

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,  
ASANSOL.**

**PRESENT:** Shri Ananda Kumar Mukherjee,  
Presiding Officer,  
C.G.I.T-cum-L.C., Asansol.

**REFERENCE CASE NO. 20 OF 2010**

**PARTIES:** Sibaram Tewary  
**Vs.**  
Management of Mohanpur Colliery of ECL

**REPRESENTATIVES:**

For the Union/Workman: Mr. Ganesh Roy, Adv.  
For the Management of ECL: Mr. P. K. Goswami, Adv.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 20.02.2024

**A W A R D**

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/29/2010-IR(CM-II)** dated 28.10.2010 has been pleased to refer the following dispute between the employer, that is the Management of Mohanpur Colliery under Salanpur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**THE SCHEDULE**

*“ Whether the action of the management of Mohanpur Colliery of M/s. ECL (Salanpur Area) by superannuating Sri Sibaram Tewary, Attendance Clerk on 30.06.2008 is legal and justified? To what relief is the workman concerned entitled for? ”*

1. On receiving Order **No. L-22012/29/2010-IR(CM-II)** dated 28.10.2010 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 20 of 2010** was registered on 12.11.2010 / 09.12.2011 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Sibaram Tewary, the retired workman appeared and filed his written statement on 23.04.2012. Fact of the case as disclosed in the written statement of the ex-workman is that Sibaram Tewary was a permanent employee under Eastern Coalfields Limited (hereinafter referred to as ECL) and posted as an

Attendance Clerk bearing U.M. No. 172051 at Mohanpur Colliery under Salanpur Area. He was appointed in his service in the year 1969. The workman passed his School Final Examination in the year 1976 and his date of birth appears as 08.02.1956 in the School Final Examination Certificate issued by the West Bengal Board of Secondary Education (hereinafter referred to as WBBSE). The management considered his School Final Examination Certificate and issued his Identity Card wherein his date of birth is recorded as 08.02.1956. The management of ECL thereafter issued an Office Order dated 23.06.1989 wherein the Age Assessment Committee as per Implementation Instruction No. 76 (hereinafter referred to as II No. 76) of Joint Bipartite Committee for the Coal Industry assessed the age of Sibaram Tewary as 08.02.1956 as per School Final Certificate. It is contended that the management without considering documents relating to proof of age has superannuated the workman w.e.f. 30.06.2008 which is illegal. Being highly dissatisfied with such illegal act of the management, the workman raised an Industrial Dispute challenging his premature superannuation and the Assistant Labour Commissioner (Central), Asansol failed to settle the dispute. The workman claimed that he has been victimized by the management and prayed for his reinstatement and payment of back wages and their dues for the period from 30.06.2008 to 07.02.2016.

3. The Agent of Mohanpur Colliery under Salanpur Area of ECL on receiving Notice of the reference case filed his written statement on 21.01.2015. The specific case of the management of ECL is that the date of birth of Sibaram Tewary is 08.02.1956 as per School Final Supplementary Examination Certificate of the year 1976. Sibaram Tewary was appointed in service on 01.07.1969 and the said certificate was obtained by him in the year 1976, after a passage of seven years from his year of appointment. According to the respondent Sibaram Tewary has already superannuated from his service as such the Industrial Dispute has become infructuous and he is entitled to no relief. It is claimed that

superannuation of Sibaram Tewary on 30.06.2008 is lawful and the dispute relating to his age cannot be entertained at this belated stage. The management has prayed for dismissal of this Industrial Dispute.

4. After filing of written statements the case was fixed up for evidence of workman witness. Sibaram Tewary filed his affidavit-in-chief. It is admitted that he joined his service as workman under the management of ECL in the year 1969. He was posted as Attendance Clerk at Mohanpur Colliery. The workman passed the School Final Examination in the year 1976 and in the Certificate issued was by WBBSE his date of birth has been mentioned as 8<sup>th</sup> day of February, 1956, which has been verified and considered by the management and the same has been referred in the Office Order dated 23.06.1989. It is his case that management had wrongly superannuated him from service on 30.06.2008 without considering his School Final Examination Certificate, terms of agreement and Notification applicable to him. It is further stated in his affidavit-in-chief that the management be directed to reinstate him in service and pay him his back wages and other benefits and dues for the period from 30.06.2008, the date on which he was wrongly superannuated till 07.02.2016, the date of his actual superannuation. In cross-examination the witness (workman witness – 1) deposed that he passed his Madhyamik examination in the year 1976 as a private candidate. It also emerged from his cross-examination that the Service Identity Card he relied upon was issued in the year 1984, in which his date of birth is recorded as 08.02.1956. At the time of examination of the workman witness no document was admitted in evidence by way of his identification.

