

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 11453 of 2025

Gangadhar Mondal

Vs.

Union of India & Ors.

For the petitioner	:	Mr. Uttiya Ray, Advocate Ms. Anima Maiti, Advocate
For respondent no. 1	:	Ms. Sabita Roy, Advocate
For respondent nos. 2 to 4	:	Mr. Pratik Majumder, Advocate
Heard on	:	June 25, 2025
Judgment on :	:	June 25, 2025

Aniruddha Roy,J.

1. This is a hearing matter upon exchange of affidavits. The urgency is that the petitioner shall retire from his service on **June 30, 2025** and the challenge thrown by the petitioner would have a significant and consequential effect on his retirement.
2. On the prayer of Mr. Majumder, learned counsel appearing for respondent nos. 2 to 4 affidavit-in-opposition filed in Court today, is taken on record.

3. Identically on the prayer made on behalf of the petitioner the affidavit-in-reply filed in Court today is taken on record.

Facts:

4. The petitioner has been working as a **Group C** employee of the respondent no. 2 (for short, D.V.C.). He was appointed by virtue of an appointment offer dated **June 19, 1995** at **page 14** to the writ petition. This was a compassionate appointment. The relevant Transfer Certificate issued by the concerned school dated **January 12, 1987** submitted by the petitioner, for obtaining the appointment in support of his age proof, mentioned the date of birth of the petitioner being **December 10, 1968**, at **page 20** to the writ petition. However, the said Transfer Certificate was **not found to be attested/countersigned** by the **District Education Officer**, as was required under the specific provision for appointment.
5. In absence of the said attestation/countersignature by the District Education Officer following the provisions laid down under **clause 2** of the interview letter issued to the petitioner dated **April 25, 1995** at **page 13** to the writ petition, he was asked to appear before the medical board for the purpose of assessment of age. After examination by the medical board, the medical department of D.V.C. issued a report dated **June 12, 1995** wherein the petitioner was assessed to be **30 years** old, at **page 17** to the writ petition.

6. On the basis of the said medical board report the appointment letter was issued and the petitioner was appointed for the post.
7. On **September 6, 1999** the petitioner after causing the said Transfer Certificate issued by the school dated January 12, 1987 to be attested/countersigned by the District Education Officer being the **jurisdictional District Inspector of Schools** and on the basis of the same the petitioner submitted an application before D.V.C. for correction of his date of birth as **December 10, 1968** in place and stead of **June 13, 1965**, as recorded in the **Service Book** on the basis of the said medical board report whereupon the appointment letter was issued. An office order in this regard dated **March 3, 1998** issued by D.V.C. is available at **page 18** to the writ petition.
8. On or about **August 7, 2019** D.V.C. has issued an identity card in favour of the petitioner showing his date of birth to be **December 10, 1968, annexure P-4** at **page 21** to the writ petition.
9. Since after the said application submitted on **September 6, 1999** no step was taken by the petitioner for correction of his alleged date of birth and the petitioner on **March 15, 2023, annexure P-5** at **page 22** to the writ petition, submitted a further application seeking rectification of his date of birth. In support, the petitioner has also submitted an affidavit sworn before the Chief Judicial Magistrate, Asansol at **page 23** to the writ petition. The petitioner has also

produced his Aadhaar Card and the Voter Identity Card and the relevant PAN Card at **pages 25 and 26** to the writ petition and **page 15** to the affidavit-in-reply.

10. The petitioner then submitted diverse applications in **June 20, 2024** under the Right to Information Act before D.V.C. seeking information with regard to the fate of his applications for rectification of his date of birth. The proceeding had travelled up to the appellate authority under the Right to Information Act. Finally, the reply sent by the appropriate authority of D.V.C. dated **November 21, 2024** at **page 39** to the writ petition, furnished the relevant information with regard to the information sought for by the petitioner. The information provided to the petitioner that the request of the petitioner for rectification of his date of birth should be dealt with as per Government of India guidelines. The appeal and RTI application were disposed of by the jurisdictional authority and the information was furnished to the petitioner through an e-mail dated **February 12, 2025** at **page 41** to the writ petition. The last representation submitted by the petitioner was dated **April 4, 2025, annexure P-7** at **page 42** to the writ petition seeking rectification of his date of birth.
11. D.V.C. after taking into consideration of the date of birth of the petitioner being **June 13, 1965** and issued the **Retirement Notice** dated April 9, 2025, the Provisional Release Order dated April 11, 2025 and the No Dues Clearance notice dated April 11, 2025, at **pages 45 to**

