
(2010) 08 CAL CK 0080
In the Calcutta High Court
Case No : W.P.C.T. 113 of 2010

Goutam Kumar Neogi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Citation : (2010) 3 CALLT 534

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Md. Abdul Ghani, J

Bench : Division Bench

Advocate : Arunabha Ghosh and Dwaipayan Sen Gupta and Anindya Lahiri, Krishna Das Poddar, for the Appellant;

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The petitioner herein filed an application before the learned Central Administrative Tribunal, Calcutta Bench for issuance of appropriate direction upon the respondent authorities in order to correct his recorded date of birth.

2. The said petitioner was appointed as "Khalasi" on compassionate ground as his father died-in-harness on 26th December, 1974 while serving the respondent Railway authorities. It is stated by the petitioner that as per the school records his date of birth is 5.02.1960 which he declared at the time of entry into the railway service. It has been submitted on behalf of the petitioner that the aforesaid correct date of birth was regularly mentioned in the pay slips issued to the petitioner by the Railway authorities from time to time and, therefore, the petitioner had no occasion to doubt that his date of birth was erroneously recorded in the Service Book maintained by the respondent Railway authorities.

3. The petitioner from a reliable source came to know afterwards that the respondent Railway authorities were finalising the papers relating to his retirement on a pre-matured date treating his date of birth as 5.02.1950 instead of 5.02.1960 as was specifically mentioned in the certificate issued by the school

authority which was produced by the said petitioner at the time of entry into the railway service. The petitioner thereafter, submitted a representation for correction of his date of birth when the said petitioner was instructed to affirm an affidavit before the 1st Class Magistrate for the purpose of correcting his date of birth. The petitioner accordingly affirmed an affidavit before the Judicial Magistrate, 1st Class, Chandernagore, Hooghly on 30th October, 2009 wherein the said petitioner specifically declared his date of birth as 5.02.1960.

4. Since the respondent Railway authorities even after submission of the aforesaid affidavit did not change the erroneously recorded date of birth of the petitioner and telephonically directed the said petitioner to collect the notice for retirement, an application was filed before the learned Tribunal for issuance of necessary direction upon the respondent Railway authorities to correct the date of birth of the said petitioner. The said application was numbered as O.A. 151 of 2010.

5. During pendency of the said application before the learned Tribunal, by a written communication dated 10th February, 2010 petitioner herein was informed that the competent authority refused to consider the prayer of the said petitioner to change the date of birth from 5.02.1950 to 5.02.1960 in the service record. The petitioner was also requested by the aforesaid written communication to fill up the settlement papers for the purpose of receiving the dues in time after retirement. While refusing to consider the prayer of the petitioner for changing the date of birth, no reason was assigned by the respondent Railway authorities. The aforesaid written communication dated 10th February, 2010 is set out hereunder:

Eastern Railway

No. E/2/Elect/1/Skilled/Pt. III Howrah, dated, 10th Feb, 2010. Sri Goutam Kumar Neogy, Tech. Gr.I(W/Man) C/o. Sr.SEE(G)/BDC Vill: Tagra, P.O. Ramnagar P.O. - Tarakeswar, Dist - Hooghly Sub:- Representation against Premature retirement from Rly.

Service. Ref:- I) Your appeal dated 6th Feb/2010

II) This office letter of even No. dated 4.2.2010.... Reference above, it is stated that date of birth on 1st page of Service Record from 05/02/1950 to 05/02/1960 has not been considered by the competent authority (AGM/E.Rly) vide CPO's letter No. E.105/Spl. Cell/GK dated 4.2.2010.

In view of above, you will be superannuated from Railway Service w.e.f. 28/2//2010(AN) by taking into account of your date of birth as 05.02.1950 as recorded in the Service Record.

This is for your information and you are requested to contact IC(Welfare)/HWH Divn. For filling up of Settlement papers to get settlement dues in time.

