

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 77 of 2016**

*{Arising out of order dated 31.08.2015 passed by learned Single Judge in Writ Petition (S) No. 1317 of 2015}*

- Subhashis Sinha, S/o Late S. Sinha, aged about 54 years, R/o Presently working as Accountant, Area Head Quarter, South Eastern Coalfields Limited, Chirmiri Area, District Korea (C.G.)

**---- Appellant****Versus**

1. South Eastern Coal Fields Ltd. Through Chairman-cum-Managing Director, South Eastern Coal Fields Ltd., Seepat Road Bilaspur (C.G.)
2. Deputy General Manager (Personnel/IR), South Eastern Coal Fields Ltd., Seepat Road, District Bilaspur (C.G.)
3. Chief General Manager, South Eastern Coal Fields Ltd., Chirmiri Area, P.O.- West Chirmiri, District Korea (C.G.)
4. General Manager (P&A), South Eastern Coal Fields Ltd., Chirmiri Area, Chirmiri, District Korea (C.G.)

**---- Respondents**


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| For Appellant   | : | Shri Chandresh Shrivastava, Advocate. |
| For Respondents | : | Shri K.K. Shrivastava, Advocate.      |

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**Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**  
**Hon'ble Shri Justice Parth Prateem Sahu**

**Judgment on Board****Per Ajay Kumar Tripathi, Chief Justice****19.03.2019**

1. Heard learned counsel for the Appellant and learned counsel for the Respondents.
2. Writ application of the present Appellant was dismissed by the learned Single Judge vide his order dated 31.08.2015. The prayer primarily made in the writ application was that the date of birth of the Petitioner ought to be corrected to

10.06.1960 instead of 26.07.1959 recorded in the service book. Further relief was to quash Annexure P/1 dated 04.02.2015 (of the writ) issued by the Respondents authorities rejection his claim.

3. The matter was heard by the learned Single Judge, who took note of the sequential events right from the time the Petitioner who is Appellant now entered service. The various declarations statutory in nature which was filled in, signed and accepted by the Appellant in relation to such declarations including his date of birth being 26.07.1959 and the efforts subsequently made by him after 19 years to seek a change in the date of birth on the basis of so-called matriculation certificate.

4. The learned Single Judge has recorded his opinion in following terms:

“3. Learned Counsel for the Respondents SECL submits that the Petitioner was appointed in 1984. On his own showing, he represented for the first time years later in 2003 and came to this Court 26 years’ later in 2010. The Court also noticed that the date of birth 26.7.1959 was mentioned in Form B Register signed by the Petitioner. The Coal Mines Provident Fund Application Form dated 14.3.1985 is also signed by the Petitioner mentioning his date of birth as 26.7.1959. Likewise, the service register of the Petitioner prepared at the time of the entry in service signed by him also bears his date of birth as 26.7.1959. There is no rejoinder to the counter-affidavit. The onus lies on the Petitioner to explain how these entries came to be made and he signed them. If he had produced his school certificate at the time of appointment and the entries in Form B register, to his eyes were incorrect, the burden of proof lies on the Petitioner as to how he signed them without protest.

4. In Writ Appeal No.399 of 2014 (South Eastern Coalfields Limited and others v. Sampat Kumar Chauhan) it was held that a presumption of correctness arises regarding entries in Form B Register relying on (2005) 11 SCC 477 (State of Uttaranchal and others v. Pitamber Dutt Semwal). The issue with regard to more than one document earlier in time mentioning the date of birth duly signed by the Petitioner also fell for consideration in the same including belated claims for correction of date of birth made nearly 25 years’ later. Form PS-3 and Form PS-4 were filled by the Petitioner. The contradictions with earlier entries remain unexplained.

5. The Court is not satisfied that Implementation Instruction No.76 is a panacea for all ills regarding a person seeking correction of his date of birth. No sooner that a controversy is sought to be raised it

must necessarily be referred to the Age Determination Committee straightaway is not the mandate of Implementation Instruction No. 76. The Court finds no error in the facts of the case in the impugned order dated 4.2.2015 that in view of the earlier entries including Form B Register which the Petitioner has not been able to explain, there was no need to refer the matter to the Age Determination Committee. Additionally, the impugned order rightly recites that if he was higher secondary school examination qualified in 1977 he opted to conceal the same to obtain a job meant for an illiterate person. His age recorded as 25 years on 26.7.1984 was not in a void but based on the medical examination which was also signed by him.

6. All these aspects of the matter have been considered by more than one Division Bench of this Court in Writ Appeal No.399 of 2014 (South Eastern Coalfields Limited and others v. Sampat Kumar Chauhan), Writ Appeal No. 84 of 2014 (Amarjeet Singh v. SECL, through its CMD), Writ Appeal No. 181 of 2014 (Prabhuram v. South Eastern Coalfields Limited and others) and Writ Appeal No.533 of 2013 (South Eastern Coalfields Limited and others v. Amarnath Kurrey), out of which, in the former two, Special Leave Petition (Civil) No.19199 of 2015 and Special Leave Petition (Civil) No.14686 of 2015 have been dismissed on 20.7.2015 and 14.5.2015, respectively.”

5. The counsel representing the Appellant submits that the implementation of Instruction No. 76 of the National Coal Wage Agreement (for short, 'NCWA') was not appreciated in right perspective by the learned Single Judge, especially, in relation to what he had to record or say in paragraph 5 of his order which has been reproduced in the earlier part of this order.
6. The learned Single Judge has rightly held that the matter will not be covered by Instruction No. 76 because it is not a case where there was serious dispute as to the date of birth of the Appellant at the time of entry into service. It is only later after 19 years that he tried to get his date of birth changed in the service record on the ground that he had a certification of matriculation where different date of birth was indicated.
7. The learned Single Judge took note of the fact that if the Appellant had a certificate of Higher Secondary School which he qualified in the year 1977, obviously, he did not produce the same because he was seeking employment on a post of Badli Loader which was meant for illiterate persons. When he

learnt subsequently that there was career progression which could be made on the basis of educational qualification that he produced such a certificate, got promoted and then having become comfortable in service tried to seek a change in the date of birth.

8. In these facts and circumstances, the conclusion reached by the learned Single Judge in relation to implementation of Instruction No. 76 of the NCWA seems to be correct and any reliance placed by the counsel for the Appellant on the same is misplaced
9. It was a rank dishonest effort on part of the Appellant to derive benefit of an extended period of service for which the Court rightly did not lend a helping hand. The Appellant cannot be permitted to wriggle out of all the declarations, endorsements and signatures which he had put on all the statutory forms and the declarations at the time of entry and to seek a change after more than two decades. The fact the Appellant has filled in the details and signed even indicated that he was educated and knew of his action.
10. Appeal has no merit. It is dismissed.

Sd/-

**(Ajay Kumar Tripathi)**  
**Chief Justice**

Sd/-

**(Parth Prateem Sahu)**  
**Judge**