
CHANGE IN THE DATE OF BIRTH OF CIVIL SERVANT



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON’BLE CHIEF JUSTICE MUHAMMAD HASHIM KHAN KAKAR

SUBJECT: SERVICE LAW/CONSTITUTIONAL LAW

DATE: _____ 2024

BY: WASEEM AHMED RAEES.

QUERY: *Whether the Committee, constituted to dispose of pension cases, had the authority to alter the dates of birth of government employees?*

Whether the actions of the Committee violated the relevant service rules that govern the procedure for altering dates of birth for government employees?

Whether the orders passed by the Committee were legal and binding, or ultra vires and therefore void.

MEMO.

It is humbly submitted that the research memoranda as directed is presented for kind perusal.

The legal framework governing the change of date of birth for civil servants in Balochistan is primarily encapsulated in the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009. Rule 11 of these Rules explicitly states that the date of birth recorded at the time of joining government service is final and ***can only be altered in cases of clerical errors, with requests for such changes to be made within two years of entry into service.***

"11. Alteration in date of birth. 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:

These provisions are designed to maintain the integrity of service records and prevent arbitrary changes that could undermine the principles of fairness and transparency in public service. The actions of the Disposal of

Pension Cases Committee in altering the dates of birth of civil servants represent a clear overreach of authority and amounted to an assumption of jurisdiction not vested in it by law. The Committee was established to facilitate the processing of pension applications, not to amend fundamental aspects of service records. By intervening in this matter, the Committee acted beyond its mandate, infringing upon the established legal framework that governs civil service employment.

Article 212 of the Constitution of Pakistan provides that matters relating to the terms and conditions of civil servants, including any changes to service records such as the date of birth, fall within the exclusive jurisdiction of the Service Tribunal. This provision creates a clear division of authority, reserving for the Service Tribunal all matters related to the terms and conditions of service. In the present case, the alteration of the date of birth directly affects the tenure of a civil servant and is thus a matter related to the terms and conditions of service. Any dispute or request for correction of the date of birth falls under the jurisdiction of the Service Tribunal and cannot be decided by any other body or committee, including the Disposal of Pension Cases Committee.

The Superior Courts have consistently upheld the principle that the recorded date of birth of a civil servant is conclusive and cannot be altered without following the prescribed legal procedures. In the case of **Registrar, High Court of Balochistan v. Mazar Khan (2014 P L C (C.S.) 1275)**, this Court addressed the issue of civil servants seeking to change their date of birth through civil courts. The Court ruled that such changes fall within the exclusive jurisdiction of the Service Tribunal, as dictated by Article 212 of the Constitution of Pakistan, and that civil courts lack the authority to entertain such suits. The court emphasized that the date of birth recorded at the time of entry into government service is final, except in cases of

clerical errors, as stipulated by Rule 11 of the Balochistan Civil Servants (Appointment, Promotion, and Transfer) Rules, 2009. The court also noted that civil servants frequently sought to manipulate their dates of birth close to retirement to extend their service. This practice was condemned as it negatively impacts the career progression of other eligible officials. Decrees obtained from civil courts, especially those without impleading the government as a party, were held to be non-binding on the government and considered nullities. The court underscored that decrees from courts without jurisdiction have no legal effect and cannot compel the government to alter official records.

Similarly, in ***Professor Dr. Muhammad Aslam Baloch v. Government of Balochistan, 2014 SCMR 1723*** the Apex Court reiterated that the date of birth once recorded is final and any requests for changes must adhere to the established rules. It would be beneficial to reproduce the following paragraph of the case:

"7. The contention of the learned counsel for the petitioner that the case of the petitioner falls out side the purview of Rule 11 is also misconceived. The language of Rule 11 of the Rules which deals with the alteration in the date of birth clearly suggests that the date of birth of a Civil Servant once recorded at the time of joining the Government Service shall be final and would not be altered except where a clerical mistake occurs in recording the same in the service record. It further provides that the request of a Civil Servant for change of date of birth shall not be entertained after a period of two years from the date of such entry in his service record. The petitioner joined the service on 6-3-1991 and since then up to the year 2004 and has never objected to the entry of his date of birth. The record reveals that the department issued seniority lists at times in which date of birth of the Petitioner was mentioned as 16-11-1951. The material produced and examined by the Tribunal clearly suggests that the petitioner got

altered/changed his date of birth when he was at the verge of his retirement in the year 2011. The original date of birth of the appellant, as per the material examined by the Tribunal was 16-11-1951 which was got altered by petitioner to 16-11-1954, by fabricated documents. The Rules do not authorize the competent authority to entertain any representation for altering the date of birth of a Civil Servant beyond two years in the service record.

8. We have inquired from the learned Counsel for the petitioner as to whether the petitioner is a Civil Servant and is governed by the Balochistan Civil Servants Act 1974, he concedes but contends that the case of the petitioner is not covered by the bar contained in Rule 11 and is an exception to the aforesaid Rule. The learned Counsel for the petitioner has failed to persuade us as to how the case of the petitioner could be construed as an exception to the Rule. The contention of the learned Counsel that the date of birth of the petitioner was not entered in his service record and subsequently somewhere in the year 2004, he acquired the knowledge that column regarding date of birth in the seniority list was blank, therefore, on further probe he learnt that column of his date of birth in the service record is blank and made representations for alteration in his date of birth does not appeal to reason. We have gone through the application dated 7-1-2004 of the petitioner for change of date of birth made to the competent authority. The contents of the Application reflects that the seniority list was issued on 16-12-2003 and the date of birth of the petitioner finds mention in the relevant column as 16-11-1951. Besides, the record reflects that the seniority list has been floated at times wherein the original age of birth of the petitioner was mentioned, therefore, the contention of the learned Counsel for the petitioner that the column of date of birth in the seniority list was blank is belied from contents of the application/representation of the petitioner addressed to the competent authority."

