
(2009) 07 PAT CK 0115
In the Patna High Court

Mr. Subejan

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Citation : (2009) 07 PAT CK 0115

Final Decision : Allowed

Judgement

S.K. Katriar and Jyoti Saran, JJ.—Heard Mr. Ashok Kumar Choudhary for the petitioner, and Mr. Ashok Kumar Keshari for the respondents. This writ petition is directed against the order dated 9.12.2005, passed by the Central Administrative Tribunal, Patna Bench, Patna, in O.A. No. 750 of 2001 (Md. Subejan v. The Union of India and Ors.), whereby the petitioner's application for declaration that 3.10.1941 is his correct date of birth, has been rejected. The Tribunal has held that 3.3.1936 is his correct date of birth and, therefore, the impugned notice dated 22.01.2001 (Annexure-6), informing him of his retirement on 2.3.2001, on attaining the age of 65 years, has been upheld.

2. According to the petitioner, he had joined as Extra Departmental Delivery Agent/Mail Carrier (hereinafter referred to as EDDA), Bhawanipur, on 25.8.1958. At the time of his entry into service, he had represented to the respondent authorities that he was born on 3.10.1941. EDDA superannuate on attaining 65 years of age. He had received notice sometime in the year 1991, calling upon him to furnish evidence in support of his date of birth. He had submitted his reply dated 17.5.1991 (Annexure-4), stating therein that he is not in possession of any certificate in proof of age. He had, however, produced a certificate from Singhwara Government Middle School, indicating therein that 3.10.1941 is his date of birth. He did not receive any communication from the authorities and had, therefore, submitted his representation on 24.1.1992, reiterating the same position as stated in Annexure-4. Copies of the same were forwarded to different authorities and are marked as Annexures-5 and 5A hereof. The petitioner again did not receive any communication on his representations and was suddenly

visited with the notice dated 22.01.2001 (Annexure-6), informing him that, in view of the position that his date of birth is 3.3.1936, he would be permitted to retire from the post of EDDA, Bhawanipur, on 2.3.2001, on attaining the age of 65 years. The petitioner submitted his representation dated 15.2001, which remained unattended, leading to OA No. 750 of 2001.

3. The respondents submitted before the Tribunal that the documents produced by them establish that 3.3.1936 is the correct date of birth. The impugned notice is dated 22.01.2001 (Annexure-6), and the petitioner had submitted his representation on 1.5.2001, much after his superannuation. It was further submitted that the petitioner had handed over charge as EDDA, and also signed the papers claiming post-retirement benefits.

4. On a consideration of the materials on record, the learned Tribunal has rejected the original application on the ground that the petitioner had submitted his representation subsequent to the date of his superannuation which was after a delay of three months. He accepted the order of superannuation, handed over charge as EDDA, and filed papers for post-retirement benefits.

5. We have perused the materials on record and considered the submissions of learned Counsel for the parties. We must first of all note that the learned Counsel for the respondents has stated before us that he is not in a position to produce the service record of the petitioner. It thus automatically follows that there is no material to show that the petitioner had at the time of entry into service represented that 3.3.1936 is his date of birth, nor can it be stated that 3.10.1941 was not represented to be his date of birth. We have no doubt in our mind that the onus to produce the original service record was on the respondent authorities which they have not discharged.

6. The second aspect of the matter is that a notice was issued to the petitioner in 1991, calling upon him to furnish materials in support of his date of birth. His replies dated 17.05.1991 (Annexure-4), and dated 24.1.1992 (Annexures 5 and 5A), are in the same tenor, receipt whereof were not denied by the respondents, wherein the petitioner uniformly says that he was not in possession of any certificate of age. He had, however, produced a certificate (Annexure-1), issued by the school showing 3.10.1941 to be his date of birth. On the other hand, the respondents have annexed a photocopy of the said certificate as Annexure-A, with the endorsement of the signatory of the certificate (Headmaster of the school), that the signature on the certificate was not his, and he had not issued the certificate. The respondents have further taken the stand that in view of this position, an enquiry was made from the school which revealed that 3.3.1936 is his correct date of birth.

7. By order dated 24.04.2008, passed in the present writ petition, this Court had passed the following order:

Madhya Vidyalaya Singhwara, Gucch, Darbhanga is a Government School. The Head Master of the said School is directed to cause production of the Admission

Register of the said School for the year 1951.

Let the Department serve a copy of this Order upon the Head Master of the said School at its cost. The Head Master is directed to cause production of the Register, as above, within seven days from the date of receipt of a copy of the order in a sealed cover before the Registrar General, Patna High Court. No sooner, he brings the same to the notice of the Court, the case will be placed on the list.

