

**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. 45 OF 1998**

**PARTIES:** Dilo Rabidas  
(represented by the legal heirs)  
**Vs.**  
Management of Ningah Colliery of ECL

**REPRESENTATIVES:**

For the Union/Workman: Ms. Debarati Konar, Advocate.  
For the Management of ECL: Mr. P. K. Das, Advocate.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 23.09.2024

**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-22012/290/97/IR(CM-II)** dated 19.08.1998 has been pleased to refer the following dispute between the employer, that is the Management of Ningah Colliery under Sripur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**THE SCHEDULE**

*“ Whether the action of the management of Ningah Colliery under Sripur Area of M/s. ECL in changing the year of birth of Dilu Rabidas Hauledge Khalasi as year 1938 is justified ? If not, to what relief is the concerned workman entitled ? ”*

1. On receiving Order **No. L-22012/290/97/IR(CM-II)** dated 19.08.1998 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 45 of 1998** was registered 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. After registration of the Industrial Dispute the deceased workman was substituted by the legal heirs on 03.06.2009. Mr. Sayantan Mukherjee, learned advocate, initially appeared for the union, Janta Colliery Mazdoor Congress and filed the written statement on 12.01.2010. In brief, the fact of the case as per pleading is that Dilo Rabidas was a ‘Haulage Khalasi’ at Ningah Colliery under

Sripur Area of Eastern Coalfields Limited (hereinafter referred to as ECL). His Unique Man Number was 268303 and Coal Mines Provident Fund Account Number was B/569613. The workman was appointed in the year 1963 and his year of birth was recorded in the Statutory Form-B Register of Ningah Colliery as 1943. Dilo Rabidas was thereafter transferred to Sripur Seam Incline under Sripur Area of ECL and again transferred to Ningah Colliery from where he was illegally superannuated on 01.07.1998, treating his year of birth as 1938 instead of 1943.

3. In the year 1987 the Service Record Excerpt (hereinafter referred to as SRE) was served upon the workman and for the first time he came to know that his year of birth was wrongly recorded as 1938. Dilo Rabidas raised objection against his wrong year of birth, recorded in the Form-B Register of the defendant company but the management did not determine the age of the workman by referring him to the Apex Medical Board and without any basis recorded the year of birth of the workman as 1938. It is the case of the union that the year of birth of the workman was recorded as 1943 in the Original and Statutory Form-B Register of Ningah Colliery and in the Identity Card issued by the erstwhile management. It is urged that the year of birth of the workman recorded in the Form-B Register and other records of the company is without any basis, false, vague and is not supported by any document. It is contended that on 11.12.1997 a Notice of superannuation bearing Ref. No. M/N/C-6/96/83/3738 dated 11.12.1997 was issued by the Manager of Ningah Colliery, declaring that he shall attain the age of superannuation i.e., sixty years as on 01.07.1998 and the management has decided to terminate his service on superannuation on 01.07.1998. The workman requested the management for rectifying his date of birth in the Form-B Register and withdrawing the Notice of superannuation but the management paid no heed to his request, as such this Industrial Dispute has been raised. It is the case of the union that by treating his year of birth as 1938, Dilo Rabidas has been

superannuated five years prior to his actual date of superannuation. Thereby he has suffered irreparable loss and damages. The workman died on 12.09.2002 during pendency of the Reference case and his legal heirs have been substituted. The union on behalf of the substituted legal representative of Dilo Rabidas urged that his actual year of birth is 1943 and the Tribunal may be pleased to set aside the Notice of superannuation dated 11.12.1997, issued by the Manager of Ningah Colliery and hold that one of the dependent of the workman is entitled to employment as the workman died in harness in the year 2002 and the back wages of Dilo Rabidas for the period from 01.07.1998 to 30.06.2003 be paid to the legal heirs of Dilo Rabidas.

