

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6642 of 2014

Jai Prakash Singh S/o Shri Nand Ji Singh Aged About 56 Years Senior Overman, North Chirmiri Colliery, R/o B Type Staff Quarter, Dumanhill, North Chirmiri Colliery, PO - Sonawani, PS Chirmiri, Distt. Korea C.G.

---- Petitioner

Versus

1. South Eastern Coalfield Ltd. Through Chairman-Cum-Managing Director, South Eastern Coalfields Ltd, Seepat Road, Bilaspur, Dist Bilaspur, CG
2. Deputy General Manager (Personnel/IR) South Eastern Coal Fields Ltd., Seepat Road, Distt. Bilaspur C.G.
3. Chief General Manager South Eastern Coal Fields Ltd., Chirmiri Area, P.O. - West Chirmiri, Distt. Korea C.G.
4. Deputy Chief Personnel Manager South Eastern Coal Fields Ltd., Chirmiri Area, P.O. - West Chirmiri, Distt. Korea C.G.
5. Assistant Manager (Personnel/IR) North Chirmiri Colliery-Dumanhill Group, P.O. Sonawani, Distt. Korea C.G.

---- Respondents

For Petitioner	:	Shri Chandresh Shrivastava, Advocate
For Respondents	:	Shri K.K. Shrivastava, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

23/11/2017

Heard.

1. The petitioner challenges decision of the respondents in altering his date of birth which was initially recorded as 1.7.1959 at the time of entry into service in the year 1975.
2. Learned counsel for the petitioner submits that the foremost ground of

challenge to the impugned order, amongst other grounds, taken in the petition, is that before altering the existing date of birth recorded in the service record of the petitioner, the petitioner was not afforded any opportunity of hearing and no notice was given to him.

3. Learned counsel for the respondents submits that though at the time of entering into service in the year 1975, the petitioner's date of birth is recorded as 1.7.1959, later on, upon enquiry made and verification done, it was found that in the CMPF records, the date of birth of the petitioner was recorded as 1.1.1957 on 10.9.1976. When these discrepancies were found, the respondents took bonafide decision to alter the date of birth of the petitioner because according to respondents, the subsequent date of birth which was entered in the CMPF records, appears to be the correct date of birth of the petitioner.
4. It being an admitted position that no show cause notice was given to the petitioner before altering his date of birth as recorded in service book, in the considered opinion of this Court, the impugned order is liable to be set aside only on the ground of violation of principles of natural justice in view of the authoritative pronouncement of the Supreme Court in the case of **State of Orissa v. Dr. (Miss) Binapani Dei & Ors.** (AIR 1967 SC 1269) wherein also, in similar facts, where the existing date of birth was altered without hearing the employee, the Supreme Court observed as under:

“9.....The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the service register, from holding an enquiry if there existed sufficient grounds for holding such enquiry and for re-fixing her date of birth. But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with

the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity of correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitution 'setup that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be perform; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the tails of justice be ignored and an order to the prejudice of 'a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

x x x

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. 'The rafter the first respondent was required to show cause why April 16, 1907, should not be accept das 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."

5. In view of above, impugned order is liable to be set aside and is accordingly set aside, however, with liberty to the respondents to afford opportunity of hearing to the petitioner, hold enquiry and then take a decision.
6. The petition is accordingly allowed to the extent and in the manner indicated above.

Sd/-
(Manindra Mohan Shrivastava)
Judge