

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

DA No.1004/93

Date of decision: 15-7-93

Shri Jagdish Singh

Vs. UOI & Others

CORAM

Hon'ble Shri C.J. Roy, Member (J)

For the applicant .. Shri B.S.Maine, Counsel

For the respondents.. Shri H.K.Gangwani, Counsel

JUDGEMENT

This application is filed under Section 19 of the CAT Act by the applicant aggrieved against the order dated 19.3.93 saying that "Shri Jagdish Singh, (the applicant) will retire from Railway Service on 31.5.1993 after superannuation of age i.e. 58 years". The facts of the case are that the applicant was appointed as Sub-Overseer Mistry in the Northern Railway with effect from 21.5.58. He produced his matriculation certificate at the time of appointment showing his date of birth as 18.5.37, which was entered into his service book. A seniority list of PWIs working on construction organisation was issued on 15.3.80, in which the name of the applicant appears at Sl.No.30 and his date of birth recorded as 18.5.1937 and the date of appointment as 21.5.58. Another seniority list was issued on 3.6.92 showing his date of birth erroneously as 18.3.35, against which the applicant represented on 10.8.92 for making correction. After obtaining the orders of the competent authority, the date of birth was corrected as 18.5.37 in that seniority list. In spite of this, the respondents have issued the impugned order dated 19.3.93. Terming this act of the respondents as absolutely illegal and arbitrary, the applicant has filed this application.

M

The respondents have filed their counter reply alongwith an MP for vacation of interim order granted by the Tribunal on 24.5.93 not to retire the applicant on 31.5.1993. They say that the applicant is being correctly retired on 31.5.93 taking into account his correct date of birth as 18.5.1935. They have denied the contentions of the applicant alleging that the applicant's matriculation certificate has been tampered with and that the Controller of Examination, Punjab University has informed vide letter dated 22.2.93 that the applicant's date of birth is 18.5.1935. They further aver that in the seniority lists issued by them on 18.2.92, 21.11.91 and June, 92, Retirement List dated 15.5.91 and also the leave account, the date of birth of the applicant is recorded as 18.5.1935. In view of this, the respondents say that the OA is misconceived and deserves to be dismissed.

The applicant has filed a rejoinder reiterating what he has stated in the OA and alleging that the letter from Punjab University is a manipulated one.

I have heard Shri B.S.Maine, learned counsel for the applicant and Shri H.K.Gangwani,^{learned} Counsel for the respondents and perused the records.

The applicant passed his matriculation examination in 1953 with Roll No.31443. He was appointed in the Northern Railway on 21.5.58, his date of birth being 18.5.37, on the basis of the matriculation certificate, which the applicant claims was produced at the time of appointment, and his date of birth was recorded as 18.5.37 in the service record. The respondents continued to mention the same date of birth in all subsequent documents. Annexure A-2 (page 13) is the seniority list dated 15.3.80, which also shows that the date of birth of the applicant is 18.5.1937.

7

The applicant's date of birth was wrongly shown as 18.3.35 in the seniority list dated 3.6.92 against Sl.No.17 in Annexure A-III (page 16). The applicant filed a representation on 10.8.92, which is Annexure IV (page 17). On the said representation, the date of birth of the applicant was corrected by the concerned Headclerk probably with the order of the competent authority, as 18.5.37 and the date of retirement was shown as 31.5.1995. However, the respondents have issued the impugned notice to superannuate the applicant on 31.5.1993, when according to the corrected date of birth, the applicant is required to retire only on 31.5.1995.

The allegation of the applicant is that the date of birth was arbitrarily altered from 18.5.37 to 18.5.35 without conducting any enquiry behind back of the applicant. The applicant has a fundamental right to continue in service if his date of birth is correct, upto the correct date of retirement as per the well-settled law. The applicant has made a representation but to no avail, and the impugned notice was issued, when in the service records, as stated supra, the original entry shows his date of birth as 18.5.37.

The Respondents' case is that the genuineness of the correctness of the matriculation certificate produced by the applicant was questionable. It appears that they have taken his date of birth as 18.5.35 as per the information given by Punjab University, which is dated 22.2.93/ ^{after an enquiry.} The seniority list issued by the respondent on 15.3.80, in which the date of birth of the applicant was recorded as 18.5.37 is not disputed. There is no specific denial to para 4.13 of the OA in which the applicant claims that Mrs. Sona Mani, Head Clerk corrected the date of birth as 18.5.37 after

obtaining the orders of the competent authority.

It would also be seen that the seniority list of PWIs in the grade of Rs.2000-3200 was issued on 25.6.92 but at that time the date of birth of the applicant was corrected to be 18.5.37, but the documents produced by the respondents pertain to the period 1991-92, i.e. prior to 25.6.92, which do not throw any strength to the case of the respondents in view of the fact that the date of birth was corrected as 18.5.37 as back as 25.6.92.

The respondents were asked to produce the original service records which they claim are not available.

It is relevant to quote the case of State of Orissa Vs. Binapani Dei & Others (AIR 1967 SC 1269) in which it was held that the respondents have not issued any show cause notice and altered the date of birth to the detriment of the applicant without any enquiry, which is against the principles of natural justice. In the above judgement it is clearly stated by their Lordships that:

"The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in service register, from holding an enquiry if there existed sufficient grounds for holding such enquiry and for re-fixing her date of birth. But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair-play. The deciding authority, it is true, is not in the position of a Judge called upon to decide to decide an action between contesting parties, and strict compliance with the forms of ~~juxta~~ judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice.

For the purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences.

"It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity.

That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

It may be further seen that the first seniority list contains the date of birth of the applicant as 18.5.37 which assumes a lot of importance in this case and in the seniority list of 25.6.92 correction of date of birth only indicates that though the service record is not produced, if it is produced it should have contained the correct date of birth as 18.5.1937.

When such is the case, the notice to retire the applicant from service on 31.5.1993 does not appear to be in consonance, because the date of birth as recorded in the service record, which is stated to have been misplaced by the respondents in their office; there is no effort made by the respondents to get the service record traced from the office of the Chief Administrative Officer (Constun.) i.e. Respondent 2, which might have been called for, when the date of birth is corrected by the Respondents.

Therefore, I hold that the acts of the respondents in issuing notice to retire the applicant without holding any enquiry and not at all by producing the service record and without any notice changing his date of birth after a long time, is not only arbitrary but also causes vast prejudice to the applicant by making him to lose the right to serve until he is superannuated according to his actual date of birth.

Following the guidelines laid down by the Hon'ble Supreme Court as stated supra, I feel that the applicant has made out a case very strongly in his favour and I, therefore, set aside and quash the impugned order dated 19.3.1993. No order as to costs.

(C.J. ROY)
MEMBER (J)

15/7/93