

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 4613 of 2011**

Ahmad Husain S/o Shri Alauddin Husain, aged about 52 years, R/o A/22, B.Sim Colliery, Post-Khongapani, District Korea (C.G.).

---- Petitioner

Versus

1. South Eastern Coalfield Limited, Through-Chairman-Cum-Manging Director, Seepat Road, Basant Vihar, Bilaspur (C.G.).
2. Chief General Manager, Hasdev Area, South Jhagarakhand, District Korea (C.G.).
3. Senior Manager (Civil) IWSS, Subarea Jhagarakhand, District Korea (C.G.).
4. General Manger (P&A), S.E.C.L. Bilaspur (C.G.).

----Respondents

For petitioner	:	Shri S.P.Kale, Advocate.
For respondents	:	Dr. N.K.Shukla, Senior Advocate along with Shri Sahilendra Shukla, Advocate.

Hon'ble Shri Justice P. Sam Koshy

CAV ORDER

Delivered on 31/07/2018.

1. The present Writ Petition has been filed seeking quashment of Annexure-P/1 dated 26/07/2011 whereby the Age Determination Committee (In short "ADC") on thorough examinations of the case of the petitioner found that the date of birth entered in his service record as 01/07/1951 to be proper. The challenge also is to the order Annexure-P/2 dated 27/07/2011 whereby the petitioner has been served with an notice superannuating him from service determining his date of retirement to be from the afternoon of 30/06/2011.
2. The facts relevant for adjudication of the present Writ Petition is that, the petitioner was initially appointed as a Tub-Loader on 12/02/1976

at the B-Seam Collary. In due course of time, the petitioner got promotion in the department and reach to the level of Senior Clerk.

3. According to the counsel for the petitioner, his date of birth is 01/06/1958, but in his service record, the respondents recorded his date of birth to be 01/07/1951 and accordingly issued Annexure-P/2 superannuating the petitioner with effect from 30/06/2011.
4. According to the counsel for the petitioner, in 1987, when all the employees working in the Coal fields were again required to fill up the service details, the petitioner had in a very categorical terms entered his date of birth as 01/06/1958 which was never questioned or objected to by the employer and which remained in operation till the notice of retirement was issued on 19/06/2011 intimating the petitioner of superannuating him with effect from 30/06/2011 whereas according to the counsel for the petitioner, considering his date of birth to be 01/06/1958, he was entitled to remain in service till 30/06/2018.
5. The petitioner had immediately challenged the notice dated 19/06/2011 vide WPS No.3301/2011 and the Writ Court disposed off the Writ Petition with the following observation.

“All the documents, which have been placed on record by the petitioner show that the respondents have taken a decision to accept his correct date of birth as 01/06/1958. Therefore, the notice of retirement, which has been issued, required consideration by the respondent – Senior Manger (Civil), who has issued the notice. Accordingly, the case of the petitioner with regard to his date of birth shall be considered on the basis of existing

record and appropriate decision shall be taken. This exercise may be completed within a period of one month from the date of receipt of copy of this order.

Till then, the petitioner shall not be relieved.”

6. As a consequence of the order passed by the High Court on 27/06/2011, the case of the petitioner was again sent to the ADC and after the ADC had scrutinized the case of the petitioner, they have determined the age of the petitioner to be 01/07/1951 and accordingly have issued Annexure-P/2 retiring the petitioner treating his date of retirement to be 30/06/2011.
7. According to the petitioner, the development which transpired subsequent to the writ petition i.e. WPS No. 3301/11 was disposed on 27.06.2011 is nothing but only an eye wash, an attempt made to circumvent the order passed by the High Court. It is the contention of the petitioner that the alleged subsequent Age Determination Committee (for short ‘ADC’) which was held did not in fact scrutinize the documents which were available with the management and without proper application of mind, they have purportedly given a report with a clear malafied intention of ensuring that the petitioner stands retired w.e.f. 30.06.2011.
8. Counsel for the petitioner submits that way back in the year 1994 itself the dispute pertaining to the date of birth of the petitioner was sent to the ADC as is evident from Annexure P-3 with the writ petition. Based upon which a report was received wherein the authorities concerned under the respondents were convinced that the date of birth of the petitioner was 01.06.1958 and it was therefore ordered for making all necessary corrections showing his date of birth to be 01.06.1958 in

stead of 01.07.1951. Annexure P-4 is a document dated 03.04.1995 which reflects the order passed for correction of his date of birth. Likewise, Annexure P-5 is also an order dated 28.07.1995 wherein the date of birth has been ordered to be corrected as 01.06.1958.