Sd/- (J. P. Shaw, APO-2) for Divl. Railway Manager/Howrah

6. After receiving the aforesaid written communication, petitioner herein filed two applications being M.A. 77 of 2010 and M.A. 78 of 2010 in connection with the original application being O.A. 151 of 2010 praying for incorporation of the amendments in the original application and also for staying the decision of the Railway authorities as communicated by the aforesaid written communication dated 10th February, 2010.

7. The learned Tribunal ultimately dismissed the original application being O.A. 151 of 2010 by the impugned judgment and order dated 26th February, 2010. The connected applications being M.A. 77 of 2010 and M.A. 78 of 2010 were also dismissed along with the original application by the learned Tribunal.

8. Assailing the impugned judgment and order passed by the learned Tribunal instant writ petition has been filed.

9. Mr. Arunabha Ghosh, learned Counsel of the petitioner submitted that the learned Tribunal erroneously dismissed the application filed by the petitioner herein without appreciating the relevant records. Mr. Ghosh further submitted that the learned Tribunal while deciding the original application of the petitioner should not have relied on the medical examination report kept with the Service Book of the said petitioner in view of the erroneous recording of the date of birth of the said petitioner on a particular page. The learned Counsel of the petitioner also submitted that the learned Tribunal committed an error by not proceeding on the basis of the school certificate issued by the Headmaster, Girish Institution, Bahirkhand, Hooghly which was produced by the said petitioner at the time of entry into the Railway service.

10. Mr. Ghosh further submitted that the learned Tribunal failed to appreciate that at the time of appointment of the petitioner in the year 1978, the school certificate issued by the Headmaster, Girish Institution, Bahirkhand, Hooghly was submitted by the said petitioner as the only valid document in support of the date of birth wherein the date of birth of the said petitioner was specifically mentioned as 5.02.1960. According to Mr. Ghosh, recording of the date of birth of the petitioner by the authorities contrary to what has been specifically mentioned in the school certificate is perverse, erroneous and without any basis.

11. It has also been submitted on behalf of the petitioner that the learned Tribunal has failed to consider that the said petitioner had to wait for the employment on compassionate ground for 4 years after the death of his father on 26th December, 1974 since the said petitioner became 18 years old and attained majority in the year 1978.

12. The learned Counsel of the respondent Railway authorities, however, submitted that the learned Tribunal was justified in rejecting the claim of the petitioner for changing the date of birth at the fag-end of his service career. The learned Counsel of the respondent Railway authorities further submitted that the date of birth of the petitioner has been correctly mentioned in the Seniority List published by the Railway authorities in the year 1997 and 2003 wherein the date

of birth of the said petitioner had been specifically mentioned as 5.02.1950.

13. The learned Counsel of the petitioner, however, submitted that no reliance should be placed on the aforesaid Seniority List purportedly published in the year 1997 and 2003 since no opportunity was granted to the petitioner to inspect the said document in order to controvert the erroneous recording of the date of birth in respect of the petitioner herein.

14. Nothing has been produced before this Court by the respondent Railway authorities in order to establish that the said petitioner had ever inspected the aforesaid Seniority Lists allegedly published in the year 1997 and 2003 or had atleast specific knowledge in respect of the aforesaid Seniority Lists immediately after its publication.

15. Going through the judgment and order passed by the learned Tribunal we find that the said learned Tribunal on examination of the Service Book and medical examination report found that on one page the date of birth of the petitioner has been mentioned as 5.02.1950 and on the reverse page as 5.02.1960. In view of the aforesaid contradictory recording of the date of birth, learned Tribunal should not have placed any reliance on the medical report kept with the Service Book of the petitioner for ascertaining the date of birth.

16. It has not been disputed that the petitioner at the time of entering into the service submitted school certificate as proof of age and the said school certificate was the only relevant document available with the respondent Railway authorities for recording the correct date of birth of the petitioner. In the aforesaid school certificate, date of birth of the petitioner has been clearly mentioned as 5.02.1960.

