

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1093 OF 1996
ALLAHABAD THIS THE 3RD DAY OF MARCH, 2003

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE-CHAIRMAN

Chingan,
S/o Khedai,
Working as Gangman under P.W.I.,
Northern Railway,
Chunar.Applicant

(By Advocate Shri Anand Kumar & Shri C.P. Gupta)

Versus

1. Union of India,
through General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Allahabad.
3. Assistant Engineer,
Northern Railway,
Mirzapur.
4. Permanent Way Inspector,
Northern Railway,
Chunar.Respondents

(By Advocate Shri V.K. Goel)

ORDER

By this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has challenged the notice dated 03.09.1996 (Annexure -1) by which applicant was informed



that he is attaining the age of superannuation on 30.11.1996.

2. The case of the applicant is that correct Date of Birth of the applicant was 26.02.1952 and he has been wrongly retired from service treating the Date of Birth as 16.11.1938. The applicant has prayed that the order dated 03.09.1996 be quashed and respondents may be directed to correct the Date of Birth of the applicant as 26.02.1952 in place of 16.11.1938.

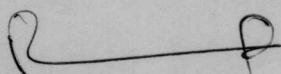
3. Resisting the claim of the applicant respondents have filed counter reply in para 7 whereof it has been stated that applicant had submitted affidavit on 11.04.1984 before P.W.I. Special Mirzapur and mentioned therein the Date of Birth as 16.11.1938. A true copy of the affidavit has been filed as Annexure CA-1. It is also submitted that on 17.04.1984 applicant was medically examined and in the fitness certificate the date of birth of the applicant was wrongly mentioned as 26.02.1952 which was subsequently corrected as 16.11.1938.

4. Shri Anand Kumar, learned counsel for the applicant has placed before me two documents. First document is Annexure-2 dated 17.04.1994 which is a medical certificate in which date of birth of the applicant has been mentioned as 26.02.1952. The another document is ~~an~~ Identity Card issued in favour of the applicant which has been filed as Annexure-2 in which also the date of birth is mentioned as 26.02.1952. However, both these documents are not original documents. They are prepared on the basis of the available record and much reliance cannot be placed on such documents to ascertain true facts.

5. Learned counsel for the respondents was directed to produce the original service record of the applicant which has been placed before me today. From perusal of it, it appears that the applicant was initially engaged as casual labour

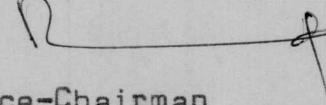
on 16.01.1978. In the record of service as casual labour, applicant's photograph has also been affixed. The photograph clearly shows that the applicant was around 40 years of age. The photograph does not appear to be of a person of 25 or 26 years of age. Further against column no.3 the date of birth has been mentioned as 26.02.1952. But it was scored out and then 16.11.1938 was written, which has also been scored out. Against column no.4, which is the column for age of casual labour employees, age has been mentioned as 40 years. From perusal of the entire casual labour record of service, it appears that the applicant was already overage and to overcome the difficulty his date of birth was illegally mentioned as 26.02.1952. Normally the ~~casual labour employee's~~ upper age limit for the casual labour is 28 years. The another significant event came in the service of the applicant in 1984 when he was granted temporary status. At this stage the applicant was medically examined for re-fixation of pay in the new pay scale and in the same the date of appointment has been shown as 06.04.1984. The applicant was medically examined and at the same time applicant filed the notary affidavit dated 11.04.1984. The original affidavit is on record. In this affidavit the date of birth of the applicant has been mentioned as 16.11.1938 on the record. Thus correction was made in the Live Casual Labour Register and all other documents, which are available on record. Thus, from the own affidavit of the applicant and his photograph available on the service record of casual labour, it is clearly established that on 16.01.1978 when applicant joined as casual labour, he was about 40 years of age and he was clearly overage but he was engaged as casual labour in breach of the rules. The applicant was beneficiary of this illegality, and could not now claim benefits of the wrong entry of date of birth at this stage.

6. After close perusal of the record I do not find any



merit in the case. So far as the impugned notice dated 03.09.96 is concerned the learned counsel for the applicant, lastly ~~submitted~~ ^{& been} submitted that the applicant has ~~not~~ paid his retiral benefits. The respondents may be directed to pay retiral benefits without any further delay.

7. Considering the facts and circumstances of the case on question of date of birth, the claim of the applicant is rejected and the O.A. is dismissed having no merit. However, if the retiral benefits have not been paid to the applicant ~~it~~ ^{it} should be paid immediately, within three months from the production of the copy of this order. ~~to~~ ^{to} ~~co26~~ 1


Vice-Chairman

/Neelam/