

(1983) 04 CAL CK 0007
In the Calcutta High Court
Case No : C.R. No. 2434 (W) of 1981

Anil Kumar Gayen

APPELLANT

Vs

West Bengal State Electricity Board and Others

RESPONDENT

Date of Decision : 13-04-1983

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : 86 CWN 823

Hon'ble Judges : Amitabha Dutta, J

Bench : Single Bench

Advocate : Mohitosh Majumdar and Maloy Chakraborty, for the Appellant; Samir Mukherji, for the Respondent

Final Decision : Dismissed

Judgement

Amitabha Dutta, J.—The subject matter of challenge in this writ petition is the office Order No. 150 dated 23.12.1980 made by the respondent No. 7, Secretary West Bengal State Electricity Board determining the date of birth of the petitioner as 1.7.1922 and his consequent date of retirement from the service under the Board from 30.6.1980. The petitioner was appointed temporarily to act as an Assistant Linesman, Ranaghat Electric Supply with effect from 1.1.1953 under the Directorate of Electricity Development, Government of West Bengal As the said Directorate ceased to function with the setting up of the West Bengal State Electricity Board (hereinafter called the Board) with effect from 1.5.1955 the petitioner who was then substantively holding the post of Assistant Linesman was transferred to the Board as on deputation to foreign service with his consent. The petitioner was subsequently confirmed in the post of Linesman under the Board by order dated 30.6.1967.

2. The petitioner admittedly signed a declaration of his date of birth as 1.7.1922 before the competent authority of the Directorate of Electricity Development after he had joined service under the said Directorate and the said declaration is dated 1.12.1954. The original declaration has been produced before this Court

and the petitioner after some prevarication has signified through his learned advocate Mr. Chakraborty his admission that it bears his signature in English.

3. The petitioner's case is that his date of birth is 3.11.1927 and not 1.7.1922, that his date of birth was wrongly recorded in the said declaration, that after the petitioner was transferred to the service under the Board an index card was prepared by the Board wherein the date of birth of the petitioner was recorded as 1.7.1922. But the petitioner refused to sign the said index card.

4. In 1971 the petitioner moved the authority to change his date of birth as entered in the service record on the strength of a horoscope. But his prayer was rejected. This fact appears from the letter dated 29.3.1972 from the Assistant Secretary (II) to the Superintending Engineer, Burdwan Circle of the Board (vide annexure "G" to the writ petition). Thereafter the petitioner obtained a certified copy of an extract from the register of birth, Kalna Municipality on or about 6.4.1972 and made a representation dated 23.3.1972 to the Board stating that his date of birth was wrongly recorded as 1.7.1922 in the index card prepared by the Board, that his actual date of birth was 3.11.1927 and that he was attaching an attested copy of his birth certificate issued by Kalna Municipality where his birth was registered, in support of his claim. He requested the authority to rectify his date of birth as recorded in the index card. Similar representations were made on 11.11.1982. But the petitioner was unsuccessful. He was served with an order dated 21.12.1979 from the Board to the effect that he was due to retire compulsorily on 30.6.78 (AN) on attaining the age of superannuation, that is, 58 years of age under Regulation 35 of the Board Employees Service Regulations.

5. The petitioner moved this Court by filing a writ petition and in C.R. No. 2803 (W) of 1980 the learned Judge D.K. Sen, J. after hearing the parties disposed of the same by his order dated 4.8.80. It may be mentioned that the date of birth of the petitioner in the service record of the Board which was produced before the Court at the time of hearing of the said writ petition was found to have been overwritten. The learned Judge made the following order:

The impugned order dated the 21st December, 1979 directing the compulsory retirement of the petitioner is set aside. The respondents are directed to determine afresh the age of the petitioner in accordance with law and the Regulations after considering all evidence produced and relied on by the petitioner. The respondents are directed not to treat the records of the Department of Electricity Development, Government of West Bengal relating to the petitioner's date of birth as a declaration by the petitioner under Regulation 21. If the petitioner is found to have been born later than the 1st July, 1922 he will be treated to have continued in his service after the 30th June, 1980. The Board will proceed expeditiously in the matter and determine the petitioner's age as directed within four weeks from the communication of this order. The Rule is made absolute to the extent as aforesaid. There will be no order as to costs.

6. The Board appealed from the said order of D.K. Sen, J. and applied for an

interim order. In F.M.A.T. No. 3041 of 1980 the learned Judges of the Division Bench disposed of the appeal and the application by making the following order on 25.11.1980.

