

(2022) 09 CAT CK 0048

In the Central Administrative Tribunal

Case No : Original Application No. 1409 Of 2021

Reena Rani

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 27-09-2022

Acts Referred:

Evidence Act, 1872 — Section 35

Citation : (2022) 09 CAT CK 0048

Hon'ble Judges : Anand Mathur, Member (A), Manish Garg, Member (J)

Bench : Division Bench

Advocate : Brijender Chahar, Yogesh Kumar Mahur, Harkesh Parashar, Tanmay Vashistha, Satish Kumar

Final Decision : Allowed

Judgement

Manish Garg, Member (J)

1. The present Original Application involves the question, whether there can be a correction in "month of birth" in application form during the process of Appointment/Selection?

2. Brief facts of the case are that the matter pertains to appointment to the post of Lower Division Clerk, Junior Sect. Assistant/ Postal Assistant/ Sorting Assistant and Data Entry Operator). Applicant is a female candidate who appeared in the Combined Higher Secondary Level Examination (10+2), 2018 conducted by Staff Selection Commission (SSC). She is aggrieved by the illegal rejection of her candidature vide Online Data verification sheet dated 14.07.2021, the reason for rejection being "Date of Birth Change". Her date of birth as per the Admit Card is 28.08.1996 and the real date of birth as per the Aadhaar Card used as Photo ID is 28.04.1996. Despite that she was allowed to sit in all the examinations, i.e., Tier I, II & III. On each Admit card there are standing instructions with respect to date of birth which is extracted as follows:

"? Candidate must carry a photo identity card having the date of birth as printed

on the admission certificate.

? If the Photo identity card does not have the date of birth, then the candidate must carry an additional certificate (in original) as proof of their date of birth.

? In case of mismatch in date of birth mentioned in the admission certificate and Photo ID/the certificate brought in support of Date of Birth, the candidate will not be allowed to appear in the examination."

3. Learned counsel for the applicant submitted that applicant herself raised this issue and also referred to the representation made in this regard. An assurance was given to her by the staff that this was a trivial issue and will be settled at the time of document verification. He further submitted that the applicant gains nothing by deliberately mentioning incorrect month in her date of birth as the maximum age for her category has a difference of more than 6 years and this was only an inadvertent error which actually happened due to the mistake of the person who had filled up the online application at the Cyber cafe. No deceitful means or malafide intentions can reasonably be attributed to the applicant in mentioning incorrect date of Birth in the online application. It is unfair on the part of the respondents to have rejected the candidature of a meritorious candidate i.e., the applicant, only because she inadvertently mentioned her date of birth as 28.08.1996 instead of 28.04.1996 for which she started agitating since the Tier-I examination onwards and even submitted an affidavit to this effect during the document verification.

4. Selection is aimed at picking up meritorious candidates. Elimination of candidates should be on the basis of lower merit only and not on the basis of hyper technical grounds. Applicant had been representing to the respondents in this respect all the way starting from the Tier-I examination when she first realised the mistake i.e., the start of the selection process to the time of document verification where she has even submitted an affidavit in respect of her mistake. The representations have not been considered and without consideration of the representations, the applicant's candidature has been rejected.

5. The learned senior counsel relied upon following case laws in support of their case:-

(i) Sumit Kumar vs. UOI & Ors. in OA No.215/2017 with connected OA No.263/2017 and OA No.391/2017.

(ii) Neha Nagar vs. DSSSB in OA No.4445/2014 decided on 18.12.2015

(iii) Ms. Kritika Raj vs. SSC – OA No.1413/2015 decided on 07.12.2015

(iv) Rohit Kumar vs. Union of India & Anr., CWP No.13720/2012 decided by Hon'ble High Court of Punjab and Haryana.

(v) Anil Kumar vs. State of Rajasthan & ors., S.B.Civil Writ Petition No.657/2012 decided on 02.01.2013 by Hon'ble High High Court of Rajasthan

(vi) Ravindra Malik vs. Staff Selection Commission & ors., OA No.2063/2012

(vii) Arvind Kumar Kajla vs. Union of India & ors., OA No.1802/2012

(viii) Writ Petition No.1004/2012 Neeraj Kumar's case) decided by Hon'ble High Court of Delhi.

