

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 22 DAY OF SEPTEMBER, 2006
Original Application No.301 of 2004

CORAM:

HON.MR.JUSTICE KHEM KARAN, V.C.

1. Smt. Bhanumati, W/o Late Shri Raj Bali
(died during the pendency of the OA
and after him his legal representatives)
1/2 Ram Srijan
1/3 Surendra Prasad
1/4 Shiv Shanker
1/5. Rama Shanker
1/6. Km.Mandeepa Devi

All Sons/legal representative of
Late Shri raj bali, R/o Village Kanewara,
Post Nahwai, district Allahabad.

.. Applicants

(By Adv: Shri A.R. Singh)

Versus

1. Union of India through
General Manager, East
Central Railway, Hajipur.
2. Divisional Railway Manager,
3. Assistant Engineer, East Central
Railway, Chopan. .. Respondents

(By Adv: Shri K.P.Singh)

ORDER

JUSTICE KHEM KARAN,V.C.

The applicant has prayed for the following reliefs:-

(i) to quash the impugned service certificate issued on 28.3.2003
by the opposite parties.

(ii) to direct the opposite parties to fix the pension, family pension and
all the settlement dues calculated on the basis of pay scale of the
applicant at the rate of Rs.4270/-

(iii) to direct the opposite parties to pay difference of arrears of pension
and all the settlement dues calculated at the rate of Rs.4270/-

(iv) to direct the opposite parties to pay the gratuity of the applicant
calculated @ pay scale Rs.4270/-

(v) to issue any such other order or direction which this Hon'ble
court may deem fit and proper under the facts and circumstances of the
case

(vi) to award the cost of original application.



2. The original applicant Raj Bali was a Mate Gang No.4 under P.W.I Singrauli and AEN/CPU. At the time of his appointment on 18.5.1964 his date of birth was written as 14.5.1941. He says that subsequently on verification from gram Panchayat, he came to know that his real date of birth was 3.7.1942 and accordingly it was entered in his service record. He continued working till 31.7.2002. While scrutinizing his service record for purposes of making various payments on retirement that it was discovered that as per service record he ought to have retired on 31.5.2001. The authorities therefore prepared the relevant papers treating his actual date of retirement as 31.3.2001 instead of 31.7.2002. What the applicant wants by this OA is that his retrial benefits should be calculated, treating him to have retired on 31.7.2002 and not on 31.5.2001. According to him service certificate dated 28.3.2003 should be quashed and settlement dues should be calculated as if his pay at the time of retirement was Rs.4270/- and whatever salary and allowances he received in between 1.6.2001 to 31.7.2002, should not be recovered from him.

3. The case of the respondents is that the applicant himself gave his date of birth as 14.5.1941, in his attestation form and the same was entered in his service record and according to that, he was to retire on 31.5.01, but he overstayed irregularly till 31.7.2002. They say in view of railway Board's letter dated 7.7.1992, the recovery is to be made from the applicant and retrial benefits are to be paid as if he retired on 31.5.2001.

4. In his rejoinder affidavit the applicant has clearly admitted in para 6 that at the time he entered in service his date of birth was mentioned as 14.5.1941 but it was subsequently corrected to 3.7.1942. He has tried to say that authorities had issued various notices to the effect that he was to retire on 31.7.2002 and he should fulfill all the formalities accordingly. He has tried to say that he has not been paid salary for the month of June, July 2002.

5. Shri A.R.Singh appearing for the applicant has contended that the applicant is an illiterate person and so he cannot be held responsible for his continuance beyond 31.5.2001, especially when the different authorities issued

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various letters in the year 2002 informing him that he was to retire on 31.7.2002. Shri Singh has also tried to say that when earlier date of birth was subsequently corrected to 3.7.1942, then there was no justification on the part of the department to say that he was to retire on 31.5.2001 and not on 31.7.2002. Relying on Harish Chandra Srivastava vs. State of Uttar Pradesh and Others (1996) 3 UPLBEC pg.1840, Union of India vs. Rakesh Chandra Sharma and Others, 2004 (1) AWC 653, Shyam Babu Verma and Others Vs. Union of India and Others (1994) 2 Supreme Court Cases 521, State of U.P. & others Vs. State Public Services Tribunal, U.P. Lucknow & Another, 2004 (1) AWC 438 and Ramesh Chandra Vs. State of U.P. and Others, (2005) 2 UPLBEC 1305 Shri A.R.Singh has argued that in any case what ever the salary and other allowances were paid to the applicant during this period from 1.6.2001 to 31.7.2002, could not be recovered from him as he worked in that period and he was not at fault for his continuance or overstay. He says that it is not a case where it can be said that the applicant was instrumental in his overstay after 31.5. 2001.