4. Management contested the Industrial Dispute by filing their written statement. According to the contents of their written statement, the date of birth of Dilo Rabidas was correctly recorded in the Form-B Register and as a token of acceptance of correctness the workman put had put his Left Thumb Impression in the Register (hereinafter referred to as LTI). In the year 1985 a new Form-B Register was prepared and the date of birth was correctly recorded as 1938 which was also accepted by the workman by putting his LTI in the Register. In the Service Book of the workman his year of birth was recorded as 1938, which was again accepted by the workman by putting his LTI without any objection. SRE containing service particulars were issued to the workman in 1987, declaring his year of birth as 1938 but the workman did not raise any objection. It is denied that the year of birth was recorded as 1943 in the Service Records of the company. The union in terms of their letter dated 28.07.1996 raised dispute before the Assistant Labour Commissioner and the employer submitted their reply on 21.03.1997. It is urged that the union has not been able to make out their case at the time of conciliation to establish the foundation of the year of birth of the workman as such the Industrial Dispute is not tenable. The management denied that the superannuation of the workman was illegal and that the legal heirs are not entitled to any relief.

5. Ram Kishun Das @ Abinash Goutam, son of Dilo Rabidas filed an affidavit-in-chief and was examined as Workman Witness - 1. In the affidavit-in-chief it is stated that Dilo Rabidas was initially appointed at Ningah Colliery under Sripur Area of ECL and his year of birth was recorded as 1943 in the Original and Statutory Form-B Register of Ningah Colliery and subsequently his father was transferred to Sripur Seam Incline under Sripur Area of ECL. Thereafter he was transferred back to Ningah Colliery, where he was illegally superannuated in a premature manner. It is averred that the year of birth of his father was rightly recorded in the Identity Card, issued by the erstwhile management. It is stated by the workman witness that in the Identity Card, issued by the Election Commission of India, the age of his father was recorded as fifty years as on 01.01.1995, which is more or less the actual year of birth of his father. In the year 1987 for the first time Dilo Rabidas learnt that his year of birth is wrongly recorded as 1938 in the Service Record and duplicate Form-B Register of the company and he raised a complaint in the Remarks column of the SRE and submitted the same before the management of Sripur Seam Incline. It is urged that the management of Sripur Seam Incline is in possession of the original SRE of the deceased employee. Though the workman raised dispute regarding his year of birth recorded in the duplicate Form-B Register, the management of the company did not arrange for his age determination by the Apex Medical Board. The management has wrongly and arbitrarily altered the year of birth of the employee as 1938 in the duplicate Form-B Register without any foundation. Accordingly, the superannuation Notice dated 11.12.1997 was issued to the workman by the management of Ningah Colliery be set aside and one of the dependent of the deceased employee be provided with employment and the legal heirs of Dilo Rabidas be paid full back wages and other consequential benefits, as if he had not been superannuated from service prior to 30.06.2003. The workman witness produced a copy of Identity Card of Dilo Rabidas as Exhibit W-1, which is marked after objection. A copy of superannuation Notice dated 11.12.1997 has been produced as Exhibit W-2.

6. In course of cross-examination witness denied the suggestion that the Identity Card produced as Exhibit W-1 is a fabricated document or that it was not issued by the colliery authority. He also denied that the year of birth of his father is 1938 and that he should have been superannuated considering his year of birth as 1938.

7. Mr. Ajit Kumar Mazumdar, Deputy Manager (Personnel), Ningah Colliery has been examined as Management Witness – 1. In his affidavit-in-chief he has reiterated the case of the management by stating that the year of birth of Dilo Rabidas is recorded as 1938 in the Service Book of the company and the same is reflected in the Service Record of the company. It is also stated that the workman superannuated from service on 30.06.1998 on his attaining sixty years of age as per his date of birth entered in the Service Record. In the affidavit-in-chief it is stated that the year of birth recorded in the Identity Card of the ex-workman as 1943 is not correct and in the statutory documents the year of birth of the workman was never recorded as 1943. It is asserted that the Identity Card is not a statutory document for considering the age of superannuation and the Form-B Register and SRE are the documents which have to be relied upon for the purpose of superannuation of a person and the management committed no illegality by superannuating the workman from service. According to the management witness the ex-workman and his legal heirs are not entitled to any relief and the Industrial Dispute is liable to be dismissed. Management witness produced the following documents in course of his examination :

- (i) Copy of the Form-B Register of Ningah Colliery bearing name of Dilo Rabidas is produced as Exhibit M-1 (after objection).
- (ii) Copy of the Service Book of Dilo Rabidas, prepared after nationalization, as Exhibit M-2.
- (iii) Copy of the Form-B Register of Sripur Seam Incline, bearing the name of Dilo Rabidas in which his year of birth is mentioned as 1938 is produced as Exhibit M-3 (after objection).