6. On the other hand, the learned counsel for the respondents while opposing the present OA, contended that as per para 23 of the notice, the following instructions were given to the candidates:

"(b) THE CANDIDATE MUST WRITE HIS NAME AND DATE OF BIRTH STRICTLY AS RECORDED IN THE MATRICULATION SECONDARY CERTIFICATE. IF ANY VARIATION IN THE NAME AND DATE OF BIRTH IS OBSERVED AT THE TIME OF DOCUMENT VERIFICATION, HIS/HER CANDIDATURE WILL BE CANCELLED

(d) The Commission will not undertake detailed scrutiny of applications for the eligibility and other aspects at the time of written examination and, therefore, candidature will be accepted only provisionally. The candidates are advised to go through the requirements of educational qualification, age, physical and medical standards etc. and satisfy themselves that they are eligible for the post(s). Copies of supporting documents will be sought at the time of Document Verification. When scrutiny is undertaken, if any claim made in the application is not found substantiated, the candidature will be cancelled and the Commission's decision shall be final.

(l) Request for change/ correction in any particulars in the Application Form, once submitted, will not be entertained under any circumstances.

3. In Annexure-1 (Procedure for filling online Application) of the Notice, candidates had been given detailed instructions regarding filling up of details/ information in the Application Form:

"Part-I (One-Time Registration):

5. For filling up the *One-time Registration Form'. Please follow the following steps:

a. Few critical details (e.g. Aadhaar Number, name, father's name, mother's name, date of birth, etc) are required to be entered twice, in the relevant columns of the Registration Form, for verification purpose and to avoid any mistakes. If there is mismatch between original and verify data columns, indication will be given in red text.

f. Fill your date of birth exactly as given in Matriculation (10th Class) Certificate.

7. YOU ARE AGAIN ADVISED THAT NAME, FATHER'S NAME MOTHER S NAME DATE OF BIRTH MATRICULATION EXAMINATION DETAIL SHOULD BE FILLED EXACTLY AS RECORDED IN MATRICULATION CERTIFICATE. YOUR CANDIDATURE MAY GET CANCELLED IN CASE OF INCORRECT WRONG INFORMATION."

4. That Notice of Examination is deemed to be sacrosanct and its provisions are binding upon all the candidates as well as on the Answering Respondent. At Para 23(d) of Notice of this Examination under heading Important Instructions to Candidates, it was duly communicated to all candidates that

"The Commission will not undertake detailed scrutiny of applications for the eligibility and other aspects at the time of written examination and, therefore, candidature will be accepted only provisionally. The candidates are advised to go through the requirements of educational qualification, age, physical and medical standards etc. and satisfy themselves that they are eligible for the post(s). Copies of supporting documents will be sought at the time of Document Verification. When scrutiny is undertaken, if any claim made in the application is not found substantiated, the candidature will be cancelled and the Commission's decision shall be final."

7. Learned counsel relied upon the decision of Hon'ble High Court of Allahabad in Writ A No.241/2017 while dismissing the writ petition on 05.01.2017 categorically stated that

"In my view, no such direction as prayed by the petitioner can be granted. A candidate for any examination for that matter is required to fill the online application form with his eyes wide open and before submitting the online application he also has an opportunity to recheck and make necessary corrections on the computer then and there. It is quite obvious that the petitioner was thoroughly negligent in filling his online application form and did not even care to make necessary corrections or verification of the facts furnished and figures filled by him in his online application form."

8. We have gone through the records of the case as well as citations relied upon by the respective side.

9. From the records following undisputed peculiar facts emerge in these circumstances:-

(i) The impugned order dated 14.07.2021 has been passed due to "Date of birth Change". However, in the facts of the present case, it is not a case of "change of date of birth per se but only a "correction of month of birth" (i.e. the date and year remaining the same.

(ii) It is an undisputed fact that, the applicant on noticing the mistake, at first available opportunity made representation dated 27.09.2019 for rectifying the mistake i.e. even before the date of examination (29.09.2019), when she downloaded the ADMIT CARD (within two days).

(iii) The applicant submitted an affidavit during the document verification process giving correct month of birth.

(iv) The applicant further made representation dated 17.07.2021 for rectifying the mistake. Needless to mention, no order has been passed on the

representation dated 27.09.2019 and 17.07.2021 by Competent Authority till date.

(v) Applicant was allowed to sit in all the examinations, i.e., Tier I, II & III, in spite of the date of Birth as per the Admit card being 28.08.1996 and the real date of birth as per the Aadhaar Card used as Photo ID being 28.04.1996 which is the correct Date of Birth.

On each Admit card there are standing instructions with respect to date of birth which is extracted as follows:

? Candidate must carry a photo identity card having the date of birth as printed on the admission certificate.

? If the Photo identity card does not have the date of birth, then the candidate must carry an additional certificate (in original) as proof of their date of birth.

? In case of mismatch in date of birth mentioned in the admission certificate and Photo ID/the certificate brought in support of Date of Birth, the candidate will not be allowed to appear in the examination."

