

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3001/2001

New Delhi, this the 4 day of November, 2002
Hon'ble Sh. Govindan S.Tampi, Member (A)

M.P.Kaushik,
S/o Late Sh. Dilip Singh
R/o 3 H/362, Nehru Nagar
Ghaziabad (UP).

(10)

...Applicant

(By Advocate Sh. Romesh Gautam)

Vs.

The Divisional Railway Manager
Northern Railway, State Entry Road
New Delhi.

...Respondents

(By Advocate Sh. R.P.Agarwal)

O R D E R

By Sh. Govindan S.Tampi,

This OA seeks that the applicant be treated as having retired on 31-7-96 on the basis of his recorded date of birth as 7-7-1938 instead of as 5-1-1937.

2. MAs No. 2608/2001 and 364/2002 are also disposed of.

3. During the oral submissions S/Sh. Romesh Gautam and R.P.Agarwal, represented the applicant and the respondents respectively.

4. The applicant, who was born on 7-7-1938 as per relevant official records, joined as a Luggage Porter on 14-4-1958 became a Parcel Clerk in 1972. He was falsely implicated in a disciplinary proceedings, which culminated in his being reduced to the initial stage in the lowest scale with cumulative effect, leading to his filing OA No. 405/93 and MA No. 1369/99, which were finally disposed in his favour on 18-4-2000. In the meanwhile, his date of

birth was wrongly changed from 7-7-38 to 6-1-37, inspite of his date of birth being correctly shown as 7-7-38 in the seniority list dt. 6-1-1992. His representation against the wrong procedure adopted and improper step taken, had not been answered, leading to his OA. The date of birth had been wrongly changed without any basis or any evidence to his cost and prejudice. This called for rectification and rendering of justice by the Tribunal.

5. According to the respondents the applicant's date of birth being 5-1-37, he was correctly retired on 31-1-1995 and the applicant's plea that he should have been retired only on 31-7-96 did not have any basis. The applicant, if he had any case should have come before the Tribunal in 1995-96 and not in 2001. His earlier representation had been disposed of earlier but taking advantage of the respondents' communication that his service records have been lost, the applicant has come up with this baseless and mischievous OA. The OA, therefore, deserves to be rejected/dismissed, prays Sh. R.P. Aggarwal, 1d. counsel for the respondents.

6. I have carefully considered the matter and deliberated upon the rival contentions. The applicant's claim is ~~contested~~ by the respondents on the ground of limitation, which in the circumstances of OA cannot be sustained. While the applicant has claimed his date of birth to be based on records - 7-7-38, which is reproduced in the respondents' own seniority list No. 847-E/169/PC/955-1540.RPS/P-2 dt. 6-1-92. On the other hand the respondents treat it to

be 5-1-37. However, nothing has been brought on record by the respondents to show that the date of birth in 1938 had been found to be manipulated or wrong and that they had after due enquiry changed it or advanced it to 1937. That being the ~~position~~, the applicant's case that his date of birth had been improperly and incorrectly amended merits acceptance. He would, therefore, be entitled for full consequential benefits as well.

7. In the above view of the matter, the OA succeeds and is accordingly allowed. Respondents are directed to treat the applicant's date of birth as 7-7-38 and the date of retirement accordingly as 31-7-96 instead of 31-7-95, he was shown as having retired on superannuation. The applicant will also be entitled for full consequential benefits. No costs.

(GOVINDAN S.TAMPI)
MEMBER (A) -

/vksh/