46 to the writ petition. From these documents it appears that, the petitioner shall retire on **June 30, 2025**. D.V.C. also served a notice dated **April 11, 2025**, at **page 47** to the writ petition, upon the petitioner for settlement of its superannuation benefits. The petitioner on **April 25, 2025** submitted another application seeking rectification of his date of birth. D.V.C. by a communication dated **April 30, 2025** at **page 49** to the writ petition has communicated its decision and rejected the request of the petitioner for rectification of his date of birth.

12. In the above facts and circumstances, the petitioner has filed the instant writ petition with the following prayers:

- “a) A Writ in the nature of Mandamus, directing the respondent authorities to alter and/or rectify the petitioner’s date of birth in his service records in accordance with law;*
- b) A Writ in the nature of Mandamus, commanding the respondent authorities to consider the representations dated 15.03.2023 and 04.04.2025, made by the petitioner and thereby revoke the retirement notice dated 09.04.2025 in accordance with law within a stipulated period of time;*
- c) A Writ in the nature of Certiorari directing the respondent authorities to produce and/or cause to be produced the records of the case and upon perusal of the same pass necessary order(s);*
- d) An ad-interim order in terms of prayers a), b) and c) as above;*
- e) An order as to costs;*

f) Any order or further orders(s) as to Your Lordships may deem fit and proper.”

13. Pursuant to the direction made by this Court the petitioner and D.V.C. have filed and exchanged their respective affidavits.

Submissions:

14. Mr. Uttiya Ray, learned counsel appearing for the petitioner submits that, at the time of receiving compassionate appointment in support of his age proof the petitioner had submitted the said Transfer Certificate issued by the relevant school date **January 12, 1987** at **page 20** to the writ petition, which was not then attested/countersigned by the District Education Officer. The said certificate clearly shows the date of birth of the petitioner being **December 10, 1968**. In absence of the said attestation/countersignature by the District Education Officer the petitioner was subjected to a medical examination by the medical board. The relevant medical certificate at **page 17** to the writ petition dated **June 12, 1995** shows that the petitioner appeared to be about **30 years**. The petitioner then after causing the necessary attestation/countersignature on the said Transfer Certificate issued by the school by the District Inspector of Schools submitted the same before D.V.C. and applied for rectification of his date of birth on the basis thereof on **September 6, 1999**.
15. Referring to **clause 2** from the interview letter dated **April 25, 1995**, learned counsel for the petitioner submits that, the primary condition

- for determination of date of birth should have been on the basis of the said Transfer Certificate issued by the school being certified by the District Education Officer. Otherwise the candidate may be asked to appear before the medical board for the purpose of assessment of age.
16. Mr. Uttiya Ray, learned counsel appearing for the petitioner submits that, once this Transfer Certificate had been produced and the petitioner applied for rectification of his date of birth within **five years** from his date of appointment, the date of birth should have been rectified to be **December 10, 1968** as mentioned in the said Transfer Certificate duly attested/countersigned by the District Inspector of Schools in place and stead of **June 13, 1965**, on the basis whereof the appointment of the petitioner was made. In support of such contention learned counsel for the petitioner has placed reliance upon two circulars, one being issued by the **Government of India** dated **December 16, 2014** (for short, the **Government of India circular**) at **page 13** to the affidavit-in-reply and the other being an office circular issued by **D.V.C.** dated **January 19, 1985** at **page 9** to the affidavit-in-reply (for short, **D.V.C. circular**).
 17. Relying upon the said Government of India circular learned counsel for the petitioner submits that, the application for rectification of date of birth dated September 6, 1999 was submitted by the petitioner within five years of his entry into the service. He further submits that, it was established that a genuine bona fide mistake had occurred at the time