(vi) The applicant was allowed to appear in all Tier I, II, III exams, despite the fact that the standing instructions on "admit card" are as follows:

"In case of mismatch in date of birth mentioned in the admission certificate and Photo ID/the certificate brought in support of Date of Birth, the candidate will not be allowed to appear in the examination."

(vii) The applicant has not fabricated or tampered with her month of birth.

(viii) The respondents have not disputed her Aadhaar Card and Matriculation Certificate.

(ix) The applicant's name find place in Final Select List for document verification.

(x) The applicant could not have gained anything by giving wrong month of birth. No undue advantage has been derived by her.

10. Applicant has relied upon the decision of Hon'ble High Court of Delhi in Ajay Kumar Mishra vs. Union of India and ors., WP (C) No.11642/2016 dated 23.12.2016. The relevant part of the judgment reads as under:

"14. In Avtar Singh Vs. Union of India reported at (2016) 8 Supreme Court Cases 471, the Supreme Court in paragraphs 35 and 36 held as under:

"35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with

arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of the cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects."

11. In the case titled Rohit Yadav Vs CBSE & ors., the Hon'ble High Court of Delhi has held as under:

"14. The facts at hand are slightly different. The petitioner herein has not filed a fabricated birth certificate or a false document or any other document, which is either tampered or manufactured. At the time of filling up the online application form for the entrance examination the operator of the cyber cafe has entered a wrong date of birth of the petitioner in the application form as 4.4.1994 whereas the correct date of birth is 8.4.1994. There is no dispute with regard to genuineness of the date of birth certificate issued by CBSE evidencing the date of birth of the petitioner as 8.4.1994. On account of this mistake to debar the petitioner would amount to travesty of justice. The Court cannot lose track of the fact that Delhi is not India; there are lakhs of students in rural areas, like the petitioner herein, who have the potential; and the students from rural background are not less intelligent than the students from affluent background. Admittedly, the petitioner comes from a humble background, resides in a village and does not have access either to the computer or the internet. While in towns people are familiar with computer, laptop, I pad and other tablet form of computers, which provide them access to vast information at their finger tips. On the contrary, students from remote villages, who are away from towns, who do not get continuous electricity, cannot be deprived of their right to education, more so when the petitioner has secured a seat.

15. A careful reading of Clause 3.1.6.3 would also show that in case there is any discrepancy the admission is liable to be cancelled. Another word for liable would be likely. In case the intention was that the admission would ipso facto be cancelled such language would have been used by the persons who had drafted the booklet. In my view Clause 3.6.6.3 is not applicable to the facts of the present case as the date of birth of the petitioner as per CBSE is 8.4.1994 and not 4.4.1994. The petitioner had no intention to mislead the respondent or gain any unfair advantage. The certificate from CBSE is a genuine document. Thus the petitioner cannot be debarred."

12. In the case of Jigya Yadav Vs. CBSE, Civil Appeal No.3905/2011, the Hon'ble Apex Court held that:

"144. At the outset, we note that there are certain characteristics of changes that students usually apply for being recorded in their certificates. Change of name of

the student/father/mother, correction in name of the student/father/mother and correction in date of birth are the primary ones. All these changes cannot be weighed with the same scale. Even in the Byelaws, all these changes are not subjected to the same set of restrictions/conditions and different changes are circumscribed by different conditions.

145. The conditions regarding "correction" in name or date of birth are not as stringent as conditions applicable to change thereof. For correction in name, the 2018 Byelaws provide for a limitation period of five years and permit such corrections that can be characterized as typographical, factual or spelling mistake in comparison with school records. Understandably, a correction would mean retention of the original record with slight modification to make it consistent with the school records. This requirement of modification could be born out of various reasons, namely typographical mistake at the time of publishing, spelling error or factual error i.e., an error of fact as it existed at the time when the certificate was published. Thus, correction in name is done to bring unanimity between the school records (as they existed at the time of sending information to the Board) and CBSE certificates. However, if school records are altered afterwards and Board is called upon to alter its certificates in light of the updated school records, the same cannot be termed as correction per se but would be in the nature of recording change. Therefore, substantially deviating from a "correction", the Byelaws provide for an option to "change" the name, which is subject to different conditions.

146. Similar provision is available for "correction" in date of birth, either on the basis of school records or on the basis of order of court. The word "change" is not used for date of birth as, unlike name, there can only be one date of birth and there can only be a correction to make it consistent with school record or order of Court. It cannot be changed to replace the former with a fresh date of one's choice. Be it noted, provisions relating to correction in date of birth and name are just and reasonable and do not impose any unreasonable restriction on permissibility of corrections. The restriction regarding limitation period shall be examined later, along with other provisions.