In case of **Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456)**

it was again reiterated that any alteration in the date of birth must adhere to the established rules and cannot be made arbitrarily.

"Heard the learned counsel and perused the record. Admittedly the certificates as well as the identity card which are annexed with the plaint show the date of birth of the plaintiff as 2-4-1956, however, the question before the Court is not the rectification of date of birth but in fact the question is as to whether such rectification can be made in the service record of the plaintiff. The plaintiff apparently passed CSS in 1983 and became civil servant in 1984 and he has been, since then, maintaining his date of birth as 2-4-1954. Previously before the amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 it was the privilege of the employee to rectify the date of birth in the record including the service record whereas after insertion of Rule 12A which was inserted by S.R.O.521(I)/2000 dated 31st July 2000 it is not permissible for the applicant/ employee to get his date of birth rectified. This question came before the Hon'ble Supreme Court in the case of Ahmed Khan Dehpal v. Government of Balochistan (2013 SCMR 759) wherein it is observed that after so many years the idea to have the date of birth altered appeared to be an afterthought of the civil servant. In this case also it is almost after 30 years of service when it revealed to plaintiff that his actual date of birth is 2-4-1956. It was observed by the Hon'ble Supreme Court that the question was as to how the civil servant, who joined the service in 1982, could not know about his actual date of birth despite the passage of more than two decades, especially when at various stages during his studies as well as service he filled many examination forms, pro formas as well as service book. In the judgment of the Hon'ble Supreme Court the case of the employee/civil servant was that even in the documents of Matric and Intermediate certificates date of birth was wrongly mentioned whereas in the instant case learned Counsel for the

plaintiff pleaded that though the date is rightly mentioned, however in the service record it is wrongly mentioned as 2-4-1954 instead of 2-4-1956.

In view of the amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 such right of correction in the date of birth was taken away absolutely and it was clarified that once the date of birth in the record at the time of joining is mentioned the same shall be final and no alteration is permissible.

Such insertion of 12A is logical as at the twilight of the career it could only be termed as mala fide. The instant suit filed by the plaintiff is not simplicitor a correction of the date of birth in fact it is correction in date of birth in the service record. Had it been simple suit for declaration that his date of birth is to be rectified, Rule 12A of 1973 would not have been applied but in instant case, service record was sought to be corrected and in terms of Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 such is barred. The strength and power of Rule 12A is statutory.

The issue of maintainability of the suit was framed earlier and parties were also put on notice. Even on the last date the plaintiff was present along with his counsel and also today he is present along with his newly engaged Counsel and I appreciate that he and his counsel tried to assist the Court. As far as the maintainability of the suit is concerned, the point involved has already been decided in the case referred above and in view of the judgment of the Hon'ble Supreme Court the suit is not maintainable. The suit is therefore, dismissed along all pending applications.

The plaintiff seems to have reached the age of superannuation on 1-4-2014 and hence any salary, perks, privileges or any other benefits availed subsequent to the age of superannuation shall be returned forthwith."

In another Case reported as Chief Secretary Government of Balochistan v. Asmatullah Kakar (2020 SCMR 1678) The August Court dealt with the issue of alteration of a civil servant's date of birth. The respondent, Asmatullah Kakar, joined the civil service with his date of birth recorded as January 8, 1959. However, he later sought to change it to December 25, 1961, claiming the original entry was incorrect. He obtained a declaratory decree in 1989, where only the Board of Intermediate and Secondary Education and his high school were made parties, omitting the Government of Balochistan, his employer, a crucial and necessary party. Subsequently, his application for changing the date of birth was rightly denied in 1991. The respondent did not pursue the matter further until 2018, close to his retirement. The Balochistan Service Tribunal allowed his appeal, declaring his date of birth as December 25, 1961, thus extending his retirement age. However, the Supreme Court held that the Tribunal erred in law, as per the settled principles under Rule 3(6) of the Balochistan Government Initial Appointment to Civil Service Posts (Age and Relaxation of Upper Age Limit) Rules, 2012, and Rule 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009. A civil servant's date of birth, once recorded, can only be altered in cases of clerical errors, which was not applicable here. The respondent's inaction for over 17 years and his re-litigation close to retirement were deemed mala fide attempts to manipulate the system.

The precedents set forth in the aforementioned cases clearly indicate that any change in the date of birth must be substantiated by valid reasons and must comply with the established legal framework. The alteration of dates of birth by the Disposal of Pension Cases Committee constitutes an unwarranted interference with the powers of the Balochistan Service Tribunal. The Tribunal is the designated authority for adjudicating disputes

related to service matters, including the terms and conditions of service for civil servants. The Committee's, decisions lack the necessary legal backing and are, therefore, void.

In the **case of Khyber Tractors (Pvt.) Ltd v. Pakistan (PLD 2005 SC 842)**, the Supreme Court held that any order passed by a body without jurisdiction is null and void and can be challenged at any time. This principle is applicable to the present case, as the Committee lacked jurisdiction to issue the impugned orders.

In light of the above considerations, it is evident that the orders issued by the Disposal of Pension Cases Committee to change the recorded dates of birth of government employees, including those of the High Court of Balochistan, are illegal and constitute an excess of power. The integrity of service records must be preserved, and any alterations must be made in accordance with the established legal framework.


The End