

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. OA 1396 of 2013

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

PRANAB KR. DAS

VS

UNION OF INDIA & ORS.

For the applicant : Mr.C.Sinha, counsel

For the respondents : Mr.S.K.Das, counsel

Order on : 23.9.15

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. The applicant who has retired from service w.e.f. 30.11.05 on superannuation has sought for the following reliefs :

- a) to direct the respondents for correction of the date of birth as 28.12.1947 instead of 28.11.1945 and to grant all consequential benefits together with the benefit of the 6th Pay Commission;
- b) to direct the respondents to revise the pension and other retiral benefits;

3. The indisputed and admitted facts are that the applicant who had declared his date of birth as 28.11.1945 sought for a change of recorded date of birth to 28.12.1947. On 11.2.1997 he was informed on behalf of the Chief Personnel Officer, Eastern Railway in regard to his appeal dated 24.1.97 that his date of birth could not be altered unless date of birth i.e. 28.11.1945 in his Matriculation Certificate is corrected by the State Education Authority. He approached the Board of Secondary Education for correction in Matriculation Certificate which when turned down he approached the District Judge and thereafter the Hon'ble High Court at Calcutta in Writ Petition No. 19502/04. The Writ Court rejected the prayer to correct the date of birth on two grounds :

- (i) that the original birth certificate issued by the competent authority was not produced, but a Xerox copy of the same was produced which, however, was overwritten and
- (ii) in the event the age was corrected, the situation would be that the writ petitioner got admission to Class II at the age of 3+ and appeared in the School final Examination at the age of 12+ which was not convincing.

4. Challenging the said judgment the applicant approached the Division Bench of Hon'ble High Court in MAT 1987/05 F<A 2324/05. The Division Bench of the Hon'ble High Court opined as follows :

"Now considering the entire scenario of the case and having regard to the judgment under appeal, we are of the view that the learned trial Judge was not correct in dismissing the writ application on the ground of delay. The delay was condoned by the Board itself by directing to file the age correction application in form No.18 though the Headmaster of the School long before by the order passed by Tarun Chatterjee, J (as His Lordship then was, now has been elevated to the Hon'ble Judge of the Supreme Court of India) and thereafter by order of High Court duties and rights of the parties in view of the non-challenge of the same to any higher forum, namely, the appellate Court, since has been crystallised, the delay point cannot be raised at the present moment.

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Having regard to the facts and the law points as discussed above, we are of the view that under Section 9 & 10 of the Births, Deaths & Marriages Registration Act, 1886, copies of the entries of the date of birth as recorded in the Birth Register which has been produced before us in original is admissible in evidence and nobody in the earth could deny the said document. Since this matter is long pending, we are of the view that the Age Correction Committee should be directed to pass appropriate decision on the basis of the certified copy of the entries of the Birth Register as issued on 29th August, 1972 which is certified to be true copy by one S.Chakraborty, Record Keeper, Midnapore authorised under Section 76 of the Evidence Act.

The respondent Board and the State of West Bengal both have urged that at the fag end of the service career in Indian Railway, the writ petitioner intended to have the correction of age to gain the benefit which is not permissible under the law in view of the views expressed by the Apex Court. Learned Trial Judge also approached the writ application to dismiss it in that angle by holding 'Even assuming that contents of the extract of the births and deaths register were correct, I must say that I am unable to countenance the move of the petitioner, since I have no doubt in my mind that after taking illegal or unethical advantage for the purpose of taking the school final examination and entering into service long long ago, he suddenly turned around to ensure extension of his service tenure by two more years. It does not seem to me that the steps taken by the petitioner were taken bona fide. As a court of equity, I am not minded at all to grant any relief to the petitioner, since my conscience does not permit to give the petitioner unethical relief. The case cited to me, in my view, is of no assistance for the reason that here the petitioner agitated the question after decades.' Under four corners of the writ application and its pleadings thereof, the writ petitioner nowhere agitated his grievance against the Railway Authorities, the employer and also did not ask for any relief against them by adding them parties in the nature of correction of date of birth to enjoy the benefits of service on the basis of such corrected age. Writ application is confined with the limited

prayer against the West Bengal Board of Secondary Education assailing its decision not to correct the date of birth on the grounds as taken. Hence, in the writ application there was no scope to urge the points that at the fag end of service the writ petitioner has sought for correction of his date of birth as has been urged by the learned Advocates appearing for the said Board and the state of West Bengal as well as has been observed to dismiss the writ application by the learned trial Judge. It is a settled legal position that writ application is decided/adjudicated on the basis of the pleading of the parties and nobody can go beyond the pleading. It is not a settle legal position that court would not travel beyond the scope of writ application.