5. the management of ECL did not file any affidavit-in-chief in support of their case. Mr. Bidhan Mukherjee, Senior Officer (Personnel) at Mohanpur Colliery under ECL was examined as Management Witness – 1. The witness deposed that Sibaram Tewary was superannuated from his service on 30.06.2008 and his date

of birth was recorded as 08.02.1956 in the Form 'B' Register of the employer company. The relevant extract of Form 'B' Register was admitted in evidence as Exhibit M-1. A photocopy of the School Final Examination Certificate of Sibaram Tewary has been admitted in evidence as Exhibit M-2, where his year of birth appeared as 1956. Management Witness -1 deposed that he cannot produce any copy of letter informing the change of date of birth of the workman from 08.02.1956 to 01.07.1948. In cross-examination the witness deposed that he cannot produce any report of medical examination by which the year of birth of Sibaram Tewary was assessed as 1948 in place of 1956. The witness admitted that no medical examination of workman was held for determination of his age. Witness reiterated in his cross-examination that the year of birth of the workman was recorded as 1956 in the Form 'B' Register of the company.

6. Mr. P. K. Goswami, learned advocate arguing the case on behalf of the management submitted that Sibaram Tewary, the aggrieved workman was appointed in service in the year 1969 and his year of birth was recorded as 1948 in the Form 'B' Register. Subsequently, without seeking any permission from the management the workman obtained a School Final Examination Certificate where his date of birth was recorded as 08.02.1956. The workman had no document in support of his age at the time of his appointment and he appears to have been appointed at the age of 18 years and could not have been a minor. It is argued that the workman claimed to have passed his School final examination in May, 1976 where his date of birth was recorded as 08.02.1956, but there is no foundation or basis of such date of birth and it was entered in the school register only on the basis of an affidavit. Learned advocate claimed that the workman has been rightly superannuated on 30.06.2008 treating his year of birth as 1948 which originally appeared in Form 'B' Register of the company. It is contended that if the year of birth of workman was treated as 08.02.1956, then in the year 1969, at the time of his appointment he was only thirteen (13) years of age, which

is contrary to the provisions of Mines Act., as no child can be appointed in the mines. Learned advocate referred to the provisions of II No. 76, relating to procedure for determination and verification of age of employees. In paragraph (B) relating to review / determination of date of birth in respect of existing employees where it is provided that Matriculation Certificate or Higher Secondary Certificate issued by the recognised Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid bodies should be treated as correct provided they were issued by the said Universities/Boards/Institutions prior to the date of employment. Learned advocate argued that the workman cannot derive advantage of getting a longer period of service on the basis of a date of birth appearing in a subsequently obtained educational certificate, which did not exist at the time of his appointment. It is urged that the workman was superannuated on 30.06.2008 on the basis of his year of birth, 1948 and his claim for back wages for the period from 30.06.2008 to 07.02.2016 is liable to be dismissed.

7. Mr. Ganesh Roy, learned advocate for the workman argued that the date of birth of the workman is recorded as 08.02.1956 in the School Final Examination Certificate (Exhibit M-2) and Form 'B' Register (Exhibit M-1) and it also finds reflection in the Identity Card issued to him at Mohanpur Colliery and the Office Order dated 23.06.1989. Learned advocate claimed that workman has been illegally superannuated from his service eight years prior to his actual date of superannuation for which the workman has suffered immense loss. Learned advocate argued that according to II No. 76 the date of birth of a workman and his age should be determined on the basis of his Matriculation Certificate which cannot be altered under any circumstance. In support of his claim learned advocate relied upon the decisions report in (i) **[(2011) 3 WBLR (SC) 369]**, (ii) **Sukumar Dawn vs Coal India Limited and Others [(2013) 3 WBLR (Cal) 605]**,

and a decision of the Hon'ble High Court at Calcutta in the case of **Radha Kanta Banerjee vs Coal India Limited and Others [WP No. 163 of 2012]**.

