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Court : Allahabad

Decided On : Mar-27-1985

Reported in : (1986)IILLJ41All

Judge : R.M. Sahai and ;J.M. Dubey, JJ.

Appellant : Bajinath

Respondent : General Manager, North-eastern Railway and anr.

Judgement :

J.M. Dubey, J.

1. This writ petition has been filed by a class IV employee of the North Eastern Railway, challenging the order of the Railway authorities rejecting his application for correction of age in his service record.

2. The case of the petitioner is that he was appointed as a Class IV employee in casual vacancy in the North Eastern Railway in April, 1954. After few months he was appointed as peon in the same cadre. At the time of his appointment the petitioner was verbally asked to give his age but was not required to submit any proof in support thereof. The petitioner who was born on 2nd September, 1929 gave his age as 24-25 years. He was, therefore, medically examined by the Railway doctor to ascertain his age and was found about 25 years old. However, in the seniority list prepared by the department his date of birth was mentioned as

15th April, 1919 instead of 2nd September, 1929. Under the then existing rules mistake in recording the date of birth of an employee in the service record could be corrected at his instance on furnishing satisfactory proof. Subsequently rules were amended on 3rd December, 1971 to provide that the request for alteration of date of birth of an employee should not be entertained after completion of the period of probation or three years' service whichever earlier. This amendment deprived the railway servants who were appointed earlier and could not take advantage of the existing rule providing the opportunity for getting the age corrected and as such on 4th August, 1972 the Railway Board decided to give them another opportunity to represent against their recorded date of birth upto 31st July, 1973.

3. The petitioner moved an application for correction of his age duly accompanied by school leaving transfer certificate from the head master of Primary Pathshala Bauhawar, Distt. Deoria within the prescribed period. On 30th July, 1973 the railway authorities required him to furnish certain information regarding his age which he did on 3rd August, 1973. The Divisional Accounts Officer rejected his application on 31st January, 1974 with the following observations:

Your request to change the date of your birth from 15th April, 1919 to 2nd September, 1929 has not been considered justified.

4. The order dated 31st January, 1974 did not assign any reason for rejecting the application of the petitioner and, as such, the petitioner filed a representation to the Divisional Accounts Officer on 25th April, 1974. The petitioner did not receive any reply from the Divisional Accounts Officer and as such he made another representation to the Financial Adviser and Chief Accounts Officer (Administration) on 30th October, 1975. The petitioner requested the railway authorities that he should be medically examined to ascertain his correct age, and be provided an opportunity of personal hearing enabling him to explain his case. The Financial Adviser and Chief Accounts Officer, however, without getting the petitioner medically examined and affording him an opportunity of hearing rejected his representation on 8th January, 1976.

5. Feeling aggrieved the petitioner has come up to this Court under Article 226 of the Constitution.
6. It has been asserted in the writ petition that the date of birth of the petitioner was 2nd September, 1929 and was so mentioned in the school leaving transfer certificate as well as in the Gaon Sabha register and that his date of birth was wrongly recorded in his service record as 15th April, 1919. This mistake was obvious, inasmuch as calculated on that basis his age comes to 35 years on the date of his initial appointment, while according to service rules age limit for such appointments was 18 to 25 years and as such he could be appointed.
7. On the other hand, it has been stated in the counter affidavit filed on behalf of the railway authorities that the date of birth of the petitioner was correctly shown in the service record. The claim of the petitioner that he was not asked to furnish any proof of his age is incorrect. The petitioner in spite of having knowledge that his date of birth was recorded as 15th April, 1919 in the service record did not make any attempt to get it corrected and had moved the application for correction only after his service record was lost. The genuineness of the school leaving transfer certificate and the Gaon Sabha register has also been challenged but no evidence has been filed in support thereof. Regarding the claim of the petitioner that if he was born on 15th April, 1919 he would have been over age by ten years on the date of his appointment and, therefore, could not have been appointed, it has been stated that there was provision for granting relaxation in the upper age limit and therefore the mere fact that the petitioner was over age on the date of his appointment calculated from 15th April, 1919 was of no help to him. The petitioner has given his date of birth as 15th April, 1919 in his application for taking loan etc, and, therefore, he is now estopped from challenging the correctness of the entry regarding his age in his service record.
8. We have heard learned Counsel for the parties and have perused the record.
9. There is no dispute on the point that mistake in recording the date of birth of the employee in his service record can be corrected by the railway authorities on his furnishing satisfactory proof. In this case petitioner had filed school leaving transfer certificate and the certificate from the Gaon Sabha to prove that he was born on

