

Government of Jammu and Kashmir
Home Department
Civil Secretariat, J&K

Subject: Adoption of date of birth in respect of Shri Fayaz Ahmad Banday, Deputy Superintendent of Police (Ministerial).

Reference: Order dated 16.10.2023, passed in O.A. No. 1074/2022 titled *Fayaz Ahmad Banday Vs Union Territory of Jammu and Kashmir & others*

Government Order No.: 430 -Home of 2024
Dated: 13.09.2024

Mr. Fayaz Ahmad Banday was appointed in J&K Police as Junior Assistant-cum-Typist, vide PHQ Order No. Estt.(APH) 82-89/PHQ dated 18.04.1983. During preparation of his Character Roll, his date of birth was recorded as 28.02.1963 in digits and in words as "*Twenty-eight February Nineteen Hundred and sixty three only*" on the 1st page of his Character Roll, and;

Whereas, the Director General of Police, J&K vide communication dated 21.01.2015 recommended the case of the officer for adoption of his date of birth as 28.04.1965; and,

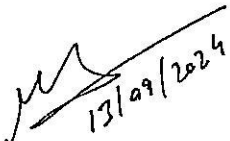
Whereas, Mr. Fayaz Ahmad Banday approached the Hon'ble High Court for the following relief:

- i. *A writ in the nature of mandamus be issued in favour of the petitioner and against the respondents commanding them to grant sanction for adoption of Date of Birth as 28.04.1965 instead of 28.02.1963 in the service book as recommended by the committee and forwarded by Respondent No.2 vide No. Estt/P-Case/836033/ 3735 dated 20.01.2015.*
- ii. *Any other writ order or direction including for costs as this Hon'ble Court deems just and proper may be issued in favour of the petitioner and against the respondents.*

Whereas, the case was subsequently transferred on 27.10.2020 to Hon'ble Central Administrative Tribunal (CAT). The Hon'ble CAT vide Order dated 30/12/2020 disposed of the case with following directions:

"...O.A is disposed of at the admission stage itself with a direction to respondents to decide the representation of the applicant dated (Nil) (Annexure A-IV) and also by treating the TA as part of the representation by passing a reasoned and speaking order in accordance with rules and with intimation to the applicant within a period of one month from the date of receipt of a certified copy of this order..."

Whereas, Mr. Fayaz Ahmad Banday filed Contempt Petition No.214/2021, titled *Fayaz Ahmad Banday Vs Mr Shaleen Kabra, Secy to D/O Home UT of J&K & Anrs* in T.A./9280/2020; and,


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Whereas, the case of the officer was considered in light of the Hon'ble Tribunal Order dated 30.12.2020 and was found devoid of any merit. Vide Government Order No. 205-Home of 2022 dated 10.07.2022, issued by Home Department, whereunder it has been intimated that the Police Headquarters (PHQ), J&K, vide communication No. Estt/P-case/836033/3735 dated 20.01.2015, forwarded the case of Sh. Fayaz Ahmad Banday, Inspector (Ministerial) [now Deputy Superintendent of Police (Ministerial)] to the Home Department, stating inter alia, that due to the clerical error at the time of preparation of Character Roll of the official, his date of birth came to be recorded in figures as 28.02.1963, and on the basis of recommendation of the Designated "Date of Birth" Committee, proposed for adoption of his date of birth as 28.04.1965; and

Whereas, the case was examined in light of the documents made available by the PHQ and it was observed that Shri Fayaz Ahmad Banday, Dy.SP(M) was appointed in J&K Police as Junior Assistant-cum-Typist in the year 1983, in terms of PHQ's order No. Estt.(APH)82-89/PHQ dated 18.04.1983, and his date of birth on the first page of his Character Roll, presumably prepared in his presence in terms of rules 193 of Jammu and Kashmir Police Rules, was recorded as 28.02.1963; and