of submission of the said Transfer Certificate issued by the school as the same was not attested/countersigned by the District Education Officer at the time of his appointment. In such circumstance, the alteration of date of birth of a Government servant can be made with the sanction of the ministry or department of Central Government or the Controller and Auditor General or the Administrator of a Union Territory as the case may be. Relying upon the said D.V.C. circular learned counsel for the petitioner submits that, at the time of joining of the petitioner the said Transfer Certificate was though not attested/countersigned by the District Education Officer but primarily revealed that the date of birth of the petitioner being December 10, 1968 and not otherwise. Therefore, the recorded date of birth being June 13, 1965 in the service record of the petitioner in terms of the said medical certificate dated June 12, 1995 is not correct and requires an immediate rectification.

18. Referring to the Identity Card issued by D.V.C. on August 7, 2019 at page 21 to the writ petition, learned counsel for the petitioner submits it was all along understood by D.V.C. that the date of birth of the petitioner is December 10, 1968 and on the basis of such understanding, which is true and the correct, Identity Card was issued. D.V.C. after issuing the said Identity Card cannot contend anything to the contrary and ought not to have rejected the request of the petitioner for rectification of his date of birth as claimed.

19. Referring to the rejection order dated January 3, 2001 from **page 14** to the affidavit-in-opposition, learned counsel for the petitioner submits at the outset it is a non-speaking decision. This is an interdepartmental memo which was never served or communicated to the petitioner. Unless a decision is communicated to the petitioner, as in the manner it is required to be done in law, there is no communication of the decision to the petitioner and it will be presumed that petitioner has not received any decision on the issue. He further submits that, the application originally was submitted on **September 6, 1999** followed by the series of subsequent communication. The issue has not been decided by the D.V.C. and no decision has been communicated, in this regard, to the petitioner. According to the petitioner, the said application dated **September 6, 1999** was kept pending till the impugned order dated **April 30, 2025** at **page 49** to the writ petition was communicated to the petitioner. In support he has relied upon the following decisions of the Hon'ble Supreme Court:

- (i) In the matter of: Greater Mohali Area Development Authority and Ors. Vs. Manju Jain and Ors. reported at (2010) 9 SCC 157 and*
- (ii) In the matter of : Gendalal Vs. Union of India & Ors. reported at (2007)15 SCC 553.*

20. Learned counsel for the petitioner further submits that the first application was made seeking rectification of date of birth on **September 6, 1999** within five years of the appointment of the petitioner following the said Government of India Circular and the same was not disposed of until the reasoned order dated **April 30, 2025** has been communicated to the petitioner. Therefore, there is no delay on the part of the petitioner to raise his claim. The application cannot be treated as a belated one or at the fag end of his service and just before retirement. A wronged employee should not be denied of his rights especially when he has adhered to the procedure laid down and attempted to avoid litigation by resorting to in house mechanism. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Bharat Coking Coal Ltd. and Ors. Vs. Chhota Birsa Uranw reported at (2014) 12 SCC 570.***
21. Mr. Ray, learned counsel appearing for the petitioner further refers to **Regulation 6** from the D.V.C. Service Regulation at **page 12** to the affidavit-in-reply and submits that the said Regulation shall apply in the facts of this case.
22. In the light of the above, Mr, Uttiya Ray, learned counsel for the petitioner submits that, the instant writ petition should be allowed and the date of birth of the petitioner should be rectified as claimed.

