

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1218 of 1998.

Allahabad, this the 4 day of ^{Sept.}~~August~~, 2008.

Hon'ble Mr. A.K. Gaur, J.M.

Chhedi Prasad Pandey, S/o Sri Paras Nath Pandey, R/o
Village Babhnoli, Post Barharganj, District
Gorakhpur

...Applicant.

By Advocate : Sri Ashish Srivastava.

Versus

1. Union of India through the
Secretary/Chairman, Railway Board, Ministry
of Railways, Rail Bhawan, New Delhi.
 2. G.M. N.E.R., Gorakhpur.
 3. DRM, NER, Varanasi.
 4. Chief Personnel Officer, N.E.R., Gorkhpur.
- ...Respondents.

By Advocate : Shri V.K. Goel.

O R D E R

By means of this O.A., the applicant has
claimed the following main relief{s}.

"(i) That this Hon'ble Court may kindly be set
aside the order dated 22.1.1996 and direct
the respondents to hold the enquiry as per
the direction given vide order dated
3.8.1995 after ascertaining the date of
birth of the petitioner from 'B' part of
the service record and also from the
record of the Accountant P.F. Section.

(ii) That the order may be issued to the
respondents to give all the arrears of
salary from 1.6.1992 to 31.5.1996
alongwith interest @ 18% per annum.

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(iii) That the respondents may be further directed to fix the petitioner's pension treating him to be retired on 31.5.1996 and he may be given all the arrears, pension alongwith interest @ 18%.

(iv) The respondents may be directed to grant all the consequential benefits of continuity of service upto 31.5.1996.

(v)"

2. The controversy related in the present case about the correction in date of birth of the applicant. The applicant had earlier approached this Tribunal by filing O.A. no. 677 of 1992, which was finally disposed of by order dated 3.8.1995 with a direction to hold a fresh enquiry as to the genuineness of the documents furnished by the applicant in proof of his date of birth after giving him adequate opportunity to defend his case and thereafter pass an appropriate order within a period of three months in the light of the instructions issued for re-construction of the service record of the applicant. The grievance of the applicant is that since the respondents had not complied with the directions contained in the judgment and order dated 3.8.1995, the applicant was compelled to file Contempt petition bearing no. 3 of 1996 before this Tribunal. After receiving the advise the applicant has filed the aforesaid O.A.

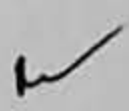
3. According to the applicant, he was inducted as Carriage Khalasi on 5.1.1959 and submitted his

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declaration in respect of date of birth as 20.5.1938. As per the declaration made by the applicant his date of birth was recorded as 20.5.1938 in the service records. Vide office order dated 27.11.1990/3.12.1990 the respondent no.3 issued a circular through which the Unit Officers were informed that the service folder 'A' card of the staff mentioned in the order was not available in the office of respondent no.3 and as such all these employees should be sent to the office of respondent no.3 alongwith the Educational service record in which their date of birth have been recorded. The name of the applicant figured at sl. No. 20 of the said letter. Pursuant to the said letter, the applicant was also directed to attend the office alongwith the proof of his date of birth since the matter was very old, the applicant made herculean efforts to get the original copy of the school leaving certificate issued from the National Intermediate College, Barhalganj, Gorakhpur, where he studied in Class IX and X i.e. from 11.7.51 to 30.6.1954. The applicant failed in High School examination {Annexure-4}. A perusal of the certificate would go to show that his date of birth has been recorded as 20.5.1938. It is also alleged by the applicant that the letter of respondent no.3 dated 7.10.1991, the applicant was informed that he was going to retire from service after attaining the age of superannuation on 58 years in the year 1992

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treating his date of birth as 20.5.1934. Although the applicant in order to prove his date of birth produced the document before the respondent no.3 viz. the original copy of transfer certificate dated 25.11.1991, but the applicant was accordingly retired as per his date of birth recorded as 20.5.1934. Being aggrieved, the applicant preferred a detailed representation regarding his date of birth on 27.2.1992. O.A. no. 677 of 1992 filed by the applicant was decided by the Tribunal after exchange of affidavits by judgment and order dated 3.8.1995 through which the Tribunal had given directions to hold fresh enquiry as to genuineness of the documents furnished by the applicant in proof of his date of birth, after giving him adequate opportunity to defend his case. In support of his case, the applicant has filed an affidavit of Head Clerk, National intermediate College, Barhalganj, Gorakhpur, Principal of the College and Gram Pradhan (Annexure nos. 8, 9 and 10). According to the applicant while deciding contempt petition, the respondents have filed certain documents with letter dated 7.11.1995 through which the applicant was informed that he should put his appearance on 12.12.1995 alongwith the records relating to the date of birth. The respondents have also filed letter/order dated 12.12.1995 through which the respondents had given the proceedings of enquiry. (Annexure-11).



4. The case of the applicant is that the respondents have filed letter dated 22.1.1996 in which 10.1.1996 was fixed but the applicant did not put his appearance on the said date. Further by the letter dated 28.12.1995, the applicant was directed to be present for further enquiry on 10.1.1996 at Varanasi, but this letter could be received by the applicant only on 9.1.1996 and as such it was physically possible for the applicant to contact the person concerned to give their evidence in support of date of birth mentioned in the scholar register as well as in Kutumb Register. However, he submitted a detailed representation against the order dated 22.1.1996 on 1.2.1996.

5. The main grounds of attack in the O.A. is that the applicant has not been granted proper and adequate opportunity to defend his case.

