

(2010) 07 JH CK 0023
In the Jharkhand High Court
Case No : L.P.A. NO. 542 of 2009

Uma Shankar Singh

APPELLANT

Vs

Central Coalfield Ltd., Project Officer, Personnel Manager/
Officer and Deputy Personnel Manager/Officer

RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Mines Act, 1950 — Section 40

Citation : (2010) 07 JH CK 0023

Hon'ble Judges : Jaya Roy, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard the counsel for the parties.
2. The appellant has filed this appeal against the order dated 28.10.2009 passed in WPS No. 4277/09 whereby the writ petitioner's- appellant's writ application has been dismissed.
3. Learned Counsel for the appellant submits that the appellant was employed in Central Coalfield Ltd, which is a Govt. Undertaking, on 17.8.1972. It is submitted that in the service record his date of birth was recorded as 1.10.1950 but the actual date of birth, which is recorded in his matriculation certificate, was 10.8.1955. Learned Counsel has further submitted that the service excerpt was prepared on 11.8.87 but when the appellant found that his age has been recorded as 1.10.1950, he objected to it and mentioned his actual date of birth as recorded in his matriculation certificate. Even the Establishment Section of BCCL verified his matriculation certificate on 29.7.81 (annexure 8) but, in spite of that the concerned authority has recorded his date of birth as 1.10.1950.
4. Learned Counsel appearing for the respondents-BCCL Mr. A. Sen submits that the appellant, in order to get employment at the time of his appointment, misrepresented his date of birth as 1.10.1950 so that he could get employment

and after obtaining employment and after serving for some time he moved for rectification of his date of birth on the basis of his matriculation certificate. So, his plea that he has obtained his matriculation certificate later, is an eye wash. Usually mark sheets are supplied immediately after the matriculation results which also contain the date of birth.

5. Counsel for the appellant further submits that it is a wrong impression that the appellant has given wrong date of birth only for the purpose to secure employment because according to his date of birth recorded in the matriculation certificate as 10.8.1955, he had not completed 18 years of age. But Section 40 of the Mines Act which was applicable in 1970, the minimum age prescribed for appointment was 16 years, not 18 years. Therefore, it was not necessary for the appellant to record his date of birth as 1.10.1950 to secure employment. In this regard the appellant has annexed annexure 7 series i.e. the Mines Act, 1950 with its amendment which was inserted in this Act in the year, 1983 with effect from 31st May, 1983.

6. In the case of Kamta Pandey v. M/s B.C.C.L. reported in 2007 (3) JCR 681 a Full Bench of our own High Court has held that although an employee will not normally be permitted to apply for change of his date of birth at the fag end of his service career, but the Supreme Court clearly held that if the court is fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedures prescribed and when a clear case relating to the date of birth, is made out on the basis of clinching materials, then necessary direction to make a declaration of the said date of birth can be given.

7. Considering the aforesaid submissions made by both the parties, the documents annexed by the appellant in this appeal and also in the light of the view expressed by the Supreme Court, we are of the opinion that when the authority concerned had verified the matriculation certificate filed by the appellant in the year, 1981 itself, they could have recorded the correct age of the appellant in his service book. This shows that the respondents were totally negligent in recording the correct age of the appellant after it was verified by them in 1981 itself.

8. In this background we are of the view that the petitioner was entitled to the relief prayed in the writ petition which has wrongly been denied by the learned Single Judge. This appeal is, therefore, allowed and the impugned order passed by the learned Single Judge is set aside. The respondent-BCCL is directed to make necessary correction in the date of birth of the appellant in his service records as per his matriculation certificate which is 10.08.1955 and pass consequential orders.