23. Mr. Pratik Majumder, learned counsel appearing for D.V.C. submits that Damodar Valley Corporation has its own Act which is a central legislation called **Damodar Valley Corporation Act, 1948** (for short, D.V.C. Act). He submits that **Section 58** of the said Act provides that the provisions of the said Act or any Rule made there under shall have effect notwithstanding anything contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.
24. **Sections 59 and 60** of the said D.V.C. Act empowers to frame rules and regulations under the said Act. In terms of the said power conferred under the D.V.C. Act **Damodar Valley Corporation Service Regulations** (for short D.V.C. Regulations) has been framed. **Sub-Regulation (b) to Regulation 21** of D.V.C. Regulations provides that, an employee of **Class – III** service shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. **Note 1** of such sub-Regulations, *inter alia*, provides that ***‘the date of birth so declared by an employee and accepted by the appropriate authority shall not be subject to any alteration after the preparation of his Service Book and in any event, after the completion of the probation period or declaration of quasi permanency, whichever is earlier. An alteration in the date of birth of an employee can be made at a later stage only by the corporation if it is established that a bona fide clerical mistake***

has been committed in recording the date of birth in the Service Book.'

25. Referring to the above provisions from Regulation 21, Mr. Pratik Majumder, learned counsel for D.V.C. submits that, there was no clerical mistake in recording the date of birth in the Service Book. The condition appearing from Clause - 2 of the Interview Letter dated April 25, 1995, as referred to above, since the said Transfer Certificate issued by the school, was found to be insufficient as an evidence in support of his age as the same was not attested/counter-signed by the District Education Officer, the employer has resorted to the alternative method provided under the said Clause - 2 and the petitioner was examined by the medical board and his age was assessed accordingly. The said clause in the said Interview Letter was incorporated in terms of D.V.C. Circular dated **January 29, 1985** at **page 9** to the affidavit-in-reply. Since D.V.C. is guided by its own act and regulations, the said D.V.C. Circular dated **January 29, 1985** shall govern the field and in terms thereof the appointment procedure was followed.
26. Referring to the said Government of India Circular dated **December 16, 2014 at page 13** to the affidavit-in-reply, Mr. Pratik Majumder, learned counsel submits that, the application of the same was restricted for the government servants only. The petitioner is not a government servant. The petitioner is an employee of D.V.C. which is an independent entity and a public sector undertaking. The said

Government of India Circular dated **December 16, 2014** would have no application in the facts of this case. In any event, in view of the provisions already referred to from the said D.V.C. Act, D.V.C. is guided by its own Service Regulations and Regulation 21 in this regard, as referred to above from D.V.C. Service Regulations, shall apply.

27. Referring to the **Regulation 6** of the D.V.C. Service Regulation from **page 12** laid down in the said D.V.C. Service Regulations, he submits that the said Regulation 6 will have no application in the facts of this case.
28. Mr. Majumder further submits that, the Appointment Letter was issued in favour of the petitioner on **June 19, 1995** at **page 14** to the writ petition and the petitioner after waiting for about four years on **September 6, 1999** submitted an alleged application seeking rectification of date of birth on the strength of an alleged attestation/counter-signature made by the District Education Officer on the said Transfer Certificate dated **January 12, 1987** which was submitted at the time of appointment of the petitioner in **1995**. This clearly shows a gross delay and a belated thought on the part of the petitioner. In any event, after following the due process of the Service Regulations framed by D.V.C. and after following the due process of law the appointment was made and the date of birth of the petitioner after being assessed to be **June 13, 1965** by the medical board was

entered in the Service Book of the petitioner. There was no *bona fide* mistake neither any clerical error on the Service Book while recording the said date of birth of the petitioner. The petitioner has never challenged the assessment of the medical board/the medical report submitted by the medical board at any point of time.

29. Mr. Majumder further submits that, the application submitted by the petitioner for rectification of his date of birth was a grossly belated application and the grievance, for the first time, was raised through this writ petition before this Court at the fag end of his career and immediately few days prior to his retirement. The alleged counter signature was made on the Transfer Certificate on **September 16, 1998** and the application was submitted on **September 6, 1999**, about a delay of one year. In case of such a belated application the law is well settled that, prayer for correction of age was not permitted. In support, he has relied upon the following two decisions:

- I. ***In the matter of : Karnataka Rural Infrastructure Development Limited -vs.- T. P. Nataraja & Ors., reported at (2021) 12 SCC 27 and***
- II. ***In the matter of : The General Manager South Eastern Coalfields Limited & Ors. -vs.- Avinash Kumar Tiwari, reported at 2023 Live Law (SC) 124***

