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Open Court.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

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Original Application No. 1214 of 1998.

this the 28th day of November 2001.

HON'BLE MR. S. DAYAL, MEMBER(A)  
HON'BLE MR. RAFIQ UDDIN, MEMBER(J)

Pati Ram, aged about 51 years, S/o late Shri Banshi Dhar, R/o Village-Rathera, P.O. Tindauli, District Mainpuri, at present residing at C/o Sri P.L. Sagir, Quarter No. 6 Type II, Section 5-B, BHEL, Ranipur, Hardwar.

Applicant.

By Advocate : Sri Rakesh Verma.

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Asstt. Engineer, Northern Railway, Firozabad.
3. The Permanent Way Inspector, Northern Railway, Mainpuri.

Respondents.

By Advocate : Sri P. Mathur.

O R D E R (ORAL)

BY HON'BLE MR. S. DAYAL, MEMBER(A)

This application has been filed for setting-aside the impugned letter dated 29.12.94/30.12.94 passed by the respondent no. 2 as communicated vide letter dated 31.12.94 superannuating the applicant from service w.e.f. 31.12.1994 on attaining the age of 58 years considering his date of birth to be 1.1.1937. Direction to the respondents is also sought to reinstate the applicant in service as Gangman w.e.f. 1.1.95 and to permit him to continue till 31.12.2007

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on the basis of his date of birth, which was recorded in the service record as 1.1.1947.

2. The applicant has claimed that he was appointed as casual labour w.e.f. 26.5.1965 and was regularised as Gangman subsequently. He has claimed that his date of birth was recorded as 1.1.1947, which was subsequently changed as 1.1.1937 by over-writing and interpolation in the service record. It is stated that the applicant was served with a chargesheet dated 17.12.1994 for having submitted two different affidavits showing different date of birth as 1.1.37 and 1.1.47 respectively and was also charged making over writing in fit memo No. 102492 dated 6.3.1986. The Enquiry officer submitted his report, findings of which was communicated to the applicant. The Enquiry Officer had held that as per the record of the old list dated 12.9.84 for decasualisation and CPC list dated 11.8.86, DMO, Tundla report, Casual Labour Register and seniority list etc. the date of birth of the applicant was 1.1.37. The Enquiry Officer had further held that as per the screening list, staff register and service record the date of birth of the applicant was 1.1.47. It was also mentioned in the Enquiry report that <sup>on the basis of &</sup> the school certificate of the brother of the <sup>the date of birth of the applicant</sup> applicant could be 1.1.1947. The applicant submitted a representation against the enquiry report on 19.4.1997, which is still pending for consideration with the respondents. Before the enquiry was completed, the respondents have <sup>passed</sup> <sup>and</sup> <sup>superannuated</sup> the order dated 29/30.12.1994 superannuated the applicant from service w.e.f. 31.12.1994. The applicant had filed a representation dated 5.2.1995 addressed to the respondent no. 2, which has also not been decided so far, hence this O.A.

3. We have heard the arguments of Sri Rakesh Verma for the applicant and Sri P. Mathur for respondents. We have also perused the original service record produced

before us by the learned counsel for the respondents.

4. We find from the averments that <sup>of which</sup> the claim made by the applicant that he had submitted a representation against the enquiry report on 19.4.1997, which has not been decided, the respondents have stated that they had decided the representation of the applicant by order dated 5.5.1997. The respondents have enclosed the order dated 5.5.97, which simply states that the charges were proved, therefore, five sets of privilege passes were withheld. The enquiry report has also been filed by the applicant, which has been perused by us. The enquiry report comes to the conclusion that as per the record of old list dated 12.9.84 for decasualisation, CPC list dated 11.8.86, DMO, Tundla report, Casual Labour Register and seniority list and the date of purchase of stamp from Ashok Kumar, Vendor, the date of birth could be 1.1.37 and doubt goes to Sri Charan Singh for correcting the date of birth. However, as per the screening list, staff register and service record, the date of birth of the applicant was shown as 1.1.47 and also as per the school certificate of his brother the date of birth of the applicant could be 1.1.47. Thus, the enquiry report gave the two different dates on the basis of <sup>two</sup> <sub>the</sub> different sets of records. The conclusion drawn in the order dated 5.5.97 at Annexure no. 1 to the Counter reply that charges were proved without discussing the full import of the Enquiry Officer's recommendations is, therefore, not sustainable. The applicant has claimed that he had filed a representation dated 5.2.95 to the respondent no. 2 against the order of retirement. The respondents have denied the receipt of this representation on the ground that no representation dated 5.2.95 is available on the file.

5. The applicant has claimed that he had not submitted two different types of affidavits. He had only submitted an

affidavit dated 6.3.1985 as it was demanded by the respondents on the ground that the certificate submitted by the applicant with regard to his date of birth has been mis-placed. The Division Bench of this Tribunal on 29.3.2001 had directed the respondents to show the affidavit in which the applicant had claimed his date of birth as 1.1.1937. The respondents have not produced such an affidavit.

6. We have seen the service book of the applicant produced before us. The service book of the applicant shows that the date of birth of the applicant was 1.1.47 at page 16 thereof. ~~xxxxxxxxxx~~ The certificate of Medical Officer is pasted in which the date of birth of the applicant was shown as 39 years, 2 months and 4 days. The applicant at 15 page of the Service book had declared his date of birth as 1.1.1947, which was signed by the applicant and by the Permanent Way Inspector, Northern Railway, Mainpuri. In column no. 6, the date of birth of the applicant was shown as 1.1.1947, which was cut off and above that 1.1.37 has been written by some one. Similarly in words, it was mentioned as 1947, which was again scored-out by mentioning 1937. The Casual Labour Card of the applicant, which has been annexed to the Service Book also shows that the date of birth of the applicant was 1.1.47. There is an affidavit which has also annexed to the Service Book and this affidavit dated 6.3.85 also shows that the date of birth of the applicant was 1.1.47. The learned counsel for the respondents has stated that the date of birth of the applicant was recorded on the basis of the affidavit produced by him at the time of appointment, which shows that his date of birth as 1.1.1937. However, this affidavit could have been <sup>not be</sup> sworn because the stamp vendor was granted the licence only on 3.3.90. We find with regard to this, that the name of the stamp vendor <sup>is</sup> ~~has~~ without any other particulars

and, therefore, the contention that the stamp was purchased from the stamp vendor was only inherent in the arguments of the learned counsel for the respondents which cannot be accepted.

7. It has been asserted by the learned counsel for the applicant that no opportunity was allowed to the applicant before the date of birth was changed. We do not find that such a ground taken by the applicant in his O.A. However, we find that the date of birth as recorded in the service record of the applicant was 1.1.1947 and the order of retirement of the applicant dated 29/30.12.94 as communicated vide order dated 31.12.94 is patently illegal. The order is, therefore, set-aside. The respondents are directed to take back the applicant in service forthwith and to grant him all the consequential benefits. The cost of the application amounting to Rs. 650/- shall also be paid to the applicant.

*Ranjana*

MEMBER (J)

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MEMBER (A)

GIRISH/-