

AFR

HIGH COURT of CHHATTISGARH, BILASPUR**WPS No. 5416 of 2012**

- Purshottam S/o Bhaddu aged about 52 Years Service Lamp Fitter, Jhiria, UG Mines, Ramnagar, R.O. Distt Anuppur, Madhya Pradesh

-----Petitioner

VERSUS

1. South Eastern Coalfields Ltd. Through Its Chairman and Managing Director, Head Quarter, Bilaspur, Chhattisgarh
2. Regional Manger South Eastern Coalfields Ltd Ramnagar R.O. Distt Anuppur Madhya Pradesh
3. Chief Personnel Manger South Easter Coalfields Ltd Hasdeo Area, South Jhagrakhand Distt. Korea Chhattisgarh
4. Chief General Manger South Easter Coalfields Ltd Hasdeo Area, South Jhagrakhand Distt. Korea Chhattisgarh
5. General Manager (P&A) SECL, Seepat Road, Bilaspur, Distt Bilaspur, Chhattisgarh

-----Respondents

For Petitioner	: Mr. Sushobhit Singh, Adv.
For Respondent-State	: Mr. Sudeep Agrawal, Dy.A.G.

Hon'ble Shri Parth Prateem Sahu, Judge**ORDER ON BOARD****23/09/2021**

1. Petitioner, being aggrieved by the rejection of his claim for correction of his date of birth in the Service Record by Age Determination Committee (for short "A.D.C.") constituted by Respondent 5, has approached this Court by way of filing this writ petition with following reliefs.

"10. RELIEF(S) SOUGHT:-

10.1 That, the Hon'ble Court may kindly be pleased to call for the entire records pertaining to the service record of the petitioner from the concerned authorities.

10.2 That, the Hon'ble Court may kindly be

pleased to issue any appropriate writ, order, direction and quash the impugned communication (Annexure P-1).

10.3 That, the Hon'ble Court may kindly be pleased to issue any suitable direction directing the respondents to allow the petitioner to perform his duties with the respondents treating his date of birth as 01.06.1960.

10.4 That, this Hon'ble Court may direct the respondents to initiate suitable inquiry against the erring officials who are responsible for tampering in the service records of the petitioner.

10.5 Any other relief, which this Hon'ble Court may deem fit and proper, may also be passed in favour of the petitioner.”

2. Facts of the case, in brief, are that the petitioner entered into the service of respondent-SECL on 01.01.1977. After entering into service, his particulars are mentioned in the Service Record maintained by respondent-SECL. The entries made in the Service Record were verified and signed by petitioner. Petitioner filed writ petition in the month of March 2012, seeking relief for correction of his date of birth from 24.07.1954 mentioned in service records to 01.06.1960. The said writ petition bearing WPS No. 1489/2012 was disposed of *vide* order dated 02.04.2012 directing the respondent-SECL to consider the case of petitioner in accordance with the Implementation Instruction No. 76 (for short “ II-76”) of the respondent department. In pursuance of the order passed in WPS No. 1489/2012, case of the petitioner was referred to the Age Determination Committee (A.D.C.) The A.D.C. after considering entire facts and circumstances of the case, Service Record and documents supplied by the petitioner in support of his claim, determined the date of birth of petitioner as 24.07.1954. The

decision of A.D.C. is under challenge in this petition.

3. Mr. Sushobhit Singh, learned counsel for petitioner would submit that the petitioner, in support of his claim for correction of date of birth, alongwith application, has produced mark-sheet of class-5th (Annexure-P/2) issued by Education Department, district Shahdol, Madhya Pradesh and mark-sheet certificate of middle school Rewa division Madhya Pradesh of the year 1976 as well as mark-sheet of Higher Secondary School examination of the year 1984. In all the mark-sheets/ certificates placed in support of the claim shows date of birth of petitioner as 01.06.1960. Petitioner has submitted representation on 28.10.1987 for correction of his date of birth in Service Record as 01.06.1960 immediately after coming to his knowledge of wrong entry of date of birth. The representation/ application for correction of date of birth is submitted within 11 years of joining of his service. Respondents-authority have not considered the claim of petitioner in accordance with their own II-76. It is pointed out by learned counsel that under II-76, clause-B mentions 'Review/ Determination of date of birth in respect of existing employees', for review of determination of date of birth certificate of matric or higher secondary school certificate issued by recognized board or middle pass certificate issued by Board of Education or department of Public instruction and admit cards issued by authorities are to be taken into consideration to be authentic. Petitioner in support of his application, submitted class 5th, class 8th and higher secondary school certificates which are mentioned to be authentic documents under II-76, but Respondent-authorities have not considered the documents

placed before them for determination of date of birth and have erroneously considered the wrong entries made in Service Record only. The action on the part of respondents is arbitrarily illegal and contrary to their own II-76. He submits that as the petitioner had submitted the relevant documents as provided under II-76, the order Annexure P-1 be set aside and respondents authorities be directed to correct the date of birth of petitioner in Service Record as 01.06.1960 from 24.07.1954.

