

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1700 of
T.A. No.

1989

DATE OF DECISION 8.1.1990

Allah Mehr Applicant (s)

Shri B.S. Mainee, Advocate for the Applicant (s)

Versus

Union of India & Others Respondent (s)

Ms. Shashi Kiran / Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice- Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Allah Mehr, Mate under P.W.I., Northern Railway, Hapur (U.P.), against the impugned order No. E/15/Screening dated 7.8.1989 passed by the Assistant Engineer, Northern Railway Hapur, giving him one month's notice of retirement based on his date of birth 1925. The case of the applicant is that he was appointed as casual labour gangman sometime in 1960 and was promoted as a temporary mate in 1965. His Casual Labour Card was prepared on 28.12.77 and the date of birth recorded was 2.2.1937. Since then the applicant has been working as a temporary mate. The applicant is totally illiterate. According to the record of date of birth, he is due to retire in February 1995, but all of a sudden, has received notice of retirement because on one casual labour card the date of birth has been recorded as 1925. On enquiry the applicant learnt that he was appointed as a temporary Mate in 1965 and his date of birth has been recorded as 1925. The applicant, however, denies that his date of birth is 1925 and ^{states} that he was born in 1937. He has stated that the maximum age limit for appointment

as a casual labourer is 28 years and according to the date of birth 1925, he would have been 40 years of age in 1965 and as such he could not have been appointed. The applicant was appointed in 1960 as a casual labour gangman when he was 23 years old and promoted as a temporary Mate in 1965. The applicant is not aware how the casual labour card was made in 1965 and how 1925 was recorded as his date of birth. He, therefore, disputes his date of birth and has prayed that the impugned notice dated 2.8.89 being illegal should be quashed.

2. The respondents in their reply have stated that the applicant was appointed as casual labour on 16.10.65 and he worked upto 5.10.1966. The flat card No. 29 was opened and this card was given to him on 6.10.65 when he left the job on his own accord. In this flat card the date of birth was recorded 1925 by the then P.W.I. and there is a thumb impression of the applicant on the same. The applicant presented himself for recruitment after a long period of nearly 11 years when he was again appointed as casual labour Mate on 28.12.77 by the then P.W.I. A new card was opened and at the time of recruitment, the applicant concealed the fact that he was issued a flat card in 1965, 66 and he changed his date of birth to 2.2.1937 instead of 1925 which had been written in the first card. The applicant represented on an affidavit and produced his old flat card No. 29 only to claim seniority with his colleagues and when that card was produced, it was noted that his date of birth was 1925 and hence the present notice has been given to him on the basis of the actual record. It has been stated that during the check by experts it is found that both the thumb impressions on the old and the new cards are of the applicant. At the time of his second appointment, the applicant concealed the fact of his first appointment and as such, he was issued a month's notice for discontinuing from service by the Assistant Engineer, Hapur, on 7.8.89. As there are two dates of birth mentioned in the two cards, the date of birth indicated in the first card has been taken as the correct date of birth. The second date of birth was changed by the applicant in his own interest by concealing the truth and by swearing a wrong affidavit. There is no record that he was ever appointed as casual labour gangman in the year 1960. As the applicant had cheated the administration and produced a false affidavit showing the date of

birth as 2.2.1937, he has been correctly given the notice of retirement.

3. In the rejoinder, the applicant has reiterated that he was appointed in 1960 as casual labour and was subsequently promoted as a temporary Mate in 1965. The applicant also denies that the flat card No. 29 was opened or given to him. The applicant worked for 90 days from 23.1.1967 and again for 28 days in 1972, 30 days from 30.9.1977 and again for 45 days from 30.10.1977. These entries have been made on the live casual labour registers available in the office of the P.W.I., Hapur. The applicant claims that the contention of the respondents that the applicant presented himself for recruitment after 11 years is false. It has also been stated that the flat card No. 29 produced by the respondents does not contain any date of birth and month and that the respondents would never have appointed the applicant in 1965 as a casual labour had the applicant's age been 40 years as alleged by the respondents. According to the rules, casual labour cannot be engaged beyond the age of 25 years. It has been stated by the applicant that in the live casual labour registers where the entries of period of working of the applicant have been made, the date of birth of the applicant is shown as 1937 at page No. 82, 1936 at page 131, 1935 at page 156 and page 22. The entries also show that he worked in 1972, 1977 and 1978. The casual labour card which was prepared in 1977 on 28.12.77, the date of birth of the applicant is clearly shown as 2.2.37 and this date has been acted upon by the respondents till the issue of the impugned notice. The applicant was required to give an affidavit about his date of birth in 1984, which he gave on 11.6.84, a copy of which is at Annexure 'X' to the rejoinder. It has been further stated that no one is appointed as a mate directly and one has to work as a casual labour gangman before he can be promoted as a mate. The respondents are exploiting the applicant as he is illiterate and although he has been working continuously for the last 22 years, he has neither been given temporary status nor regular scale.

4. In this application, the question of date of birth is being considered and not regarding temporary status or regularisation of the appointment.



5. I have gone through the pleadings and heard the arguments of the counsel for the applicant and the respondents. The identity card No. 29 shows the date of birth 1925, but does not give the date and the month in which the applicant was born. The second identity card does indicate the date of birth as 2.2.37 and it was accepted till the applicant was asked to file an affidavit which he did in 1984. After this, the respondents have made enquiries by consulting a finger print expert who has given the opinion that the thumb impressions of the applicant are on both the cards. Even if it is accepted that the thumb impression on the first card is that of the applicant, it is not clear why the date and the month of year was not stated in the first card. A thumb impression of an illiterate person on any piece of paper cannot be the final authority unless it has been explained to him and verified by some persons. It is also unlikely that a person would have been appointed as casual labour at the age of 40 years, if the date of birth is to be reckoned in the year 1925, and again when he was appointed as casual labourer, the second time in 1977, he would be 52 years of age, a very unlikely age to be appointed. If the thumb impressions on both the cards are accepted to be those of the applicant, there is no reason^{for} discarding the date given on the card which is also signed by a P.W.I. and which has been accepted by the respondents all along for about 12 years. Perhaps the records were not clear and the respondents asked the applicant to file an affidavit as provided under the rules. Such an affidavit was sworn in by the applicant (Annexure X to the rejoinder) and apparently accepted, or at least not rejected by them.

6. The case of the respondents is that they found out that the year of birth of the applicant was 1925 when the applicant applied for seniority over others based on his appointment as a casual labour Gangman in 1960. It has been stressed by the learned counsel for the applicant that the applicant is still on daily wages and how can the seniority of a person be fixed when he has not been made regular. Under normal rules, he should have been made regular or given temporary status, but the respondents have acted arbitrarily. The question of seniority will apply only to regular incumbents. The respondents did not retire the applicant on the basis of the first card in 1983 nor did they have any record in their possession to indicate that the applicant was really born in 1925.

Bra

The respondents have not produced any records as to why the applicant was asked in 1984 to file an affidavit about his age and what they did on this affidavit. In any case, I am not discussing the question of seniority of the applicant. Based on the fact that the identity card issued by the P.W.I. Hapur in 1977 shows his age to be 40 years and the date of birth as 22.1937, this should be treated as his correct date of birth and his service regulated accordingly. In the circumstances, the application is allowed and the date of birth of the applicant is to be treated as 22.1937. There will be no orders as to cost.

U

B. C. Mathur
8.1.90
(B. C. Mathur)
Vice-Chairman

C