

(2013) 10 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition (C) No. 5086 of 2009

Shri Karunamay Nath

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2014) LabIC 436

Hon'ble Judges : Tinlianhang Vaiphei, J

Bench : Single Bench

Advocate : N. Dhar, Mr. S. Chakraborty and Mr. B. Malakar, for the Appellant; H. Buragohain, CGC, for the Respondent

Final Decision : Allowed

Judgement

Tinlianhang Vaiphei, J.—Mr. N. Dhar, learned counsel appearing for the petitioner and Mr. H. Buragohain, learned CGC appearing for the respondents are heard at length. This writ petition is directed against the order dated 31.8.2009 issued by the respondent No. 3 releasing him from service in the afternoon of 31.8.2009 on superannuation pension purportedly upon attaining the age of 57 years. The case of the petitioner is that he was appointed as Constable (GD) in the S.S.B. (Group Centre), Haflong on 22.7.1971. On 14.6.1995, he had submitted a representation before the authority concerned to treat the period during which he was found to be underage in the service as boy service and to record his date of birth as on 20.8.1954 in accordance with the date of birth entered as per High School Leaving Certificate issued by the Board of Secondary Education, Assam. His representation was eventually accepted whereupon a certificate of verification of qualifying service under Rule 32 of the Central Civil Services (Pension Rules) 1972 was issued by the respondent No. 3 whereby his date of birth was accepted as 20.8.1954 by regularising the deficiency of his age as boy service. Consequential correction was also made in the seniority list dated 23.6.2003 mentioning it as 20.8.1954. However, much to his consternation, the respondent No. 3 issued the Memorandum dated 29.8.2009 intimating him that

the Ministry of Home Affairs did not accept his date of birth as 20.8.1954 and that his date of birth as recorded in his documents i.e. 20.8.1952 stood as it was. This office Memorandum was followed by the impugned order dated 31.8.2009 releasing him from service purportedly on his attaining the age of superannuation.

2. The submission of Mr. N. Dhar, learned counsel for the petitioner is that once the date of birth of the petitioner has been entered as 20.8.1954 in his Service Book as reflected in Annexure-12 of the writ petition which has been accepted and verified to by the respondent authorities, the respondent authorities could not have altered such entry for the purpose of releasing him from service on superannuation without first giving him an opportunity of hearing. It is his contention that the date of birth of the petitioner so entered is based on his matriculation certificate issued by the Board of Secondary Education, Assam, and there is no evidence to substantiate the claim of the respondent authorities that his correct date of birth is 20-8-1952. He, therefore, submits that the impugned order is illegal and is liable to be quashed.

3. On the other hand, the learned CGC submits that the date of birth projected by the petitioner is to be his was based on the reconstructed service record and that the original service record was lost in transit when the petitioner was transferred from Haflong to Basar in Arunachal Pradesh and that the Matriculation Certificate purportedly based on which the date of birth claimed by the petitioner was never annexed to the original Service Book. According to the learned CGC, the date of birth of the petitioner has been found to be maintained as 20.8.1952 right from the beginning as reflected in the inter-se seniority list prepared from time to time before re-construction of his Service Book as well as the various ACRs of the petitioner. The learned CGC, therefore, argued that the respondent authorities did not commit any illegality in holding that the date of birth of the petitioner is 20.8.1952, and the writ petition is liable to be dismissed.

4. I have carefully gone through the materials on record including the Service Book produced by the learned CGC. In my opinion, both the parties have raised contentious issues which cannot properly and effectively be decided by this Court. Nevertheless, one undisputed fact on record is that no opportunity of hearing was indeed given to the petitioner while issuing the impugned order. The contention of the learned counsel for the petitioner is that once the certificate of verification of qualifying service under Rule 32 of the Central Civil Services (Pension Rules) 1972 has been issued by the competent authority, such entry cannot be changed to his detriment without affording of opportunity of hearing to him, has considerable force. The respondent authorities ought to have given the petitioner an opportunity of hearing before giving him the marching order. Under the circumstance, the limited interference of this Court in the impugned order is called for. Resultantly, this writ petition is allowed. The impugned order dated 31.8.2009 (Annexure-20) to the writ petition is, therefore, quashed. The respondents authorities are therefore, directed to give an opportunity of hearing

to the petitioner and thereafter take a fresh decision thereon in-accordance with law. No costs.