

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE**

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

W.P.A. NO.14519 of 2023

Md. Sabir

Vs.

Eastern Coal Fields Limited & Ors.

For the petitioner : Mr. Partha Ghosh
Mr. Amal Kumar Datta
Ms. Simran Sureka
Mr. Debasis Das

For the respondent no.1 : Ms. Priti Banerjee

Judgment on : 16.02.2024

Ravi Krishan Kapur, J.:

1. The petitioner challenges a letter dated 2 June, 2023 whereby an age related question pertaining to the petitioner has been raised.
2. For convenience, the letter dated 2 June, 2023 is set out hereinbelow:

To
Md Sabir
Designation- Survey Mazdoor
U. Man No.104732
Amritnagar Colliery

Dated:02.06.2023

Dear Sir,

Please refer to our letter no Agent/4100/2015/1957 dated 29.12.2015 Agent/4100/2022/3048 dated 31.03.2022 and Agent/4100/2022/1079 dated 19.7.2022, and your response which makes it clear there is serious issue related to your age and so far you have been unable to provide any suitable documentary evidence in support of your claimed age. Already Apex Medical Board had fixed dates as per rule of the company but you were on leave on both the occasions which is not only unfortunate but surprisingly coincidental. Moreover your mobile phone and WhatsApp were switched off and we could not connect you anyway neither acceptable nor desirable from any responsible employee of the unit. The whole matter is very seriously being monitored by higher authority including vigilance department.

Now we have been asked to provide convenient date range as early as possible to resolve the issue. So you are asked to meet Manager (P), Amritnagar Colliery immediately after joining your duty so as to be conversant neither said date range to ensure your presence in the next Medical Board is not be missed in any circumstances. You are also advised to stay communicated through mobile phone with Personal Manager, Amritnagar Colliery.

Yours faithfully

*Chief Manager (M) Agent
Amritnagar Group of Mines*

Copy to:

- 1. GM Vigilance, ECL, HQ*
- 2. GM, Kunustoria Area*
- 3. HOD P&IR/HOD legal, ECL, HQ*
- 4. CMO/Secretary, Apex Medical Board, CMS Cell, ECL, HQ-with a request to fix suitable date as above*
- 5. Area Personnel Manager, Kunustoria Area*
- 6. Manager, Amritnagar Colliery*

3. Briefly, the petitioner's father Late Nasir Mia died in harness on 18 November 1999. Upon his death, the petitioner was appointed on compassionate grounds. It is contended that the petitioner had submitted his Higher Secondary (HSC) admit card, certificate and mark sheet wherein the date of birth of the petitioner was mentioned as 6 March 1975. Thereafter, the petitioner had also undergone a medical examination on 25 May 2000 where the petitioner's date of birth was reflected as mentioned in the educational documents as 6 March 1975. By a letter dated 4 June 2004, the appointment in favour of the petitioner was approved by the respondent no.1 and the petitioner has been working since then at the Amritnagar Colliery. It is also contended that the service book as well as the identity card of the petitioner records the petitioner's date of birth as 6 March 1975. In this background, it is alleged that after providing continuous service of 18 years any issue raised in respect of the age of the petitioner is arbitrary, unfair and unreasonable.

4. On behalf of the respondent authorities, it is submitted that the respondent no.1 has jurisdiction to conduct an enquiry to ascertain the age of any employee, verify documents at any stage during the course of employment, ascertain the genuineness of such documents and to direct the petitioner to re-submit or produce documents as and when required. It is also contended that the Service Record Excerpt of the Late Nasir Mia records the date of birth of the petitioner as 21 years as on 1 April 1987 which is contrary to the records submitted by the petitioner. The respondent authority had directed the petitioner to submit the necessary certification as far back as in 2015 in terms of the appointment letter. The respondent authorities have also received complaints against the petitioner from the Central Vigilance Commission and other investigating authorities alleging fabrication of documents which suggest conflicting dates of birth i.e. 6 March 1975, 1 April 1966 and 16 January 1969 respectively. Such complaints require investigation. Despite, repeated reminders to produce all qualification documents including the Matriculation Certificate in original alongwith an attested photocopy thereof the petitioner has failed to produce the same. The petitioner has also refused to appear before the Medical Board. In any event there has been no final decision by the Medical Board and the writ petition is premature.

5. Implementation Instruction 76 governing the procedure of determination of the date of birth of employees of the respondent no. 1 is set out hereinbelow:

“(B) Review determination of date of birth in respect of existing employees.- (i)(a) In the case of the existing employees

matriculation certificate (SSC) or higher secondary certificate (HSC) issued by the recognized universities of 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.

(i)(b) Similarly, Mining Sardarship, winding 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 documents mentioned in (i)(a) and (i)(b) above are available, the date of birth recorded in (i)(a) will be treated as authentic.

(ii) 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 merits of the case will take appropriate action for correction through Determination Committee/Medical Board.

(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, CMP records and identity cards (untampered) will be treated as final. Provided that where there is a variation, 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 the 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) The 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.”

6. Correction of the date of birth of any employee is always permissible.

Rule 76 permits the respondent authorities to check and verify the age of any existing employee. The impugned communication only informs the petitioner that a Medical Board had been constituted to verify and check his date of birth. There has been no final decision by the Medical Board.

7. In *GM, Bharat Coking Coal Ltd. v. Shib Kumar Dushad* (2000) 8 SCC 696

it has been held as follows:

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 the 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.

8. The petitioner has been repeatedly requested to inter-alia submit the Matriculation Certificate. There are materials which suggest contradictory and irreconcilable dates of birth of the petitioner as per the Service Record based on the Admit Card of Bihar Intermediate Shiksha Parisad, Patna, Service Record Excerpt of Late Nasir Mia and the records of Raniganj Maroari Sanatan Vidyalay. This obviously requires investigation. Significantly, at the time of induction it was mentioned in his letter of appointment that such investigation could be conducted at any point of time. Repeated reminders have also been given to the petitioner to submit necessary documents. The petitioner has deliberately and intentionally chosen not to furnish any such documents and has unnecessarily procrastinated matters. Every employee is obliged to produce irrefutable proof relating to his or her date of birth [*Home Deptt v R. Kirubakaran*, 1994 Supp (1) SCC 155].
9. The scope of judicial review is limited and circumscribed. The matter is a preliminary stage and there has been no final decision by the Medical Board. Any interference at this stage is unwarranted. There is no perversity, illegality, irrationality or procedural impropriety which justifies any interference with the impugned communication. There are no other grounds to interfere with the exercise being conducted by the respondent authorities.[*Sarvapalli Ramaiah vs District Collector, Chittoor*, (2019) 4 SCC 500, *Indian Overseas Bank & Ors. vs Om Prakash Lal Srivastava*, (2022) 3 SCC 803 and *Neeharika Infrastructure Private Limited vs State of Maharashtra and Ors*, (2021) 19 SCC 401].
10. All the decisions cited on behalf of the petitioner are distinguishable and inapposite. In each of the cited decisions, there was a final decision

pertaining to the age of the employee which was the subject matter of challenge. There are also no materials to transfer the matter to an independent Medical Board.

11. The investigation is at a preliminary stage and there has been no final decision by the Medical Board. The writ petition is premature and there is no scope to interfere with the impugned communication.
12. For the aforesaid reasons, WPA 14519 of 2023 stands dismissed. The interim order stands vacated. It is made clear that there has been no decision on the merits of the case and all issues are left open to be decided by the appropriate authorities.

(Ravi Krishan Kapur, J.)