4. Mr. Sudeep Agrawal, learned counsel for Respondent-SECL, opposing the submissions made by learned counsel for petitioner would submit that the claim of petitioner for correction of date of birth in Service Record is to be rejected on the ground of delay and laches. Petitioner was inducted in service in the year 1977. He for the first time raised his grievance for correction of date of birth in Service Record in the year 2012 after about 35 years of his service. Petitioner verified the particulars and details mentioned in Form 'B' Register which is statutory document maintained by respondent-department. In Form 'B' Register, date of birth of petitioner was entered as 24.07.1954, he did not raise any objection at the time of verification of entries made in Form 'B' Register. Same date of birth in other registers/ documents maintained by respondent-authorities is mentioned, like Service Register, Form PS-3, Form PS-4. Respondents looking to the large number of applications/ claims for correction of date of birth gave an opportunity in the year 1984 to all the employees to move an application for correction of their date of birth if it is erroneously entered. General notices were circulated to all the Offices under respondent-department. Petitioner has not filed any application in

this regard at that relevant point of time, hence, claim of petitioner is liable to be dismissed on the ground of delay. He submits that class 5th and class 8th mark-sheets and certificates do not bear the date of its issuance, hence, that cannot be considered in terms of II-76. The mark-sheet issued by Board of Secondary Education, M.P. in the year 1984 cannot be taken into consideration for determining date of birth as it is the document issued after entering into service. He submits that the submission made by learned counsel for petitioner and the pleadings in the writ petition that the petitioner has made representation on 28.10.1987 for correction of date of birth is *per se* wrong. Respondent-SECL at no point of time has received any representation as stated to be submitted by petitioner. Representation Annexure P-3 on which the petitioner is placing reliance does not bear seal of receipt of the office of respondent department, thus Annexure P-3 is concocted document and cannot be taken into consideration particularly when the grievance of petitioner for correction of date of birth is raised in the year 2012 for the first time only few years prior to his date of superannuation. He further pointed out that A.D.C. after considering entirety of the facts and circumstances of the case, documents available with them has rightly determined date of birth of petitioner as 24.07.1954 which does not call for any interference. There is no infirmity on the part of respondents in decision making process. In support of his contention, learned counsel places reliance upon the order passed in WPS No. 3268/2008 dated 16.07.2018 and order passed by Division Bench of this Court in WA no. 399/2014 (*South Eastern Coalfields Ltd. vs. Sampat Kumar Chauhan*) dated 27.02.2015.

5. I have heard learned counsel for respective parties and also perused the record of writ petition.
6. Annexure P-1, proceedings of A.D.C. would show the date of appointment of petitioner to be on 01.01.1977, though the petitioner claims that he submitted representation on 28.10.1987 but Annexure P-3 copy of alleged representation does not bear proper seal and sign of receipt of representation by the respondent department, hence, the submission made by learned counsel for respondents that the respondent department at no point of time has received any such representation stated to be submitted by petitioner cannot be disbelieved because if an employee working with the department submits any application/ representation then it is to be before officials of concerned department and there is specific employee deputed for receiving the applications/ documents on behalf of department. In absence of proper evidence of receipt of representation, the submission of learned counsel for petitioner that he submitted representation for correction of his date of birth initially on 28.10.1987 could not be accepted and it is hereby repelled.
7. So far as, the other submission made by learned counsel for petitioner with respect to not following II-76 properly in considering the certificates of the petitioner, perusal of Annexure P-2 which is copy of mark-sheet of class 5th and certificate of middle school, would show that they do not bear date of issuance of those certificates and the mark-sheet certificate of higher secondary school examination issued by Secretary of Board of Secondary Education, M.P. is of the year 1984 which was issued much after

joining of service by the petitioner, hence, the submission made by learned counsel for petitioner that the testimonials submitted by the petitioner have not been considered by A.D.C. in terms of II-76 Clause (B) is not sustainable and it is hereby repelled. In case of **G.M. Bharat Coking Coal Ltd. West Bengal v. Shib Kumar Dushad and others**, (2000) 8 SCC 696, 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.

