

*Form No.HCJD/C-121*  
**ORDER SHEET**  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**W.P NO.495/2020**

**MUHAMMAD ALI.**

Versus

**CHAIRMAN CAPITAL DEVELOPMENT AUTHORITY, ETC.**

Sr.No. of order/ Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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**26.02.2020 Raja Rizwan Abbasi, Ch. Gulfam Ashraf Goraya,  
Ms. Naila Noreen, Advocates for Petitioner.  
Mr. Shahid Naseem Tahir Gondal, Chief Legal Advisor, CDA/Respondents.**

Through instant petition, Petitioner has challenged order dated 14.02.2020, issued by the Respondents, whereby, Petitioner's request for correction of his date of birth has been declined by Deputy Director-III, (HRD) CDA.

2. Learned Counsel for the petitioner, *inter alia*, contended that the petitioner was initially appointed as typist in Kohistan Development Board (hereinafter referred as to the KDB) in the year 1977 and his date of birth in KDB's service book was wrongly mentioned as 07.06.1959, therefore, the year of birth was corrected as 1961. Kohistan Development Board was abolished and his employment along with other employees of the defunct KDB, was absorbed in CDA, vide Office order dated 15.10.1983. Learned Counsel further stated that since, his date of birth in the service book was recorded as June 1961, therefore, he applied for correction of his date of birth as per matriculation certificate i.e. 07.07.1961, vide application dated 04.03.2019. But, to his surprise

he received reply after approximately one year on 14.02.2020, stating that his request for correction of date of birth cannot be exceeded to and shall be considered as 07.06.1959 as originally entered in the service book. Being aggrieved with this reply he filed the present petition. Learned counsel for the petitioner further submitted that Petitioner's date of birth has been recorded as 1961 in his NIC's dated 20.01.1980; 20.04.1989 (Duplicate); CNIC's 22.06.2000; 28.11.2016; 19.09.2019 and Intermediate Certificate, which are also available on record. He apprised that the respondent authority in this regard has sought opinion from the legal advisor who by citing Financial and Administrative Powers, 2007 of the authority opined that any dispute regarding date of birth can be investigated/considered on the basis of the above documents. Learned Counsel submitted that the respondent authority has approved correction of the date of birth in other similar cases, thus the attitude of the respondent authority is discriminatory towards the petitioner which is also in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

3. On the other hand, learned counsel for the respondent authority submitted that there is no application for change of date of birth found in the record of the KDB as such the date of birth of the petitioner has been considered as originally entered in the service book. He argued that the intermediate certificate is the duplicate copy and therefore cannot be considered as authentic. He argued that if Petitioner's date of birth is considered to be 1961 then he was about 16 years of age at the time of joining the KDB in 1977, whereas, the minimum age for employment is 18 years. Further, for any change in the date of birth;

can be applied within two years from the date of appointment but the petitioner applied for change of date of birth on 04.03.2019 almost after 36 years of his absorption in CDA. In this regard, learned counsel relied on case law reported as "*Dr. Muhammad Aslam Baloch vs. Government of Balochistan through Secretary*" (2014 SCMR 1723), "*Shahid Ahmed Vs. OGDCL Ltd*" (2015 PLC (C.S) 267), "*Rana Muhammad Rasheed Vs. Labour Appellate Tribunal Sindh*" (2019 PLC 115), "*Dr. Shamim Waheed Vs. Province of Punjab*" (2008 PLC (C.S) 192, "*Abdul Razzaq Vs. Messrs Karachi Port Trust*" (2018 PLC Note 3, "*Mehr khan Vs. Executive Engineer, Electricity Wapda*" (1998 SCMR 613), "*Qamaruddin Vs. Pakistan through Secretary*" (2007 SCMR 66). Learned Counsel lastly submitted that the case of the Petitioner involves factual controversy thus constitutional jurisdiction under Article 199 of the Constitution could not have been invoked and referred the judgments reported as "*Khalid Mehmood Vs. Collector of Customs*" (1999 SCMR 1881), "*Muhammad Mahmood Bawani Vs. Deputy Controller Building Zone-B*" (2007 SCMR 1209).