17. We have also examined the pay slips annexed with the writ petition wherein the date of birth as well as the date of retirement of the said petitioner have been specifically mentioned as 5.02.1960 and 29.02.2020 respectively. In view of mentioning the correct date of birth and date of retirement in the pay slips regularly by the respondent Railway authorities, petitioner herein had no occasion to apprehend that any incorrect date of birth would be mentioned in the service records.

18. In the aforesaid circumstances, it cannot be said that the petitioner raised the dispute for correction of his date of birth at the fag-end of his service career since the respondent authorities mentioned the correct date of birth and date of retirement in the pay slips regularly.

19. This Court, however, directed the Surgeon Superintendent, S.S.K.M. Hospital, Government of West Bengal to take necessary steps for proper medical examination of the petitioner by a competent medical officer in order to determine the correct age of the said petitioner upon holding Ossification Test.

20. The Professor and Head of the Department of Forensic and State Medicine, S.S.K.M. Hospital, Kolkata after the medical examination of the petitioner

submitted a report before this Court expressing opinion that the age of the petitioner was 50 to 55 years (more towards the lesser side) on 11-06-2010. The said Professor of the S.S.K.M. Hospital further observed that for service purposes age of the petitioner may be fixed at 52 years on 11th June, 2010. The aforesaid medical report specifically demolished the unilateral finding of the Railway authorities relating to the date of birth of the petitioner as 5.02.1950 and the same virtually supports the claim of the said petitioner that his date of birth is 5.02.1960.

21. In any event, the petitioner herein submitted the school certificate at time of entering into service as proof of age wherein the date of birth of the said petitioner has been clearly mentioned as 5.02.1960. The respondent Railway authorities also regularly issued the pay slips in respect of the petitioner upon specifically mentioning his date of birth as 5.02.1960 and date of retirement as 29.02.2020. The aforesaid recordings of the date of birth and date of retirement of the petitioner in the pay slips cannot be changed all of a sudden unilaterally by the respondent Railway authorities and that too without giving an opportunity of hearing to the petitioner herein.

22. The School Certificate was issued in favour of the petitioner before joining the service. We do not find any reason why the respondent authorities will not accept the date of birth of the petitioner as recorded in the said school certificate as correct specially when such certificate was issued by the Head of the Institution on the basis of the Admission Register. The respondent Railway authorities had no other valid document as proof of age of the petitioner excepting the school certificate issued by the Headmaster, Girish Institution for the purpose of recording the date of birth of the said petitioner in the Service Book since the aforesaid school certificate was produced by the petitioner at the time of entering into service. The aforesaid recording of the date of birth was undisputedly, reflected in the pay slips issued by the respondent Railway authorities from time to time which could not be unilaterally changed by the respondent Railway authorities without disclosing any valid reason and giving an opportunity of hearing to the said petitioner.

23. As already mentioned hereinbefore, the petitioner herein should not be blamed for raising the dispute for correction of his date of birth at the fag-end of his service career since the respondent Railway authorities unilaterally changed the date of birth of the said petitioner at the fag-end of the service career without assigning any reason. The correct date of birth of the petitioner was mentioned previously in the pay slips on the basis of the school certificate which was produced by the said petitioner at the time of entering into the service. The respondent Railway authorities illegally and wrongfully changed the date of birth mentioned in the service records of the petitioner unilaterally at the fag-end of the service career and forced the petitioner to retire pre-maturedly before attaining the age of super-annuation.

24. For the aforementioned reasons, we are unable to hold that the date of birth

of the petitioner should be accepted as 5.02.1950 instead of 5.02.1960 ignoring the school certificate issued by the Head of the Institution as well as the pay slips issued to the said petitioner regularly by the respondent Railway authorities wherein the date of birth of the petitioner has been specifically mentioned as 5.02.1960.

