

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1233 of 2008

Gyan Singh, S/o Nanku, age 46 years, Occupation Service, Electric Fitter, South Eastern Coalfields Ltd. North Chirmiri Colliery, Deva Incline, R/o Doman Hill 20 Number, P.S. Chirmiri, District Korla, C.G.

---- Petitioner

Versus

1. South Eastern Coalfields Ltd., Through the Chairman cum Managing Director, Seepat Road, Bilaspur, C.G.
2. General Manager, North Chirmiri Colliery, G.M. Complex, Malviya Nagar, P.S. Podi, Baikunthpur, District Korla, C.G.
3. Chief Personnel Manager, North Chirmiri Area, G.M. Complex, Malviya Nagar, P.S. Podi, Baikunthpur, District Korla, C.G.
4. Mines Superintendent, North Chirmiri Colliery, (Gelhapanai), Manendragarh, District Korla, C.G.

---- Respondents

 For Petitioner: Mr. A.K. Prasad, Advocate.
 For Respondents: Mr. Vinod Deshmukh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/06/2021

1. The petitioner herein calls in question legality, validity and correctness of the order dated 3-1-2008 (Annexure P-1) by which the petitioner's date of birth has been determined as 11-5-1950 by the Age Determination Committee pursuant to the direction issued by this Court in W.P.(S)No.5287/2006 on 4-10-2006 directing the Age Determination Committee to determine the correct age of the petitioner.
2. It is the case of the petitioner that he was appointed by the South Eastern Coalfields Limited (SECL) on the post of Electric Fitter on 2-2-1976 and his date of birth has wrongly been entered as 11-5-

1950, whereas his actual date of birth is 2-7-1960. Since the authorities did not hear, he was required to file writ petition in which the matter was referred to the Age Determination Committee and it is the case of the petitioner that the Age Determination Committee has not looked into the Primary School Certificate dated 28-4-1972 and the Transfer Certificate dated 1-3-1978 in which date of birth of the petitioner has been recorded as 2-7-1960, as such, the petitioner's date of birth has not been determined in accordance with law.

3. Return and additional return have been filed by the respondents / SECL stating that in statutory Form 'B' registered under Section 48 of the Mines Act, 1952 and in the Service Register in Form PS - 3 and Form PS - 4, date of birth of the petitioner has been recorded as 11-5-1950 and the Age Determination Committee on the basis of medical evidence has recorded his date of birth as 11-5-1950.
4. Mr. A.K. Prasad, learned counsel appearing for the petitioner, would submit that the Age Determination Committee is absolutely unjustified in holding that the age of the petitioner is 55-60 years on the date of medical examination and date of birth of the petitioner has illegally been held to be 11-5-1950 which is contrary to law and Implementation Instruction No.76 issued under the National Coal Wage Agreement and it is liable to be set aside.
5. Mr. Vinod Deshmukh, learned counsel appearing for the respondents / SECL, would submit that in the statutory Form 'B', Service Register, Forms PS-3 & PS-4, date of birth of the petitioner has been recorded as 11-5-1950 on which the

petitioner has also signed. He would further submit that the documents Primary School Certificate and Transfer Certificate are not the documents under the Implementation Instruction No.76 issued under the National Coal Wage Agreement, as such, the writ petition deserves to be dismissed.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. In order to consider the plea raised at the Bar, it would be appropriate to notice the relevant provision contained in Implementation Instruction No.76 which is a part of National Coal Wage Agreement III and which provides procedure for determination/verification of the age of the employees, and for resolution of disputed cases of Service Records, framed by the Joint Bipartite Committee for the Coal Industrial of Coal India Limited. In Implementation Instruction No.76, the procedure is divided in two parts, Para (A) provides for Determination of the age at the time of appointment whereas Para (B) provides for Review/determination of date of birth in respect of existing employees. In order to consider the plea raised at the Bar, it would further be appropriate to reproduce Para (A) (ii) which provides for determination of the age at the time of appointment.

It reads as follows: -

“ii) Non-matriculates but educated.

In the case of appointees who have pursued studies in a recognised educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances.”

8. Para (B) of Implementation Instruction No.76 provides for Review/

determination of date of birth in respect of existing employees which we are concerned here. Para (B) (i) (a) of the said Instruction reads as follows: -

“i) (a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognised Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities / Boards / Institutions prior to the date of employment.”

9. A careful and critical reading of Para (B)(i)(a) of Implementation Instruction No.76 would show that in case of existing employees, following documents issued prior to the date of employment shall be treated as correct: -

1. Matriculation certificate.
2. Higher Secondary Certificate issued by the recognized University or Board.
3. Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction.
4. Admit cards issued by the aforesaid Bodies.

Thus, four kinds of documents are deemed to be correct if they are available and they must have been issued by the said University, Board or Institution prior to the date of employment.