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150. Indisputably, the candidate would pursue further education and explore future career opportunities on the basis of school records including the CBSE Board. The CBSE maintains its official records in respect of candidate on the basis of foundational documents being the school records. Therefore, the CBSE is obliged to carry out all necessary corrections to ensure that CBSE certificate is consistent with the relevant information furnished in the school records as it existed at the relevant time and future changes thereto including after the publication of results by the CBSE. However, when it comes to recording any information in the original certificate issued by the CBSE which is not consistent with the school records, it is essential that the CBSE must insist for supporting public document which has presumptive value and in the given case declaration

by a Court of law to incorporate such a change. In that regard, the CBSE can insist for additional conditions to reassure itself and safeguard its interest against any claim by a third party/body because of changes incorporated by it pursuant to application made by the candidate. In the concluding paragraph, we intend to issue directions to the CBSE Board in light of the discussion in this judgment. For the nature of uniform directions that we propose to issue so as to obviate any inconsistent approach in the cases under consideration including future cases to be dealt with by the CBSE Board, it is not necessary for us to dilate on the question of validity of the respective amendments in the relevant Byelaws effected from time to time.

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153. This Court in *CIDCO vs. Vasudha Gorakhnath Mandevlekar*⁵⁸, has observed that the records maintained by statutory authorities have a presumption of correctness in their ⁵⁸ (2009) 7 SCC 283 favour and they would prevail over any entry made in the school register. The Court observed thus:

“18. The deaths and births register maintained by the statutory authorities raises a presumption of correctness.

Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the respondent. (See *Birad Mal Singhvi v. Anand Purohit*⁵⁹.)”

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“171. As regards request for “change” of particulars in the certificate issued by the CBSE, it presupposes that the particulars intended to be recorded in the CBSE certificate are not consistent with the school records. Such a request could be made in two different situations. The first is on the basis of public documents like Birth Certificate, Aadhaar Card/Election Card, etc. and to incorporate change in the CBSE certificate consistent therewith. The second possibility is when the request for change is due to the acquired name by choice at a later point of time. That change need not be backed by public documents pertaining to the candidate.

(a) Reverting to the first category, as noted earlier, there is a legal presumption in relation to the public documents as envisaged in the 1872 Act. Such public documents, therefore, cannot be ignored by the CBSE. Taking note of those documents, the CBSE may entertain the request for recording change in the certificate issued by it. This, however, need not be unconditional, but subject to certain reasonable conditions to be fulfilled by the applicant as may be prescribed by the CBSE, such as, of furnishing sworn affidavit containing declaration and to indemnify the CBSE and upon payment of prescribed fees in lieu of administrative expenses. The CBSE may also insist for issuing Public Notice and publication in the Official Gazette before recording the change in the fresh

certificate to be issued by it upon surrender/return of the original certificate (or duplicate original certificate, as the case may be) by the applicant. The fresh certificate may contain disclaimer and caption/annotation against the original entry (except in respect of change of name effected in exercise of right to be forgotten) indicating the date on which change has been recorded and the basis thereof. In other words, the fresh certificate may retain original particulars while recording the change along with caption/annotation referred to above (except in respect of change of name effected in exercise of right to be forgotten)."

13. Learned counsel for the respondents relied upon the judgment of Hon'ble High Court of Allahabad in Writ A No.241/2017, which is distinguishable from this case, this is a simple case of mistake in filling up the date of birth in the online application form for which she herself made a representation to get it rectified.

14. In view of the above peculiar factual backdrop of the case, as narrated and case laws discussed herein above, the impugned Annexure A-1 dated 14.07.2021 is set aside and quashed. We find that this Tribunal vide interim order dated 28.7.2021 was pleased to pass following order:

"In the facts and circumstances, as interim order, it is ordered that the last appointments to the posts in question, shall be subject to outcome of the present OA."

15. Respondents/Competent Authority are hereby directed to consider the case of the applicant for suitable post of Lower Division Clerk, Junior Sect. Assistant/ Postal Assistant/ Sorting Assistant and Data Entry Operator, as per advertisement for "Combined Higher Secondary (10+2) Level Examination, 2018" as per her merit subject to reasonable conditions to be fulfilled by the applicant as may be prescribed by the respondent authorities, such as, furnishing sworn affidavit containing declaration and to indemnify the respondents in consonance and comply with other procedural formalities in accordance with the terms of employment as per law . The said exercise shall be carried out by the respondents within a period of two months from the date of receipt of certified copy of this order. OA is allowed. No order as to costs.