8. Learned Advocate citing the decision of the Hon'ble High Court submitted that in the case of **Sukumar Dawn vs Coal India Limited and Others [(2013) 3 WBLR (Cal) 605]**, the Hon'ble High Court at Calcutta held that the age determined by the Colliery Medical Officer cannot be considered as sacrosanct and the Age Dispute Committee cannot defeat the petitioner's right in the absence of any proof of service of Notice of the said committee upon the petitioner and that even if the petitioner failed to produce any proof relating to his date of birth, respondent authority cannot in derogation of the certificate issued by the authorities fix a date of birth unsupported by any reason for the conclusion reached by the Colliery Medical Officer determining age of the petitioner and retire him prior to the date of his retirement.

9. The point for consideration at this stage is whether the superannuation of Sibaram Tewary, Attendance Clerk on 30.06.2008 is legal and justified and what relief the workman concerned is entitled to, if any.

10. I have considered the pleadings of the workman and employer and evidence brought on record by the parties. I have also considered the arguments advanced by the learned advocates in support of their respective case. The aggrieved workman admittedly joined his service as Attendance Clerk in the year 1969. He passed the school final examination in the year 1976 under WBBSE, where his date of birth was recorded as 8<sup>th</sup> February, 1956. In his written statement as well as in the affidavit-in-chief of WW-1, the workman stated that the management's Age Assessment Committee has admitted his date of birth as 08.02.1956 according to the School Final Examination Certificate and also issued his service Identity Card. The workman is aggrieved for being superannuated from service on

30.06.2008, which is not consistent with his date of birth entered in the Service Records as 08.02.1956. From the excerpt of Form 'B' Register, produced as Exhibit M-1, it appears that initially the year of birth of Sibaram Tewary was recorded as "1948" and later on his date of birth was recorded as 08.02.1956 on the basis of a letter bearing No. C-6/120/P-1410 dated 03/09.06.1989 of the Personnel Manager of Salanpur Area. Subsequently, the date of birth 08.02.1956 was cancelled and the previous date of birth recorded as 01.07.1948 was revived as per HQ's letter No. ECL/CMD/C-6/WBE-30/675 dated 15/20.04.1999 and Area's Letter No. C-6/120/P-1193 dated 03.05.1999 of the Deputy Chief Personnel Manager, Salanpur Area.

11. This Industrial Dispute has been raised in the year 2010, after superannuation of Sibaram Tewary on 30.06.2008. The main contention of the management is that the concerned workman was appointed much later in service on 01.07.1969 and the School Final Examination Certificate was obtained much later on the basis of examination held in May, 1976. It is their case that at the time of appointment no such certificate was produced and the same cannot be considered in the light of provision of NCWA.

12. On a close reading of the pleading submitted by the management, I find that it does not refer to any date of birth on which the management has relied upon for the purpose of superannuation. The management has submitted no affidavit-in-chief MW-1 this case and in his evidence-in-chief he has admitted that the date of birth of Sibaram Tewary was recorded as 08.02.1956 in the Form 'B' Register. He also admitted that copy of School Final Examination Certificate bears his year of birth as 1956. The witness failed to produce copy of any office letter by which the date of birth of the workman was changed from 08.02.1956 to 01.07.1948 i.e. the earlier date of birth recorded. It transpires from the cross-examination of the management witness that no medical examination was held

for determination of age of the workman. The year of birth of the workman recorded as 1948 at the time of his appointment therefore has no basis. It is contrary to the pleading that the year of birth of Sibaram Tewary was 1948, on the basis of which he has been superannuated from his service. It is true that the workman has passed his school final examination from WBBSE in May, 1976, which is nearly seven years after his appointment. The management of ECL having accepted his date of birth appearing in the School Final Examination Certificate had altered the date of birth in the 'B' Form Register from 01.07.1948 to 08.02.1956. In the year 1987 at the time of supplying SRE of employees to verify the particulars and age, no age-related dispute was raised by the management and in the Office Order bearing no. 1730/C-6/89/80/613 dated 23.06.1989 issued by the Manager of Mohanpur Colliery under Salanpur Area, the age in respect of several worker including Sibaram Tewary were stated to have been assessed by the Age Assessment Committee as per II No. 76 of JBCCI and it would appear from serial no. 13, that the age of Sibaram Tewary was assessed as 08.02.1956, as per School Final Certificate. The management having kept the workman in the dark has superannuated him on the basis of the date of birth in the Form 'B' Register later on altered to 01.07.1948. No opportunity was given to the workman to raise any dispute to such change in the date of birth. The workman had no occasion to raise dispute in relation to his age as the management had created the impression that his date of birth was accepted as 08.02.1956. If for argument's sake it is assumed that at the time of appointment the date of birth of the workman was recorded as 01.07.1948 and the management of the employer company was not satisfied with subsequently produced School Final Examination Certificate, bearing his date of birth as 08.02.1956 then under the provisions of II No. 76 the date of birth should be determined by the Colliery Medical Officer, keeping in view any documentary or other relevant material as produced by the appointee and the date of birth as determined shall be treated as correct and the same will not be altered under any

