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Government of Jammu & Kashmir
Public Works (R&B) Department
Civil Secretariat, Jammu

Subject: TA No. 1505/2020 titled Ghulam Rasool Ganie V/s
UT of J&K and others.

Government Order No. 94 - PW(R&B) of 2023
Dated: 06 -03-2023

Whereas, the petitioner's father was working in the
PW(R&B) Department Kashmir who died in harness.

Whereas petitioner was subsequently appointed in terms of
SRO 283 of 1991 dated: 24-09-1991, as Chowkidar by the
Chief Engineer, R&B Kashmir vide Order No. PW(R&B) K-123
dated: 15-09-1993 issued under endorsement No. 12674-75
dated: 15-09-1993 on regular/temporary basis against
available vacancy left by his deceased father. Based on the
Date of Birth certificate issued by the Medical Superintendent,
Sub-District Hospital, Bandipora, the appointee's date of birth
was recorded as 01-04-1973 on the service records.

Whereas, in the meantime, while the erstwhile R&B Special
Sub-Division, Bandipora and Gurez were separated, the
petitioner remained with R&B Special Sub-Division, Gurez and
his age was re-examined by the Executive Engineer, R&B
Division Gurez through Medical Board, Baramulla, which
declared his age as 45 years on 30-08-2004 and accordingly
his date of birth was rectified and recorded as 16-08-1959.
Whereas, in accordance with above Date of Birth, retirement
notification in respect of the petitioner was issued vide No.
EE/RB/BPR-687 dated: 19-06-2019, and superannuated
accordingly. As per the records, petitioner has been paid
leave salary of Rs. 3,69,600 vide TV No. 17 of 12/2019 and
Rs. 16,500 vide TV No. 288 of 03/2022, in addition to final GP

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Fund withdrawal of Rs. 7,75,471 vide TV No. 113 of 10/2021 which he has accepted.

Whereas the petitioner filed writ petition bearing No. SWP No. 2064/2019 titled Ghulam Rasool Ganie V/s State and others seeking following reliefs before the Hon'ble Court:-

A. Commanding the respondent to act upon the date of birth as declared by the petitioner at the time of his appointment and accepted by the appointing authority.

B. Commanding the respondents not to cause any harassment to the petitioner till he gets superannuation as per his DOB recorded and accepted by them at the time of appointment.

C. Writ of certiorari for quashing the manipulated / tempered dated of birth done by the respondents which is in violation of Article 35AA.

Whereas, objections were filed and this writ petition being a service matter was transferred to Hon'ble CAT, which was disposed off vide order dated 15.06.2022 with the following direction:-

"In view of the facts and circumstances of this case, the respondents are directed to ascertain the age of the applicant on the basis of the assessment made by the duly constituted Medical Board. Respondents shall forward the case of the applicant to the Principal Government Medical College, Srinagar who will constitute a Medical Board within 4 weeks to ascertain the age of the applicant and render its opinion within one week thereafter. The respondents are directed to pass appropriate order with regard to the date of birth of the applicant and will communicate the said direction to the applicant based on the opinion of the Medical Board duly constituted. Respondents will act in accordance with the opinion of the Medical Board With this



observation TA is disposed of. There will be no order as to costs, MA no. 200/2022 is also disposed of."

Whereas, vide this department's OM dated 05.08.2022 the Health & Medical Education Department was requested to take further necessary action, if not already taken to avoid adverse orders from the Hon'ble Court.

Whereas, in response the Health & Medical Education Department vide their OM dated 11.10.2022 forwarded copy of letter dated 12.09.2022 to Principal Government Medical College Srinagar for further necessary action. The Principal/Dean GMC Srinagar vide his letter requested Medical Superintendent SMHS Hospital Srinagar to take the further course of action in the matter as has been directed by the Hon'ble CAT Bench Srinagar vide its order dated 15.06.2022 in order to avoid adverse order from the Hon'ble CAT.

Whereas, the Administrative Officer, Government Medical College Srinagar forwarded the report furnished by Member Secretary, Standing Medical Board, Government SMHS Hospital Srinagar in communication No. NGS/MC/22/780 dated 22-09-2022 which opined that:-

"According to his dental and Radiological examination, his age is roughly 54(Fifty Four) years"

Whereas, the issue was examined and it was observed that three different medical board has given their verdict after examination at different times. 1st in 1993, 2nd in 2004 and 3rd on the direction of Hon'ble CAT 2022 and had assessed different age of petitioner in their respective reports.

Whereas, the petitioner has retired in 2019. He was paid his retirement dues and thereafter filed court case, which shows his afterthought.



Whereas, in view of difference of opinion of three different medical boards, it was decided to refer the case to Law Department for advise/opinion, who vide their U.O dated 03.02.2023 has returned with the following advice:-

"Returned: Article 35-AA of the J&K Civil Services Regulation provide procedure for determination of Date of Birth. Clause (c) and (d) of Article 35-AA are reproduce here under:-

"(c) Alteration of Date of Birth. The date of birth so declared by the Government servant and accepted and once recorded by the appropriate authority (as specified in clause (b) above) in the service book or any other record of service of the Government servant, as the case may be, shall not be subject to any alteration, except in the case of a clerical error without the orders of the Government. No alteration of date of birth of a Government servant shall be made by the Government (Administrative Department) unless a request in this regard is made by the concerned Government servant within a period of five years of his/her entry into Government service and it is clearly established that a genuine/bonafide mistake has occurred.

(d) Notwithstanding the provisions contained in clause (c) above regarding alteration of date of birth, Government, however, reserves the right to make a correction in the recorded age of Government servant at any time, against the interests of the Government employee when it is satisfied that the age recorded in his/ her service book or in the history of services of the concerned Government servant is incorrect and has been incorrectly recorded with the object that the said Government employee may derive some unfair advantage there from;

Perusal of Article 35-AA, in its entirety transpires that the date of birth so declared by government servant and accepted and once recorded by the appropriate authority is not subject to alteration except in the case of clerical error without orders of the Government. However, in terms of clause (d), the Government has been empowered to make correction in the recorded age of the government servant at any time and against the interests of government employee, if it is satisfied that the age recorded in his/her service book is incorrect and has been incorrectly recorded with the object that the said government employee may derive some unfair advantage of that.

Since, the petitioner has been remiss in raising his grievance as the alteration of his Date of Birth was effected in 2004 and has accepted the retirement as per the Date of Birth maintained in his service records and therefore, after retirement in 2019 precludes him from showing that the entry of his Date of Birth in service records was not entered correctly. The department is advised to counter and consider the claim of applicant



by passing the appropriate orders on the above stated rule position in reference of the directions passed by the Central Administrative Tribunal Bench".

Now therefore, in deference to the order dated 15.06.2022 passed in above titled matter and coupled with the rule position as provided under Jammu and Kashmir Civil Services Regulation, the case of the petitioner has been considered and found devoid of merit and is hereby rejected.

By order of the Government of Jammu and Kashmir.


Sd/-
(Shailendra Kumar) IAS,
Principal Secretary to Government
Public Works(R&B) Department

No:-PWD-LIT/356/2022-05

Dated: 6 -03-2023

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
2. Director, Archives & Archeology & Museums J&K.
3. Chief Engineer R&B Kashmir.
4. OSD to Advisor(B) to the Hon'ble Lieutenant Governor, J&K.
5. Private Secretary to Principal Secretary to the Government Public Works(R&B) Department.
6. Concerned.
7. In-Charge Website PW(R&B) Department.
8. Government Order file/Monday return.


6.3.23
(Karan Singh Aithmia)
Under Secretary to Government,
Public Works (R&B) Department