Whereas, the PHQ also informed that Shri Fayaz Ahmad Banday, Dy.SP(M) had filed a representation with PHQ only in the year 2014, in furtherance of which his case has been brought to the notice of Administrative Department by the PHQ, after a lapse of more than three decades; and

Whereas, during the course of further examination, it was observed that the aforesaid committee of PHQ had neither considered the relevant Rule position governing the preparation and attestation of Character Roll as indicated in rules 192 and 193 of the J&K Police Rules, 1960 nor the provisions governing alteration of date of birth, provided as Article-35-AA (c) of the Jammu and Kashmir Civil Service Regulations, 1956. The pertinent Rules provisions read as under:

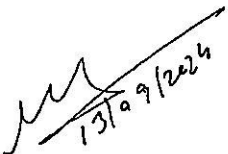
Police Rules

192. Character Rolls

A character roll in Form 29 shall be prepared and maintained for each enrolled police officer. Each roll shall be paged and extra pages or papers added shall be given a page number and attached in the chronological order.

193. Attestation of recruits and preparation of character roll.

When the formalities required by Rule 185 have been completed, and the recruit had served for one month and received the instructions prescribed in rule 794 his character roll shall be prepared in his presence. When the roll is otherwise complete the recruit shall be taken before a Gazetted officer and required to sign the agreement printed as item 4 in the roll and the rolled impressions of the thumb and fingers of his left hand shall be taken in the space provided for the purpose. The Gazetted officer before signing the roll shall satisfy himself that the recruit understands the purpose of his agreement and shall be explained to him the purport of rule 117


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and given him the opportunity of claiming alternation in his recorded age on production of documents in support of his contentions

Article 35-AA- 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

Provided that in case of Government servant in service on the date of issue of this notification, a request for alteration of his/her date of birth may be considered by the Government, for reasons to be recorded in writing, if an application to this effect is made within a period of six months from the date of issue of this Notification. Provided further that the date of birth so altered would not make him/her ineligible to appear in any school or University/Board or Public Service Commission examination in which he had appeared or for entry into Government service, on the date on which he first appeared at such examination or on the date on which he entered Government service.

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 therefrom."

Whereas, Article 35-AA of J&K Civil Service Regulations, Volume-1 explicitly lays down that the alteration in date of birth can be effected only within five years from the date of entry into Government service. Shri Fayaz Ahmad Banday, Dy.SP (M) has failed to represent for alteration to his recorded date of birth within the prescribed time limit and has filed a representation with PHQ after rendering three decades of service; and

Whereas, it was further observed that the official was all along having the knowledge of the entries made in his character roll in light of the above provisions of the Police Rules, but he failed to make a representation to the Government (Administrative Department) within a period of five years of his entry into Government service. Besides, the examination of Character Roll indicates that there is neither overwriting nor mutilation in the existing entry regarding date of birth of Shri Fayaz Ahmad Banday, Dy.SP (M) and the same with the lapse of time has attained finality; and

Whereas, the case having been examined in light of the available record and provisions contained in the J&K Police Manual and J&K CSR, it was found that the official has not represented for alteration of his date of birth within the time line prescribed under Rules. Even otherwise also adoption of his date of birth as 28.04.1965, will render him ineligible for entry into the Government service; and

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Whereas, Mr. Fayaz Ahmad Banday again approached the Hon'ble High Court through medium of Writ Petition (C) 379/2023 and the Hon'ble High Court, J&K vide order dated 27.02.2023 disposed of the case with following directions;

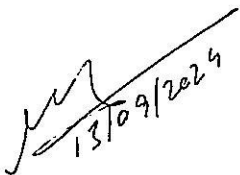
"As respondent No. 2 has himself recommended that the age of the petitioner may be adopted as 28.04.1965 instead of 28.02.1963. We dispose of this petition by requesting the learned tribunal to consider the prayer the petitioner for grant of interim relief as expeditiously as possible, and till the said prayer is considered, the status quo as it exists today be maintained with regard to the services of the petitioner".

