

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, C.J.

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITION NO. 4428 OF 2019

(Against the judgment dated 31.10.2019 of the Balochistan Service Tribunal, Quetta passed in Appeal No.490/2018)

Muhammad Khaliq Mandokhail

...Petitioner(s)

Versus

Government of Balochistan through Chief Secretary, Civil Secretariat, Quetta and another

...Respondent(s)

For the petitioner(s): Mr. Muhammad Shoaib Shaheen, ASC

For the respondent(s): Not represented

Date of hearing: 16.02.2021

...

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- *The instant petition under Article under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, has been filed by the petitioner calling in question the judgment of the Balochistan Service Tribunal, Quetta dated 31.10.2019 whereby the Service Appeal filed by him seeking correction of date of birth in the service record was dismissed.*

2. Briefly stated the facts of the matter are that the petitioner was appointed as Naib Tehsildar in the Revenue Department of Government of Balochistan on 18.08.1992. He was promoted to the Post of Tehsildar vide notification dated 07.03.2010 and he was further promoted to BPS-18 vide notification dated 18.10.2017. The date of birth of the petitioner was mentioned in the Secondary School Certificate as 01.03.1959, while in the service book, it was registered as 20.12.1963. However, the petitioner approached the Board of Intermediate and Secondary Education, Quetta to get his date of birth corrected in the Secondary School Certificate in the year 2014 after the lapse of 22 years. The said certificate was duly issued to him on 29.12.2014 by correcting the

date of birth of the petitioner from 01.03.1959 to 20.12.1963. The petitioner after securing correction of date of birth in the Secondary School Certificate, also got his date of birth corrected from NADRA in his CNIC. The department issued seniority lists dated 15.10.2014 and 03.01.2018, however, the date of birth of the petitioner was mentioned as 01.03.1959. The petitioner being aggrieved by the seniority lists duly issued by the department filed objections before the competent authority but the objections raised by the petitioner were not addressed and the department paid no heed to it. Consequently, on 27.09.2018 a notification was issued by the department regarding the date of retirement of the petitioner, after attaining the age of superannuation, with effect from 28.02.2019 basing his date of birth as 01.03.1959. Against the notification of superannuation, the petitioner filed departmental appeal which was rejected vide order dated 02.01.2018. Being aggrieved by the rejection of departmental appeal, the petitioner preferred service appeal before the Balochistan Service Tribunal, Quetta, which was dismissed by the Tribunal vide judgment dated 31.10.2019. Hence this petition for leave to appeal.

3. Learned counsel for the petitioner *inter alia* contends that in the service book the date of birth of the petitioner was rightly mentioned as 20.12.1963 and according to law, the first date of birth entered in the service record has to be presumed to be the correct date of birth; that the learned Tribunal has failed to take into consideration Rule 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, according to which the date of birth of a civil servant once recorded at the time of joining the government service shall be final and no alteration therein shall be permissible; that the learned Tribunal has also not considered that the petitioner's date of birth recorded in the matriculation certificate was corrected by the Board by issuing a duplicate certificate. He lastly added that while passing the impugned judgment, the learned Service Tribunal has erred in law, therefore, the same is not sustainable in the eyes of law.

4. We have heard learned counsel for the petitioner and have perused the available record.

5. We have noticed that the petitioner was appointed as Naib Tehsildar on 18.08.1992. The academic credentials of the petitioner clearly reflect that the date of birth was recorded as 01.03.1959 on every document including NADRA record. It was very surprising that the petitioner moved for correction of his date of birth after the lapse of 22 years of continuous service in the year 2014. He approached the Board of Intermediate and Secondary Education, Quetta to get his date of birth changed from 01.03.1959 to 20.12.1963. It is surprising that the Board without any hesitation proceeded according to the whims of the petitioner and submitted itself before the desire of the petitioner, although the Board had no authority to entertain such a request and made alteration of its own. We have specifically confronted the learned counsel to show us from the record the material placed before the Board which prompted the Board to come for the rescue of the petitioner and act according to the illegal desire of the petitioner. It has been informed that an affidavit was tendered, which was made basis for conversion of the date of birth from 01.03.1959 to 20.12.1963. It is established law that while seeking such like correction, a declaration is sine qua non which can only be issued by the Civil Court of competent jurisdiction on the basis of evidence produced during the proceedings regarding the authenticity of the subject matter. In the absence of any declaration the Board was not empowered to change the date of birth. The whole proceedings carried out by the Board are nothing but squarely smack mala fide at the end of Board as well as the litigant. The said conduct of the Board is deprecated. As a consequence the proceedings carried out regarding the change of date of birth are prima facie based upon an act of Board which is mala fide based upon extraneous consideration, therefore, any superstructure raised over it would fall to the ground. As we have noticed that the whole proceedings were carried out after the lapse of 22 years of active service, therefore, it can be safely held that the proceedings carried out by the petitioner were based upon an afterthought just to prolong the service tenure and it was nothing but an attempt to continue with the service on the basis of frivolous and tainted documents which speak volume in relation to its genuineness. This Court in a number of cases has discouraged change in the date of birth of a civil servant, which could be for the

purpose of unduly enhancing the tenure of service in employment. In the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456), it has been held by this Court that a civil servant could not seek alteration in his date of birth at the verge of his retirement. The material produced and examined by the Tribunal clearly suggests that the petitioner got changed his date of birth when he was at the verge of his retirement.

6. Now we will advert to the contention raised by the learned counsel for the petitioner that according to Rule 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, the date of birth of a civil servant once recorded at the time of joining the government service shall be final and no alteration therein shall be permissible. It would be in order to reproduce the said rule, which reads as under:-

"11. The date of birth of a civil servant once recorded at the time of joining the Government service shall be final and no alteration therein shall be permissible, except, where a clerical mistake occurs in recording the date of birth in the Service record:

Provided that, no request of a civil servant on this ground shall be entertained after a period of two years from the date of such entry in his service record; and all such cases shall be decided by the Appointing Authority, on the recommendation of an Enquiry Committee with the following composition:

- | | |
|------------------------------------|-----------------|
| 1. Senior Member, Board of Revenue | Chairman |
| 2. Secretary, S&GAD | Member |
| 3. Secretary, Law Department. | Member |
| 4. Secretary of the concerned | Co-opted Member |
| | Administrative |
| | Department" |

7. A bare perusal of the aforesaid Rule makes it abundantly clear that the date of birth of a civil servant once recorded at the time of joining of Government service as a general principle shall be final and would not be altered except **(i)** there is a clerical mistake **(ii)** the change is sought within the period of two years. This Rule narrows down the scope for change of date of birth by stipulating that no alteration shall be permissible after the expiry of the time as mandated in the said rule. Otherwise, the service book is only a piecemeal and for all intents and purposes it would not be considered as a complete service record. We have noticed that the

other documents relating to his service record including the academic record, the CNIC, the seniority lists prepared on different occasions, the ACRs and the retirement notification, all conjointly reflect that the date of birth of the petitioner was incorporated as 01.03.1959. The petitioner joined the service on 18.08.1992, whereas he agitated his grievances in the year 2014 after the lapse of 22 years. Hence keeping in view the facts and circumstances, it is clear that the proceedings initiated by the petitioner seeking alteration in the date of birth while pressing in Rule 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 were intended on the basis of extraneous considerations just to prolong the service period. The whole proceedings carried out by the petitioner can be dubbed as tainted on this score alone. Otherwise no substantial question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, has been raised before this Court.

8. For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
16th of February, 2021
Not approved for reporting
Waqas Naseer/*