

(1977) 07 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 37 of 1970

Dewan Singh

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 28-07-1977

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1977) 6 ILR HP 528

Hon'ble Judges : Chet Ram Thakur, J

Bench : Single Bench

Advocate : R.N. Malhotra and P. Malhotra, for the Appellant; C.L. Kapila, for the Respondent

Judgement

Chet Ram Thakur, J.—The Petitioner has been retired from service by order, dated 27th March, 1970, Annexure J, with effect from the date he was relieved.

2. The Petitioner was working as an Overseer in Nichar, District Kinnaur, when the order was passed retiring him from service. According to the Respondents his date of birth was 1-10-1908 but the Petitioner, according to the Respondents, had changed the date of his birth in the service record from 1-10-1908 to 1-10-1918.

3. The admitted facts are that the Petitioner joined service as an Overseer in the Military Engineering Service, Lahore, on 14-12-1942 and from there he was transferred as Overseer to Delhi Cantt. where he worked till 14-10-1948 when due to retrenchment he was relieved from the post of Overseer under the M.E.S. Thereafter he joined as an Overseer at Ropar in the P.W.D. (B&R) Punjab and then on 1-11-1966, i.e. on the reorganisation of the erstwhile State of Punjab he was allocated to the then Union Territory of Himachal Pradesh. According to him, at the time of his discharge from the military service in 1948 he was issued a discharge certificate in which the date of his birth is 1-10-1918. The employer, i.e. the Military department, got his antecedents verified through a letter Annexure A issued by one Shri Bhola Nath Rai Saheb Garrison Engineer, Lahore,

to the Superintendent of Police, Sialkot (now in Pakistan). According to this verification his date of birth was accepted as 1-10-1918. Further, when he was transferred from Lahore he had left behind the certificate as also the diploma which he had obtained from the Civil Engineering College, Ludhiana, because at that time the partition of the country was not in view. In or about the month of March/April, 1947 partition of the country took place with the result that Lahore went to Pakistan, as a consequence thereof the Petitioner could not go back to bring those certificates. The Petitioner further averred that from time to time the seniority lists in the various departments where he had been working were drawn up and his date of birth was shown as 1-10-1918. Further he had got his education from Ganda Singh High School, Sialkot, where the date of birth was also indicated as 1-10-1918.

4. The department made certain enquiries from different sources with regard to his age. Enquiry was also made from the Punjab University at Chandigarh and also from the Punjab State Archives, Patiala about any Dewan Singh son of Nihal Singh who may have appeared in the Matriculation Examination from Ganda Singh High School, Sialkot, in the year 1936, as according to the Petitioner he had matriculated from that school in the year 1936.

5. According to the Petitioner while he was in the school, his name was Dewan Chand and it was only on or about the time of joining of service that he embraced Sikhism and changed his name to Dewan Singh.

6. The Respondents again made enquiries with regard to the name of Dewan Chand, who might have appeared as a student in the Matriculation examination in the year 1936, but the reply received was in the negative and eventually the Respondents sent the service book in which the entry about the date of birth from 1-10-1908 was said to have been converted to 1-10-1918, to the Director, Forensic Science Laboratory for his opinion. The information received from him is Annexure H-I. It was opined that the original date of birth was 1-10-1908, and which had been changed to 1-10-1918 and it was on the basis of this opinion eventually that the impugned order was passed.

7. The learned Counsel for the Petitioner has raised two points. The first is that there was no enquiry conducted in the case and whatever enquiry was conducted the same was at his back and secondly there was violation of the principles of natural justice and the violation of Article 311(2) of the Constitution.

8. Both these points are inter-related. From Annexure A it would appear that at the time of his entry in service in the M.E.S. at Lahore on 30-12-1942 a form was filled in, in which the Petitioner indicated his date of birth as 1-10-1918 and this form was sent by the Garrison Engineer, Lahore Division, to the Superintendent of Police, Sialkot, for verification of the entries contained therein. The reply to this is contained at the foot of this form and it is written as:

Returned duly completed as requested. He was discharged from Overseer Service P.W.D. Sialkot six months ago.

