
(2002) 04 MP CK 0053
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1274/99

Bhan Singh Bhadoria

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Madhya Pradesh Financial Code — Rule 84

Citation : (2002) 95 FLR 331 : (2002) 3 MPHT 428 : (2002) 3 MPLJ 195

Hon'ble Judges : R.B. Dixit, J; Chandresh Bhushan, J

Bench : Division Bench

Advocate : R.D. Jain and D.P.S. Bhadoria, for the Appellant; K.B. Chaturvedi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.B. Dixit, J.

Petitioner, Bhan Singh Bhadoria son of Laloo Singh was working as Forester in Forest Department and his date of entering in the service in the department was admittedly 25th April, 1962. His date of birth in the service record was recorded as 19-7-1940. On the entries of service record, it seems that this date of birth was also attested on 13-4-1974 by Assistant Conservator of Forest, Forest Division, Guna. On 14-11-1994, petitioner was required to submit a certificate regarding his date of birth. Petitioner submitted a copy of school leaving certificate regarding his date of birth. However, the department found this date of birth incorrect and the enquiry revealed that the correct date of birth was 29-7-1935 and accordingly he was retired from the service. Against which, the petitioner filed a petition before the State Administrative Tribunal being O.A. No. 1073/95. The Tribunal by its order dated 28-7-1998 found that he was prematurely retired without affording him any opportunity of hearing and accordingly, quashed the order of retirement. It was further directed that the date of birth of petitioner shall be deemed to be 19-7-1940. However, it was directed that it is open to the department to challenge this date of birth subject

to procedure mentioned in the Rule 84 of the M.P. Financial Code, after affording him an opportunity of hearing.

The department concerned thereafter issued a show-cause notice dated 28-8-1998, stating that since his date of birth was found incorrect, he may submit any document within three days regarding his correct date of birth. However, it seems that petitioner did not submit any fresh document except he had already submitted earlier. The department, thereafter passed an order dated 25-9-1998, maintaining its previous order of retirement by giving more details of enquiry made in this regard. This order was again challenged by petitioner in another O.A. No. 1288/98, however his petition was dismissed by the Tribunal by the impugned order.

The learned Counsel of the petitioner has submitted that whatever enquiry was made regarding his date of birth was done behind his back and no enquiry report was given to him to controvert the findings arrived at in such an enquiry. Therefore, it does not amount to affording him of any proper opportunity of hearing. It is further submitted that such an enquiry regarding date of birth should not have been done at the fag end of the service life. Heavy reliance is placed on the decisions of the Apex Court in case of Union of India Vs. Harnam Singh, , State of Orissa and others Vs. Ramanath Patnaik, and G.M. Bharat Coking Coal Ltd., West Bengal v. Shib Kumar Dushad and Ors., reported in AIR 2001 SC 72.

In so far as affording the opportunity of hearing is concerned, it is urged that petitioner/Government servant was not supplied with the documents relied on against him. It has been observed by the Hon"ble Supreme Court in case of Union of India (UOI) Vs. T.R. Varma, , wherein it has been observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

In case of Union of India and others Vs. Mohd. Ramzan Khan, , it has been pointed out that where conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned, deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching its conclusion, rules of natural justice would be affected.

The learned Govt. Advocate has contended that the documents produced on

behalf of the department clearly indicate that the enquiry regarding school leaving certificate revealed that it was found false by the school authority. In this respect copies of School Register as well as different certificates regarding verification of the date of birth of the petitioner clearly indicate that he has given wrong date of birth. We have perused the photocopies of these documents, as brought on record and there seems to be some discrepancies regarding the serial number of the Register and there is also difference in name of schools, which goes to indicate that the date of birth as given by petitioner/employee, may or may not be correct. In such a situation, it is not a mere clerical error in the date of birth which can be changed by the department concerned without conducting a regular departmental enquiry, in accordance to the relevant provisions of law.

In so far as the present case is concerned, where the department has verified the date of birth as supplied by the Government servant/petitioner, in his service record and no objection was raised till he reached the date of superannuation and at that stage when the department suspected his date of birth as incorrect, it had no authority to change the date of birth unless it amounts to merely a clerical error. But, where if it is found that an employee had defrauded the department by giving totally a wrong date of birth, the only course left to the department is that of conducting a regular enquiry and then to terminate the service of the employee and can also launch a prosecution against him. Without following the procedure laid down under the law, it is not open to the department to retire a Government servant at the fag end of his service life by making such an enquiry behind his back and without affording him an opportunity to cross-examine the witnesses or to controvert the documents/material collected against him. In the circumstances, in our opinion, the impugned order is not sustainable under the eye of law.

Consequently, the petition is allowed and it is directed that the petitioner is entitled to all the benefits had he not been retired as treating his date of birth as 19-7-1940. We would also like to make it clear that it is also open to the department concerned to conduct any regular departmental enquiry against the petitioner, if it is permissible under the relevant provisions of law.