

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 916 of 2001**

Gorakh Singh S/o Daroga Singh aged about 58 years, Senior Overman, South Eastern Coalfields Limited, West Jhagrakhand Colliery Hasdeo Area, District Korea (Chhattisgarh)

---- Petitioner**Versus**

1. Chairman-cum-Managing Director, South Eastern Coalfields Limited, HQ. Bilaspur (Chhattisgarh)
2. Chief General Manager, South Eastern Coalfields Limited, South Jhagrakhand, Hasdeo Area, District Korea.
3. Dy. Chief Personnel Manager, South Eastern Coalfields Limited, Hasdeo Area, District Korea (Chhattisgarh)
4. Manager, South Eastern Coalfields Limited, West Jhagrakhand Colliery, Hasdeo Area, District Korea (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Ghanshyam Patel, Advocate.
For Respondents	:	Shri Vivek Verma, Advocate.

Hon'ble Shri Manindra Mohan Shrivastava, J**Order on Board****18/07/2016**

1. After hearing learned counsel for the parties, this Court is of the opinion that this petition deserves to be allowed on the short ground of procedural impropriety.
2. Relevant facts for adjudication are stated infra:-

The petitioner was initially appointed as General Labour/Majdoor in the service with the Coal Company in the year 1962. In form-B, which is statutory form maintained by Coal Companies, date-of-birth was initially recorded as 01/07/1943. The respondents however proposed to change his date of birth and

accordingly notice was issued to the petitioner. The inquiry culminated into an order adverse to the petitioner and his date-of-birth was changed to 06/05/1941. The petitioner aggrieved with the same, preferred series of representations on 10/04/1996, 27/06/2000 and 24/07/2000. These representations were considered favorably by the management resulted into issuance of order dated 17/01/2001, by which, original entry recording date-of-birth as 01/07/1943 was restored. However, after some time another order was passed on 31/01/2001, by which, earlier entry was cancelled and the date-of-birth again recorded as 01/07/1943. The petitioner eventually retired upon attaining the age of superannuation on 31/05/2001.

3. The order of cancellation amongst various grounds is assailed on procedural impropriety by submitting that date-of-birth was recorded as 01/07/1943 vide order dated 17/01/2001, after holding an inquiry and consideration of petitioner's representation. If the authority again proposed to cancel the order, principle of natural justice required the authority to again issue a notice and afford an opportunity of hearing before passing of the impugned order.
4. On the other hand, learned counsel for the respondents submits that earlier when the respondents proposed to change the date-of-birth of the petitioner, a notice was issued to the petitioner and only thereafter, the order was passed on 29/03/1996. Therefore, at the second stage of repetition of those proceedings, fresh opportunity was not again required. According to him, the record of the case speaks that the correct date of birth of the petitioner is 06/05/1941 and not 01/07/1943.
5. Whatever may be the position, on record, once an order in favour of the petitioner was passed on 17/01/2001 correcting his date-of-birth as 01/07/1943, it constituted a record in his favour. If this order was sought to be cancelled, reviewed or recalled, principle of natural justice required an opportunity of

hearing to be afforded to the petitioner, which admittedly has not been done. Entries made in the service record with regard to his date-of-birth have serious impact on the service condition and it also affects the tenure of service along with many other benefits including pecuniary benefits.

6. In case of **State of Orissa v. Dr. (Miss.) Binapani Dei and others**¹, the Supreme Court emphasized upon the need of compliance with principles of natural justice in matters relating to alteration of the date-of-birth and observed as under:-

“12. It is true that some preliminary enquiry was made by Dr. S, Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State.”

7. In view of the above factual and legal position, this Court is of considered opinion that the order dated 17/01/2001 passed in favour of the petitioner could not be altered without opportunity of hearing given to him. On this short ground, this petition is allowed and impugned order dated 31/01/2001 is quashed.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge

Tiwari

¹ AIR 1967 SC 1269