10. Their Lordships of the Supreme Court in the matter of **Eastern Coalfields Limited and others v. Bajrangi Rabidas**¹ noticing the above-stated clause in Implementation Instruction No.76 have clearly held that date of birth recorded in Matriculation or Higher Secondary Examination is to be accepted as authentic.

1 (2014) 13 SCC 681

11. Reverting to the facts of the case in the light of the aforesaid discussion, it is quite vivid that the petitioner has placed upon two documents i.e. Primary School Certificate dated 28-4-1972 (Annexure P-3) and Transfer Certificate dated 1-3-1978 (Annexure P-4), both are not the documents within the meaning of Implementation Instruction No.76 and even otherwise, the petitioner has entered into service on 2-2-1976, whereas the transfer certificate has been issued on 1-3-1978. These two documents are not the documents contemplated in Implementation Instruction No.76, they are neither matriculation certificate nor higher secondary certificate issued by the recognised University or Board, or middle pass certificate issued by the Board of Education and/or Department of Public Instruction or Admit cards issued by the aforesaid bodies; therefore, date of birth recorded in these documents cannot be treated as correct.

12. On the other hand, respondent SECL by way of additional return has brought certain documents i.e. statutory Form 'B' registered under Section 48 of the Mines Act, 1952 got prepared at the time of appointment of the petitioner in which the petitioner's date of birth was recorded as 11-5-1950 and on which the petitioner has also signed in token of his acceptance. In the Service Register Form PS – 3 and Form PS – 4 also, the petitioner's date of birth has been recorded as 11-5-1950 which has also been filed along with the additional return and on which the petitioner has signed in token of his acceptance. Even in the application for medical card, the petitioner has stated his date of birth as 11-5-1950.

13. At this stage, it would be appropriate to notice the scope of

interference in the order of the Age Determination Committee.

14. Way back in the year 2000, in the matter of **G.M., Bharat Coking Coal Ltd., West Bengal v. Shib Kumar Dushad and others**², their Lordships of the Supreme Court held that once enquiry is made by the age determination committee following the procedure laid down in Implementation Instruction No.76 then the scope of interference by the writ court is quite limited and the High Court should not interfere with the date of birth as determined by the employer / SECL and issue a writ of mandamus i.e. claimed by the employee. Paragraphs 17, 18, 19, 20 and 24 of the report read as follows: -

“17. The date of birth of an employee is not only important for employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly, will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy for

which the employee next in the line has been waiting does not materialise, on account of which the junior is denied promotion which he has all along been led to believe will be his due on the retirement of the senior.

18. At this stage we may take note of certain instructions which were issued by the appellant laying down the procedure for determination/ modification of date of birth of employee. The document is styled as:

"Implementation Instruction No.76

Procedure for Determination

Verification of Age of Employees".

19. Its authenticity is not disputed by the parties. Indeed the respondent employee has filed this document as Annexure R-7 to the counter-affidavit filed in this court. Under para 'A' the manner of determination of age at the time of appointment is laid down. Under para 'B' are laid down the procedures to be followed in cases of determination of date of birth in respect of existing employees. Under sub-para (i) of para 'B' the case of the existing employee having a Matriculation Certificate or Higher Secondary Certificate issued by the recognised University or Board or Middle Form Certificate issued by the Board of Education and/or Department of Public Instruction should be treated as the correct date of birth provided the documents are issued by the University/Board prior to the date of the employment. Under sub-para (i) (b) of para 'B' it is provided that mining sirdarship, wind up engine or similar other statutory certificate where the Manager had to certify the date of birth will be treated as authentic. Provided that where both the documents mentioned in (i)(a) and (i)(b) above are available the date of birth in (i)(a) will be treated as authentic. In clause (ii) of para 'B' it is specifically stated that wherever there is no variation in records such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the management. The management, after being satisfied on the merit of the case will take appropriate steps for corrections through the Age Determination Committee/Medical Board. In 'C', 'D' and 'E' the procedures to be followed by the Age Determination Committee/Medical Board for determination of age of an employee are laid down. The provisions read as follows:

"(C) Age Determination Committee/ Medical Board for the above will be constituted by the management. In the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B)(i)(a) or (B)(i)(b) above, the date of birth recorded in the records of the Company, namely, Form 'B' register, CMPF Record and Identity Cards (untampered) will be treated as final, provided that where there is a nomination in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board constituted by the management for determination of age.

(D) Age determination: by the Age Determination Committee/Medical Board referred to above may consider their evidence available with the colliery management; and/or

(E) Medical Board constituted for determination of age will be required to manage (*sic* assess) the age in accordance with the requirement of medical jurisprudence and the Medical Board will as far as possible indicate the accurate age assessed and not approximately."