In our opinion, the appellants should decide afresh the age and/or the date of birth of the respondent after considering all the material evidence including the certified copy of the birth register of the Municipality as produced by the respondent as a declaration under Article 21 and also the statement of age of the respondent in the Electricity Development Directorate. Such determination shall be made by the appellants within a period of four weeks from date. The appellants shall not however take into consideration the date of birth of the respondent as entered in the service records of the respondent in the West Bengal State Electricity Board which, as stated above, has been overwritten. If after considering all the evidence the appellants come to the conclusion that the respondents date of birth was other than July 1, 1922 that is. if it is a date later than July 1, 1922 the appellants shall at once reinstate the respondent in service and pay all arrears of salary and allowances to the respondent. If however it is found that the date of birth of the respondent was July 1, 1922, in that case the respondent should be deemed to have retired from service with effect from June 30, 1980.

7. Thus the only modification made by the appellate court was that the Board would also take into consideration the statement of age by the respondent in the Electricity Development Directorate, that is to say, the declaration dated 1.12.1954 signed by the petitioner stating his date of birth as 1.7.22 after he had joined service under the said Directorate on 1.1.1953 among other material evidence in determining the age/date of birth of the petitioner.

8. The petitioner through his learned advocate had sent a letter dated 29.9.1980 addressed to the Deputy Secretary (1) of the Board enclosing the xerox copies of four documents to enable the Board to take necessary action in terms of order made D.K. Sen, J. in C.R. No. 2803 (W) of 1980. These documents were described as follows :

- i) Birth certificate issued by the Kalna Municipality;
- ii) Certificate issued by the President, Kalna Municipality
- iii) Affidavit affirmed by Sri Anil Kumar Gain (the petitioner) before the learned Judicial Magistrate, 1st Class, Hooghly; and
- iv) Copy of the judgment dated 4th August, 1980.

Thereafter the respondent No. 7, Secretary of the Board passed the impugned order dated 31.12.1980 (annexure to the writ petition) which is as follows:

Dated 23.12.80 Office Order No. 150

In pursuance of the orders dated 25.11.80 in FMAT No. 3041 of 1980 passed by the Hon'ble High Court I have carefully examined and considered afresh all the

material evidence including the certified copy of the birth register of the Kalna Municipality, the declaration of age by Sri A.K. Gain in the Electricity Development Directorate in the Government of West Bengal and the letter dated 17.12.80 of the Chief Electrical Inspector, Government of West Bengal.

After considering the above documents I am convinced that the date of birth of Sri Gain is the 1st July, 1922 and accordingly Sri Gain shall be deemed to have been retired from Board's service with effect from the 30th June, 1980.

Sd/- R.N. Mitra, Secretary.

9. Four points have been raised on behalf of the petitioner to challenge the said order. Firstly, the respondent Nos. 1 and 7 have not complied with Regulation 21 of the Board Employees Service Regulations which runs as follows:

Declaration of age 21. (1) Age shall be computed from the date of birth, as declared by the applicant at the time of, or for the purpose of entry into Board's service and duly supported by acceptable evidence which shall be produced by the employee at the time of employment or within such period as appointing authority may direct.

(2) A declaration of age made by an applicant and accepted by the Board at the time of or for the purpose of entry into Board's service shall be deemed to be binding on the person who has made it.

Note: 1. A certificate of having passed the Matriculation/School Final/ Higher Secondary or equivalent examination, indicating the applicants age granted by the University/Board holding the examination or an extract from the Register of Births maintained by a local authority or a certificate of birth issued by a Govt, recognised hospital showing the date of applicant's birth shall be treated as acceptable evidence for the purpose of this Regulation.

Note : 2. Is not relevant for the present purpose.

Secondly, it is argued that the respondent No. 7 has relied on a letter dated 17.12.80 from the Chief Electrical Inspector, West Bengal addressed to him without supplying a copy thereof to the petitioner and has thereby violated the principles of natural justice. The said letter is memo No. EA/11 M/129 dated Calcutta the 17.12. 1980 and its contents are as follows:

Sub :- Date of birth of Sri Anil Kumar Gain.

Sir,

With reference to your D.O. No. 607 dated 16,12.80 on the above subject, I am to inform you that the date of birth of Sri Anil Kumar Gain. Permanent Street Lighting Man of ex-Electricity Development Directorate, Government of West Bengal is 1st July, 1922 as per record available in this office.