25. The learned Tribunal unfortunately, refused to issue any direction to the respondent authorities to correct the date of birth of the said petitioner inspite of observing that on one page of the medical examination report kept with the Service Book date of birth of the petitioner has been written as 5.02.1950 and on the reverse page as 5.02.1960. The said learned Tribunal also refused to accept the certificate issued by the Headmaster of the school as conclusive proof of the actual age of the petitioner wherein the date of birth of the said petitioner has been specifically mentioned as 5.02.1960 on the basis of the school Admission Register. The learned Tribunal did not assign any reason for not placing any reliance on the aforesaid school certificate as well as the pay slips issued regularly by the respondent Railway authorities wherein the date of birth of the petitioner has been specifically mentioned.

26. The learned Tribunal refused to grant any relief to the petitioner mainly on the ground that the said petitioner did not raise any objection for correction of his date of birth for a long period and woke up from slumber only at the fag-end of his service without appreciating the fact that the Railway authorities in the pay slips issued to the petitioner specifically mentioned the correct date of birth of the said petitioner as 5.02.1960 and date of retirement as 29.02.2020 and, therefore, the said petitioner had no occasion to approach the respondent Railway authorities on any earlier occasion for correcting his date of birth. The learned Tribunal also relied on the case of Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, wherein the Supreme Court has specifically held that unless material for correction of date of birth is conclusive in nature, no direction could be issued to correct the date of birth.

27. In the present case, the school certificate issued by the Headmaster, Girish Institution on the basis of the Admission Register should have been regarded as conclusive proof of age of the petitioner apart from the pay slips which were issued by the Railway authorities regularly upon specifically mentioning the date of birth of the said petitioner as 5.02.1960 and the date of retirement as 29.02.2020.

28. For the aforesaid reasons, learned Tribunal had adequate conclusive proof in respect of the correct date of birth of the petitioner on the basis whereof appropriate directions should have been issued for correcting the date of birth of the said petitioner.

29. For the reasons discussed hereinbefore, we are unable to approve the findings of the learned Tribunal and hold that the respondent Railway authorities should not have unilaterally changed the date of birth of the petitioner from

5.02.1960 to 5.02.1950 ignoring the certificate issued by the Head of the Institution which was produced by the said petitioner at the time of entering into the service and also not considering the date of birth and date of retirement of the petitioner as specifically recorded in the pay slips issued regularly by the respondent Railway authorities.

30. In the aforesaid circumstances, the direction issued by the respondent Divisional Railway Manager, Howrah in the written communication dated 10th February, 2010 with regard to superannuation of the petitioner from railway service w.e.f. 28.02.2010(AN) by taking into account the date of birth of the petitioner as 5.02.1950 cannot be sustained and the same is, therefore, quashed.

31. For the identical reasons as mentioned hereinabove, the impugned judgment and order passed by the learned Tribunal on 26th February, 2010 cannot be sustained and the same are accordingly, set aside.

32. The respondent Railway authorities are directed to correct the service records of the petitioner upon mentioning the date of birth of the said petitioner as 5.02.1960 and the aforesaid correct date of birth should also be mentioned in that particular page of the Service Book where the date of birth of the petitioner has been erroneously written as 5.02.1950 instead of 5.02.1960.

33. Since the petitioner herein was illegally super-annuated from Railway service before attaining the actual age of super-annuation on the basis of the erroneous recording of the date of birth and in view of quashing of the impugned order of super-annuation dated 10th February, 2010 issued by the respondent Divisional Railway Manager, Howrah, the petitioner herein is entitled to resume his duties forthwith.

34. The respondent Railway authorities are, therefore, directed to reinstate the petitioner in service forthwith and also pay admissible salary and allowances to the said petitioner regularly. The respondent Railway authorities are further directed to pay full back wages to the said petitioner from the date of his illegal super-annuation i.e. on and from 28th February, 2010 till the date of actual resumption of duty in terms of this order. The aforesaid arrear dues should be paid to the petitioner as early as possible but positively within a period of four weeks from the date of communication of this order.

35. With the aforesaid observations and directions, this writ petition stands allowed.

36. In the facts and circumstances of the present case, there will be, however, no order as to costs.

37. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Md. Abdul Ghani, J.

38. I agree.