Verified and fit.

Sd/-Dy. Superintendent of Police, Sialkot.

No. 12292 Station Sialkot Dated 12-2-1943:

In Annexure B which is a combined provisional seniority list, his date of birth is indicated as 1-10-1918. It appears from Annexure G that the Chief Engineer wrote to Shri Dewan Singh after the department found that the date of birth in Part II of the service book had been changed from 1-10-1910 to 1-10-1918 and that the same in Part III appears to have been altered from 1-10-1908 to 1-10-1918 and asked him to produce the original Matriculation certificate or any other authenticated document in proof of his date of birth and also to produce the original verification of character and antecedents made by the Superintendent of Police Sialkot on 12-2-1943. It was stated therein that he had not produced any of these documents and further it was stated therein that according to the information given by the Petitioner to the Superintending Engineer 5th Circle he had qualified in the Matriculation examination from Ganda Singh Hindu High School, Sialkot, in 1936 and passed his Middle School examination from Hindu High School, Sialkot, and it was written therein that references were, therefore, made to the registrar Punjab University, Chandigarh, and Director of Archive, Punjab, Patiala, in the matter so as to find out his correct date of birth. But the information supplied was that the name of Dewan Singh is not available amongst the candidates who passed the Matriculation examination and then it was further stated therein that it was, therefore, clear that he had not passed his Matriculation Examination in 1936 from the said High School. Further he was informed that it had been decided tentatively to take his date of birth as 1-10-1908 and retire him from Government service and also to take disciplinary action against him for concealing the facts about his date of birth in his service book and not producing the original documents available with him. But, before action could be taken final orders were issued and he was given a show cause notice why the date of birth may not be taken as 1-10-1908 and retire him from Government service immediately and why disciplinary action should not be taken against him for concealing facts and for interpolating the entries regarding his date of birth in the service book and the reply was called for along with documentary proof about his date of birth by 5-11-1967 at the latest.

9. The Petitioner sent reply to this which is contained in Annexure D. According to him he had not interpolated the entries and that the correct date is 1-10-1918. The original antecedents verification certificate had been attached by him along with an agreement bond on a judicial paper. At the end he prayed that if at all his statement needed a clarification the same may be referred to the Registrar of the Punjab University at Lahore as his name was Dewan Chand throughout his study period in schools and books and was changed as Dewan Singh after leaving studies. He also supplied information about the schools in which he had studied. Finally when the department was not satisfied with the reply it referred the matter to the opinion of the Director, Forensic Science

Laboratory, at Chandigarh, and whose opinion is Annexure H-I, as already stated above. Thereafter on the receipt of this opinion the department informed the Petitioner that in view of the opinion of the Director of Forensic Science Laboratory, Union Territory, Chandigarh, it has been decided to take his date of birth as 1-10-1908 and to retire him from Government service immediately. It was further stated therein that before orders to this effect were actually issued he was given a chance to show cause as to why his date of birth should not be taken as 1-10-1908 and why he should not be retired from Government service immediately, and he was required to send a reply to this within 15 days, failing which it was said that it would be presumed that he had nothing to say in the matter and that he will be retired from Government service. This is a letter, dated 16-2-1970. To this letter, the Petitioner sent a reply, Annexure-I, dated 5-3-1970. The Petitioner again reiterated the same facts as earlier and he contested the claim of the department that his date of birth was not 1-10-1918 and that it was 1-10-1908.

