

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CRICUIT SITTING: BILASPUR

Original Application No.203/00292/2017

Bilaspur, this Thursday, the 10th day of January, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Durgaprasad Singh,
 Son of Late Shri Khhamman Singh
 Aged about 60 years,
 resident of Ward NO.24
 Chanderibhata Dallirajhara
 Tehsil Dondi District Balod (C.G.)

-Applicant

(By Advocate –**Shri K. Rohan proxy counsel for Shri Amrito Das**)

V e r s u s

1. Bhilai Steel Plant
 Through its Chief Executive Officer,
 Bhilai Chhattisgarh 490021
2. General Manager (Personnel)
 Bhilai Steel Plant Bhilai Chhattisgarh 490021
3. Senior Manager (Personnel),
 Rajhara Iron Ore Mechanised Mine,
 P.O. Dallirajhara Distt. Durg (CG) 491228
4. Deputy General Manager (Personnel)
 Mines Headquarter, Bhilai Steel Plant
 Bhilai Chhattisgarh 490021
5. Additional Manager (Personnel)
 Rajhara Iron Ore Mechanised Mine
 P.O. Dalli-Rajhara Distt. Durg (C.G.) 491228 - **Respondents**
 (By Advocate –**Shri Ashish Surana**)
 (Date of reserving the order: 08.01.2019)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant challenging the legality, validity and propriety of the order dated 02.03.1998 whereby the date of birth of the applicant was arbitrarily changed by the respondent No.3 during promotion/regularization.

2. The applicant in this Original Application has sought for the following reliefs:-

“8.1 Relief clause 8.1 is not pressed.

8.2 This Hon’ble Tribunal may kindly be pleased to quash and set aside the order dated 07.05.2016 (Annexure A/5).

8.3 This Hon’ble Tribunal may kindly be pleased to issue an appropriate direction to the respondent-authorities to reinstate the applicant till his actual date of retirement and thus grant consequential benefits thereto.

8.4 Any other relief (including the cost of the present proceedings) which this Hon’ble Tribunal deem just, fair and equitable in the circumstances of the case may be granted.”

3. The case of the applicant is that the applicant was appointed on the post of Departmental Piece Rated (Skilled) on regular basis by the respondent entity vide order dated 23.08.1996 whereby the name of the applicant appears at S.No.82 in the list. The date of birth in the said list is noted to be 08.07.1957. Copy of the order dated 23.08.1996 is annexure as Annexure A-1. The date of birth

has been registered in accordance with the Form 'B' along with CPF Declaration Form, which recognizes the age of the applicant to be 20 years and the date of birth of the applicant to be 08.07.1957. Copy of the Form B is annexed as annexure A/2.

3.1 The applicant worked on the post of DPR and the respondents have passed the order of promotion/regularization dated 02.03.1998 arbitrarily and without any due opportunity being given to the applicant changed the date of birth of the applicant from 08.07.1957 to 03.06.1956 despite the fact that earlier being correct and on record.

3.2 The applicant made several representations before the respondent authorities seeking correction of his date of birth in accordance with the date provided in Form B and correct his records. The representations dated 05.03.2010, 04.01.2011 and 25.11.2013 are annexed as Annexure A/3. Finally after several representations the respondent No.5 vide letter dated 06.11.2013 informed the applicant that the date of birth of the applicant has been changed after taking into consideration the mark sheet submitted by the applicant for his appointment. The applicant has made the representation before the respondent No.4 bringing forth the facts and drawing the attention of the authority towards Circular No.M & R-13/2004 requesting the adherence to the rules

and thereby revert the date of birth of the applicant to that mentioned in Form B being 08.07.1957. Copy of representation dated 29.02.2016 is annexed as Annexure A/4. That despite the said representation the respondent authority failed to ratify the age of the applicant in accordance with the rules and thus the applicant was illegitimately superannuated and relieved of his duties vide order dated 07.05.2016 on the basis of the wrong date of birth, whereby the applicant should have been allowed to work for a further period of about one year as his legitimate date of birth was considered and corrected to that effect. Copy of 07.05.2016 is annexed as Annexure A/5.

3.3 The main ground of challenge the action of the respondents are that the action of the respondents for changing the date of birth of the applicant on his service record is neither justified nor any opportunity was wanted to the applicant to present his case. The respondent- authority have committed a serious illegality in failing to ratify the correct date of birth of the applicant despite several representation of the applicant, the case of the applicant has not been decided in the light of M&R 13/2004, whereby the date of birth mentioned in Form B is to be considered for final record of service.