Paragraph 17 of the judgment reads 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.”

8. Hon'ble Supreme Court in case of **State of Madhya Pradesh and others v. Premlal Shrivastava**, (2011) 9 SCC 664 has 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 and held thus:

“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 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; (1993) 2 SCC 162 : 1993 SCC (L&S) 375).

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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.”

14. It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant. It is clear that the said rule has been made in order to limit the scope of correction of date of birth in the service record. However, an exception has been

carved out in the rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake. This is a salutary rule, which was, perhaps, inserted with a view to safeguard the interest of employees so that they do not suffer because of the mistakes committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction. Onus is on the employee concerned to prove such negligence.

9. Recently Hon'ble Supreme Court in case of **Eastern Coalfields Limited vs. Ram Samugh Yadav**, (2020) 3 SCC 421 has considered the claim for correction of date of birth at belated stage and held thus:

“2. It is required to be noted that Respondent 1 joined service in the year 1973. His date of birth was recorded as in the year 1945 both in the form register which can be said to be statutory document as well as in the pension form.

* * * * *

6. Nothing is on record that in the year 1987 when the opportunity was given to Respondent 1, to raise any issue/dispute regarding the service record more particularly his date of birth in the service record, no such issue/dispute was raised. Only one year prior to his superannuation, Respondent 1 raised the dispute which can be said to be belated dispute and therefore, the learned Single Judge as well as the employer was justified in refusing to accept such an issue.

7. The Division Bench of the High Court

has, therefore, committed a grave error in directing the appellant to correct the date of birth of Respondent 1 in the service record after number of years and that too when the issue was raised only one year prior to his superannuation and as observed hereinabove no dispute was raised earlier.”

10. If the facts of present case are concerned in the light of aforementioned rulings of Hon'ble Supreme Court and the judgment passed by Division Bench of this Court in case of *Sampat Kumar Chauhan* (supra), in the case at hand also, petitioner was inducted in the service in the year 1977 and for the first time he raised his grievance of wrong mentioning of his date of birth in service record only in the year 2012 by filing writ petition. Learned Single Judge considering the grievance raised and clause of II-76 of the respondent-department had directed the respondents to consider the claim of petitioner in accordance with II-76. In pursuance of the direction issued by learned Single Judge, claim of petitioner was referred to A.D.C. The A.D.C. has considered the entire claim in view of II-76 and after recording following, determined the date of birth as 24.07.1954.

“a) Mark sheet of Higher Secondary School Certificate Exam submitted by Sri. Purusottam Das indicates his date of birth as 01.06.1960. But Sri.Purusottam Das stated that he passed Higher Secondary School Certificate Exam as private candidate in the year 1984 i.e. subsequent to his date of appointment i.e. 01.01.1977.

b) The Form 'B' Register which is a statutory record under Mines Act maintained at Jhiria UG Mines indicates his date of birth 24.07.1954. Sri.Purusottam Das signed in Form 'B' Register authenticating the entries

made therein. Form 'B' Register is a base record in which the basic details like date of birth, date of appointment, address of the employee are entered at the time of joining of any employee.

c) the service register of Sri.Purusottam Das indicates his date of birth as 24.07.1954. As such service excerpts issued to Sri.Purusottam Das also indicates his date of birth as 24.07.1954 (undisputed).

d) As per form PS-3 his date of birth is 24.07.1950, but there is overwriting to make the year look like 1958. As per form PS-4 his date of birth as 24.07.1950. Form PS-3 and PS-4 obtained under CMPS in the year 1998 should reflect service details including date of birth as available in Form 'B' Register and Service Register. Any clerical error in recording date of birth of Sri.Purusottam Das can not alter the details available in base records like Form 'B' Register and Service Register.

e) Form 'A' under CMPF which was obtained at the time of appointment also indicates his date of birth as 24.07.1954.”

11. Considering the entirety of the facts and circumstances of the case, particularly, considering that the petitioner for the first time raised grievance of wrong entry of his date of birth in Service Records few years prior to attaining his age of superannuation, 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 in determining the date of birth of petitioner as 24.07.1954 as recorded in Form 'B' Register and Service Record which is finding of fact.
12. For the aforesaid discussion and reasoning assigned, writ petition

being devoid of any substance is liable to be and is hereby dismissed accordingly, leaving the parties to bear their own cost(s).

Sd/-
(Parth Prateem Sahu)
Judge

Pawan