10. From the above, therefore, it would appear that the Petitioner had all along been maintaining that his date of birth was 1-10-1918 and the department had been contending that it was not so, rather the date of birth as originally appeared in the service book was 1-10-1908 and that it was subsequently interpolated so as to make it 1-10-1918. The department made enquiries after receiving intimation from the Petitioner with regard to the schools in which he got his education and the year in which he passed Matriculation examination from the Punjab University at Chandigarh as also from the Director of National Archives at Patiala about the name of the Petitioner after seeing the gazette and to inform if any such person of the name of Dewan Chand son of Nihal Chand had appeared in the Matriculation examination in 1936. They found that there was no such person of the name, who had appeared in the aforesaid examination, and latter on when the Petitioner informed that he had after his leaving the school embraced Sikhism changed his name from Dewan Chand to Dewan Singh, the Respondents again made enquiries but the reply was the same and ultimately they referred the matter to the opinion of the Director, Forensic Science Laboratory, Chandigarh. The Petitioner maintains that no opportunity was given to him to rebut the opinion of the Director, Forensic Science Laboratory and this submission of his appears to be quite correct. This is merely an opinion and it cannot be said to be conclusive. The Petitioner was entitled to an opportunity to rebut the same by cross-examining the Director as to how he formed that opinion and this opportunity was really denied to the Petitioner and the principles of natural justice require, as held in *A.K. Kriepak and Ors. v. Union of India* and Ors. 1969 S.L.R. (S.C.) 445, an opportunity to be afforded to the person against whom any action is to be taken. It has been held in this authority that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to

draw the line that demarcates administrative enquiries from quasi-judicial inquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An in just decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. In the instant case it is abundantly clear that it was purely an administrative enquiry and which enquiry was conducted at the back of the Petitioner. He was simply informed that such and such reply has been received and what he had to say, but he had no opportunity to confront the person and elicit out the correct replies to his questions that he could have put to the person if they had been examined in his presence. Therefore, there can be no doubt that an opportunity was denied to him to question firstly the authorities from whom the information was received by the department and secondly from the Director of Forensic Science Laboratory as to on what basis and data he formed his opinion that the entries in the service book were interpolated. The department contends that after he is retired it would take action against him for interpolating the entries but it appears that the department has already taken action before it embarks upon an enquiry into the correctness of the entries in the service book on which depends his retirement.

11. If the Petitioner has been retired because of the fact that the service book entries appear to have been interpolated and in fact his age was 1-10-1908 and the Petitioner questions that finding of the authorities then in that case before taking any action the Petitioner was entitled to notice as contemplated under Article 311(2) of the Constitution and which has not been done in the present case.

12. It had been contended by the learned Counsel for the Respondents that these are complicated questions of fact and as such the Petitioner should be left to seek his remedy from the civil court through a suit. But, this is not correct, because here the Petitioner does not contest the correctness and otherwise and what he contests is arbitrariness and the irregularity in the conduct of the enquiry and, therefore, in these circumstances, as held in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, where the question in dispute is about the regularity of the enquiry and the High Court is apparently of the view that the question whether the State acted arbitrarily did not raise any question of investigation into complicated issues of fact, no interference with the exercise of direction of the High Court is called for.

13. Further it was averred by the learned Counsel for the Respondents that the Petitioner had not taken any such ground that there was no proper enquiry made, but from the tenor of the petition and the ground as taken in para 15-A of the petition it is clear that he was not given any opportunity to rebut the opinion of the Director, Forensic Science Laboratory, Chandigarh. In the statement of facts also he has averred that his actual date of birth was 1-10-1918 and not 1-10-1908 as alleged by the department.

14. It is true that the Petitioner was asked by the department to produce the Matriculation certificate as also the verification certificate at the time of his entry into service in the M.E.S. and he had already given his explanation but the department has not said anything if the explanation was satisfactory or not. But this also cannot be said to be an adequate opportunity to rebut the evidence which had been collected by the department ex-parte and at the back of the Petitioner without any opportunity offered to him for rebutting the same.

15. In these circumstances the only conclusion that would follow is that this order, Annexure J, has been passed in violation of the principles of natural justice as also in violation of the provisions of Article 311(2) of the Constitution and, therefore, this order being invalid is hereby struck down. It would be open for the Respondents to take necessary action in the matter in accordance with law but presently as the matter stands the order is not valid and the Petitioner in view of this will be entitled to all the benefits, such as continuance in service till the date of his age of superannuation and to all other consequential benefits. The Petitioner shall also get his costs, assessed at Rs. 200/-from the Respondents.