4. The replying respondents have filed the reply to the O.A. In the preliminary submission the respondents have submitted that vide order dated 02.03.1998 the alleged change of date of birth suffer from unexplained inordinate delay and latches. The present application challenging the order dated 02.03.1998 is filed on 17.04.2017 after service of order of superannuation dated 07.05.2016. It has been further submitted by the replying respondents that the date of birth 03.06.1956 has been mentioned as per the mark sheet issued by the Board of Secondary Education Bhopal in the year 1975 and Transfer Certificate issued by the school states the applicant's date of birth as 03.06.1956. Further as per the copy of the Driving License his date of birth has been recorded as 03.06.1956. These documents showing date of birth as 03.06.1956 have been produced by the applicant himself and the applicant himself has declared his date of birth as 03.06.1956 in the Service Book duly signed by him. So the respondents as per the guidelines regarding determination of date of birth circular No.M&R 13/2004 have recorded applicant's date of birth as 03.06.1956. Copy of Circular is filed as Annexure R/1.

4.1 It has been further submitted by the replying respondents that the applicant has not approached this Tribunal with clean hands and ought to have produced the mark sheet the transfer

certificate and the driving license filed by him with the application for appointment on the post of OCM (HEME) S-3 Grade. So the applicant has suppressed the material facts and the petition is liable to be dismissed for suppression of fact. It has been further submitted by the replying respondents that the applicant never challenged the rejection of the applicant's request on 06.11.2013 before any court of law and the present application is filed at belated stage is liable to be dismissed.

4.2 In Parawise reply the respondents has submitted that the applicant was initially appointed as contractual worker in Mines and at the time of joining services the applicant mentioned his age as 20 years. The applicant subsequently applied in the recruitment at Mines and was selected/posted as Regular Departmental Piece Rated (Skilled) employee with effect from 31.05.1996 vide order dated 23.08.1996 on temporary basis. The applicant subsequently submitted application for selection as OCM (HEME) Trainee in S-3 grade along with the relevant documents without which applicant could not have been selected. The applicant submitted the mark sheet issued by the Board of Secondary Education, Madhya Pradesh, the Transfer Certificate and driving license has been produced by the applicant and on the basis of documents the date of birth of applicant has been recorded as 03.06.1956. So, the

applicant was appointed as OCM (HEME) Grade S-3 on the basis of the documents filed with the application and posting order has been issued on 02.03.1998 and date of birth of applicant is recorded as 03.06.1956 on the basis of the mark sheet, transfer certificate and driving license submitted by the applicant. The same date of birth has been declared by the applicant himself in the service book duly signed by him.

5. We have heard the learned counsel of both the parties and have gone through the documents attached with the pleadings.

6. It is clear from the pleadings that the applicant was appointed in the respondent department and the applicant has furnished form B Annexure A/2 whereby age has been prescribed as 20 years as on 08.07.1977. In this document at Serial No.17 in the column of 'Remarks' it is mentioned as 'Transferred from A.D. Mines has been entered. It is also clear from CPF declaration and nomination form which has been signed by the applicant on 13.02.1997 his date of birth has been entered as 08.07.1957. Further as per Admission, Nomination and Declaration Form, date of birth of applicant has been entered as 08.07.1957. From these documents Annexure A/2, CPF declaration and nomination form and admission nomination declaration form, the date of birth of the applicant has been shown as 08.07.1957. From the Annexure A/1

dated 23.08.1996 vide which the applicant has been made regular DPR (Skilled) and has been appointed and posted and as per list of persons his appointment DPR (Skilled) on regular basis, the name of the applicant had appeared at Serial No.82 and the date of birth has been entered to 08.07.1957.

