

(1983) 11 CAL CK 0009
In the Calcutta High Court
Case No : Civil Rule No. 12321 of 1979

Samarendra Nath Das

APPELLANT

Vs

Union Of India and Others

RESPONDENT

Date of Decision : 17-11-1983

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : 88 CWN 269

Hon'ble Judges : Ganendra Narayan Ray, J

Bench : Single Bench

Advocate : S.N. Ganguly, for the Appellant; P.K. Ghosb, for the Respondent

Judgement

Ganendra Narayan Ray, J.—This Rule is directed against an order issued by the General Manager, North Eastern Railway, Calcutta which is Annexure "E" to the writ petition. By the aforesaid Memo issued by the G. M. (P), it has been held that as the petitioner's date of birth has been decided to be 1st July, 1919, as recorded in his High School Certificate, the petitioner should not be allowed to continue in service beyond 30th September, 1979 and the period from the date of superannuation should be treated as service on re-employment and the Railway Board's sanction should be obtained. It may be noted in this connection that during the hearing of this matter, the learned Counsel appearing for the Railway Administration has produced the records to show that the Railway Board has sanctioned the re-employment of the petitioner from the date he had attained the age of superannuation on the basis of the age determined by the Chief Personnel Officer till 30th September, 1979. It appears that the petitioner was initially appointed in the office of the Senior Food Controller, North Eastern Railway which was then Oudh Trihut Railway, Gorakhpur as a Clerk and he was subsequently transferred to the office D. C. O. S. O. T. Railway, Gorakhpur. The petitioner's case is that at the time of entry in the service, the father of the petitioner was alive and he appeared before the appropriate authorities with an affidavit in support of the correct age of the petitioner and on that basis, the

petitioner's age was recorded to the effect that the petitioner's date of birth was 1st July 1922. The petitioner contends that the said date of birth was accepted even on the face of the Matriculation Certificate wherein a different age was noted. The petitioner, therefore, contends that the petitioner's date of superannuation must be computed with reference to his actual date of birth namely 1st July, 1922 which was accepted and recorded in the service record on proper verification of the relevant documents. It appears that as the age of the petitioner noted in the service record was contrary to the age recorded in the Matriculation Certificate, the petitioner was asked to show cause why the age should not be corrected. The petitioner explained the circumstances and insisted that the correct age which was noted in the service record should not be altered. It, however, appears, that the representation of the petitioner was not acceded to and the Chief Personnel Officer was inclined to accept the date as recorded in the Matriculation Certificate and the age of the petitioner, was therefore, altered treating the same as 1st July, 1919. In view of such alteration of the age of the petitioner in the service record, it was found that the petitioner had superannuated from the service. In the aforesaid circumstances, the impugned order was issued by the G. M. (P) to the effect that the petitioner should not be allowed to continue in service from 30th September, 1979 and the period of service rendered by the petitioner from the date of superannuation on the basis of the age determined as aforesaid till 30th September, 1979 be treated as service on re-employment. It also appears that on that basis post retirement benefits of the petitioner are being computed. Against such determination of the age and the consequential orders for giving the post retirement benefits to the petitioner and adjustment of over-payment made to the petitioner contrary to the pay and other emoluments which was admissible to the petitioner on the basis of the re-employment on superannuation, the instant writ petition has moved by the petitioner.

2. Mr. Ganguly, learned Counsel for the petitioner has contended at the first place that under Rule 145 of the Indian Railway Establishment Code, Volume I, the determination of the age can only be made by the General Manager in case of non-gazetted Railway employees. But in the instant case the determination having been admittedly made by the Chief Personnel Officer, the said determination must be held to be illegal and without jurisdiction.

3. Mr. Ganguly has further contended that the age noted in the Matriculation Certificate is not binding as a matter of rule and the concerned authorities were quite free to accept the correct age of an employee in preference to the age noted in the Matriculation Certificate and as in the instant case the petitioner's correct age on the basis of other documents had been accepted in preference to the age noted in the Matriculation Certificate there cannot be any reason to modify the age of the petitioner at the last lap of his service simply because the age noted in the Matriculation Certificate differed with the age accepted at the time of entry in the service. Mr. Ganguly has also contended that the concerned authorities failed and neglected to properly determine the age of the petitioner

even assuming that such determination was warranted in the facts and circumstances of the case. Hence, it was not open for the respondents to treat the petitioner as a re-employed employee from the alleged date of superannuation till 30th September, 1979 by an order giving retrospective effect to the determination of age. Mr. Ganguly has contended that the concerned authorities had no jurisdiction to force the petitioner to accept re-employment with a lesser pay packet without his option. It may be noted in this connection that under the existing rules, if an employee is re-employed after the superannuation, then he is not entitled to get the salary last drawn by him with increments etc. but he is to get the salary which is the lowest in the cadre in which he is re-employed. Mr. Ganguly has, therefore, contended that the order determining the age of the petitioner subsequently by the Chief Personnel Officer should be quashed and the order or orders by which the petitioner was treated or deemed to have been treated as re-employed after attaining the age of superannuation till the 30th September, 1979 should also be quashed and suitable direction should be given to the Railway Administration to treat the petitioner's age, which was initially noted in the service record as correct and to give all benefits to the petitioner on the basis of such age of the petitioner including arrear salaries and the post retirement benefits.

