
(1966) 01 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 266 of 1965

Dakshaprasad Deka

APPELLANT

Vs

Inspector General of Police and Others

RESPONDENT

Date of Decision : 10-01-1966

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : (1966) 01 GAU CK 0003

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : S.K. Ghose, N.M. Lahiri, S.N. Bhuyan and B.M. Mhanta, for the Appellant; M.C. Pathak, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G. Mehrotra, C.J.—The relevant facts are that the Petitioner was appointed in the Police Department as Assistant Sub-Inspector of Police by the Superintendent of Police, Kamrup with effect from 17-1-1929. The date of the birth of the Petitioner was only shown as 1910, though he was actually born in the year 1911 according to his matriculation certification. On the basis of his birth date as one in the year 1910 he was retired in the year 1965. The Petitioner once applied for the correction of his age in the service book in 1955. It appears that that prayer was rejected, though there is some dispute as to the actual correction made in the service book. According to the Petitioner though his prayer was rejected in 1955, prior to that his service book had already been corrected and he was shown to have been born in 1911. But as in the gradation list the birth year was shown to be 1910 he applied for correction in the year 1955. Again in the year 1963 he applied for the correction of the year of his birth. That was rejected. He filed a review petition which was also rejected in the year 1964. He was compulsorily retired in 1965 and by means of the present petition he has challenged the order of retirement. His contention is that according to his correct age and according to the age given in his matriculation certificate, his retirement is due in 1966 and

not 1965.

2. Two points have been urged by Mr. Ghose on behalf of the Petitioner. His first contention is that his retirement in the year 1965 though in fact he attained the age of 55 in 1966 amounts to removal within the meaning of Article 311 of the Constitution and unless an opportunity was given to him to prove his real age there has been a violation of Article 311(2) of the Constitution.

3. The contention of Mr. Pathak, the senior Government Advocate is that if a person is retired at the age of superannuation, it cannot amount to removal within the meaning of Article 311. He further contends that the retirement will be deemed to be on attainment of the age of superannuation as he has attained the age of 55 years in accordance with the date as shown in his service book at the time of his appointment.

4. F.R. 56 which provides for the age of superannuation at the age of 55 reads as follows:

F.R. 56(a) The date of compulsory retirement of a Government servant is the date on which he attains the age of 55 years....

Only the relevant portion of the F.R. has been quoted above. This rule clearly means the date when he factually attains the age of 55 years and not when he attains the age of 55 years according to the year of his birth given in his service book. If the Petitioner disputes the fact and prima facie makes out a case on the basis of some evidence, his retirement before the year 1966 will amount to punishment. He will be deprived of his benefit of one year's salary and he should have been in these circumstances given an opportunity of showing cause before he was retired. It is not necessary to refer to a large number of cases. The circumstances under which the termination of service amounts to a removal have been very well laid down in various decisions of the Supreme Court e.g. in the cases of Parshotam Lal Dhingra Vs. Union of India (UOI), and Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., Reference may also be made to the case of Bhanwar Singh Bhup Singh Rajput Vs. State of M.P.,

5. The next point urged by Mr. Ghose is that the Government was not right in rejecting his application for the correction of his age on the ground of limitation. Reliance has been placed by the State on S.R. 8, Note, relevant portion of which reads as follows:

No alteration in the date of birth of a Government servant should be allowed except in very rare cases where a manifest mistake has been made. Such mistakes should be rectified at the earliest opportunity in the course of (1) periodical re-attestation of the entries in the first page of service book and (2) preparation of the annual detailed statement of a permanent establishment (Financial Rule form No. II) in which is noted the date of incumbent's birth. In no case the request for change in the date of birth of a Government servant made on a date within three years of the date of his actual superannuation

should be entertained.

According to this rule as the application has been made within three years of his attainment of superannuation in the year 1964, it could not be entertained.

6. Mr. Ghose's contention is that the attainment of superannuation does not mean superannuation according to the age given in the service record but it means superannuation according to the age of the Petitioner, In any case when a dispute was raised the Petitioner should have been given an opportunity to prove the fact of his age before his petition was rejected and the principles of natural justice require that before he was compulsorily retired and if a dispute was raised with regard to his age, he should have been given an opportunity to prove his correct age and thus there has been a clear violation of Article 311 of the Constitution. We accordingly allow this petition, quash the order of superannuation dated the 26th June 1965 and direct the opposite parties to give an opportunity to the Petitioner to show cause against the order of retirement and prove his real age. We make no order as to costs.