

(1998) 07 CAL CK 0038

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction C.O. No. 516 (W) of 1993

Sunil Bhusan Raha

APPELLANT

Vs

Calcutta State Transport Corporation and Others

RESPONDENT

Date of Decision : 29-07-1998

Acts Referred:

Calcutta State Transport Corporation Employees Service Regulations, 1961 — Regulation 14, 14A
Constitution of India, 1950 — Article 226
Road Transport Corporations Act, 1950 — Section 34, 35
West Bengal Services Rules — Rule 9(1), 9(2), 9(3), 9(5)

Citation : (1999) 3 CALLT 169

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Mr. K.K. Maitra and Mr. Majibar Rahman, for the Appellant; Mr. Pranab Kumar Chattopadhyay, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—A question of some importance arises for consideration in this application.

2. The petitioner was appointed by Calcutta State Transport Corporation on 1.4.55. His date of birth was recorded as 3.1.35. Allegedly, an office order was issued by the Government of West Bengal Directorate of Transportation on 7.11.57 which is contained in annexure "A" to the writ application stating :

"in order to determine the age of the employees, the entry in the Service Book/ Service Roll requires to be attested by the appointing authority.

The appointing authorities are, therefore, requested to direct the employees under them to produce the Matriculation/School Final certificate in original for the purpose of attestation of the Service Book/ Service Roll.

The employees who are not Matriculate may be directed to produce a certificate

from the Headmaster of the school or an Affidavit made before the Court of Law in proof of age.

The attestation of the Service Book/Service Roll should be completed within a month from the date hereof."

3. Pursuant to the said circular letter, the petitioner allegedly filed a certificate issued by the Headmaster of the school wherein his date of birth was recorded as 28.1.39. It appears from the affidavit in opposition that both the aforementioned dates of birth appeared in his service records and both were authenticated by the petitioner. However, in certain documents, the petitioner's date of birth was mentioned as 28.1.39, in the meantime, the petitioner was also promoted to higher post. In the year 1992, when the aforementioned fact was discovered that the service records of the petitioner bear 2 different dates of birth, the petitioner was asked to see the Depot Manager by "See Me slip" date 27.4.92 as contained in annexure "E" to the writ application. The petitioner filed his representation on 30.7.92. Upon discussion of the matter with the petitioner, the Depot Manager by a letter dated 4.11.92 addressed to the petitioner stated :

"The Deputy Managing Director has been pleased to order to fix up your date of birth as 3.1.1935 being the first entry as recorded in the Service Roll. This date (i.e.3.1.1935) should be accepted for all official purposes. On the basis of this entry in the Service Roll you will be superannuated from your services of this Corporation with effect from 1.1.1993(A.N.) on attaining the age of superannuation i.e. 58 years of age in terms of Regulation 14 & 14A of Calcutta State Transport Corporation Employees" Service Regulation. Your service will, therefore, stand terminated with effect from the afternoon of the date as mentioned above, on the ground of superannuation. You are requested to deposit your identity Card and all other articles issued to you by this Corporation on the day of superannuation.

You are further requested to submit separate application in support of your claims for CPF, Gratuity. Leave Salary, Clearance certificate, free travelling pass etc. Immediately for arranging payment in time."

4. Thereafter, the matter was again taken up for hearing by the Depot Manager on representation by the petitioner. The Depot Manager, although appears to be satisfied with the petitioner's date of birth so recorded as 28.1.39 in the aforementioned certificate issued by the Headmaster of the school, referred the matter to the Deputy Managing Director, CSTC. Belgharla for determination of actual date of birth of the petitioner at his earliest convenience. At that time, the petitioner filed a writ application, and by an order dated 19.11.92, Paritosh Kumar Mukherjee. J, keeping in view the aforementioned finding of the Depot Manager in his letter as contained in annexure "H" to the writ application directed the Chairman to consider the matter stating:

"The said Chairman is also directed to take into consideration the relevant fact that the respondent authority, namely. Calcutta State Transport Corporation

having accepted the date of birth as January 18, 1939, for all these years, cannot alter the same to the prejudice of the petitioner, in the manner, as it was done in the facts of the present case."

5. By reason of the impugned order dated 21.1.93, the claim of the petitioner to the effect that his date of birth is 28.1.39 was rejected and his date of birth was determined as 1.4.35. The petitioner in his writ application has questioned the said order.