8. In course of cross-examination Management Witness stated that Exhibit M-1 was prepared in the year 1985 and the basis of the entries made in the Form-B Register have not been recorded. The witness stated that he has produced document to establish that the SRE was served upon Dilo Rabidas.

9. The point for consideration is whether the year of birth of Dilo Rabidas was wrongly recorded as 1938 and what relief the workman is entitled to?

10. Ms. Debarati Konar, learned advocate for the dependent of the deceased employee, Dilo Rabidas, argued that the date of birth of Dilo Rabidas was recorded as 1943 in the original Form-B Register of Ningah Colliery. In his Identity Card the year of birth of the workman was recorded as 1943 which has been marked as Exhibit W-1 (after objection). It is submitted that Dilo Rabidas was thereafter transferred to Sripur Seam Incline and in the year 1987. SRE was served upon him, when for the first time he came to know that his year of birth was wrongly recorded as 1938 in the duplicate Form-B Register of the company and he raised objection against such wrong recording of his year of birth. Learned advocate further argued that though the workman raised objection against wrong year of birth recorded in the duplicate B-Form Register, the employer company did not refer him for determination of his age by the Apex Medical Board. Notice of superannuation was issued on the basis of incorrect date of birth, bearing Ref. No. M/N/C-6/96/83/3738 dated 11.12.1997, wherein the management of Ningah Colliery informed Dilo Rabidas that he would superannuate from service on and from 01.07.1998, which has been produced as Exhibit W-2. It is argued that Dilo Rabidas was entitled to be in service upon 30.06.2003 but he was ultimately superannuated from service on 01.07.1998. After raising the Industrial Dispute, Dilo Rabidas died on 12.09.2002. Learned advocate argued that the order of superannuation is illegal and liable to be set aside and Dilo Rabidas who died in the meantime on 12.09.2002, his legal heirs are entitled to money

equivalent to the wage of Dilo Rabidas from 01.07.1998 to 12.09.2002. Learned advocate for the dependent of Dilo Rabidas inter-alia argued that the Identity Card of Dilo Rabidas issued by the management clearly states his year of birth as 1943, on the other hand the management has failed to produce any document in support of their claim that the year of birth of Dilo Rabidas is 1938. Learned advocate in support of her argument relied upon a decision of the Hon'ble High Court of Allahabad in the case of **Shyam Lal Vs. Additional Commissioner and Others [C.M.W.P. No. 9257/1980]**, wherein it was held that in the absence of any certificate, the date of birth recorded in his Service Book must be deemed to be his correct date of birth. Learned advocate for the dependent of the deceased employee also relied upon the decision of the Hon'ble Supreme Court of India in the case of **Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and Others [AIR 1968 SUPREME COURT 1413]**, wherein the Hon'ble Supreme Court of India held that a party in possession of best evidence which would throw light on the issue consciously withholds it, Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie on him and that party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it. Learned advocate argued that in the instant case the management of the company had the original Form-B Register of Ningah Colliery of the year 1963 in their custody in which the year of birth of Dilo Rabidas is recorded as 1943 but they withheld such evidence and adverse inference should be drawn against them for non-production of original document and its place producing the duplicate Form-B Register which was subsequently prepared.

11. Mr. P. K. Das, learned advocate for the management of ECL argued that the year of birth of Dilo Rabidas was all through recorded in his Service Record as 1938 and in the year 1987 SRE was served upon him but the workman did not raise any objection. It is only after the Notice of superannuation was served upon



the workman, disclosing his date of superannuation as 01.07.1998 based upon his year of birth as 1938, the workman raised the Industrial Dispute. It is argued that the document which has been produced on behalf of the dependents of the workman as the Identity Card of Dilo Rabidas does not bear any seal or signature of any issuing authority of ECL. The admission of document has been objected against and no evidentiary value can be attached to the same. It is argued that the year of birth was recorded as 1938 in the Service Book, which has been marked as Exhibit M-2 and SRE was also issued to him in which the year of birth was recorded as 1938. Learned advocate referred to the Form-B Register of Ningah Colliery and Sripur Seam Incline which have been produced as Exhibit M-1 and M-3 respectively where his year of birth has been consistently recorded as 1938 which are statutory service record of the company lying with the management of the employer company. It is urged that the management has produced the statutory documents in their possession which demolishes the claim of the union. It is argued that the legal heirs of the workman have not been able to discharge their onus by producing any primary document in support of the year of birth of Dilo Rabidas, as such they are not entitled to any relief in this case.

