
(2011) 12 GAU CK 0039

Gauhati High Court

Case No: Writ Petition (Civil) No. 1573 of 2011

Union of India & Ors.

APPELLANT

Vs

Bolo Ram Boro

RESPONDENT

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.