4. Mr. Ghosh, learned Counsel appearing for the Railway Administration has, however, submitted that by Memo. No. E (NG) 664 BRI/2, dated 19th November, 1964 issued by the Assistant Director Establishment, Railway Board, all the General Managers of different Railways had been informed that the Board had decided that the General Manager would be entitled to re-delegate their powers under Rule 145 of the Railways Establishment Code, Volume I to the Chief Personnel Officers. Pursuant to such directions of the Railway Board authorizing the General Managers to re-delegate the powers to determine the age of the non-gazetted Railway employees, the General Manager of the North Eastern Railway by his order dated 28th April, 1965 authorised the Chief Personnel Officer to exercise the powers of the General Manager for determination of the age of the Railway employees. He has, therefore, submitted that the Chief Personnel Officer had jurisdiction to determine the age of the petitioner and such determination having been made by the Chief Personnel Officer, no illegality has been committed. Mr. Ghosh has contended that under the Indian Railways Act, 1890 the Railway Board can frame rules relating to the service of the Railway employees and can give suitable directions for the administration of different Railways. He has also contended that under the Railway Establishment Code the Railway Board has been given authority to frame Rules to be applicable generally to all Railway employees. Under the circumstances, the decision of the Railway Board to authorize the General Managers to re-delegate the powers under Rule 145 is quite valid. He has also submitted that it will appear from the said Memo that such decision of the Railway Board had the sanction of the President. He, therefore, submits that the petitioner is not permitted to contend that the determination of the age by the Chief Personnel Officer is par se illegal and not

binding on him. Mr. Ghosh has also contended that in the service record of the petitioner no basis for recording the age was noted and as the petitioner's age noted in the service record varied from the age recorded in the Matriculation Certificate, the petitioner was given opportunity to show cause as to why the age noted in the Matriculation Certificate should not be accepted. After giving the petitioner reasonable opportunity of being heard, the Chief Personnel Officer was inclined to accept the age noted in the Matriculation Certificate and he has given reasons for such decision. Hence, the determination made by the Chief Personnel Officer was not arbitrary or capricious and no exception should be taken to such determination being made by the Chief Personnel Officer after following the principles of natural justice. Mr. Ghosh has also contended that as the petitioner's age was wrongly noted and such erroneous entry could not be detected earlier and as in fact the petitioner continued in service even after attaining the age of superannuation, after the proper determination of the age of the petitioner, it was necessary to regularize the service rendered by the petitioner upto 30th September, 1979 from the date of his attaining the age of superannuation and the Chief Personnel Officer recommended that as in fact the petitioner had rendered service during the said period, the service rendered for such period should be treated as the service rendered by the petitioner on re-employment and such re-employment should be regularized by the Railway Board. As aforesaid, the Railway Board had in fact regularized the service of the petitioner on the basis that he had been re-employed after attaining the age of superannuation. Mr. Ghosh has submitted that simply because the petitioner had in fact rendered service after attaining the age of superannuation, it cannot be held that the petitioner will be entitled to claim full salary with all increments earned so far on the basis that he was continuing in service as before. Mr. Ghosh has also contended that the petitioner is not entitled to claim the said period as the period spent on extended service because such extension of service is not a matter of course but can be allowed by the appropriate authority considering the necessity and reasonableness of such extension by recording reasons. He has contended that as the petitioner had in fact rendered service for some period for which he was not otherwise entitled, the Railway Board had treated the said period as the period undergone on re-employment by regularizing the said service, so that the petitioner does not suffer any prejudice. As no injustice was done to the petitioner, it will not be proper for the Writ Court to interfere in the facts and circumstances of the case.

5. In reply to the aforesaid contentions of Mr. Ghosh, Mr. Ganguly has contended that the Rule 145 and other Rules of the Indian Railway Establishment Code having been framed under Article 309 of the Constitution the same cannot be changed by the administrative direction given by the Railway Board and concurrence of the President on such administrative direction cannot be treated as amendment of Rule 145. In my view, there is substance in the said contention of Mr. Ganguly. The conditions of service framed under Article 309 of the amending the Rules under the powers exercised under Article 309 of the

Constitution and the concurrence of the President to any administrative instruction cannot be treated as amendment of a Rule framed under Article 309 of the Constitution. In the circumstances, it must be held that the determination made by the Chief Personnel Officer is contrary to Rule 145 of the Railways Establishment Code, Volume I. So long Rule 145 is not changed by suitable amendment of the service rules framed under Article 309 of the Constitution, only the authority mentioned in Rule 145 has the power to determine such age. In the circumstances, the determination of the age of the petitioner should be made by the General Manager on consideration of the relevant materials including the representation of the petitioner. If on such reconsideration the age of the petitioner is held as July 1, 1919 and the Railway Board does not revise its decision that after superannuation, the petitioner should be deemed to have served on re-employment then the decision already taken by the Railway Board should remain in force and stand confirmed. In my view, Mr. Ghosh is justified in his contention that simply because an incorrect age was recorded in the service record and on the basis of such incorrect age an employee had rendered service, such employee cannot claim in law and/or in equity, automatic extension of service unless the concerned authority is satisfied that in the facts and circumstances of the case, the extension of service should be made and the period spent after attaining the age of superannuation should be deemed to be the period spent on extended service. It is, however, made clear that this order will not preclude the Railway Board from considering the case of the petitioner for the purpose of deciding as to whether or not the service rendered by the petitioner after attaining the age of superannuation on the basis of the determination of age to be made by the General Manager should be treated as service on re-employment or service on extension and to allow consequential benefits accordingly. Let such determination of the age of the petitioner be made as expeditiously as possible preferably within a period of three months from today by the General Manager. The respondents are also directed to refer to the Railway Board the adjudication of the age of the petitioner by the General Manager for the purpose of enabling the Railway Board, if it so desires, to consider as to whether or not in the facts of the case the Railway Board will revise its decision about the status of the petitioner for the period from the date of superannuation upto September, 1979. It is reasonably expected that the Railway Board if decides to review its earlier decision will give its adjudication as expeditiously as practicable.

The Rule is accordingly disposed of. But there will be no order as to costs in this Rule.