Whereas, Mr. Fayaz Ahmad Banday also approached the Hon'ble Tribunal in through medium of O.A No. 1074/2022 titled *Fayaz Ahmad Banday Vs Union Territory of Jammu and Kashmir & others* and Hon'ble Tribunal vide Order dated 16.10.2023 has made following directions:

"It is provided that the respondents will place before this Tribunal certified copies of all the service record of the petitioner in a sealed cover and it is also provided that the respondents will review the Government Order bearing No. 205-Home of 2022 dated 01-07-2022, whereby, the case of the petitioner was found to be devoid of any merit and was accordingly rejected. The competent authority while reviewing the Order shall take into consideration the judgment passed by the Hon'ble High Court of Jammu and Kashmir in WP© no. 1518/2020, as also the judgment of the CAT Bench of Jammu, in OA 196/2020. The whole process shall be completed within a period of 08 weeks from today. Since the Hon'ble High Court has vide its judgment dated 27-02-2023, directed status quo to be maintained with regard to the services of the petitioner, the same order shall continue till further orders from this Tribunal

It is expected that the competent authority will uphold the dignity of law in considering the judgment passed by the Division Bench of the Hon'ble High Court in WP© No1518/2020 on 29-10-2022, as also the orders passed by the competent authority in similarly situated cases. Any observations made herein above shall not be construed to be expression of any opinion in the merits of the matter pending."

Whereas, the case of the officer was examined in light of the orders of the Hon'ble High Court and Hon'ble Tribunal, it was observed that Shri Gopal Krishan was appointed as Follower Guard Man temporarily against the post of Barber on 01.03.1990. In the appointment register placed on record, his date of birth is mentioned as 15.09.1968. This date of birth is consistently reflected in the department's documents (i.e., Appointment Register, Medical Form filled at the time of appointment, Long Roll of the Police Force, School Leaving Certificate, and the Seniority List of SGCT). However, the date of birth recorded as 15.09.1960 in the Character Roll was due to a clerical error. In contrast, Shri Fayaz Ahmad Banday was appointed in the J&K Police as Junior Assistant-cum-Typist in 1983. His date of birth, as recorded on the first page of the Character Roll (presumably prepared in his presence in accordance with Rule 193 of the Jammu and Kashmir Police Rules), is 28.02.1963. If the date of birth were to be adopted as 28.04.1965, this would render him ineligible for entry into Government Services. There is neither any mutilation nor any overwriting in the Character Roll; and,


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Whereas, the case of the applicant has no analogy with that of Shri Gopal Krishan;
and,

Now, therefore, in due deference to the order dated 16.10.2023, of the Hon'ble Central Administrative Tribunal, Srinagar passed in O.A No. 1074/2022 titled *Fayaz Ahmad Banday Vs Union Territory of Jammu and Kashmir & others*, the Government Order No. 205-Home of 2022 dated 01.07.2022, issued by Home Department is reviewed and found that the applicant has not carved out any ground warranting reconsideration of his case. Therefore, the claim of the officer is found devoid of any merit, for reasons recorded herein above and is hence rejected. The date of birth of the officer shall continue to be treated as 28.02.1963, as recorded in his Character Roll, at the time of his appointment.

By Order of the Government of Jammu and Kashmir.

Sd/-
(Chandraker Bharti) IAS,
Principal Secretary to the Government.

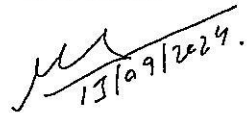
Dated 13.09.2024

No. HOME-PNG/28/2021-01 (CC-9245)

Copy to the :-

1. Director General of Police, J&K.
2. Principal Accountant General, J&K.
3. Director Archives, Archaeology and Museums, J&K.
4. Private Secretary to the Principal Secretary to the Government, Home Department.
5. I/C Website, Home Department.
6. Government Order/ Stock file.

Copy also to: Additional Secretary (JKL), Ministry of Home Affairs, Government of India.


(Monish Kumar)JKAS
Under Secretary to Government,
Home Department