9. Counsel for the petitioner referred to Annexure P-4 is a document prepared as early as on 03.04.1995 which clearly reflects the date of birth reflected in various documents maintained with the Management and the service excerpt to be 01.06.1958. Likewise, in Form-B register which is a statutory register maintained under the Mines Act also the date of birth of the petitioner is entered as 01.06.1958. In addition, there is a finding of the authority that in the Provident Fund record also the date of birth was wrongly entered as 01.07.1954 whereas it ought to have been 01.06.1958 and a letter was issued from the respondents side advising the authority of the Coal Mines Provident Fund for correcting the Coal Mines Provident Fund record showing his date of birth to be 01.06.1958. According to the petitioner, once when there was a decision taken in the year 1995 itself and appropriate correction was done in his service record so far as date of birth is concerned, the respondents could not have at any point of time changed his date of birth from 01.06.1958 to 01.07.1951. If at all if a change had to be made, the same should have been only after taking into confidence the petitioner by giving an opportunity of hearing.
10. Counsel for the petitioner drew the attention to all other records maintained by the respondents Management like PS-3 which a nomination form giving details of the family particulars. Likewise, all the pay slips which were issued to the petitioner also reflect his date of birth to be 01.06.1958. Counsel for the petitioner further referred to a

document dated 17.06.2011 which is again a monthly statement of all those persons who were to retire in the month of June 2011 in which also the name of the petitioner was not reflected which by itself would reveal that the pension and other related documents maintained by the respondents did not show the petitioner to attain the age of superannuation in June, 2011. In spite of all these, the Management did not find these documents and records to be sufficient to accept the date of birth of the petitioner to be 01.06.1958 and treating his date of birth as 01.07.1951 the respondents and the ADC which have been conducted after dismissal of WPS No.3301/11 on 27.06.2011 retired the petitioner from the service of the respondents.

11. Per contra, counsel appearing for the respondents would submit that as per the direction of this Court in WPS No. 3301/2011, the petitioner was directed to appear before the ADC on 22.07.2011. The ADC thereafter duly verified the documents and reached to the conclusion that there is no strong basis for treating the date of birth of the petitioner to be 01.06.1958 in stead of 01.07.1951. So far as Annexure P-4 and P-5 are concerned, it was contended by the counsel for the Management that those letters have been issued by the Officers of the department without there being any decision in any forum like the ADC or the approval at headquarter level for change of date of birth. Therefore, the same may not have much force of law. It was further contention of the respondents that when the ADC was subsequently conducted in 2011, the petitioner was required to produce the original records pertaining to his date of birth but he failed to produce the original records so far as his date of birth is concerned, therefore, the authorities concerned proceeded with the available documents in his

service record and reached to the conclusion that the nearest age which the petitioner appears within the range of 55-60 years. According to the respondents, as per the guidelines, the nearest age to the age range arrived at by the Committee would be considered as his date of birth. In the instant case, since the age range of the petitioner was assessed between 55-60 and his date of birth being 01.07.1951 as per the Form B register that was the nearest age that could be assessed. Thus, there is no error or flaw on the part of the ADC as well as the Management in determining his date of birth to be 01.07.1951 and retiring him from service w.e.f. 30.06.2011. Thus, prayed for dismissal of the writ petition.

12. Having heard the counsel for the parties, the two issues which cropped up for consideration are i) whether the date of birth of the petitioner was 01.06.1958 in stead of 01.07.1951 ii) whether the finding of the ADC while issuing Annexure P-1 dated 26.07.2011 is proper, legal and justified and if not, what are the consequential reliefs which could be granted.
13. The respondents were directed to produce/make available the original records pertaining to the ADC as also the service records of the petitioner. The respondents had provided the aforesaid records before the court in a sealed envelop for perusal of the court, accordingly, this court had the occasion of perusing the entire records.
14. From perusal of entire records it reflects that though the original Form-B which was filled up at the time of admission, it bears the date of birth of the petitioner as 01.07.1951, but there appears to be correction made on the said entry by adding 01.06.1958. This

correction being made also appears to be with the signature of officer of the respondent-company. Likewise, in the service register also there appears to be overwriting being done and after getting the particulars of service, a new date of birth has been incorporated. So also the last pay certificate issued as early as on 08.03.1994 also reflects a correction of date of birth being made from 01.07.1951 to 01.06.1958. In addition, the petitioner has also been able to produce school leaving certificate issued as early as on 26.12.1973 from RBRHS School wherein his date of birth has been mentioned as 01.06.1958.