Thirdly, it is contended by the respondent No. 7 has violated the rules of natural justice by not giving the petitioner an opportunity of being heard.

Fourthly, it has been submitted that the impugned order dated 31.12.80 is not a speaking order as no reasons have been assigned for arriving at the decision involving civil consequences adversely affecting the petitioner and is therefore liable to be struck down.

In support of his submissions the learned advocate of the petitioner has relied on the following decisions:

(i) Choudhury -vs- Union of India, AIR 1956 Calcutta 662 in which the learned Single Judge of this court, D.N. Sinha, J. has indicated the procedure that should be followed in conducting a departmental enquiry against a railway servant; (2) The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, in which the Supreme Court has held that when an authority makes an order in exercise of quasi judicial function it must record its reasons in support of the order it makes and this rule is a basic principle of natural justice. It must inform every quasi-judicial process and must be observed in its proper split; (3) Uma Charan vs. State of M.P., AIR 1981 SC 1951 in which the Supreme Court quashed the select list as the Selection Committee in review of the select list and without recording any reason as required in Regulation 5(5) of the relevant Regulations, superseded a member of State Police Service as the recording of reasons is the only safeguard against possible injustice and arbitrariness in making selections and (4) Pramatha Nath Choudhury vs. State of West Bengal, 1981(1) SLR 570 in which a Division Bench of this Court sitting in appeal held that the date of birth of the appellant, a police officer as stated in his matriculation certificate, the genuineness of which could not be denied on behalf of the respondent State of West Bengal, must be accepted to be correct for determining the date of his retirement on superannuation although the appellant give a different date of birth when he entered into service as a constable.

10. In answer to the points raised on behalf of the petitioner it has been submitted by the learned advocate for the respondents that the respondent No. 7 duly complied with the order of the appellate court in F.M.A.T. No. 3041 of 1980 and that the letter dated 17. 12. 80 from the Chief Electrical Inspector, West Bengal merely intimated the position regarding the date of birth of the petitioner as per record available in his office which is the declaration dated 1.12. 1954 admittedly signed by the petitioner, of his date of birth as 1.7.1922 after he had joined service as Assistant Linesman under the Electricity Development Directorate, Government of West Bengal which became defunct after the setting up of the Board to which he was transferred with his consent in or about May, 1955. So, no prejudice can be said to have been caused to the petitioner not to speak of substantial prejudice by the respondent No. 7 is consideration of the said letter, the appellate court having directed consideration of such declaration of the petitioner along with other material evidence for the purpose of determining the petitioner's age. it is further submitted that the petitioner in his letter dated 29.9.1980 sent through his learned advocate furnished copies of four documents on which he sought to rely without asking for personal hearing and

the appellate court also did not specifically direct that the petitioner was to be given a personal hearing. It is contended that the rules of natural justice should not be stretched too far and the doctrine has to be tailored to the needs of the situation demanding prompt determination of the matter. Lastly it is submitted that the reasons for the decision arrived at by the Secretary to the Board have been recorded in a separate note in the office file of the Board produced before this Court and the same reasons have been stated in the counter-affidavit sworn by the defendant no. 7 himself in the present case which would show that the decision is not arbitrary but is supported by cogent reasons. So, the rules of natural justice have been sufficiently complied with in this case. In this connection reliance has been placed on the decision of the Supreme Court in the case of *Sarin H.C vs. Union of India*, 1976(2) S.L.R. 243, 260 in which the Supreme Court quoted with approval a passage occurring in the judgment of Lord Denning in *R v. Secretary of State for the Home Department Ex parte Mughal*, (1973) 3 All England Reporter 776 at page 803. The passage runs thus "The rules of natural justice must not be stretched too far. Only too often people who have done wrong seek to invoke the rules of natural justice to avoid the consequences".

11. The moot question for decision is whether the respondents have properly complied with the order made on 25-11-1980 by the appellate Court in F.M.A.T. No. 3041 of 1980 in arriving at a fresh decision recorded in the office Order No. 150 dated 23.12.1980, on the age and/or date of birth of the petitioner which has been challenged in this case. After considering the submissions made on behalf of the parties the materials placed before me and the circumstances of this case, for reasons to be presently stated, I answer the question in the affirmative.

