

## Union of India & Ors. Vs Bolo Ram Boro

**Court:** Gauhati High Court

**Date of Decision:** Dec. 21, 2011

**Citation:** (2012) 1 GLT 295

**Hon'ble Judges:** Amitava Roy, J and P.K.Musahary, J

**Bench:** Division Bench

**Advocate:** Advocate appeared for the Petitioner: Mr. N.J. Dutta, Central Government counsel., Advocate appeared for the Respondent: Mrs. N. S. Thakuria, Advocates appearing for Parties

### Judgement

Amitava Roy, J.

In challenge is the judgment and order dated 29.4.2010 rendered by the learned Central Administrative Tribunal, Gauhati

Bench (for short, hereinafter referred to as "the Tribunal") in Original Application No. 241 of 2009 holding that the respondent (original applicant)

had been superannuated on the basis of his incorrect date of birth and consequently directing the petitioners herein to reinstate him in service and to

release to him all consequential benefits.

2. We have heard Mr. N.J. Dutta, learned Central Govt. counsel for the petitioners and Ms. N.S. Thakuria, learned counsel for the respondent/

original applicant.

3. Sans unnecessary details the facts in bare essentials for the disposal of the instant appeal are that the respondent was initially appointed as Vocal

Mechanic on 4.2.1972 at the Advance Base Workshop, EME, Narengi, Guwahati and following successive transfers was on 10.9.87 transferred

to the Central Ordnance Depot, Cheeoki, Allahabad. The respondent's pleaded version was that at the time of joining service he had produced a

School Leaving Certificate dated 31.12.1971 issued by the Headmaster, Dorakahara Govt. Aided ME School disclosing therein his age to be 18

years 2 months and 28 days as on 31.12.1970. The respondent claimed that the date of birth was accordingly entered in the service book as

28.6.1952 on the basis of that document. When by the letter dated 27.6.2008 the Commandant, Central Ordnance Depot, Cheeoki, Allahabad

sought clarification from him with regard to his date of birth, he insisted it to be 28.6.1952. The respondent/applicant, however, alleged that at that

point of time the Personnel Officer (Civil) coerced him to state his date of birth as 4.2.1949. He further alleged that thereafter on 4.11.2008 this

authority formally took his signature on a typed letter where it was written that he (respondent/applicant) had requested him (respondent authority)

to correct his date of birth as 4.2.1949 in lieu of 28.6.1952. Being shocked and perplexed on this turn of events, the respondent/ applicant on

15.2.2008 submitted a representation before the Commandant, Central Ordnance Depot, Cheeoki, Allahabad disclosing the above episode and

maintaining that his date of birth ought to be sustained as 28.6.1962. His request not having been acceded to and as it was decided to

superannuate him on the basis of his date of birth 4.2.1949, he approached the learned Tribunal for redress.

4. The petitioners in their counter pleaded lack of its jurisdiction in entertaining the application as the cause of action had arisen beyond its territorial

limits. They stated that on a scrutiny of the medical examination report dated 4.2.1972, the age of the applicant on that date was ascertained to be

23 years. It also transpired on enquiry that the resultant date i.e. 4.2.49 was altered and overwritten to be 28.6.1952 in his service book de hors

any supporting documentary evidence to that effect. The respondents, therefore, accepted the applicant's date of birth to be 4.2.1949 and took

necessary initiatives for his superannuation on the basis thereof. According to them, he eventually retired from service from Allahabad on the basis

of his aforementioned date of birth. While admitting that in various documents/ forms preserved by its different Units his date of birth was recorded

therein to be 28.6.1952, the petitioners contended that the alteration was wholly without any basis and, in particular, without the approval of the

competent authority in violation of the instructions contained in O.M. No. F.9/1/6 1Estt (A) dated 17.11.1962. According to them, therefore, the

applicant was asked to clarify his actual date of birth whereupon he produced the School Leaving Certificate dated 31.12.1971. The petitioners

asserted that in terms of the said certificate his date of birth was computable to 3.10.1952 and not 28.6.1952 as claimed by him. The petitioners

also maintained that the applicant's claim of his date of birth to be 28.6.1952 on the basis of the contemporaneous records was examined by the

Head of the Department, Director General of Ordnance Services, Integrated Headquarters of Ministry of Defence (Army) and was eventually

rejected on 21.1.2009.