- 15.** To further support the case of the petitioner is the order of the Area Chief Personnel Manager dated 03.04.1995 which is an advice from the office of the respondents to the office of the CMPF to make necessary corrections in the CMPF records where as per records available with the CMPF infact the original date of birth has been reflected as 01.07.1954. This means that in the service records his date of birth was initially mentioned as 01.07.1951. The petitioner claims the correction to be made as 01.06.1958 and now in the CMPF records there is altogether a different date of birth mentioned i.e. 01.07.1954. This letter of Area Chief Personnel Manager was as early as of 03.04.1995.
- 16.** Further, from the monthly pay slip which were being issued to the petitioner, a couple of sample copies of which also finds place in the records provided by the counsel for the respondents, bears the date of retirement as 31.05.2018. Further down in the family particulars

which have been filled in Form-PS-3, his date of birth has been reflected as 1958, so also in the nomination papers PS-4 which are all statutory forms maintained with the employer, his date of birth has been shown as 01.06.1958.

17. It is pertinent at this juncture that the pay slip which finds place in the records also bears the date of retirement and in the said pay slip itself, the date of retirement has been shown as 31.05.2018. In addition to the earlier letter of the Area Chief Personnel Manager of the year 1995, precisely to be 03.04.1995, there is yet another office order dated 28.07.1995 and this time the letter has been issued from the office of the Superintending Engineer (Civil) who by virtue of the earlier order of the Area Chief Personnel Manager dated 03.04.1995 has carried out necessary corrections correcting the date of birth of the petitioner in the service records as 01.06.1958.
18. After the said corrections having been made in the service records, practically in every documents, and there being orders also reflecting of the respondents accepting the date of birth of the petitioner to be 01.06.1958, there does not seem to be any further orders having been issued by the competent authority in the department/management whereby it could be said that the earlier decision of the management for carrying out the correction so far as date of birth is concerned, is further recalled or has been set aside/quashed by any court of law or cancelled or further corrected by the management at any point of time.

- 19.** Moreover, even if there would had been any order, the same could be passed only after giving fair opportunity of hearing to the petitioner. But, if we look into the records which are made available to the court and also when we consider the aspect that when each month the petitioner was receiving his monthly wages which reflects his date of retirement as 31.05.2018, however, abruptly one fine morning the petitioner has been served with a notice that he would stand retired w.e.f. 30.06.2011.
- 20.** The point of issue is as to whether further alteration in service records of the petitioner detrimental to his interest without compliance of the basic principles of natural justice or at-least show cause notice seeking explanation from the petitioner or a departmental enquiry could be passed.
- 21.** The management has not been able to produce any single document or note-sheet or an order wherein it must have been held that the order dated 03.04.1995, as also the subsequent order dated 28.07.1995 by the Area Chief Personnel Manager followed by the order of the Superintending Engineer (Civil) to have been wrongly passed without authority or have been passed with malafide intention. The management has also failed to bring on record as to any steps that were taken for recalling of the orders dated 03.04.1995 and 28.07.1995. The respondents are also silent to the extent as to what steps have been taken against the officers or employee who has allegedly tempered with the service records of the petitioner.

22. Now coming to the opinion of the ADC which met after disposal of the writ petition, it would again reveal that the aforementioned documents in preceding paragraphs all were produced by the petitioner before the ADC and which is reflected from the documents which were produced before the court during hearing in a sealed envelop. The ADC thereafter went on scrutinizing the case of the petitioner and given the following findings:

“On examining the submission and documents of Shri Ahmed Husaain and other official document, the following has been observed by the ADC-

1. *The date of birth of Shri Ahmed Hussain was recorded as 1951 in the initial form 'B' register which is to be taken as 01.07.1951 as per clause -1 to Annexure-1 to II 76. The letter No.366-68 dated 03.04.1995 was issued for correction of his date of birth 01.06.1958 in CMPF records on the basis of school leaving certificate dated 26.12.1973 for SS exam failed in 1972.*

2. (a) *The School leaving certificate dated 26.12.1973 is not valid/classified document under clause B(i) (a) of Annexure-1 to 01.01.1976 on the basis of which a letter No.366-68 dated 03.04.1995 was issued by the then ACM Hasdeo Area.*

(b) Under Clause B(i)(a) of Annexure -1 to II76 matriculation certificate or higher secondary certificate issued by board of education are valid/classified document for correction of date of birth.

3. *The letter dated 03.04.1995 issued by the then ACPA Hasdeo Area speaks that no approval or competent authority, neither recommendation of ADC as per II76 was obtained for correction of date of birth as 01.06.1958, as no reference of communication of comment authority or ADC has been reflected in the letter dated 03.04.1995 issued by the then ACPM Hasdeo Area.*

4. *His date of birth recorded as 01.07.1951 in form 'B' LPC and service book has been changed as 01.06.1958 without recommendation of ADC, without competent approval and without authentication of the name by competent official of unit/establishment.*

In view of above observation, it is established that there is no merit to record/correct his date of birth as 01.06.1958 on the basis of school leaving certificate dated 26.12.1973 referred to above under clause B(i)(a) of the Annexure-1 to II76.