6. There are two questions which this Tribunal has to decide in this case. (1) whether the applicant was to retire on 31.5.2001, on attaining the age of 60 years to be reckoned from 14.5.1941 or was to retire on 31.5.2002 on attaining the said age reckoned from 3.7.1942. (2) If the applicant was to retire on 31.5.2001 whether or not the period of overstay could be treated as part of the service for purposes of granting retiral benefits and whether the department is entitled to recover the amounts paid as salary or allowances for the period of overstay.

7. In so far as the first point is concerned, Shri A.R.Singh has not been able to show or as to how he says that the date of birth of the applicant was not entered as 14.5.1941 in the service record. The respondents have clearly stated that the applicant filled in the attestation form, mentioning his date of birth as 14.5.1941. Photo copy of this attestation form has been annexed to the Counter affidavit. It supports the contention of the respondents. In column 7 of the attestation form date of birth is mentioned as 14.5.1941. It is no where mentioned by the applicant that this attestation form was subsequently amended or corrected so as to mention 3.7.1942 as his date of birth. Notice dated 19.12.2001 (Annexure II) letter dated 11.7.2002 (Annexure III) statement (Annexure IV) do not come to the rescue of the

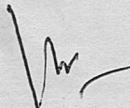
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applicant as these were issued in the year 2001-2002, on the erroneous belief that his date of birth was 3.7.1942. The Tribunal is of the view that the date mentioned in the attestation form is the real date of birth entered in the service record at the time he entered in service. I have no reliable material to say that his date of birth was ever changed. Applicant cannot say that since he is an illiterate so date of birth mentioned by him, in the attestation form should not be treated to be the actual date of birth. So the respondents are perfectly justified in saying that the applicant was to retire in May 2001 as his date of birth in the service record was 14.5.1941. Realising the difficulty as reflected by the attestation form, the learned counsel for the applicant said nothing more in that regard and mainly laid stress on the question whether the salary or other allowances paid to the applicant during this period could be recovered from him.

8. The next question is as to whether the period of overstay could be treated to be the part of service rendered by the applicant for purposes of working out the qualifying service for pension etc. Shri Singh was not in a position to cite any rule or law on the point. The Tribunal is of the view that irregular or unauthorized over stay of the applicant beyond 31.5.2001 is not to be treated as period of service for purposes of pension etc.

9. The last question is as to whether the emoluments such as salary and allowances paid to the applicant during the period of overstay could be recovered from him or not. The view taken by our own Hon'ble High court and by the Apex court in the cases relied on by Shri A.R.Singh is that money paid to the servant under the head of salary or allowances for such period cannot be recovered from him unless it is found that the servant himself was guilty of any fraud or misrepresentation. In other words, if the servant was instrumental in misrepresenting the facts and as a result thereof in getting the pay etc for which he was not otherwise entitled, the same could be recovered otherwise not.

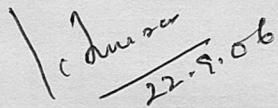
10. Shri K.P. Singh has relied on 'Radha Kishun's case (supra) so as to say that in such cases of overstay after attaining the age of superannuation employee concerned is also to be equally held responsible and so whatever was paid to him during this period would be recovered. He says that on the basis of

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this judicial pronouncement Railway Board issued a circular and on the basis of the same, the department has decided to recover that money from the applicant.

11. The Tribunal is of the view that the facts before the Hon'ble Apex court were quite different. There it was admitted to the parties that the date of birth of the applicant was 13.5.1933 and according to that he was to retire on 31.5.1991. here in the instant case, there was a dispute as regards the date of birth. Secondly, the applicant was an illiterate person. Thirdly, the department itself issued various notices and letters in the year 2001-2002, informing him that he was to retire on 31.7.2002 so it is difficult to say that the applicant was instrumental in his over stay. These were the officers who were at fault in permitting him to continue even after 31.5.2001. He worked from 1.6.2001 to 31.7.2002 and it was for this work, he was paid the salary. So I am of the view that in the circumstances, Radha Kishun's case cannot be applied to the case in hand for saying that emoluments paid for the period of overstay could be recovered from the applicant.

12. In the result, this O.A. is finally disposed of with a direction that pension and other retrial benefits as may be admissible under the rules shall be paid to the applicant, if not already paid, treating ^{RazBali} ~~him~~ to have retired on 31.5.2001 but the respondents shall not recover any amount paid to him under the head of salary or allowances during this period from 1.6.2001 to 31.7.2002. The OA stands disposed of but with no order as to costs.


VICE CHAIRMAN

Dated: Sept. ,2006
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