6. Contesting the claim of the applicant, the respondents have filed Counter affidavit denying the claim of the applicant. In order to judge the veracity of the documents, the applicant was directed vide order dated 26.10.1995, to furnish the copy of original Middle School certificate within 10 days. The applicant was also directed to furnish the copy of school leaving certificate, but the applicant deliberately did not furnish the same with a view to avoid verification and submitted his letter dated 14.11.1995 raising objections against

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the directions as communicated to him vide letter dated 26.10.1995. The applicant was also directed to be present in person alongwith the Clerk of National Inter College, Barhalganj, who has filed an affidavit in the Court alongwith original documents. Instead of participating in the enquiry, again by his letter dated 27.11.1995 the applicant tried to prolong the enquiry by asking reasons for directions issued to produce the clerk of the college (Annexure CA-1). The applicant, however, appeared on 12.12.1995 when his statement was got recorded in question-answer form (Annexure CA-2). According to the respondents, the applicant did not furnish the information as sought and deliberately raised the objection creating impediment in smooth continuance of the enquiry. In nutshell, the applicant did not cooperate in the proceedings and failed to comply with the direction of the letter dated 17.11.1997 and did not appear on the date fixed. Though the letter dated 28.12.1995 was received by the applicant on 9.1.1996, but he never sought more time on the ground that the letter was received by him on 9.1.1996. It is further submitted by the respondents that the order dated 22.1.1996 has been passed in strict compliance of the order and direction of this Tribunal in O.A. no. 677 of 1992.

7. The applicant has filed Rejoinder Affidavit reiterating the same facts as contained in the O.A.

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According to the applicant, after filing of contempt petition and during pendency of contempt petition, the respondents passed the impugned order. It is alleged by the applicant that no enquiry was required to be conducted by the respondents in order to judge the genuineness of the documents furnished by the applicant in proof of his date of birth, whereas the respondents were required to conduct an enquiry on the basis of the documents which were already served by the applicant for correction of date of birth, but the respondents intentionally and deliberately compelled the applicant to again submit the attendance register and Kutumb Register and also to produce the custodian of the scholar register. According to the applicant, the respondents have failed to comply with the order passed by this Tribunal.

8. I have heard the learned counsel for the parties and perused the pleadings on record. It has been contended on behalf of the applicant that the order and direction contained in the judgment and order dated 3.8.1995 has not at all been followed by the respondents in its letter and spirit. On the other hand, Sri S.K. Anwar, learned counsel for the respondents vehemently argued that in strict compliance of order and directions of this Tribunal, the enquiry was conducted. During the course of enquiry, the Enquiry Officer contacted the concerned Institution in order to judge the veracity of the

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transfer certificate, but the Institution declined to give register to the Enquiry Officer, whereas the custodian of the register had filed an affidavit before the Court. The enquiry was fixed on 12.12.1995 on which date the applicant appeared, but could not prove the authenticity of the certificate issued by the Institution. The applicant was specifically directed to prove the authenticity of the certificate and was directed to produce the custodian of register in person alongwith other relevant materials, but he did not turn up. Again on 10.1.1996 the enquiry was fixed and the applicant was directed to produce the original Kutumb Register so that the photocopy thereof, filed by the applicant could be adjudged, but in spite of information being given to the applicant, he did not appear and refuse to give any information in this regard. It is seen from the record that on 12.12.1995 the statement of the applicant was recorded in the question-answer form. A perusal of the said statement of the applicant would go to show that the applicant did not give the specific reply of the queries raised during recording the statement of the applicant and gave a general reply in a casual manner.

9. It is also seen from the record that vide order dated 3.8.1995 this Tribunal directed the respondents to hold fresh enquiry in order to judge into the genuineness of the documents furnished by

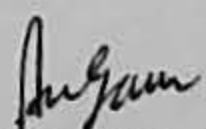
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the applicant in proof of his date of birth and decide it after giving reasonable opportunity to the applicant. The judgment rendered by this Tribunal on 3.8.1995 was served upon the respondents vide letter dated 22.8.1995 and vide letter dated 26.10.1995 of the respondents, the applicant was directed to furnish Roll no. under which he had appeared in the Middle examination and had failed. The applicant was further directed to furnish copy of original school leaving certificate within ten days. From the pleadings of the parties and evidence on record, it is abundantly clear that the applicant deliberately did not furnish the documents with a view to delay the proceedings. Vide letter dated 14.11.1995 the applicant also raised the technical objections. The applicant also failed to submit the documents as asked by the respondents. Further the applicant could not produce the custodian of the register and Head Master in support of his case in spite of there being a direction by the Enquiry Officer in this regard. It is a matter of great surprise that the custodian of the scholar register and Head Master have already filed their affidavit before the Court, supporting the case of the applicant, but when the applicant was directed to produce them before the enquiry, he could not do so and replied negatively that they are not under his control. This conduct of the applicant is not trustworthy and no credence could be attached ^{to} ~~only~~ the affidavits of these two

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persons. It is also seen from the record that instead of participating in the enquiry the applicant vide letter dated 27.11.1995 again tried to prolong the enquiry by asking the reasons for direction issued to produce the Clerk of the College. The statement of the applicant was recorded on 12.12.1995 in question and answer form and the replies given by the applicant to the questions put-forth by the Enquiry Officer are not trustworthy and far from the truth. The applicant also failed to comply with the directions contained in the letter dated 28.12.1995 issued by the respondents. As the applicant was adopting dilly dallying tactics with a view to avoid the enquiry proceedings, the Enquiry Officer had ~~no other option~~ ^{no other option}, except to pass the order dated 2.1.1996. In my considered view the Enquiry Officer has rightly recorded the finding that the applicant failed to prove the validity and genuineness of the certificates furnished by him. The applicant has already been retired long ago after attaining the age of superannuation. The applicant has utterly failed to make out any case warranting intervention of this Tribunal.

10. In view of the above, the O.A. has no merit and is accordingly dismissed. No costs.


MEMBER-J

GIRISH/-