4. I have heard the learned Counsel for the parties and perused the record.

5. To resolve the controversy regarding the actual date of birth of the petitioner the record attached with the petition was carefully perused which reveals that petitioner's CNIC's and Intermediate certificate contain the date of birth as 07.07.1961. The record further shows that he joined KDB in 1977, wherein, his date of birth in service book was recorded as 07.06.1959 which was amended by cutting the year to 1961. In 1983, he was absorbed in CDA with the record

containing amended date of birth as 07.06.1961. Petitioner, in view of the fact that his date of birth has been wrongly recorded as 07.06.1961, which does not match with the date of birth mentioned in CNIC as 07.07.1961, applied for correction of the same by filing representation dated 14.03.2019. In response to which the respondents, vide reply dated 14.02.2020, regretted to make correction by observing as under:-

*“Subject:- CORRECTION IN DATE OF BIRTH*

*It is informed that your request dated 04.03.2019 regarding correction in your date of birth as 07.07.1961 instead of June-1961 has been considered but not acceded to.*

*2. The date of birth shall be considered as 07.06.1959 as originally entered in your Service Book.*

*3. This issues with the approval of Chairman, CDA.”.*

6. Record appended with petition further shows that during the pendency of the application dated 14.03.2019, the respondents also verified the certificate of the petitioner issued by Board of Intermediate & Secondary Education, Lahore, who vide their report dated 08.07.2019 verified the certificate to be found correct as per their office record. In response to this Court's query as to why the manual correction of date of birth was not confronted to the petitioner and as to whether the correction has been made after joining the CDA in 1983, the learned counsel for the respondent admitted that they have received the record of petitioner with amended date of birth. It is observed that the respondent also sought opinion from their Legal Advisor in petitioner's case whose opinion is as under:-

*“It is admitted fact that date of birth once entered cannot be changed, however in case of dispute, as laid down in Financial & Administrative Powers 2007 the Authority on the representation of affected employee can investigate/consider on the basis of documents*

*such as Matric Certificate and Birth Certificate (Original) issued by the Education Board & Municipal Corporation/Committee respectively. As decided by the Apex Court the Government has plenary powers to correct wrongly entered date of birth without any limit exercising powers only fairly and honestly upon careful consideration and investigation of all facts and material brought to its notice giving reasonable opportunity to be heard to affected person in accordance with the established principles of natural justice: (2009 SCMR 269) 2009 PLC (CS 593)".*

According to the said opinion respondents are empowered to consider the request of the petitioner for correction of date of birth in the record. It is observed that above mentioned opinion has not been considered by the respondents as is evident from their reply dated 14.02.2020 whereby they have rejected the request of the petitioner without mentioning any reason whatsoever.

7. During the course of arguments, learned counsel for Respondents furnished the copy of office order dated 21.02.2020 having subject "Encashment of Leave in Lieu of LPR" and it transpired that the petitioner has been given retirement from service w.e.f 06.06.2019 and his name has also been struck off from the strength of the respondent authority from the same date. However, the petitioner contended that he has no knowledge, whatsoever, of his retirement and this office order, whereas, he is still working with the respondents. This sudden development in the case of the petitioner at this stage is improper and uncalled for and has created a factual dispute between the parties concerning the present status of the Petitioner's service requiring factual probe into the matter. Even if, it is believed that as mentioned in the said letter, the Petitioner stood retired from service on 06.06.2019, then it is not understandable that why the Respondents vide letter dated 14.02.2020 replied to the request of the Petitioner after almost half year from his date of retirement on 14.02.2020 by simply rejecting his request without referring to his retirement on 06.06.2019.

8. The record appended with the petition reveals that the year of birth from 1959 to 1961 have already been corrected while the petitioner was in service with KDB and at the time of his absorption in respondent authority in the year 1983, his service book contained his rectified date of birth. All the photocopies of CNIC's and educational qualification certificates contained the date of birth as 07.07.1961, thus, the respondents were under legal and moral obligation to have verified the documents of the petitioner before taking adverse view against him.

9. In view of above, I am of the considered view that it would be in the fitness of things to refer the matter back to the Respondent Authority for deciding the petitioner's representation dated 04.03.2019 for correction in the date of birth, afresh.

10. For the foregoing reasons, instant writ petition is disposed of and letters dated 14.02.2020 & 21.02.2020 are set aside. Petitioner's representation dated 04.03.2019, shall be deemed to be pending before the Respondents, which shall be decided afresh through a speaking and well reasoned order, after verification of record and by providing an opportunity of hearing to him.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**