6. It appears that by an order dated 29.1.93, Paritosh Kumar Mukherjee. J. directed the stay of operation of the said order dated 21.1.93, in so far as it directed that the petitioner was to retire from service with effect from 31.1.93. No application for vacating the said interim order appears to have been filed, but merely an affidavit in opposition was filed. The matter remained pending for a long time, and in the meantime, the petitioner also reached the age of superannuation even in terms of the date of birth claimed to be correct by him that is 29.1.39.

7. Mr. Maitra, learned counsel appearing on behalf of the petitioner inter alia, submitted that keeping in view the fact that in the service records the petitioner's date of birth was recorded as 28.1.39. there was absolutely no reason as to why after 34 years of service, date of birth of the petitioner would be changed to his disadvantage. Learned counsel submitted that the Chairman of the respondent corporation committed an illegality in so far as he failed to take into consideration the direction of the State of West Bengal as contained in annexure "A" to the writ application, and further failed to take into consideration the decision of this court in Nihar Ranjan Bhowmick v. State of W.B. & Ors. reported in 1991 (1) CLJ 93 and a Special Bench decision of this court in Deputy Commissioner of Police. Special Branch & Ors. v. Bhupesh Chandra Karanjai & Anr., reported in 1993 (2) CLJ 74. Learned counsel submitted that the respondent No.1 was bound by the circular letter issued by the State of West Bengal, and in support of his aforementioned contention, reliance has been placed on The General Manager, Mysore State Road Transport Corporation Vs. Devraj Urs and Another, .

8. Mr. Chattopadhyay, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the petitioner by declaring his date of birth as 3.1.35. cannot now be permitted to challenge the same. Learned counsel submitted that by reason of declaring his year of birth. In 1955, he obtained a service in Calcutta State Transport Corporation, which he might not have been otherwise entitled to and in that view of the matter, the petitioner is estopped and precluded from rising a contrary submission in this application. Reference in this connection has been placed in Union of India Vs. C. Rama Swamy and others, .

9. It is not a case where the petitioner seeks to change his date of birth at the far end of his career. It is also strictly not a case where the date of birth as

recorded in the service book is sought to be altered to disadvantage or detriment of the employee as was the case in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, and *Sarjoo Prasad Vs. General Manager and another*, . However, even assuming that the said decisions apply in the present case, evidently in view of the impugned order, as prior to passing of the impugned order, the petitioner had been given an opportunity to file a representation as also an opportunity of personal hearing, the principles of natural justice must be held to have been duly complied with. The fact that two dates of birth were mentioned in the service book, and both of them were authenticated by the petitioner is not in dispute. There, thus exists an anomaly. Such an anomaly, there cannot be any doubt, was required to be resolved, and thus no exception can be taken" to the steps taken by the respondent corporation in asking the petitioner to file documentary evidence and other evidences for the purpose of proving his date of birth. It is not known as to under what circumstances the aforementioned circular letter dated 7.11.57 was issued by the Chief Administrative Officer or whether the same is binding on the respondent No. 1, or not. It appears that the respondent No. 1 was constituted in terms of the provisions of Road Transport Corporation Act. Service Regulation framed by Road Transport Corporation had not been produced before this Court. In *G.M. Mysore State Road Transport Corporation (supra)*, the apex Court held that the direction of the State Government is binding on the Corporation in view of section 34 of the Act and the regulations framed thereunder. In that case, the orders of discharge of employees were in question, and in that connection, a question arose as to whether the disciplinary proceedings had been initiated in terms of the provisions of the said Act, and the regulations framed thereunder. Such a question does not arise in this case. However, assuming that in terms of the aforementioned order dated 7.11.57, the petitioner filed his certificate as contained in annexure "B" to the writ application. It is not understood as to how the said certificate dated 20.2.55 was considered to be a school leaving certificate. As noticed hereinbefore, the petitioner Joined the services on 1.4.55. The said certificate, therefore, was in possession of the petitioner at the relevant time, but for reasons best known to him. he withheld the said document. It is in this backdrop, the order dated 20.11.93 impugned in this writ application has to be considered. The Chairman of respondent No. 1 while passing the said Order, narrated the entire backdrop of facts and he considered the question on merit. The said authority held that as per the practice of CSTC, the incumbent puts his signature on the service record as a token of his recognition, and as he had done so, the same should be accepted to be correct. However, the said page of the service records got mutilated, but the relevant portion has been pasted on a separate sheet and kept in tact. When a new service record was opened on 28.2.58, the petitioner must have produced the certificate issued by the Headmaster of the school and on that basis only, his date of birth was recorded as 28.1.39. It was observed:

"Moreover the Headmaster's school certificate was issued on 20th February,

1955, I had asked Shri Raha why he did not produce the said certificate at the time of his first appointment in CSTC. He joined CSTC on 1st April. 1955. He could not give any convincing reply. He stated that as per the appointment letter he was not asked to produce any document relating to age. Normally all certificates relating to age and qualifications are invariably produced at the time of first appointment."

The said authority further proceeded to consider all the materials on record and held:

"it appears that Shri Raha willingly and with ulterior motive suppressed his date of birth and had shown the same to be 3.1.1935 so that his age on the date of appointment i.e. 1.4.55 becomes more than 20 years so as to be entitled to get the appointment letter. At a subsequent date Shri Raha might have produced the school certificate as per which his date of birth was shown to be 28.1.1939. The school certificate is also of very little value without supporting corroboration from the School Admission Register and other relevant documents. Since Shri Raha himself had accepted his date of birth to be 3.1.1935 at the time of his first entry in CSTC. as is evident from the first record, with all fairness we should accept the said date to be his date of birth for the purpose of retirement and calculating other service benefits. Otherwise, it is afraid that if the flood gate is opened, large number of similar cases will come for grant of age benefit and this will cause injustice to many other.

Considering the facts and circumstances of the case, I am inclined to believe that Shri Raha can not claim double benefit. If his date of birth is to be accepted as 28.1.1939, he could not have got the appointment in CSTC on 1st April. 1955, in all probability because of lower age limit. Hence, I tend to believe, in all fairness his date of birth should be accepted as 3.1.1935 and he should be made to retire and his service benefit should be calculated on the same basis. A copy of this order may be given to Shri Raha."

10. The very fact that the petitioner could not satisfy the authority as to why he withheld the said purported certificate dated 1.4.35, is not under challenge, nor can be subject matter of the writ application. The same by itself clearly demonstrates the conduct of the petitioner to the effect that he wanted an appointment as a major although he was minor at that point of time. It is now a well settled principles of law that when a decision had been taken by an administrative authority, this court in exercise of its power of judicial review could not enter into the merit of the decision, but in such a situation this Court is only concerned with the decision making process, and in a given situation, may, set aside the order if the same suffers from illegality, irrationality or procedural irregularity. No such illegality, irrationality or procedural irregularity has been pointed out. and in that view of the matter, this is case where this court should not exercise its discretionary jurisdiction. Reference in this connection may be made to *Tata Cellular Vs. Union of India*, . In *Nihar Ranjan Bhowmick's* case (supra), upon which strong reliance has been placed by Mr. Maltra, the fact of the

matter was absolutely different. In that case, the court was considering the interpretation of a statutory authority. In that case, the petitioner enhanced his qualification and it was held that while his enhanced qualification was noted, the date of birth stated in the Matriculation Certificate also ought to have been noted. However, that period during which the petitioner worked as a minor was directed to be not considered for the purpose of retiral benefits. This finding of the Division Bench appears to have been overruled by the Special Bench in the case of Deputy Commissioner of Police (*supra*). In the aforementioned case, this Court was concerned with construction of Rule 9 of the West Bengal Service Rules. Part-i. The Special Bench held that in terms of sub-rule (1) of Rule 9 of the said Rules only a declaration will not serve the purpose unless the same is backed up by Matriculation Certificate or any other certificate as envisaged therein. The Court observed that sub-rule (3) and sub-rule (5) of Rule 9 must be construed in that context. Although the court noticed a submission made at the Bar that a statement in the school record has no evidentiary value unless it is shown on what materials the entry in the register was made, but did not accept the same on the facts of that case on the ground that admittedly the age recorded by the Matriculation certificate was accepted as the genuineness whereof was not challenged. The Bench further held that keeping in view the provisions of Rule 9 in the entirety a Government servant can ask for revision of his date of birth subsequently. A distinction was made between a review and a revision, and it was held that although the employee concerned will have no right whatsoever to get his date of birth altered, but that does not prevent him from making such a representation, which may be considered by the State in exercise of its power under sub-rule (5) of Rule 9 thereof. However, the Bench made a general statement of law that rule of estoppel has no application in service Jurisprudence. Before going into the questions raised in this application, it may be noticed that the decision of the Special Bench as aforementioned has been distinguished by various decisions of this Court. The said fact has been noticed by a Division Bench of this Court in an unreported decision in F.M.A.T. 1340 of 1988 (*Hindustan Copper Limited & Ors, v. Chitwaran Singh & Anr.*) disposed of on 9.4.96. In the instant case. Rule 9 of the West Bengal Service Rules, Part-I has no application. Admittedly, the petitioner being a workman was either governed by the Standing Order or the terms of the regulation framed by the corporation in exercise of its power conferred upon it u/s 34 of the Road Transport Corporation Act. Furthermore, even in the administrative order dated 7.11.57 as contained in annexure "A" to the writ application is applicable, what was required to be filed was Matriculation/ School Final certificate in original and in case of employees who were not Matriculates, may be directed to produce a certificate from the Headmaster of the school or an Affidavit made before the Court of law in proof of age. The genuineness of the said certificate appears to have been suspected by the Chairman of respondent No. 1, as it has clearly been held that the writ petitioner could not explain properly as to why despite having such a certificate in his possession, he did not file the same at the time of entry in the service. Evidently, he did so for the purpose of obtaining an advantage. Having