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Having regard to such, this Court is of the view that the findings and observation to that effect is beyond the pleadings of the writ application, should be quashed. However, it is made clear that as the subject matter of correction of date of birth as recorded in the records of Railway Authorities is not at all the subject matter of the lis, this Court is not expressing any opinion on that score as the same is beyond the consideration in the present writ application where the writ petitioner neither has made any grievance against the Railway Authorities nor the Railway Authorities are parties in this proceeding.

Having regard to such, the impugned judgment under appeal is set aside and quashed.

The writ application is allowed by quashing the impugned decision of the Secretary, West Bengal Board of Secondary Education.

The Age Correction Committee and the West Bengal Board of Secondary Education are directed to pass appropriate decision for correction of their records relating to age of appellant as well as for issuance of the School Final Certificate afresh by making proper endorsement of the date of birth as 28th December, 1947 on the basis of the certified copy of the extract under the said Act of 1886 as to be produced by the petitioner before them, a Xerox copy of which duly countersigned by the learned Advocate for the petitioner should be kept in their record for such purpose." (emphasis supplied)

5. It is submitted that pursuant to the said directions the Board corrected the date of birth in Matriculation Certificate on 5.8.10. Based upon such corrected certificate the applicant sought for correction of date of birth before the CPO, Eastern Railway, Kolkata on 17.8.11 i.e. about six years from the date of his retirement. He has filed this OA seeking a direction upon the authorities emboldened by the Hon'ble High Court's directives arguing that the same would bind the authorities as well as this Tribunal.

6. Thus, the long and short of the matter is whether the applicant would be permitted to seek a correction of date of birth in the service record on the basis of a corrected Matriculation certificate issued six years after his retirement, whether the authorities are mandated to deem his date of retirement as

30.12.07 instead of 30.11.05 and grant benefits of two years' service, only for the purpose of pensionary benefits.

7. I have heard ld. Counsel for the parties and perused the materials on record.

8. Ld. Counsel for the applicant has strenuously urged that in the appeal before the Division Bench of the Hon'ble High Court at Calcutta an interim order was granted on 14.11.05 with direction that the retirement of the applicant on 30.11.05 will be subject to the result of the appeal. As such conclusion of the appeal in the affirmative would mandate a correction in the service records too. The authorities are bound by the direction of the Hon'ble High Court and should correct the service record and grant consequential benefits. The final decision in the appeal is carefully perused and its tenor is carefully noted. It is noted that this aspect has been duly taken care of by the Hon'ble Division Bench while expressing that "the subject matter of correction of date of birth as recorded in the records of the Railway Authorities is not at all the subject matter of the lis". In unambiguous words it has been expressed by the Hon'ble Court that it was not giving any opinion "on that score" as the same was beyond the consideration of the Writ Application adjudicated upon and no grievance was raised against the Railway Authorities nor the Railway Authorities were parties to the proceedings. The subject matter of lis was correction of date of birth in the Matriculation certificate and not the subject matter of correction of service records. The benefit of correction in service records was explicitly and expressly excluded from the relief granted.

9. In my considered opinion the interim order granted on 14.11.05 having merged to the final order/ judgment of the Hon'ble High Court, no benefit would enure to the applicant in regard to the correction of service records six years after his retirement for the purpose of seeking higher pensionary benefits.

10. Neither the law of the land nor the statutory rules permit such correction after retirement.

Here I seek to be guided by the following decisions as cited by the ld.

Counsel for the respondents -

a) Coal India Ltd. & Anr. -vs- Ardhendu Bikas Bhattacharjee & Ors.

[(2005) 12 SCC 201]

b) UOI -vs- Ram Suia Sharma [1996 SCC (L&S) 605]

11. Accordingly the OA being devoid of merit is dismissed. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

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