As per radiological findings his age range is to be seen 55-60 years. As per circular/guidelines No.CII/C-5(B)/MP/ADVR/2704 dated 07.07.1992. The nearest point of age range as recorded in Form 'B' register will be accepted as the age of the employee concerned.

Accordingly, in terms of circular/guidelines/No.CII/C-5(B)/MP/ADVR/2704 dated 07.07.1992, his age to be reckoned/recorded as 01.07.1951 which is the nearest age to the age range i.e. 55-60 years, as recorded in form 'B' register initially.

In view of above, ADC determines the age/date of birth of Shri Ahmed Hussain as 01.07.1951 (1st July Nineteen Fifty One) as recorded in initial form 'B' register”.

23. A perusal of aforesaid findings would clearly reflect the attitude and mental makeup with which the committee had been constituted by the respondents and the manner in which the committee conducted themselves while scrutinizing the case of the petitioner. Moreover, the committee also did not conduct an enquiry as such so far as his date of birth is concerned. The committee concerned conducted themselves as if they were specifically entrusted with the assignment

of ensuring that committee does not make a recommendation in favour of the petitioner. What is more surprising is that, though the ADC refers to radiological report, but on going through radiology report available in the records submitted before this court, it is revealed that the radiology report is nothing but a blank Form-O with only remark in the assessment column wherein it has been mentioned as “radiological age range is 55 years to 60 years” and all other columns in the said form which is supposed to be examined and verified assessing the actual physical condition of the petitioner on the date of his being radiologically examined. This again creates a great doubt on the radiologist who has given the report and also the basis on which the report has been made. Thus, for the aforesaid reasons, this court finds it difficult to accept the opinion of the ADC.

- 24.** The case of the petitioner cannot be said to be one which has been raised at the fag end of his service career. From the record itself it shows that as early as in the year, 1995 itself the dispute of date of birth arose which was accepted the management and ordered for correction of his date of birth. Further, from the records it also shows that the management had also thereafter made corrections in all the service records maintained by the employer including those statutory records. Thereafter, there does not appear to be any order at any level for recalling of the orders earlier passed so far as correction of date of birth is concerned. Neither was the petitioner at any point of time intimated that his date of birth entered in the service record as 01.06.1958 is not acceptable to the employer and it needs correction.

The petitioner was under the bonafide belief that he would be retiring only w.e.f. 31.05.2018 as was reflected in his monthly pay slip. Thus, the objection of raising the dispute belatedly is not sustainable.

- 25.** This court is fully aware of the fact that there are catena of decisions wherein it has been held that the writ court should not, as a matter of routine, entertain the date of birth issues raised by the employee at the time of his superannuation. However, what also cannot be lost sight of is the fact a wronged employee should not be denied of his rights especially when he is adhered to the procedure and the system and had resorted to in house mechanism that was available.
- 26.** The establishment, like the respondent-corporation, should not be benefited from their own omission, lacunas and lapses. In the instant case the respondents have totally failed to follow a full proof procedure in date of birth issue and have dealt with the issue ignoring their own mechanism prescribed and guidelines laid. It is the apparent action in as much as holding the ADC in mechanical manner with no application of mind with a predetermined approach of rejecting the claim of the petitioner. That, they have given the opinion on the basis of which the claim of the petitioner has been rejected.
- 27.** This court also gets strength to form this opinion in the light of the judgment of this court reported in 2014 LAB. I.C. 3735 Kulwant Ram Vs. South Eastern Coalfields Ltd., decided on 02.07.2014. Also from the decision of this court dated 05.03.2012 in case of Dau Ram Chandra Vs. South Eastern Coalfields Ltd. (WPS No.7472 of 2010).

28. In view of the same, this court is of the opinion that the decision of retiring the petitioner w.e.f. 30.06.2011 was bad in law. As a consequence, the impugned order dated 26.07.2011 and 27.07.2011 i.e. the opinion of the ADC as also the order passed subsequent ordering for retiring the petitioner accepting his date of birth as 01.07.1951 are not sustainable. The same deserve to be and are accordingly set aside. The petitioner is entitled for all consequential benefits treating his date of birth as 01.06.1958 which he would have otherwise got had his services not been treated as superannuated w.e.f. 30.06.2011 vide Annexures P/1 & P/2.

29. The petition stands allowed.

Sd/-
(P.Sam Koshy)
Judge

Inder