30. Mr. Pratik Majumder, learned counsel for D.V.C. then refers to the said decision of D.V.C. dated **January 3, 2001 at page 14** to the affidavit-in-opposition and submits that way back in **2001** the decision rejecting the claim of the petitioner was taken by D.V.C. and was communicated to the petitioner. From the document it appears,

according to him, that the petitioner had perused the same and seen the same by putting his signature. Therefore, it is incorrect to allege that D.V.C. had not taken any decision on the application of the petitioner dated **September 6, 1999**.

31. Mr. Majumder then refers to another document at **page 15** to the affidavit-in-opposition and submits that while applying for higher post the petitioner himself has declared his date of birth to be **June 13, 1965**. The said application was submitted on **June 17, 1999** as would be evident from **page 16** to the affidavit-in-opposition.
32. Mr. Majumder submits that the date of birth mentioned in the Identity Card at **page 21** to the writ petition was a *bona fide* mistake and supporting pleading has already been made in the affidavit-in-opposition by D.V.C.
33. For the purpose of service of an employee wherever and whenever it is required, the date of birth recorded in the Service Book is taken into consideration and, accordingly, the petitioner is due to retire on **June 30, 2025**.
34. He further submits that, the Aadhaar Card or the EPIC card have no evidential value with regard to the date of birth.
35. In reply, Mr. Uttiya Ray, learned counsel for the petitioner submits that, since the application submitted by the petitioner way back on **September 6, 1999** has not been considered, the plea taken by D.V.C. that, the claim of the petitioner is grossly belated and at the fag end of

his career and immediately before his retirement, is not tenable in law. Referring to the said document dated **January 3, 2001**, at **page 14** to the affidavit-in-opposition, he submits that, the said document was never communicated to the petitioner neither was perused by the petitioner.

36. Since there is no delay on the part of the petitioner in applying for his rectification of date of birth, the judgments cited on behalf of D.V.C. are clearly distinguishable and have no application in the facts of this case.

Decision :

37. After hearing the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, D.V.C. is governed by its own statute, viz. the said D.V.C. Act and its own Service Regulations framed thereunder. D.V.C. Circular dated **January 29, 1985** at **page 9** to the affidavit-in-reply is the governing circular relating to the appointment terms of an employee of D.V.C., viz. the petitioner herein. The appointment of the petitioner was of the year **1995**. Hence, the case of the petitioner shall be governed under the heading '**For Future Cases**' as mentioned in the said **D.V.C. Circular, 1985**. The relevant clause is quoted below :

“ A FOR FUTURE CASES

- 1) At the time of joining of the incumbent the authorities concerned (illegible).... ensure production of*

documentary evidence of authentic nature in support of age viz. Matriculation certificate/Extract from the School Admission Register duly countersigned by the District Education Officer of the State Government concerned/extract from the Municipal Birth Register/Baptismal Certificate as the case may be. In case on fails to produce any of documentary evidence he may be asked to appear before the medical Board for the purpose of assessment of age.”

38. **Clause 2** from the Interview Letter dated **April 25, 1995** in pursuance whereof the petitioner was appointed is quoted below :

“2. In case you are non-Matriculate the extract from the School Admission Register duly countersigned by the District Education Officer of the State Govt. concerned/extract from the Municipal Birth Register/Baptismal certificate as the case may be, should be produced otherwise you may be asked to appear before the Medical Board for the purpose of assessment of age.”