12. The impugned order already quoted above *ex facie* shows that the respondent No. 7 Secretary of the Board considered afresh all the materials evidence including the birth register of Kaina Municipality and the declaration of age by the petitioner in the Electricity Development Directorate, Government of West Bengal. No doubt, he has also considered a letter dated 17.12.1980 of the Chief Electrical Inspector Government of West Bengal which has been quoted above which simply refers to the position appearing from the office record containing the original declaration dated 1.12.1922. It cannot, therefore, be successfully contended that the Secretary of the Board has taken into account any extraneous or irrelevant material on that the petitioner was prejudiced any way for not having been supplied with a copy of the said letter dated 17.12.1980. The original records of the Board, containing the impugned order of Sri R.N. Mitra, Secretary of the Board and some records of the Electricity Development Directorate has been produced before this Court. It contains the detailed reasons for the said order in two separate typed sheets preceding the impugned order itself. The note containing the reasons does not bear any signature. But I cannot accept the charge made on behalf of the petitioner that the said note was subsequently placed on the records Sri R.N. Mitra, Secretary of

the Board has himself sworn the affidavit-in-opposition in this case and in paragraph 9 thereof he has stated on oath the identical reasons for arriving at his decision The relevant portion of the said paragraph reads as follows:

The birth certificate shows that male child was born to Shri Nibaran Chandra Mistri (Gain) on 3.1.27 and the same appears to have been signed by one K.P. Chatterjee on 27.12.27. It further appears that the certified copy was compared by the clerks of the Municipality on 6.4.72 and was signed by the Chairman on 7.4.72. The President of the Kalna Municipality issued the certificate on 3.8.79 stating that the birth register related to Shri Anil Kr. Gain son of Late Nibaran Chandra Gain. He stated further that Shri Gain's next brother was born in August 1931 and accordingly the entry in the birth register was an indirect confirmation of the age of Shri Anil Kr. Gain. This inference could not be accepted as the President could not be said to have any direct personal knowledge about the entry in the birth register and it was probable that the same related to some other son of Shri Nibaran Chandra Gain. It is also to be noted that Shri Gain did not file the certified copy of the birth register earlier but tried to confirm his date of birth by filing horoscope indicating different date of birth. In the form of declaration of age dated 1.12.54 the date birth was noted as 1.7.22 and such declaration was signed by the petitioner English with an endorsement that that same was recorded according to Shri Gain's own statements of the Assist English with an endorsement that the of West Bengal. The horoscope which the petitioner sought to rely was furnished by him for the first time in 1971, about 16 years after his entering into service of the Board. The same contained date of birth as on 28.3.26, whereas the certified copy of the birth register of Kalna Municipality shows the date birth as 3.11.27. In view of the contradictory position indicated by the said documents the petitioner's clear declaration of age as made while entering the services under the Electricity Development Directorate has been taken to be the correct date of birth and in terms the regulation of the Board he was asked to retire with effect from 30.6.80.

13. It has been submitted on behalf of the petitioner that the reasons given in the affidavit-in-opposition cannot render the impugned order valid, as the order thus does not embody the reasons. in this connection reference has been made to the observations of the Supreme Court in Mohinder Singh v. Chief Election Commissioner, AIR 1978 S.C. 85 at page 858 (paragraph 8):

When a statutory functionary makes an order passed on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit be otherwise. Otherwise an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

But in my view, the present case is distinguishable. As the original records or the Board shows that the reasons for the impugned order were noted in separate sheets before the order was made and were only reiterated subsequently in the affidavit sworn by the maker of the order himself. So, this is not a case of

supplementing the reasons by affidavit or giving reasons after the order in question had been made. In my view, the affidavit sworn by the Secretary of the Board giving reasons extracted from the reasons noted in the original record, prior to making the impugned order, makes the order a speaking order.