20. From the provisions in the instructions referred to above, it is clear that in case of dispute over the date of birth of an existing employee who has neither a Matriculation Certificate/Secondary School Certificate nor a statutory certificate in which the Manager has certified the entry regarding the date of birth to be authentic the employer is to refer the matter to the Medical Board. Therefore, no fault can be found with the action taken by the appellant to refer the case of the respondent to Medical Board. The Medical Board as laid down in the instructions is to consider the matter on the evidence available with the colliery management and in accordance with the requirement of medical jurisprudence. As noted earlier, in the present case the Medical Board determined the age of the respondent to be 52 years in 1988 and the employer (appellant) accepted such determination. In the circumstances there was hardly any scope for the High Court to interfere with the date of birth as determined by the employer (appellant herein) and issue a writ of Mandamus that the date as claimed by the employee (the respondent herein) should be accepted.

24. On the analysis and the discussions in the foregoing paragraphs, we have no hesitation to hold that the High Court erred in interfering with the date of birth/age of the respondent as determined by the appellant. Accordingly, the appeal is allowed. The judgment of the Single Judge in Writ Petition No.2717 of 1994 and the judgment of the Division Bench, confirming the judgment of the Single Judge with a modification, are set aside. Writ petition stands dismissed. ...”

15. The Supreme Court in the matter of **Bharat Coking Coal Limited and others v. Shyam Kishore Singh**³ placing reliance upon its earlier judgment in the matter of **State of Madhya Pradesh and others v. Premlal Shrivastava**⁴ in which it has been held that even if there is good evidence to establish that the recorded date of birth is clearly erroneous, correction cannot be claimed as a matter of right, held in paragraph 10 as under: -

“10. This Court in fact has also held that even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter of right. In that regard, in *State of M.P. v. Premlal Shrivastava*⁴ it is held as hereunder: (SCC pp. 667 & 669, paras 8 & 12)

“8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction

3 (2020) 3 SCC 411

4 (2011) 9 SCC 664

of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal can come to the aid of those who sleep over their rights (see *Union of India v. Harnam Singh*⁵).

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12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book.”

16. Similarly, the Supreme Court in **Shyam Kishore Singh's** case (supra) as well as in the matter of **Eastern Coalfields Limited and others v. Ram Samugh Yadav and others**⁶ held that prayer for correction in the date of birth at the fag end of career is totally impermissible.

17. Reverting to the facts of the present case, finally, it is quite vivid that the question of date of birth is a pure and simple question of fact. The petitioner has failed to bring the documents as per

5 (1993) 2 SCC 162 : 1993 SCC (L&S) 375

6 (2020) 3 SCC 421

Implementation Instruction No.76 issued under the National Coal Wage Agreement III relating to age of existing employees which is a binding document between the parties and which determines the age of a particular employee. In absence of documents earmarked under Para (B)(i)(a) of Implementation Instruction No.76 and in view of the clinching evidence available in the shape of statutory Form 'B' registered under Section 48 of the Mines Act, 1952 and Forms PS – 3 & PS – 4 of the Service Register in which the petitioner's date of birth has been recorded as 11-5-1950, this Court is unable to interfere with the decision of the Age Determination Committee duly accepted by the employer SECL. Not only this, the petitioner entered into service on 2-2-1976 and he first time raised the dispute relating to his date of birth in the year 2006 that is after 30 years of entering the service and four years prior to the date of his retirement, that is fag end of his service. Raising such a dispute after three decades of induction in service and that too at the fag end of service is highly belated claim, though no time limit is prescribed in the applicable rules and regulations for correction in date of birth, yet the petitioner kept sleeping over his right, if any, and such a belated claim is ex facie illegal as held by their Lordships of the Supreme Court in **Shyam Kishore Singh's** case (supra) and correction of date of birth cannot be claimed as a matter of right, even if good evidence is available to show that the recorded date of birth is erroneous as held by their Lordships in **Premal Shrivastava's** case (supra) and followed in **Shyam Kishore Singh's** case (supra).

18. In the considered opinion of this Court, the petitioner has failed to make out a case for interference in the date of birth as determined by the Age Determination Committee duly accepted

by the respondent / SECL. I do not find any infirmity in the decision making process of the Age Determination Committee which is a finding of fact.

19. As a fallout and consequence of the above-stated discussion, the writ petition deserves to be and is accordingly dismissed, leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.1233 of 2008

Gyan Singh

Versus

South Eastern Coalfields Ltd. and others

Head Note

Correction in date of birth cannot be claimed as a matter of right and that too at the fag end of service career.

जन्म तिथि में सुधार का दावा अधिकार के रूप में नहीं किया जा सकता, वह भी तब जब सेवा का कार्यकाल अंतिम पड़ाव पर हो।