7. The applicant stood retired on 30.06.2016 as per impugned order dated 07.05.2016 (Annexure A/5). The main contention of the applicant is that the respondent-department has changed the date of birth from 08.07.1957 to 03.06.1956 without giving opportunity of hearing. On the other side, the contention of the replying respondents is that the applicant was initially appointed as Contract Worker of Mines at the time of joining his service the applicant has mentioned as 20 years. This stand of the applicant is also supported by Annexure A/2 i.e. Form B. In this Annexure in the Serial No.4 in the Column Age and Sex, the age of the applicant has been shown as 20 years as on 08.07.1977. The Replying respondents has annexed the Circular No.M&R 13/2004 (Annexure R/1) whereby the guidelines regarding the determination of date of birth has been issued. The replying respondents have relied upon the Clause 3 (iii) which reads as under:-

“3.iii. If age/date of birth has been declared by the employee at the time of appointment as per the Matriculation/10th

Board/Certificate/School Final Examination Certificate/ School Leaving Certificate issued by the Competent Authority of the Board or School, the same shall be treated as final and no more change will be allowed at a subsequent stage.”

8. Further the replying respondents has also annexed the certificate of Higher Secondary School Examination 1975 issued by Board of Secondary Education Madhya Pradesh Bhopal and in the said document the date of birth has shown 03.06.1956. The respondents have also annexed the document regarding the Transfer Certificate issued by the competent authority dated 04.07.1997 where by the date of birth has shown as 03.06.1956. Further as per Driving License issued by the licensing authority dated 02.03.1979, the date of birth has also shown as 03.06.1956. So, from the document annexed by replying respondents as Annexure R/2 i.e. mark sheet of High Secondary School Certificate Examination 1975, Transfer Certificate dated 04.07.1997, driving license dated 02.03.1979, the date of birth has been shown as 03.06.1956.

9. From the pleadings it is clear from the submission made by the replying respondents that earlier the applicant was working on contract worker mines and the Form B has been submitted by the applicant, on appointment of applicant. It is pertinent to mention that in this Form B, the completion of 20 years have been shown as

on 08.07.1977 and in this document there is no column for indicating specific date of birth. The replying respondents has specifically made it clear in their reply that the applicant subsequently applied and got selected for appointment for the post of OCM (HEME) Grade S-3 and the applicant has submitted the document along with application. The respondent-department has annexed documents as Annexure R/2 i.e. certificate of higher secondary school certificate examination 1975, transfer certificate dated 04.07.1997 and license certificate dated 02.03.1979. On the other side the applicant has relied upon the guidelines Annexure R/1 Circular No.M& R-13/2004 under the head Guidelines regarding determination of Date of Birth wherein in Clause 2 regarding guidelines for recording DOB at the time of joining. The submission of the applicant is that he has joined mines department which is under the respondent in the year 1977 and the annexed form B has been filed by the applicant whereby the age of applicant is 20 years has been shown as 08.07.1977. The submission of truthness regarding the date of birth as 08.07.1957 cannot be believed as no specific date of birth has been mentioned. Regarding the CPF Declaration and Nomination Form made on 13.02.1997 and the Admission, Nomination and Declaration Form dated 22.02.1993, these documents have been filed by the applicant

himself and the authenticity of the declaration cannot be attested particularly in view of Annexure R/1 Circular No.M&R 13/2004.

The relevant portion is as under:

“3.Guidelines for recording DOB during the course of service:

iii. If age/date of birth has been declared by the employee at the time of appointment as per the Matriculation/10th Board/Certificate/School Final Examination Certificate/School Leaving Certificate issued by the Competent Authority of the Board or School, the same shall be treated as final and no more change will be allowed at a subsequent stage.”

So, the replying respondents are justified to meet out the stand and the action taken by them to the fact that the applicant was earlier appointed as contractual worker in mines on 08.07.1977. It is also clear from the reply of the replying respondents that subsequently the applicant applied and got selection for appointment on the post of OCM (HEME) Grade S-3. It is relevant to mention that the applicant himself has submitted the documents which has been annexed by the replying respondents Annexure R/2 i.e. Higher Secondary School Certificate Examination, 1975, Transfer Certificate dated 04.07.1997 and Driving License Certificate dated 02.03.1979. So, in view of the above, we are of the considered opinion that the date of birth of the applicant is 03.06.1956, which has been entered in the record on the basis of document submitted by the applicant himself and complied with Circular No.M&R

13/2004 whereby it has specifically mentioned in clause 3(iii) regarding the authenticity of date of birth as declared by employee at the time of appointment as per the Matriculation/10th Board/Certificate/School Final Examination Certificate/ School Leaving Certificate issued by the Competent Authority of the Board or School, the same shall be treated as final and no more change will be allowed at a subsequent stage. Hence, there is no reason to disbelieve these documents.

10. In view of the above, this Original Application is dismissed.
No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member