circumstances. In the present case the management of the company ought to have referred Sibaram Tewary to get his age determined by the Colliery Medical Officer or by any Age Assessment Committee. The Office Order dated 23.06.1989 referred earlier supports the case of workman that the Age Assessment Committee, as per II No. 76 of JBCCI has determined the age of Sibaram Tewary as 08.02.1956, accepting his School Final Examination Certificate. The management of the company therefore did not have the right to retract its findings to the disadvantage of the workman by superannuating him eight (8) years prior to his actual date of superannuation. At this stage it is inconsequential to deal with the question as to whether the workman was appointed in his service at the age of thirteen years in the year 1969. It was incumbent upon the management to record the proper date of birth at the time of appointment in service. In failure thereof, it is only appropriate to take into consideration the available materials and the conduct of the parties in deciding the date of birth for the purpose of superannuation.

13. Learned advocate for the workman relied upon a decision of the Hon'ble High Court at Calcutta in the case of **Sukumar Dawn vs Coal India Limited and Others [(2013) 3 WBLR (Cal) 605]**, wherein it was held that even if the petitioner failed to produce any proof relating to his date of birth, the respondents authorities cannot in derogation of the certificate issued by the authorities fix a date of birth unsupported by any reason for the conclusion reached by the Colliery Medical Officer determining the age of the petitioner and retire him prior to the date of his retirement according to the certificate of the school.

14. In another decision relied on behalf of the workman in the case of **Radha Kanta Banerjee vs Coal India Limited and Others [WP No. 163 of 2012]**, the dispute which came up for consideration before the Hon'ble High Court is that the petitioner workman was superannuated in February, 2012, treating his date

of birth as 22.02.1952. It was the contention of the workman that his date of birth is 22.04.1954, on the basis of the certificate issued by WBBSE which should be treated as his actual date of birth for the purpose of his superannuation. The Hon'ble High Court revoked the order of superannuation, treating the date of superannuation of the workman as 30.04.2012.

15. Having considered the facts and circumstances of the case it appears to me that the management of ECL has committed gross illegality by superannuating Sibaram Tewary by reverting to his earlier date of birth recorded in the Service Record, which was done away with after recording the age to 1956 as his year of birth as per his School Final Examination Certificate. The management having accepted the date of birth at one point of time, should not have superannuated the workman in a premature manner without any further medical examination. In my view the management has violated the terms of II No. 76 by not following its own order dated 23.06.1989 produced as Annexure-C of the workman's written statement, which was not denied. The ratio of the decisions relied upon by the workman squarely applies to this case. There could not have been a better document than the School Final Examination Certificate, in absence of any other document relating to determination of age of the workman by any Medical Board. I therefore, hold that the order of superannuation of the workman w.e.f. 30.06.2008 is bad in law and the same shall not have any force. The workman having completed his age of superannuation during pendency of this proceeding cannot be reinstated in his service. However, the management of ECL is liable to compensate his losses by paying his back wages from 01.07.2008 till 29.02.2016 the date on which he should have been superannuated. The Industrial Dispute is accordingly decided in favour of the workman on contest. The management of ECL shall treat Sibaram Tewary to be in service until 29.02.2016 and pay him his back wages and consequential dues within two (2) months from the date of communication of this Notification.

Hence,

**ORDERED**

that the Industrial Dispute is decided in favour of the workman on contest. the letter of superannuation bearing no. 1730/C-6/80/63/28 dated 16.01.2008 issued by the management of ECL for superannuation of Sibaram Tewary w.e.f. 30.06.2008 is revoked. The workman shall be treated to be in service till 29.02.2016. Management of ECL is directed to pay him back wages from 01.07.2008 till 29.02.2016 along with consequential benefits within two (2) months from the date of communication of the Notification. An Award be drawn up in favour of Sibaram Tewary in the light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

**(ANANDA KUMAR MUKHERJEE)**

Presiding Officer,  
C.G.I.T.-cum-L.C., Asansol.