

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.663/96

New Delhi this the 8th day of July 1996.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr R.K.Ahooja, Member (A)

V.P.Verma
S/o Sh. Amar Nath Verma
Chief Typist
Dy Chief Engineer (Construction)
Northern Railway
Patel Nagar, New Delhi.

(By Advocate: Sh.Anis Subrawardy)

...Applicant.

Versus

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Accounts Officer(Construction)
Northern Railway
Kashmere Gate
Delhi-110 006.
3. The Deputy Chief Engineer (Const.)
Northern Railway
Patel Nagar
New Delhi.
4. The Chief Permanent Way Inspector
(Construction)
Northern Railway
Near Lahori Gate
New Delhi.

...Respondents

(By Advocate: Sh. Rajeev Sharma)

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

This application is directed against the order dated 6.2.1996 (Annexure A-I) proposing to retire the applicant on 31.3.1996, and for a direction to the respondents to allow the applicant to continue in service till 5.6.1998. The facts necessary for disposal of this application can be stated thus:



1.2

(X)

2. The applicant was initially appointed as Luggage Porter w.e.f. 6.11.1956 under the Station Master, Kalka within the jurisdiction of Deputy Superintendent, Delhi. By passage of time, he had been promoted and when he filed this application, he was working as Chief Typist in the grade of Rs. 1600-2660 under the Dy. Chief Engineer (Construction), Patel Nagar, Delhi. In September 1960, a show-cause notice was issued to the applicant to explain why he should not be removed from service for concealing his actual date of birth i.e. 5.6.1940 as shown in the Matriculation Certificate dated 15.5.1956 and for giving wrong date of birth as 5.6.1938. An enquiry was held in the matter, and according to the applicant, Annexure A-III is a copy of the order by which the Disciplinary Authority decided to drop the proceedings correcting his date of birth as 5.6.1940 and providing that his engagement w.e.f. 6.11.1956 would be counted only for seniority and would not be counted for other benefits as the same was non-fortuous. In the service sheet of the applicant, according to him, necessary correction was made and the applicant has produced a photocopy of the service sheet. However, the applicant states that he came to know in the year 1993 that the correction of his date of birth had not been carried out in his service book. Therefore, in the year 1994, he made a representation, followed it up with another representation dated 11.2.95 for carrying out the correction of his date of birth in his service book but eventually the impugned order had been served on him. Therefore, the applicant has filed this application praying for quashing of the order and for a direction to the respondents to allow him to continue in service till the age of superannuation basing on his correct date of birth.

...3

0

(9)

3. The application is resisted by the respondents. The respondents do not dispute the fact that the date of birth of the applicant as entered in the Matriculation Certificate is 5.6.1940. They also do not dispute that a disciplinary proceeding was initiated against the applicant as mentioned in the application alleging that he was guilty of concealing his real date of birth i.e. 5.6.1940 and showing his date of birth as 5.6.1938. But they contend that as the records of the disciplinary proceeding could not be traced, the order at Annexure A-III dated 19.8.1963 could not be endorsed by them as authentic. Further, the respondents contend that the applicant cannot at this stage seek his date of birth to be changed as he had even in the year 1985 shown in his own application for an advance from State Railway Provident Fund his date of birth as 29.3.1938. Therefore, the respondents seek to justify the decision to retire the applicant w.e.f. 31.3.96 as his date of birth has all along been maintained in the official records as 29.3.1938.

4. During the course of hearing, by order dated 24.4.96, the respondents were directed to file an affidavit of Shri K.K.Gupta as also the competent authority explaining as to what happened to the show-cause notice issued to the applicant in September 1960 and to produce for the perusal of the Bench the entire files as also the service records of the applicant. Today when the matter came up for hearing, learned counsel for the respondents has produced an affidavit filed by Shri K.K.Gupta, and another affidavit filed by Sh. Ved Prakash who is Divisional Personal Officer in the office of the Divisional Railway Manager, Northern Railway, New Delhi.

(9)

5. Having perused the entire pleadings in this case as also the other materials placed on record, including those two affidavits, we are left with no doubt that the respondents themselves are convinced that the real date of birth of the applicant as recorded in his Matriculation Certificate is 5.6.1940. We also have no doubt that a show-cause notice was issued to the applicant ~~last~~ way back in September 1960/why he should not be removed from service for concealing his real date of birth and claiming that he was born in the year 1938. That such a notice was issued and the ~~applicant's~~ real date of birth was 5.6.1940 is admitted by the respondents in their pleadings. The sole ground on which the respondents ~~resist~~ the claim of the applicant for continuing in service basing on his real date of birth is that in the service book of the applicant, his date of birth remained to be 29.3.1938 and not 5.6.1940. Further ground on which the respondents seek to justify their action is that the applicant himself has been mentioning his date of birth as 29.3.1938. A perusal of the impugned order shows that the respondents had not taken any final decision in the matter. It is worthwhile to reproduce para 2 of the impugned order:

"The case for correction of date of birth of Sh.V.P.Verma, Chief Typist from 29.3.38 to 5.6.40 (PNM Item No.1068 of NRMU) has been referred to G.M.'P' N.Rly, B/House, New Delhi as advised by CAO/C vide their letter No.848-E/2/P-8/C/Louse dt. 19.1.96. The final action will be taken on receipt of any advice from G.M.'P', N.Rly, B/House."

This itself shows that the decision to retire the applicant w.e.f. 31.3.96 is not a final decision. Even though the applicant had in the year 1985 shown his date of birth in a loan application as 29.3.1938, the facts remains that, according to the respondents themselves, the date of birth of the applicant is 5.6.1940 as recorded in the Matriculation Certificate. A final

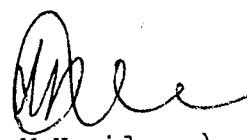
✓

decision on the disciplinary proceedings initiated against the applicant in September 1960 for concealing his date of birth 5.6.1940 should definitely have been taken by the respondents. The respondents neither in the reply statement nor in the affidavit have stated whether any final decision was taken or not. If Annexure A-III produced by the applicant is not a real one, the respondents must be in a position to say what was the real order which was passed on the disciplinary proceedings. A final order must have been passed in the proceedings. In any case, as it is a fact beyond dispute that the date of birth of the applicant as recorded in the Matriculation Certificate is 5.6.1940 and as the respondents themselves have accused the applicant for concealing that date when he initially joined service, we are of the considered view that the respondents are bound to correct the service record of the applicant recording his date of birth as 5.6.1940.

5. In the result, the application is disposed of with a direction to the respondents to correct the date of birth of the applicant in his service book and other records as 5.6.1940, and to allow him to continue in service treating that his date of birth is 5.6.1940.

No order as to costs.


(R.K.Ahuja)
Member (A)


(A.V.Haridasan)
Vice Chairman (J)

aa.