2nd September, 1929 and not on 15th April, 1919. Once the evidence to the effect that the petitioner was born on 2nd September, 1929 had come on record it was incumbent on the railway authorities to have applied their minds to it and record a specified finding as to whether the proof furnished by the petitioner was satisfactory or not. Recording of such finding presupposes the passing of a speaking order which has not been done in this case. The application of the petitioner for correction of his age was rejected without assigning any reason. It is noticeable that on one hand the petitioner had filed two certificates, on the other hand, there appears to be no evidence on record to controvert the same. In these circumstances normally the application of the petitioner for correction of his age ought to have been allowed specially when the error appeared to be apparent on the face of the record. It is not disputed that the age limit for such appointment was 18 to 25 years and therefore the petitioner could not have been more than 25 years of age at the time of his appointment but if we calculated his age on the basis of date of birth recorded in his service book it comes to 35 years. Unless it is proved by the opposite parties that there was some rule for relaxation of age limit in the appointment of class IV employees the claim of the petitioner that he was 25 years of age at the time of his appointment has to be accepted. As stated above the Railway authorities did not pass speaking order and, therefore, this writ petition was liable to be allowed on this ground alone with a direction to the Railway authorities to decide the application of the petitioner for correction of age afresh in accordance with law. However, when the writ petition came up for hearing before us, considering that the petitioner was a poor class IV employee and this matter has been pending for a very long time and further that the main thing to be seen in this case was as to whether there existed any rule for relaxation of age limit in such appointment we decided to dispose of the matter finally after affording the opposite parties an opportunity to prove that there existed any rule for relaxation of age limit. We accordingly directed the opposite parties to produce the rule which they failed to do in spite of being afforded repeated opportunities. In these circumstances we have no option but to hold that there existed no rule for relaxation of age limit in the appointment of the class IV employees. Once it is held that there was no rule for relaxation of age limit in the appointment of class IV employee the presumption would be that the petitioner when appointed was not

more than 25 years of age and as the age of petitioner if calculated on the basis of date of birth recorded in his service book comes to 35 years the entry in the service book was obviously in-correct. In our opinion, the order of the Divisional Accounts Officer rejecting the application of the petitioner for correction of age suffers from error apparent on the face of record. The order of the Financial Advisor and Chief Accounts Officer (Administration) rejecting representation of the petitioner against the said order without getting him medically examined and affording an opportunity of hearing also suffers from the same defect. It is now well settled that an appeal to an authority's discretion is an appeal to his judicial conscience and, therefore, the discretion must be exercised, not in opposition to, but in accordance with, established principles of law. The Financial Advisor and the Chief Accounts Officer (Administration) did not follow this established principle while rejecting the representation of the petitioner. The learned Counsel for the opposite parties cited a Division Bench case of this Court in Civil Misc. Writ Petn. No. 489 of 1977, Niyaz Ahmad Khan v. Union of India in support of their contention that the Railway Authorities were not bound to correct the service record of the petitioner after such a long time, they had discretion in the matter and once that discretion was exercised in one way or the other this Court cannot interfere with it under Article 226 of the Constitution. We have perused the judgment and we are of the opinion that the said decision does not lay down any general rule but is confined to the fact of that case alone. Even otherwise that case is quite distinguishable in view of the fact that the petitioner of that case was quite an educated person and had himself signed the service book containing the alleged incorrect entry while in the present case the petitioner is practically, illiterate and, therefore, there was no question of his being stopped from challenging the said entry. If we accept the view of the learned Counsel for the opposite parties that even if the exercise of discretion by the Railway Authorities is arbitrary and against the well established principles of natural justice this Court should not interfere with it under Article 226 of the Constitution it will not only lead to great injustice to a number of innocent citizen of the country but will also run contrary to the established law on the point of exercise of discretion. In the words of Benjamin Cardozo:

The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains.' (The nature of the Judicial Process -- Yale University Press, 1921), Lord Mansfield also once observed: -Discretion, when applied to a Court of justice means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful, but legal and regular.' *Tingley v. Dalby* 14 N.W. 146.