The Headmaster of Madhya Vidyalaya, Singhwara, has forwarded to the Registrar General of this Court, the Admission Register of 1951 in original in a sealed cover. The same has been made available to the learned Counsel for the parties for their perusal and inspection. We have also gone through the same and we are of the view that the same was maintained in routine course of business and does not in any way cause any doubt or suspicion about its genuineness.

8. We are mindful of the legal position that rebuttable presumption attaches to such entries of date of birth. The respondent authorities produced the following documents before the Tribunal. Paragraph 3(c) of the order of the Tribunal summarizes the list of documents and is reproduced hereinbelow for the facility of quick reference:

Seniority List Sl. No. Date of Birth Date of Appointment

Darbhanga 21 3.3.1936 25.9.1958 Division as on 01.07.1994 SDI(P)West 5
3.3.1936 25.9.1958 Division as on 31.7.96

Darbhanga Division 6 3.3.1936 25.9.1958 as on 01.07.1998

The Tribunal has not gone into this question at all. Indeed the Tribunal had not called upon the respondent authorities to produce the original records, nor the Admission Register was sent for.

9. Before we proceed further on this aspect of the matter, we would like to clarify the legal position in the present context. The admitted position is that the respondent authorities had issued a notice to the petitioner in 1991, to produce evidence in support of his date of birth. The aforesaid certificate dated 5.5.1991 (Annexure-1), issued by the Headmaster of the School, had led the respondents to send a functionary to the School to verify the contents of the same and a copy of the report was not supplied to the petitioner. In other words, adverse materials taken into account by the authorities were not brought to the notice of the petitioner to enable him to meet the same. Such a situation is covered by the decision of the Supreme Court in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, That was also a case relating to date of birth of an employee, a Medical Officer in the services of the Orissa Government. Enquiry was conducted behind her back and copy of the enquiry report, which was adverse to the employee, or the adverse materials, were not disclosed to the employee. The action based on the report was set aside by the Orissa High Court and affirmed by the Supreme Court. Paragraph 12 of the Judgment is reproduced

hereinbelow for the facility of quick reference:

It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State.

10. The Headmaster denied his signature on the copy of the certificate produced by the petitioner. As stated hereinabove, a photo copy of the certificate with the Headmaster's denial recorded thereon is Annexure-A to the counter affidavit. In other words, adverse materials were received against the petitioner and were not brought to the notice of the petitioner. Secondly, there is no material before us to show that the respondent authorities had made efforts to verify the petitioner's assertion from the original records. There is no material on record to suggest that copy of the enquiry report was forwarded to the petitioner, or the adverse materials were brought to his notice.

11. It is true that the respondent authorities had initiated an enquiry to determine the correct date of birth. They did issue show-cause notice to the petitioner, but the rest of the enquiry on their own showing was behind his back. The respondent authorities have enquired about the veracity of Annexure-1, and had, on receipt of Annexure-A, finally concluded against the petitioner. We are convinced that the respondent authorities neither forwarded copy of the enquiry report, nor disclosed the adverse materials, nor their final decision was forwarded to the petitioner, that his date of birth has been altered. If that were so, the petitioner's cause of action would have arisen soon after the communication was made to the petitioner. The matter is squarely covered by the judgment of the Supreme Court in *State of Orissa v. Binapani Dei* (supra), and the date of birth determined by the respondent authorities has no value.

12. We have examined the original Admission Register and are of the view that the same is a genuine document, maintained in routine course of business. The same discloses 3.10.1941 to be the petitioner's date of birth, and is fit to be accepted. The documents summarized in paragraph 3(c) of the impugned order and reproduced hereinabove record the petitioner's date of birth as 3.3.1936. It is evident on the face of it that aforesaid seniority lists maintained by the respondents are of 1.7.1994, 31.7.1996, and 1.7.1998, and have evidently been prepared after the respondent authorities concluded the enquiry behind the

petitioner's back, and have to be discarded. The three documents relied on by the respondents cannot form the basis for determination of the date of birth, being consequential in nature. Placing reliance on the same would be tantamount to putting the cart before the horse.

13. We must also notice the document marked Annexure-3 to the writ petition which is extracted hereinbelow:

Seniority list of the E-D employees who applied to sit in the examination for promotion to Class IV Cadre to be held on 9.9.1981

Sl. -Name of the ED official -Designation- D.o.B. -Date of continuous No. Service.

