

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6563 of 2015

Jai Nath Tiwari Son of Late Basudeo Tiwari, resident of village- Dudhmi-
Dehri, P.S.- Tilauthu, District- Rohtas

... .. **Petitioner**

Versus

1. The State Of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna
2. The Chief Engineer, Water Resources Department, Dehri, Dist.- Rohtas
3. The Superintending Engineer, Sone Canal Modernization Circle, Dehri.
4. The Executive Engineer, Sone Barrage Division, Indrapuri
5. The Medical Officer, Sone Barrage Dispensary, Indrapuri

... .. **Respondents**

Appearance :

For the Petitioner : Mr. Vishwanath Rai, Advocate and
Mr. Ajay Kumar, Advocate
For the : Mr. Pawan Kumar, Ac to GA 1

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 02-04-2019

Heard learned counsel for the petitioner as well as
learned counsel for the State.

The petitioner was appointed as a Khalasi in the
Water Resources Department way back in the year 1989. On
noticing a discrepancy in his date of birth recorded in his
Service Book he approached the Executive Engineer, Sone
Barrage Division, Indrapuri for rectification of the error. The
same has been rejected by the Superintending Engineer, Sone



Canal Modernization Circle, Dehri under letter dated 20.2.2015 placing reliance on the Rules 96 & 97 of the Bihar Financial Rules. Relying upon the bar imposed therein for claiming correction of date of birth petitioner's application has been rejected as the same has been made much after ten years of the appointment. Claim for correction of the date of birth is not prescribed in the said rules beyond ten year after appointment of the Government Servant. Rule 96 of the Bihar Financial Rules would apply to claim for correction of date of birth on the basis of claim made by employee, different from that claimed at the time of appointment.

In the instant case, the employee/petitioner has not come forward claiming a different date of birth than what was given by him at the time of appointment. The petitioner at the time of his appointment was subjected to medical examination. Annexure 2/2 is determination of his age and date of birth by the Medical officer, Sone Barrage Hospital, Indrapuri (Rohtas). It has determined his age to be 30 years by his appearance as also according to the submission of the petitioner. Petitioner's age was thus determined to be 30 years on 26.5.1989 by the respondent authorities themselves while appointing him. The determination of age under Annexure 2/2 leads to irresistible



conclusion that the petitioner's year of birth was assessed as 1959. Such determination done at the time of petitioner's appointment is admitted by the respondent authorities as the said Medical Certificate issued on 26.5.1989 has been verified by the authorities and the same has been found to be genuine. In view of the aforesaid circumstances, the admitted position is that at the time of appointment petitioner's age was 30 years. In the circumstances, it is not a case where the employee/petitioner has come forward claiming correction of date of birth by a new claim after his appointment. In fact, he is pointing out a mistake/error committed by respondents in recording of his date of birth in the service book.

In the circumstances, this Court would observe that where the employee is not claiming a new/different date of birth and the claim is based on the documents which are contemporaneous to his appointment on which basis he was appointed, bar under Rule 96 of the Bihar Financial Rules should not be permitted to create a situation where respondent authorities cannot rectify or correct their own error in recording of the date of birth, though the same date of birth is being claimed today, which was claimed and admittedly accepted by the employer at the time of appointment, but wrongly recorded



in Service Book of the petitioner due to mistake of the authorities. Such effect of Rule 96 and 97 of the Bihar Financial Rules would be inequitable and unjust as petitioner cannot be made to suffer for mistake of the authorities.

Order dated 20.2.2015 rejecting petitioner's claim for removing the mistake in recording the date of birth in the service book is therefore quashed. Respondent authorities, in the circumstances taken note of hereinabove, should pass a fresh order correcting the mistake in recording the date of birth in the petitioner's service book.

Let the same be done within four weeks from today.

It is submitted that if the correction in the date of birth of the petitioner is undertaken, he could have retired in May 2019. Since the petitioner has wrongly been kept out of service from May, 2015 till today, this Court is of the opinion that if the petitioner would give an affidavit that in the said period he is not gainfully employed, the issue would be considered by the respondent authorities and 50% of the dues on account of salary be paid to the petitioner, in case it is found that the petitioner is not gainfully employed.

It is needless to say that the petitioner would be entitled to calculate his length of service in continuity for all



other benefits up till the date of birth claimed by him based on
the determination by the medical certificate dated 26.5.1989.

Writ petition stands allowed.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.04.2019
Transmission Date	NA