5. The learned Tribunal, however, sustained the challenge made by the respondent/ applicant on the following grounds:

i) Pass No. D00478 bearing Personal No. 66491 dated 2.8.2007 mentioned his date of birth to be 28.6.1952.

ii) The first page of his service book recorded the date of birth to be 28.6.1952 and that the date 4.2.1949 written above the said entry was by

way of correction but no basis thereof was disclosed.

iii) The School Leaving Certificate supports the claim of the applicant that his date of birth is 28.6.1952.

iv) The alteration of the date of birth from 28.6.1952 to 4.2.1949 at the fag end of his career was not supported by any cogent material.

6. Mr. Dutta while reiterating the plea of want of jurisdiction of the learned Tribunal, has without prejudice thereto, argued that a bare perusal of

the School Leaving Certificate dated 31.12.1971 and the service book of the respondent/applicant would in unambiguous terms reveal that the

claim of his date of birth to be 28.6.1952 is not substantiated thereby. According to him, the date 28.6.1952, as the first page of the service book

of the respondent/ applicant reveals that it had been written over the date 4.2.1949 and, thus, the learned Tribunal had grossly erred in law and on

facts in interfering with his superannuation based on his date of birth 4.2.1949.

7. Ms. Thakuria per contra has argued that having regard to the lower rung of service to which the respondent belonged, the suggested alteration

of his date of birth from 4.2.1949 to 28.6.1952 is an impossibility and, thus, the plea to this effect raised on behalf of the petitioners is clearly

unsustainable. The service book of the respondent having remained in the custody of the competent authority all throughout his service tenure, he

had no access thereto and, thus, the purported allegation of alteration of his date of birth to his advantage is wholly unfounded. According to her,

as admittedly the contemporaneous documents/records pertaining to the respondent disclose his date of birth to be 28.6.1952, the action of the

concerned authorities in superannuating him from service by taking his date of birth to be 4.2.1949 is illegal, arbitrary and unjust and that the

learned Tribunal having interfered therewith on a conscious and rational scrutiny of the materials on record, the instant petition is liable to be

dismissed.

8. We have cautiously considered the rival pleadings and the arguments advanced. Though Mr. Dutta has laboured to impress upon us against the

jurisdiction of the learned Tribunal in entertaining the Original Application of the respondent/applicant, for the finding proposed on the merits of the

debate, we are not inclined to advert thereto in praesenti. That the age of the respondent on 4.2.1972 on the completion of the medical

examination by the Regimental Medical Officer of 1, Advance Base Workshop EME C/o 99 APO was adjudged to be 23 years is a matter of

record. Reckoned therefrom his date of birth as 4.2.1949 is an inevitable deduction. According to the petitioners, on the completion of 25 years of

service of the respondent, his service book was referred to the audit authority and in course of the exercise undertaken thereafter the

incompatibility of the two dates was noticed. In reply to the clarification sought for from the respondent, he produced the School Leaving

Certificate dated 31.12.1971 and the age referred to therein suggested his date of birth to be 3.10.1952.

9. A plain perusal of the first page of the service book of the respondent would reveal that his date of birth as 28.6.1952 has been overwritten on

an earlier date i.e. 4.2.1949. The date 4.2.1949 has also been written afresh above 28.6.1952 encircled by ink. The entry 28.6.1952 as above

clearly suggests an alteration and, that too, to the advantage of the respondent in clear terms. Having regard to the above referred facets of the

controversy, we are of the unhesitant opinion that the date of birth of the respondent as originally entered to be 4.2.1949 had been altered

subsequently to 28.6.1952 for his benefit.

This aspect of the matter was left out of consideration by the learned Tribunal. The fact that this date i.e. 28.6.1952 does not match with the date

computable from the School Leaving Certificate also has not been taken note of. The mere fact that the respondent's date of birth as 28.6.1952

had appeared in some documents per se does not detract from the finding that the original date of birth i.e. 4.2.1949 had been substituted by the

latter i.e. 28.6.1952 as is apparent from his service book. The entry in the service book also does not disclose the reason why the alteration had

been made. This assumes significance in the face of the categorical assertion made by the petitioners that this alteration had been made without the

approval of any competent authority.

10. On a consideration of all above, we are of the view that the impugned judgment and order is unsustainable in law and on facts. The alteration in

the original date of birth of the respondent i.e. 4.2.1949 being apparently noticeable on the face of the record, his plea that this date had not been

originally recorded does not commend for acceptance.

11. In the facts and circumstances of the case, we find no infirmity with the action of the petitioners in superannuating the respondent from service

on the basis of his date of birth accepted to be 4.2.1949.

12. The petition is, thus, allowed.

13. The impugned judgment and order is interfered with and is set aside. The petitioners, however, would release all retiral benefits to the

respondent as due to him in law. No costs.