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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.143 OF 2005

ALLAHABAD THIS THE 12TH DAY OF NOVEMBER 2008

HON'BLE MR. JUSTICE A. K. YOG, MEMBER-J

Prakash Chand, aged about 55 years,
Son of Late Kaloo, Resident of
House No.594/14, Mashiha Ganj, Kashipura,
Sipri Bazar, Jhansi (U.P.)

. Applicant

By Advocate : Shri A. K. Dave

Versus

1. Union of India, through General Manager,
Northern Central Railway, Allahabad.
2. Divisional Railway manager,
North Central Railway, Jhansi Division, Jhansi.
3. Divisional Railway Manager (P)
Northern Central Railway, Jhansi.
4. Chief Personnel Officer,
N.C.R., Allahabad.

. Respondents

By Advocate : Shri Tarun Verma & Shri D.P. Singh

O R D E R

1. Heard Shri A. K. Dave Advocate, learned counsel representing the applicant and Shri D. P. Singh appearing along with Shri Tarun Verma, Advocate.
2. This OA is against impugned order dated 03.02.2005/Annexure-1A and order dated 22.02.2005/Annexure-1B (incorporated by amending the OA) holding Date of Birth of the Applicant as 06.02.1945-instead 10.08.1950-as earlier accepted by the competent authority in the department. It appears, at the time of entry in Service Book, Date of Birth of the applicant was entered as 06.02.1945 the

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respondent authorities as per impugned order given reasons to arrive at conclusion that 'School Leaving Certificate' submitted by the Applicant within seven/eight years of entering into service, could not be treated as authentic; - it could not be relied and also imputed 'ulterior motives' to the applicant.

3. I need not deal with those 'circumstances or reasons' stands for closed on three grounds indicated apart for hereinafter. (I) Pleadings contained in Paras 4.23 (ii), (iii) (incorporated by amendment) read:-

"(ii) The School leaving Certificate issued in 1966 was submitted in the year 1969 before his service book was prepared and the variation in the school leaving certificate bearing his names as Prakash instead of Prakash Chand though all other particulars are same, cannot be interpreted as being different person. The respondents since 1969 to 2004 never pointed the discrepancy to the Applicant.

(iii) The Applicant had not represented the seniority list because the seniority was shown correctly and his date of birth was already accepted as 10.08.1950 in the year 1973 and various documents were issued to him bearing date of birth as 10.08.1950".

Facts incorporated in aforequoted Paras of the OA have not been controverted by filing supplementary counter affidavit and consequently the facts contained in aforesaid paras are unrebutted and thus (II) to be accepted. (III) Apart from what is stated above, reference may be made to Tribunal interim order (in this OA) dated 24.02.2005. For convenience said order is reproduced below:-

AN,

"Shri A. K. Dave, counsel for the applicant and Shri Tarun Verma, counsel for the respondents. Heard counsel for the parties over interim relief. The records have also been perused. The learned counsel for the respondents had also produced a copy of the relevant rules relating to Date of Birth. The service records of the applicant reflected the Date of Birth of the individual is 06.02.1945. This entry in the service records does not seem to have been made when the other columns had been filled up. Apart from the freshness of the ink confirming it, in the personal file there has been a detailed discussion about the Date of Birth of the applicant and note dated 28.04.1973 reads as under:-

"Sub-Shri Prakash Chand Kalloo
CL/Sub. 108/JHS

As per your orders at page 4, the orders were conveyed to HPC JHS vide page 5.

The remark of HPC JHS is at page 7 and his school certificate in original at page 6 for your perusal of orders.

HPC JHS has given his date of birth as 10.08.1950 in his letter vide page 7.

For orders please.

Sd/-
28.4.73

APO (M)

Accept 10.08.1950 as date of birth,
return original certificate

Sd/-
2.5.73

Received original school certificate

Sd-
Prakash Chand"

As the Service Book itself (read along-with the personal file) of the applicant confirms that as late as April 1973 the Date of Birth had been accepted as 10.08.1950, and the applicant was also made aware of the same as he had appended his signature while receiving back the original School certificate, prima-facie I find that the applicant has a case.

It has been argued by counsel for the respondents that on a number of occasions opportunities were available to the applicant to agitate against his Date of Birth reflected as 1945, as for example, at least a twice seniority list was circulated wherein objections were

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called for to correct any mistakes in the seniority. All these aspects will be gone into at the time of final hearing.

As and interim order, the respondents are directed not to superannuate the applicant on the basis of his Date of Birth as 06.02.1945 and the applicant shall be allowed to continue in service beyond 28.02.2005.

The learned counsel for the respondents submits that the continuance of the applicant on the basis of the Date of Birth as claimed by him might pose some problems relating to seniority of other employees. He, therefore, prays for a short date of final hearing. Counter affidavit has already been served upon the applicant and as such the applicant is given two weeks time to file to rejoinder affidavit.

List this case for final hearing on 14.03.2005.

The Service records and personal file are returned for the time being and the counsel for the respondents may take them available on the next date of hearing".

4. Under aforesaid interim order, the Applicant has continued in Service. Said fact is not denied by and on behalf of the Respondents, Nor there is any material on record to show that the Applicant otherwise not suited to continue in service-as on date by Requiscicing to the impugned order (which has though had traces of finality/final order), the Applicant has seemed the Department treating his D.O.B. in 1950-Hardly one or two years are left. Equity/Law both require interim order to be confirmed. There is nothing on record to show that any attempt was made at the behest of the respondents to show that order dated 28.04.1973 and 02.05.1973 in Service Book (quoted in the aforesaid order of the Tribunal) are incorrect. These departmental orders refer to-School

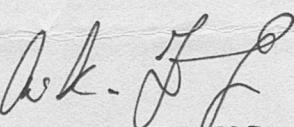
Ans.

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Leaving Certificate as per order dated 02.05.1973 certificate was accepted and 'Date of Birth' of the applicant accordingly treated/accepted as 10.08.1950. There were no occasion for the respondent department Authority to take a different view or review said order or sit in appeal over those orders, and that too without affording opportunity of hearing to the applicant. Impugned order is thus Violative of Principles of Natural Justice and thus a nullity. Further the impugned orders have not referred to the order dated 28.04.1973 and 02.05.1973 quoted in the order dated 24.02.2005. And hence it is vitiated.

5. In totality of the circumstances, Respondents cannot be permitted to ignore Date of Birth of the applicant as 10.08.1950.

6. In the result, OA is allowed, impugned orders dated 03.02.2005 (Annexure A-1A) and order dated 22.02.2005 (Annexure A-1B) are set aside. Respondents are directed to permit the applicant to continue in service in accordance with law treating his 'Date of Birth' 10.08.1950 and also to ensure to show correct 'Date of Birth' (by making necessary Corrections/endorsement) in his Service Book, if not already done within One month of certified copy of this order. No Costs.


 (JUSTICE A. K. YOC
 Member-J

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