10. It is true that there is difference between executive discretion and judicial discretion and that the executive discretion is not required to be exercised exactly in the same manner in which the judicial discretion is exercised. However, the Executive discretion has also to be exercised in accordance with the law and well established principles of natural justice and cannot be permitted to be exercised in an arbitrary manner. Equality is the founding faith of the Constitution and foundation of our democratic republic and it is antithetic to arbitrariness. The Supreme Court in *E.P. Royappa v. State of Tamil Nadu* 1974-I L.L.J. 172 at pp. 201-202 (Para 14).

Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within the traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies, one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14.

11. In *Smt. Maneka Gandhi v. Union of India* : [1978]2SCR621 the Supreme Court relying on the decision in *F.P. Royappa v. State of Tamil Nadu* and *Anr.* said:

Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be 'right and just and fair' and not arbitrary, fanciful or oppressive, otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

In *Nand Lal Bajaj v. State of Punjab* : 1981 CriLJ1501 the Supreme Court reiterated the aforesaid principle in the following words:

The functions of the Advisory Board are purely consultative. It is an independent body constituted under Section 9 of the Act consisting of sitting Judge as the Chairman and not less than two other members, who may be sitting or retired Judge of the High Court. It is expected that the Advisory Board would act in a fair and impartial manner in making a report whether or not there is, in its opinion, sufficient cause for the detention of a person. In coming to that conclusion, the Board has to make an objective determination on the question as to whether there was sufficient material on which the subjective satisfaction of the detaining authority could be based.

12. It further observed:

It is the arbitrariness of the procedure adopted by the Advisory Board that vitiates the impugned order of detention. There is no denying the fact that while the Advisory Board disallowed the detenu's request for legal assistance it allowed the detaining authority to be represented by counsel. It appears that the Advisory Board blindly applied the provisions of Sub-section (4) of S. II of the Act to the case of the detenu failing to appreciate that it could not allow legal assistance to the detaining authority and deny the same to the detenu. The Advisory Board is expected to act in a manner which is just and fair to both the parties.

13. In *Sadhu Roy v. State of West Bengal* A.I.R. 1975 S.C. 919 the Supreme Court dealing with the question of subjective satisfaction observed: -

For the legal label that the satisfaction of the executive authority about potential prejudicial activity is 'subjective' does not mean that it can be irrational to the point of unreality. Subjective satisfaction is actual satisfaction, nevertheless. The objective standards which Courts apply may not be applied, the subject being more sensitive, but a sham satisfaction is no satisfaction and will fail in Court when challenged under Article 32 of the Constitution. If material factors are slurred over, the formula of 'subjective satisfaction' cannot salvage the deprivatory order. Statutory immunity hardly saves such invalidity. After all, the jurisprudence of detention without trial is not the vanishing point of Judicial review. The area and depth of probe, or course, is conditioned by the particular law, its purpose and language. But our freedoms are not wholly free unless the judiciary have a minimal look at their executive deprivation, even though under exceptional situations.

It further observed:

The satisfaction, though attenuated by 'subjectivity' must be real and rational, not random divination, must flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctified phrases.

When even the subjective satisfaction has to be exercised in accordance with the well established principles of natural justice it cannot be reasonably claimed that Railway Authorities could exercise discretion vested in them in any manner they liked. In our opinion, if the discretion is not exercised in accordance with law and well established principles of natural justice this Court in an appropriate case can always interfere in its writ jurisdiction.

14. In the result, the writ petition succeeds and is allowed. The order dated 31st January, 1974 of the Divisional Accounts Officer and order dated 8th January, 1976 of the Financial Advisor and Chief Accounts Officer (Administration) are quashed and the opposite parties are directed to correct the date of birth of the petitioner from 15th April, 1919 to 2nd September, 1929 in his service record. The petitioner shall be entitled to the cost of the writ petition.