12. I have considered the rival contention of the legal heirs of Dilo Rabidas and management. The initial onus of proof lies upon the person who asserts a thing to be true. In the present case the union has raised the dispute that the year of birth of Dilo Rabidas was 1943. The only document which has been produced at the time of evidence is Exhibit W-1, which is purportedly an Identity Card of Dilo Rabidas. The document does not bear the name of the person as it has faded out over the years and the same does not bears any authentication from the office of the management and at the time of admitting the same in evidence the management raised objection. On the face of the document, it appears that it is incomplete in nature and I am unable to place reliance upon the same unless it is corroborated by some other evidence. No other document relating to year of

birth of Dilo Rabidas has been produced on behalf of the legal heirs of the workman. The two other documents produced by the workman are the Notice of superannuation dated 11.12.1997 (Exhibit W-2) which disclosed the date of superannuation and termination of service of Dilo Rabidas as 01.07.1998. The other document is a copy of death certificate (Exhibit W-3) discloses that Dilo Rabidas died on 12.09.2002. The management on the other hand produced a copy of service record of the superannuated employee as Exhibit M-2 where the year of birth of Dilo Rabidas is recorded as 1938. No objection was raised on behalf of the workman at the time of admitting the document in evidence. The management witness stated that SRE was issued to the workman regarding his date of birth but he did not raise any objection. The Form-B registers of Ningah Colliery and Sripur Seam Incline have been marked as Exhibit M-1 and M-3 respectively after objection. In both these statutory documents the year of birth of Dilo Rabidas has been consistently recorded as 1938. No evidence has been brought on record to establish that the workman on earlier occasion raised any objection regarding his year of birth recorded in the Form-B Register or against the Service Record wherein his year of birth is also recorded as 1938. From Exhibit M-3, the Form-B Register of Sripur Seam Incline it appears the Dilo Rabidas was released for SSI to Ningah on 05.08.1994. In the same Form-B Register there are entries in respect of two other persons. There is no interpolation in the year of birth recorded in the columns for Age and Sex of the person. Though objection has been raised against the copy of Form-B Register, I do not find such objection to be tenable in the light of the fact that the same is maintained in the official course, containing entries in relation to other employees as well.

13. The decision of the Hon'ble High Court of Allahabad in the case of **Shyam Lal Vs. Additional Commissioner and Others [C.M.W.P. No. 9257/1980]**, relied on behalf the workman, I find the same goes against the workman as it has been observed that :

*“In the absence of any certificate of his having passed the High School or any equivalent examination at the time of his entry into the service, the date of birth or the age recorded in his service book must be deemed to be his correct date of birth for all purposes in relation to his service including eligibility for promotion, superannuation, premature retirement or retirement benefits.”*

In the present case the workman has not produced any Certificate. Therefore, the age of the workman recorded with the employer company shall have predominance over other claims. The workman at the fag end of his employment cannot be allowed to raise dispute with regard to the year of birth recorded by the employer to get additional benefit.

14. In another decision of the Hon'ble Supreme Court of India in the case of **Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and Others [AIR 1968 SUPREME COURT 1413]**, cited on behalf of the workman, the general principle regarding adverse presumption under Section 114(g) of the Indian Evidence Act of 1872 wherein it is laid down that a party in possession of the best evidence which could throw light upon the issues in controversy, withholds the same from the court cannot rely upon abstract doctrine of onus of proof. In the instant case the primary onus relating to the proof of workman's year of birth lies upon his legal heirs, which they have failed to discharge. The company is in possession of document containing year of birth of the workman recorded for several years and maintained as Service Record of the employee are produced as Exhibit M-1, M-2 and M-3. The entries found therein are consistent regarding the year of birth of Dilo Rabidas, which is 1938. From the facts and evidence, I am unable to hold that the management has withheld the best evidence with them, available in this matter.

15. Having considered the facts and circumstances and the evidence on record, I hold that Dilo Rabidas has been superannuated from his service w.e.f.

01.07.1998 on the basis of his year of birth recorded the Service Record lying with the company. The Industrial Dispute raised by the union on behalf of the workman and thereafter pursued by the legal heirs has no merit and the same is dismissed on contest.

Hence,

**ORDERED**

that the Industrial Dispute is dismissed on contest. Let an Award be drawn up in 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.