obtained an advantage, the principle of estoppel will apply, as has been held by the Supreme Court in *Union of India Vs. C. Rama Swamy and others*, wherein the law has been laid down in the following term :

"Reading sub-rules (2) and (3) together it is clear that whereas in the case of sub-rule (2) the date of birth has to be accepted which is indicated in the application for recruitment but in the case covered by sub-rule (3) if the date of birth as recorded in the service-book is different from the one which was contained in the application, possibly because of an alteration having been made at the instance of the officer concerned, then that is the date which has to be accepted by the Central Government.

In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicated a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age. after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.

In such a case, even in the absence of a statutory rule like Rule 16-A, the principle of estoppel would apply and the authorities concerned would be justified in declining to alter the date of birth. If such a decision is challenged the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, then the principle of estoppel would clearly be applicable and relief of change of date of birth can be legitimately denied. To that extent the decision in *Manak Chand* case does not lay down the correct law."

11. In view of the aforementioned dictat, the decision of the Special Bench that rule of estoppel has no application in a service Jurisprudence, must be held to have been overruled by the apex Court. Furthermore, only because a certificate

has been produced by the petitioner from the Headmaster, it does not mean that the same must be held to be sacrosanct. The Chairman of respondent No. 1 has assigned sufficient reasons for holding as to why the said certificate should not have been accepted. As indicated hereinbefore, in Deputy Commissioner's case, although as a proposition of law the question as to whether the age recorded in school register and consequently in Matriculation certificate should have evidentiary value or not, when there being no evidence of the person on whose statement such date of birth was considered and the point although was directly covered by the decision of the Apex Court in *Birad Mal Singhvi Vs. Anand Purohit*, the same was neither noticed nor considered. In the said decision, it has clearly been held that:

"To render a document admissible u/s 35 three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book register or record, secondly, it must be an entry stating a fact in issue or relevant fact, and thirdly. It must be made by a public servant in discharge of his official duty or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible u/s 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of material on which the age was recorded."

12. The said decision has been considered by a Division Bench of this Court, in *Chittaranjan Das Vs. Durgapore Project Ltd. and Others*, as also by another Division Bench decision reported in 1996 Lab IC 167. As indicated hereinbefore, the said aspect of matter has also been considered in an unreported Division Bench of this court in F M A T 1340 of 1988 (*Hindustan Copper Limited & Ors v. Chitwaran Singh & Anr.*) disposed of on 9.4.96. In that case also, genuineness of the certificate produced was suspected.

13. For the reasons aforementioned it is not possible to hold that the impugned order dated 21.1.93 as contained in annexure "J" to the writ application suffers either from illegality, irrationality or procedural irregularity, and in that view of the matter, there is no merit in this application, which is dismissed. However, keeping in view the fact that by reason of the interim order passed by this Court the petitioner has worked, the salary paid to him shall not be directed to be refunded but the retiral benefits of the petitioner shall be paid on the basis that his date of birth is 3.1.35. In the facts and circumstances, there will be no order as to costs.

14. Petition dismissed