction of date of birth itself is a ground for rejecting the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be corrected would not be permitted at the fag end of his service carrier to raise dispute as regard the correctness of entries in the service register. The same principle was followed by the Hon'ble Apex Court in the case of Union of India –vs- Harnam Singh –

reported in 1993 (2) SCC 1632, wherein it has been held *inter alia*:

“A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of the powers regulating conditions of service, unless and services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. 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.....”

Following the above principles, the Finance Department, Audit Branch, Govt. of West Bengal vide Memo no. 707 – F(P) dated 24.01.2021, wherein it has been stipulated , inter alia,

“In pursuance of the recent judgement of the Hon’ble Supreme Court in the case of State of Tamil Nadu –Vs- Vanugopalan and in some other similar Cases, the Governor has now been pleased to decide that prayer for change in date of birth in respect of the Govt. employees, will not be entertained, if the said prdyer is not made within the period of five years from the date of joining in the Government service.

This principle will also be applicable to the employees of Government Undertakings, Statutory Bodies, Autonomous Bodies, P.R. Bodies etc. MUTATIS MUTANDIS.”

8. In view of the above, I am of the opinion that the respondents have rightly rejected the claim of the applicant for making correction of his date of birth after a long eight years time from the date of entry into his service. Accordingly, the O.A. is dismissed being devoid of merit with above observations and no order as to cost.

**URMITA DATTA (SEN)
MEMBER (J)**

A.K.P.