14. The reasons thus given are in my opinion proper and adequate. The facts and circumstances in this case are eloquent. The petitioner himself signed the declaration of his date of birth as 1.7.1922 on 1.12.1954 after he had entered service under the Electricity Development Directorate. After he came over to the State Electricity Board in 1955, his date of birth was recorded in the index card as 1.7.1922. But "the petitioner declined to sign the same and raised his, voice against such recording" as stated by him in paragraph 8 of the writ petition. And yet he remained silent for about 16 years by not making any representations for changing the said record of his date of birth. In 1971 he sought to change the recording with the help of a horoscope in which the date of birth was recorded as 28.3.1926. Being unsuccessful, he obtained an extract from the register of births maintained by Kalna Municipality in April, 1972 and made representation on that basis for changing the record of his date of birth from 1.7.1922 to 3.11.1927 as appearing from the said birth register containing entries showing the birth of a male child of Nibaran Chandra Mistri (Gain) which is the name of the petitioner's father. The learned advocate for the petitioner has referred to the verification roll of the petitioner in the Electricity Development Directorate signed by the Chief Electrical Engineer in which his age was recorded as 29 years 6 months on 1.1.1953 which is the date of the petitioner's entry into Government service. He has submitted that if his date of birth as 1.7.1922 is correct his age on 1.1.1953 would have been 30 years 6 months and that the petitioner would not have been eligible for Government service for being aged above 30 years which was the maximum age limit for entry. But it appears that such wrong calculation in the verification roll helped the petitioner to get into service. In the original records of the Board, there is also, as pointed out on behalf of the respondents, an application made by the petitioner on 24.4.1968 for the post of Mistri (Electrical) giving his date of birth as 1st June, 1923. But it must be said that the Secretary of the Board has not taken that application into account in arriving at his decision regarding the age of the petitioner. The learned advocate for the petitioner has placed emphasis on Note 1 to Regulation 21 of the Board Employees Service Regulations (quoted above) wherein it has been stated inter alia that an extract from the register of births maintained by a local authority shall be treated as acceptable evidence for the purposes of the said Regulation requiring declaration of the date of birth by the employee for the purpose of entry into Government service duly supported by acceptable evidence for computing his age. It has been submitted that it was mandatory on the part of the Board to treat the extract from the birth register maintained by Kalna Municipality produced by the petitioner as acceptable evidence of his date of birth. In this connection, reference has been made to the decision in the case of *Pramatha Nath Choudhury -vs- State of West Bengal* 1981(1) SLR 570 in which

the learned Judges of the Division Bench accepted the case of the petitioner appellant who was a police officer, that his date of birth as stated in the original Matriculation Certificate must be accepted to be correct. But in the reported case the genuineness of the Mariculation Certificate could not be denied on the part of the respondents. But that is not the factual position in the instant case. In the present case, the petitioner would have been entitled to the benefit of the relevant provision in Note 1 to Regulation 21 only if the extract from the municipal birth register could be said to relate unmistakably to the petitioner. The Secretary of the Board has given cogent reasons for not acting on the extract from municipal birth register as it contradicts a horroscope relied by the petitioner earlier in 1971 to change his recorded dale of birth and has based his decision on the declaration of date of birth signed by the petitioner himself on 1.12.1954. It cannot be said that the decision is perverse or without evidence. Extensive reasons cannot be given when the tribunal or administrative authority merely finds facts on evidence. It cannot be expected to give fuller reasons than the nature of the case admits. In any event, where a legal right claimed by the petitioner is not capable of being fully adjudicated upon without detailed examination of oral and documentary evidence which can be taken in a civil suit, the summary proceeding under Article 226 of the Constitution is not appropriate for the purpose.

15. The point taken on behalf of the petitioner that as the petitioner was not granted a personal hearing, the rules of natural justice have been violated rendering the impugned order void is in my view, not well founded in the circumstances of the present case. There is nothing to show that the petitioner ever demanded personal hearing. He in his learned advocate's letter sought to rely on four documents specified there, in support of his claim and also made available the operative part of the appellate court's order dated 25.11.1980 to the Secretary of the Board, all of which were considered by the. respondent No. 7 who made the impugned decision. Thus the petitioner had reasonable opportunity of presenting his case. The rules of natural justice or of fairness are not out and dried. They vary according to the nature and circumstances of each case. They have to be tailored to the needs of the particular situation. They do not require oral hearing in every case. A fair abridgement of personal hearing is permissible. Fairness is a flexible and pragmatic concept. A balance has to be struck between the need for expedition and the need to give trial type personal hearing. In my view, there has been no violation of procedural justice in this case.

16. This is not a case in which a genuine mistake in stating his date of birth by an employee at or about the time of entry into service was subsequently sought to be corrected at the first available opportunity or even at a later stage, with the help of unimpeachable evidence of his age. There has been a spate of attempts to change the recorded dates of birth by employees in race it times. A lenient view in the matter by the court will open a flood-gate for unscrupulous persons. I hold that this is not a fit case for interfering with the impugned order determining the age of the petitioner and the writ petition must fail. The Rule is

discharged. No order is made as to costs.