

20<sup>th</sup> September,  
2021  
(AK)  
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**W.P.C.T. 494 of 2013**

Sri Chittaranjan Roy  
Vs.  
Union of India & Ors.

Mr. S.K. Datta  
Mr. Bareen Chatterjee  
...For the Petitioner.

Mr. Partha Ghosh  
...For the Respondents.

The grievance of the present writ petitioner is primarily that the petitioner was terminated from service on the premise of records apparently obtained from the primary school where the petitioner was initially admitted, thereby disbelieving the admit card issued to the petitioner by the West Bengal Board of Secondary Education, which was relied on by the petitioner at the time of his employment.

The further reason on which the termination occurred was that, allegedly, the younger brother of the petitioner, namely one Ajoy Kumar Ray had already been superannuated, and the date of birth of the said person shows that, for him to be younger than the petitioner, the date of birth as given at the time of appointment by the petitioner has to be disbelieved.

Upon being given chance to show cause, the petitioner had categorically stated by an affidavit on oath

the attending circumstances, due to which the name of the own elder brother of the petitioner was recorded incorrectly as that of the petitioner.

In such view of the matter, the petitioner contends that subsequently, when the petitioner joined secondary school, the appropriate age and name of the petitioner were furnished and, accordingly, the petitioner was issued the admit card in-question by the Board.

It is submitted by learned counsel for the respondents that the affidavit authored by the uncle of the petitioner, corroborating the explanation given by the petitioner in his reply to the show cause notice, was disbelieved. The respondents reiterated the previous position as held by them, by repeating that the younger brother of the petitioner had retired earlier, on which basis the age of the petitioner, as disclosed by him at the time of employment, was disbelieved.

Learned counsel for the respondents submits that ample opportunity of hearing was afforded to the petitioner. However, the primary school records of the petitioner also show that the age given by the petitioner, as recorded in the admit card, was incorrect.

It appears from the arguments of the parties as well as the materials-on-record that the petitioner's uncle gave a corroborating certificate, which reiterates the clear case of the petitioner in his reply that his elder brother's name in the primary school records was wrongly recorded

synonymously with the petitioner, which gave rise to the error in the primary school records.

The petitioner, in support of his contention, had also furnished death certificate of his elder brother and categorically stated that there was a family feud with Sri Ajoy Kumar Ray, the complainant in the matter, who was the step-brother of the petitioner and, with a *mala fide* intention, lodged the complaint.

In view of the respective contentions of the parties, it is evident that the respondents acted in a perverse manner, in merely paying lip service to their duty by discarding the affidavit of the petitioner's uncle and relying on the basis of the date of superannuation of the said Ajoy Kumar Ray as sacrosanct.

However, as per the judgment of the Supreme Court in *O.K. Bhardwaj Vs. Union of India and others* reported at (2001) 9 Supreme Court Cases 180, which has been relied on by learned counsel for the petitioner, even on minor charges of a factual nature, if denied by the delinquent employee, an enquiry should be called for. The present case stands on a more serious pedestal, since the charge resulted in termination of the petitioner.

In the present case, certain specific averments were made by the petitioner in explanation to the show cause notice, which included the alleged *mala fides* of the complainant and that there was an error in the primary

school records which were subsequently rectified in the secondary school records.

In such view of the matter, the respondents ought to have enquired into the veracity of the contentions of the petitioner, not only by undertaking a thorough enquiry into the records of the secondary school of the petitioner but also regarding the validity of the petitioner's contention that the recording in the primary school records was erroneous. In the absence of such an enquiry being held, the impugned decision to terminate the petitioner, merely on the basis of the superannuation date of the said Ajoy Kumar Ray, was patently vitiated in law.

Accordingly, W.P.C.T. 494 of 2013 is allowed, thereby setting aside the order dated May 15, 2013 passed by the Central Administrative Tribunal at Calcutta in O.A. No.578 of 2011 and remanding the matter back to the respondent nos.5 and 6, that is, the Senior Divisional Officer and the Divisional Personal Officer, Eastern Railway, Sealdah Division, who shall undertake a detailed enquiry as indicated above and shall come to an appropriate conclusion as regards the veracity of the age certificate given by the petitioner, upon giving an opportunity of hearing to the petitioner if necessary.

Since it is submitted that the petitioner has, in the meantime, reached his age of superannuation, in the event it is found after the enquiry that the petitioner's

admit card carried the valid date of birth of the petitioner, the petitioner shall be considered to have continued in service till the date of his superannuation and shall be disbursed all the back wages as well as appropriate retiral benefits to which the petitioner would be entitled in the event his service continued till his date of superannuation as per the initial declaration of date of birth given by the petitioner.

Such enquiry shall be conducted as expeditiously as possible, keeping in view the age and the financial condition of the petitioner and shall be completed positively within three months from this date.

The conclusion arrived at by the respondent nos.5 and 6 in that regard shall be communicated to the petitioner immediately thereafter.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

**(Sabyasachi Bhattacharyya, J.)**

**(Jay Sengupta, J.)**