39. On a harmonious reading of the above two clauses, this Court is of the firm view that **Clause 2** incorporated in the Interview Letter dated **April 25, 1995** is in tune and consonance with the said clause quoted above from the **D.V.C. Circular of 1985**.
40. On a meaningful and harmonious reading of the clauses, referred to above, it appears to this Court that, there are two parts :
- i) In case the candidate is non-Matriculate the extract from the School Admission Register duly counter-singed by the District

Education Officer of the State Government concerned/extract from the Municipal Birth Register/Baptismal Certificate as the case may be, should be produced;

- ii) Otherwise, the candidate may be asked to appear before the medical board for the purpose of assessment of age.
41. On a harmonious reading of the above, this Court is of the firm view that, there are two independent provisions, as referred to above. If the first provision fails then the second provision applies. Thus, there is no conflict between the two. The two provisions are independent of each other. The two provisions shall be read one after another separately and not conjointly.
42. In the facts of the instant case, admittedly in **1995** when the said transfer application was submitted at the time of appointment, the same was not attested/counter-signed by the District Education Officer in compliance of Clause-2 of the said Interview Letter. Thus, there was no conclusive evidence before D.V.C. with regard to the age proof of the petitioner, as it was required under Clause – 2 of the Interview Letter. In such circumstance, the petitioner was asked for the examination by the medical board and the medical report, at **page 17** to the writ petition dated **June 12, 1995**, shows the petitioner was assessed to be **30 years** old as on **June 12, 1995**, when the medical certificate was issued. Accordingly, the date of birth in the Service Book of the petitioner was recorded to be **June 13, 1965**. Therefore,

- there was no *bona fide* mistake or clerical error in recording the date of birth in the Service Book of the petitioner. The recording was made pursuant to the said medical report on the basis of an available procedure for assessment of age of the petitioner recognised under the relevant Service Regulation of D.V.C. in conformity with Clause – 2 of the Interview Letter. Thus, the age of the petitioner was assessed by the medical board by virtue of an independent assessment method which was recognised in the regulation of D.V.C. and was correctly recorded in the Service Book.
43. The petitioner has never challenged the said finding of the medical board. The finding of the medical board having been crystalised and after attaining its finality, the appointment was provided to the petitioner in **1995** and since then the petitioner has been working and is scheduled to retire on **June 30, 2025**.
44. **Regulation 21** of D.V.C. Service Regulation and **Note 1** contained therein, at **page 13** to the affidavit-in-opposition, *inter alia*, provides that ‘*an alteration in the date of birth of an employee can be made at a later stage only by the corporation, if it is established that a bona fide clerical mistake has been committed in recording the date of birth in the service book.*’
45. In view of the said provision laid down under **Regulation 21** only in case of a *bona fide* clerical mistake, if committed in recording the date of birth in the Service Book, then only it is permitted to be altered at a

later stage. On a meaningful and harmonious reading of the said provisions, this Court is of the considered view that, as discussed above already, no such *bona fide* clerical mistake has been committed in recording the date of birth in the Service Book. The date of birth recorded in the Service Book was arrived at on the basis of the report of the medical board which is a recognised method in the service regulation of D.V.C. and, accordingly, the assessment was done following the due process of law.

46. The law is well settled that, Court cannot sit in appeal on a decision and opinion of experts neither the Court can substitute an expert's opinion. The medical experts had opined in its said medical report and assessed the age of the petitioner. The court seldom interferes with an expert's opinion unless an *ex facie mala fide*, arbitrariness, inconsistency or infirmity in the decision making process is there on the face of the expert's opinion. This is not such a case.
47. When on a close scrutiny of records it reveals that the procedure of law/statutory regulation has been followed and the decision has been arrived at, procedural infirmity or illegality or error in application of law or mis-construction of law may be there on the face of the decision making process and/or on the decision, but the same cannot be termed as genuine *bona fide* or clerical mistake on the decision.

48. In the instant case, the medical examination has been held before the medical board following the due process of law. The medical report has never been challenged.
49. In view of the foregoing reasons and discussions this Court is of the considered opinion that, all other contentions and rival contentions of the parties raised before this Court, whether the application submitted by the petitioner was belated or not or whether the same was properly decided or not are not required to be considered and, as such, this Court does not proceed and deal with the same.
50. Accordingly, the instant writ petition is devoid of any merit. It is clarified that, the **Date of Retirement** of the petitioner, as scheduled, is **not interfered with**.
51. Accordingly, the instant writ petition, **WPA 11453 of 2025** stands **dismissed**, without any order as to costs.
52. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)

