

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(S) No. 483 of 2008

Arti Das S/o Mangloo Das, Presently Posted and Working Dumper Operator (Loader) , EPGH, South Eastern Coalfields Limited, Dipka, District Korba (CG)

---- Petitioner

Versus

1. South Eastern Coalfields Ltd. through Chairman-cum-Managing Director, Headquarter Sipat, Bilaspur, District Bilaspur (CG)
2. Director (Personnel) South Eastern Coalfields Limited, Sipat, Bilaspur, District Bilaspur (CG)
3. Chief General Manager South Eastern Coalfields Limited, Dipka Expansion Project, Dipka, District Korba (CG)
4. Personnel Manager, South Eastern Coalfields Limited, Dipka Expansion Project, Dipka, District Korba (CG)
5. Deputy Chief Personnel Manager, South Eastern Coalfields Limited, Dipka Expansion Project, Dipka, District Korba (CG)

---- Respondents

For Petitioner	:	Shri S. R. J. Jaiswal, Advocate
For Respondents	:	Shri Pravin Das, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

03/08/2015

The petitioner through the present writ petition is claiming for correction of his date of birth in the service record.

2. The relevant facts for deciding the petition are that the petitioner was working as Dumper Operator (Loader) with the respondents establishment. He was appointed on 01.05.1979 and at the time of appointment the date of birth of the petitioner was entered in the service record as 27.06.1948 which according to the petitioner is incorrect and his actual date of birth is 07.08.1959.

3. Counsel for the petitioner relied upon the documents Annexure P-1, a duplicate mark sheet of class VIIIth and Annexure P-2, a transfer certificate issued on 30.09.1997. He submits that in both the documents the date of

birth of the petitioner is recorded as 07.08.1959 based upon which the petitioner has sought for correction of his date of birth in the service record.

4. However, on perusal of the record maintained by the respondent establishment would show that the service book of the petitioner was made available to him on 20.08.1987 wherein also the petitioner had entered his date of birth as 27.06.194 as is evident from Annexure P-4.

5. In between, the petitioner had raised a dispute pertaining correction of his date of birth which was scrutinized by the establishment and the case of the petitioner was also referred to the Age Determination Committee which in turn considered the case of the petitioner as per the guidelines of Implementation Instructions 76 on 04.02.2008 for which the petitioner was given advance notice on 31.01.2008. The Age Determination Committee subsequently after thorough examination of the case of the petitioner submitted his report which was communicated to the petitioner vide memo dated 28.04.2008, the relevant portion of which reads as under:

“As per radiological findings his age range is 55 (fifty five) years to 60 (sixty) years. Age range nearest to Form 'B' that is 27.06.1948 (Twenty seventh June Nineteen forty eight) is confirmed.”

6. Taking into consideration the date of birth to be 27.06.1948, the the petitioner was retired in the year 2008 and since then he is not in employment with the respondents.

7. There is an internal mechanism in the establishment itself which is Implementation Instruction No.76 by which the date of birth of the employees in case of a dispute is determined/verified provided the employee has cogent and authentic document establishing the correct date of birth and justifying the reasons why the correct date of birth could not be mentioned in the service record. However, in the present case the petitioner failed to give any justification in respect of the same and also failed to produce proper document for correction of his date of birth.

8. The Supreme Court has consistently held that prayer for correction in the entry concerning date of birth should be made at the earliest when the said incorrect entry came to the notice of the employee and he should not be allowed to dispute the entry at the fag end of service.

9. Under Clause (B) of I.I. No.76 which deals with review determination of date of birth in respect of existing employees, it is provided that in the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct, provided they were issued by the said Universities/Boards/Institutions prior to the date of employment.

10. In M/s Bharat Coking Coal Ltd. and others v. Chhota Birsra Uranw, 2014 AIR SCW 2634, the Supreme Court while dealing with the I.I. No.76 held thus:

“11.....Admittedly, the appellant as the employer in view of its own regulation being Implementation Instruction No.76 contained in the National Coal Wage Agreement III, gave all its employees a chance to identify and rectify the discrepancies in the service records by providing them a nominee form containing details of their service records.

12. The appellant in the present case should have followed the procedure as laid down by Implementation Instruction No.76 to determine the date of birth of an existing employee. The relevant provisions of which read as follows:

(B) Review determination of date of birth in respect of existing employees.

(i)(a) In the case of the existing employees Matriculation Certificate of (sic: or) Higher Secondary Certificate issued by the recognized Universities of Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities/Boards Institutions prior to the date of employment.

(i)(b) Similarly, Mining Sardarship, winding engine or similar other statutory certificate where the Manager had to certify the date of birth will be treated as authentic.

Provided that where both documents mentioned in (i)(a) and (i) (b) above are available, the date of birth record in (i) (a) will be treated as authentic.

(C) Age Determination Committee/medical Board for the above will be constituted by the Management. In the case of employees

whose date of birth cannot be determined in accordance with the procedure mentioned in (B)(i)(a) or (B)(i)(b) above, the date of birth recorded in the records of the company, namely, Form 'B' register, CMP Records and Identity Cards (untampered) will be treated as final. Provided that where there is a variation, in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board constituted by the Management for the determination of age.

(D) Age determination by the Age Determination Committee/Medical Board referred to above may consider their evidence available with the colliery management; and/or

In another case, being G. M. Bharat Coking Coal Ltd. Vs. Shib Kumar Dushad (supra) where the date of birth of an employee of the Bharat Coking Coal was in dispute and the same set of instructions were applicable, this court referring to the Implementation Instruction held that:

20. From the provisions in the instruction referred to above, it is clear that in case of dispute over the date of birth of an existing employee who has neither a Matriculation certificate/Secondary School Certificate nor a statutory certificate in which the Manager has certified the entry regarding the date of birth to be authentic the employer is to refer the matter to the Medical Board.

Implementation Instruction No.76 Clause (i)(a) permits rectification of the date of birth by treating the certificate to be correct provided such certificates were issued by the educational institution prior to the date of employment. “

11. It is pertinent to note at this juncture that except for Annexures P-1 and P-2, there is no other document on the possession of the petitioner on the basis of which he is seeking for the correction of his date of birth in the service record. Further, Annexures P-1 and P-2 are the documents which do not inspire confidence to treat it to be cogent and genuine documents by which the date of birth of the petitioner can be authentically said to be 07.08.1959.

12. For the aforesaid reasons, the instant writ petition fails and is accordingly rejected.

**Sd/-
(P. Sam Koshy)
JUDGE**