

Executive Engineer, Bhadrak (R&B) Division, Orissa and Others

Vs

Rangadhar Mallik

Civil Appeal No. 3517 of 1992

(Kuldip Singh, N. M. Kasliwal JJ)

03.09.1992

JUDGMENT

KASLIWAL, J. –

1. Special leave granted.

2. The respondent Rangadhar Mallik after joining government service on November 16, 1968 accepted his date of birth as November 27, 1928 by affixing his signature in the service roll. On September 9, 1986 for the first time the respondent made a representation for changing his date of birth from November 27, 1928 to November 27, 1938. After considering the representation of the respondent the Governor of Orissa rejected the representation of the respondent. The respondent as such was superannuated with effect from November 30, 1988 as having completed the age of 60 years. The respondent filed an application before the Orissa Administrative Tribunal challenging the aforesaid action of the Government. The Tribunal vide its order dated November 11, 1991 quashed the order of superannuation on the ground that the respondent was not afforded an opportunity of personal hearing before rejecting his representation. The Tribunal directed for holding a fresh enquiry and to reinstate the respondent in service forthwith. The State of Orissa and others have filed the above appeal challenging the order of the Tribunal.

3. We have heard learned counsel for the parties and have gone through the record. It is not in dispute that the respondent himself had accepted his date of birth as November 27, 1928 after entering into service on November 16, 1968. The respondent also affixed his signature in the service roll in token of his acceptance of his date of birth as November 27, 1928. The respondent did not challenge the aforesaid date of birth nor made any representation till September 9, 1986. Rule 65 of the Orissa General Financial Rules stipulate that representations made for correction of date of birth near about the time of superannuation shall not be admitted. The representation made by the respondent was considered by the Governor of Orissa and the order of rejection was communicated to the respondent vide letter dated February 27, 1989. There was no provision made in the Rules for providing personal hearing before considering any representation for change in the date of birth. The State Government in its counter filed before the Tribunal had taken a clear stand that the respondent entered government service as work-charged employee. The date of birth as recorded in the service roll of the respondent was November 27, 1928. The service roll was opened on April 25, 1973 and the date of birth in the service roll was made on the basis of the horoscope produced by the respondent. After the entry was made in the service roll, the respondent had put his signature in token of authentication of such entry. The respondent had produced the documents in support of his claim of date of birth as November 27, 1938. The documents so produced were duly perused and each of such documents were not found worthy of any consideration and as such the representation

was rejected.

4. Learned counsel appearing on behalf of the respondent submitted that the respondent was an illiterate man and there was no question of his date of birth being November 27, 1928 because in that case his age at the time of joining service on November 16, 1968 would be nearly 40 years. It was thus, argued that the respondent could not have been allowed to enter the service at the age of 40 years when according to the Rules the maximum age was 25 years. We do not find any force in the above contention. Even if the date of birth of the respondent is assumed as November 27, 1938, then also he was over age by 5 years at the time of joining service on November 16, 1968. If any indulgence was granted in giving appointment to the respondent in spite of being over age, he cannot take advantage of his own wrong. The respondent was appointed initially as a Gang Mulia on work-charged basis. The date of birth was recorded as November 27, 1928 as per horoscope submitted by the respondent himself and he had also put his signature in the service roll accepting his date of birth as November 27, 1928. The respondent did not take any step nor made any representation for correcting his date of birth till September 9, 1986. The representation as well as the documents furnished by the respondent were considered by the Governor and thereafter his representation was rejected. It cannot be said that such action taken by the Government was in any manner illegal or against any principles of natural justice. There was no requirement of any law to give any personal hearing to the respondent before dismissing his representation.

5. In the circumstances mentioned above, we allow this appeal and set aside the order of Tribunal dated November 11, 1991. No order as to costs.

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