

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.200 OF 1996  
ALLAHABAD THIS THE 4TH DAY OF JULY, 2003

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

HON'BLE MR. A. K. BHATTAGAR, MEMBER-J

1. Hemidum W/o Late Taj Mohd.  
aged about 61 years,  
R/o Mohalla - Sarria,  
Village and P.O. Fulwaria,  
District - Varanasi, U.P.
2. Akhlak Mohd.  
S/o Late Taj Mohd.,  
aged about 32 years,  
R/o Mohalla - Sarria,  
Village & P.O.- Fulwaria,  
District-Varanasi, U.P.
3. Ahsan Ahmad  
S/o Late Taj Mohd.,  
aged about 23 years,  
R/o Mohalla - Sarria,  
Village and P.O. - Fulwaria,  
District - Varanasi, U.P. ....Applicant

(By Advocate Shri S. Agrawal)

Versus

1. Union of India,  
through General Manager,  
N.E. Railway,  
Gorakhpur.
2. Divisional Railway Manager (P),  
N.E. Railway,  
Varanasi Division,  
Varanasi. .... Respondents

(By Advocate Shri V.K. Goel)

O R D E R

HON'BLE MAJ. GEN. K.K. SRIVASTAVA, MEMBER-A

The aforesaid Original Application under section 19 of Administrative Tribunals Act 1985, was filed by Taj Mohammad, challenging the order dated 13.3.1995, whereby he was made to retire with effect from 30.09.1993 treating his date of birth as 27.9.1995 claiming that his correct date of birth is 15.03.1937 and, therefore, he was to attain the age of super-annuation on 31.3.1995. During the pendency of present Original Application Taj Mohammad expired and his legal heirs have been substituted.

2. In brief the case of the applicant is that Late Taj Mohd. was appointed on 16th October 1955 as a Fitter Khalasi at Varanasi Division of N.E. Railways. He was promoted to the post of Machinist. His date of birth was 15.3.1937 as recorded in various documents namely School Leaving Certificate, "A" Card prepared by the respondents in the year 1957, Provident Fund Ledger Accounts, Pay slips etc. It is also stated that in January 1994, in the Pay slip, his date of birth was mentioned as 27.9.1935 without there being any reason for such change although earlier it was mentioned as 15.3.1937. He made a representation dated 7.1.1994, Annexure-A5 to DRM (P), NE Railway, Varanasi, protesting wrong mention of the date of birth and it was subsequently corrected and in the Pay slip dated December, 1994 the correct date of birth was again mentioned as 15.3.1937. He has filed Annexure-A4 the letters dated 21.11.1994 published by the Divisional Railway Manager, Varanasi containing the name of large number of employees who were to attain the age of superannuation in the year 1995 wherein the name of the applicant Taj Mohd, was also shown

and his date of birth was shown as 15.3.1937 and the date of retirement as 31.3.1995. The applicant has also placed on record the documents showing that even the officials have accepted from time to time that as per A and B Card prepared in respect to the applicant, his date of birth is mentioned as 15.3.1937, as is apparent from Annexure-A6, but for the reasons best known to the respondents, in an illegal manner the impugned order dated 13.3.1995 has been issued treating the date of birth of the applicant as 27.9.1935 although neither in the service book there was any alteration in the date of birth ~~in the date of birth~~ nor the applicant was ever put to notice for alteration of date of birth in the record of the respondents.

3. The respondents have filed their counter affidavit, wherein they have claimed that at the time of entry into service the applicant on the basis of Medical memo was found having date of birth as 27.9.1935 and, accordingly, in the service book date of birth was recorded as 27.9.1935, according to which, the applicant was liable to attain the age of super-annuation on 30.9.1993. But due to over-sight he continuously worked upto 13.3.1995, when after noticing the aforesaid mistake, the order dated 13.3.1995 was issued retiring the applicant retrospectively with effect from 30.9.1993. It has been admitted that A-Card although was prepared on 20.9.1957, but it is also stated that at that time the date of birth of the applicant was not entered in the said card and it has been entered subsequently. However, in respect of their submission the respondents have not placed any document on the record, although to the contrary the applicant has placed several documents, as stated above.

4. We have heard Shri Sudhir Agrawal, learned counsel for the applicant and Shri V.K. Goel, learned counsel for the

respondents and perused the records.

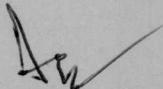
5. This Tribunal considering the claim of respective parties, vide its order dated 10.3.1997 directed the respondents to produce Service "A Card" and other records, if any, pertaining to the applicant, in order to show as to what is the correct date of birth of the applicant recorded in the service book. The respondents have produced "A-Card" before us, which clearly shows that the date of birth mentioned therein is 15.3.1937 and the said card also shows that it was prepared in the year 1957. There is no record placed before us by the respondents to show that there was any other date of birth recorded in the service record of the applicant except 15.3.1937. Various records which are available for perusal of this Tribunal namely "A card", produced before us by the respondents, "Pay Slip", Annexure-A7, statement of PF Accounts Ledger, Annexure-A8, report dated 7.4.1994 of A.P.O., Annexure-A6, the circular dated 21.11.1994, issued by the Divisional Railway Manager (P), NE Railway, Varanasi, it is clear that the date of birth of the applicant in the entire record of the respondents is 15.3.1937. The contention of the respondent is clearly misconceived and contrary to the record and hence is liable to be rejected. We are thus clear of the view that the respondents have acted wholly illegally and arbitrarily in issuing the impugned orders retiring the applicant retrospectively with effect from 30.9.1993 although there was no basis for the same.

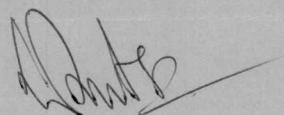
6. In view of what has been stated above, this Original Application is allowed. The order dated 13.3.1995, Annexure-A1 is quashed. It is declared that Late Raj Mohd.



was entitled to retire on 31.3.1995. Since admittedly he has actually served the department upto 13.3.1995, hence arrears of salary for the balance period i.e., 13.3.1995 to 31.3.1995 shall be paid to the applicant. Besides treating the date of retirement of the applicant as 31.3.1935, he would be also entitled for re-fixation of all pensionary benefits etc. The respondents are, therefore, directed to pay salary for the period of 13.3.1995 to 31.3.1995, and to re-calculate the pensionary benefits and also arrears of pensionary benefits to the applicant and revised pension accordingly and pay same to the applicant. The respondents shall pass necessary orders and pay arrears of salary and pensionary benefits as above to the applicant within a period of three months from the date of communication of this order.

7. There will be no order as to costs.

  
Member-J

  
Member-A

/Neelam/