1. Shri Hanuman Mahto EDA Ratwara 22.4.1938 11.2.1955 2. " Upendra Thakur EDMC Kar pirochha 2.4.1943 27.9.1955 3. " Md. Subejan EDDACU MDMC Bhabanipur 3.10.1941 20.08.1958 4. " Arul Hassan EDDA Benipur 5.8.1941 27.11.1959 5. " Rajeshwar Das EDDA CUMEDMC 7.1.1938 1.8.1960 6. " Ram Lai Poddar EDDA (H Bilaspur) 20.3.1943 12.6.1961 7. " Aye Nabi Khan EDMC Akhawargam (K. Ranway) 15.5.1948 1.2.1962 8. " Ram Swarath Mishra EDDA CUN.EMDC Thalwara 14.7.1942 27.2.1965 9. " Indra Mohan Jha EDDA CUN EDMC RAP. MILLS 5.2.1944 2.3.1964 10. " Shashi Kant Jha EDMC Kilaghat ---- 27.2.1965 11. " Sri Kant Mishra EDDA-CUN-EDMC- Balun (Mhigachhi) 2.7.1948 1.8.1966 12. " JagdishYadav ED-Mail Pion Barobazar 1.3.1946 1.9.1966 13. " Satya Narain Sah EDMC Sisho ---- 12.11.1966 14. " Gangadhar Choudhary EDDA Cum-EDMCJogiara 30.12.47 21.6.1967 (Anandpur) 15. " Mahendra Lal Das EDDA-CUN-EDMC- Jaideopatti 15.11.48 15.8.1968 16. " Gauri Shankar Mishra EDA Thalwara 3.1.46 8.10.1968

This seniority list was issued on 9.8.1981, obviously prior to the enquiry, shows 3.10.1941 be the date of birth, and is also a circumstance in favour of the petitioner.

14. Before we part with the records, we must record our displeasure as to the manner in which the Tribunal has given a short shrift to the issue. The Tribunal failed to realize that it is a forum of facts and is duty-bound to examine all issues of facts and law arising before it in a lis. It is evident from a perusal of Section 22 of the Administrative Tribunal Act, 1985, that it is a forum of facts and is the Sine Qua Non for the existence of the Tribunal. The duty to examine all issues of facts is the very justification for its creation and existence. The High Court under Articles 226 and 227 of the Constitution of India while exercising powers of judicial review has normally limited jurisdiction. The Tribunal failed to examine the circumstances obtaining at the time of the petitioner's entry into service, equally failed to examine the circumstances attendant upon the petitioner's case, and concluded it by a perfunctory conclusion that the petitioner's protest was belated. In view of the foregoing discussion, it is evident that the respondent authorities had conducted the enquiry behind the petitioner's back, did not communicate the adverse materials or the enquiry report, nor the final decision, to the petitioner. Obviously, therefore, the petitioner was unaware of the

progress in the enquiry which lay hidden in the files, and he was apprised of the same by the impugned order which alone provided the cause of action, prior where to the cause of action for the petitioner did not arise. Secondly, the impugned notice to the petitioner is dated 22.01.2001, and his representation is dated 1.5.2001. It is correct to state that he did submit charge report dated 2.3.2001, and also his application on the same date for payment of gratuity. Instead of examining the original records and the aforesaid issues, the Tribunal attached undue importance to certain documents which were consequential to an absolutely illegal enquiry, and allegedly belated representation by the petitioner, ignoring the circumstances the petitioner was faced with and discussed hereinabove. Had the Tribunal shown the willingness to go into the depth of the matter in the right judicial spirit, it would have reached the correct conclusion. This is not to suggest that it is not open to the Tribunal to dispose of a matter on a preliminary issue. The present case was surely not one such, and the Tribunal was duty-bound to examine all issues of facts and law. The Tribunal is further reminded that it is entirely a judicial forum where civil rights and liabilities of the parties are determined, and it should not dispose of matters in an administrative spirit. It has to do justice between man & man, and man and the State. The Tribunal by its approach abdicated its essential duty and function and passed it on to this Court, which had to be undertaken in the interest of justice, to avoid the necessity of remitting the matter back to the Tribunal, and to save the parties as well as the Court from further harassment.

15. In the result, this writ petition is allowed. The impugned order dated 9.12.2005, passed by the Tribunal in O.A. No. 750 of 2001, is hereby set aside. 3.10.1941 may be taken to be the petitioner's date of birth. He shall be entitled to the consequential benefits including arrears of salary within a period of three months from today.

15.1. Let the original Admission Register be returned per speed post.

15.2. Let copy of this judgment be forwarded to the Patna Bench of the Tribunal for circulation amongst its members including the signatories of the order.