

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Original Application No. 1434 of 1992

Allahabad this the 12th day of January 1996

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

Bishan Swarup Kausik, E/o Late Shri Mishri Lal,
A/a 59 years Extra Departmental Runner, P.O.
Gomat Distt. Aligarh.

Applicant.

By Advocate Shri R.K. Tiwari

Vs.

1. Sub Divisional Inspector(Posts) West Sub Division,
Aligarh.
2. Sr. Supdt. Posts, Aligarh.
3. Union of India through Secretary, Ministry of
Communication, New Delhi-1

Respondents.

By Advocate Shri S.C. Tripathi.

O R D E R (Oral)

By Hon'ble Dr. R.K. Saxena, Member(J)

The applicant has approached the Tribunal by way of this O.A. challenging the order dated 24.8.1992(Annexure A-1) whereby he was refused to be paid any salary for the period starting from 29.6.1991 to 02.4.1992.

2. Brief facts of the case are that the applicant was employed as Extra-Departmental Runner

.....pg.2/-

at Gomat in district Aligarh. According to the applicant, his date of birth was 13.7.1933. Since, the retirement age for Extra Departmental Runner (herein after referred as E.D.R.) is 65 years, he was to retire on 12.7.1998 but, the respondents assuming that the applicant had completed 65 years, retired him on 26.9.1991. This order of retirement was passed by Sub-Divisional-Inspector (Posts.) The applicant, however, preferred an appeal before Senior Superintendent Posts, who allowed the appeal on the basis of the documentary evidence of age which was ²produced before the appellate authority. The result was that the applicant was restored to his post w.e.f. 03.4.1992. The salary for the period starting from 29.6.1991 to 02.4.92 was, however, refused on the ground that the applicant had not worked and, therefore, he was not entitled for any salary. Hence, this O.A.

3. The respondents contested the case on the ground that the applicant had not furnished any documentary evidence in support of his date of birth and, therefore, his date of retirement was presumed as 29.6.1991 and he was, ^{accordingly} therefore, retired. It is further contended that the applicant furnished the proof of his age before the Appellate Authority and on being satisfied, the applicant was allowed to be restored on his post where he joined on 03.4.1992. The other grounds taken by the respondents is that Shri Tara Chand who was younger brother of the applicant and was working in the department had already retired and

thus, there was no justification of elder brother being continued in the service. This factum has been disputed by the applicant in his rejoinder by saying that Shri Tara Shankar (and not Tara Chand) was his cousin and not his own real brother. However, he kept silence as to whether the said Tara Shankar was elder to him or younger.

4. We have heard the learned counsel for the parties and have perused the record.

5. The main question in this case is whether the date of birth of the applicant was ^{correctly} recorded or not by the respondents in the Service Book. The specific date of birth as 13.7.1933 has been pointed out by the applicant but the respondents contend that no date of birth was disclosed by the applicant at the time of entry in service. It is really surprising that the employer failed to inquire about the date of birth of the employee and ^{to} record the same in Service Book. Either it is a case of negligence or it was done with the intention to help the employee in future. Anyway, the act of the respondents for not having recorded the date of birth, ^{not} can be appreciated.

6. The respondents have also come with the plea that the date of birth was disclosed by the applicant before the appellate authority which being convinced, withdrew the order of retirement

and restored the applicant on the post. There is inconsistency in the case of the respondents that the documentary piece of evidence was not adduced by the applicant at the time of entry in service yet the entry was made of assumed date of birth. If, it is true that no proof of date of birth was given by the applicant, there was no necessity of entertaining the same during the hearing of the appeal. The learned counsel for the applicant also failed to explain if, Tara Shankar even cousin, was elder or younger to him. There is specific averment on behalf of the respondents that the said brother whose name has been shown as Tara Chand, was younger to the applicant. It was expected of the applicant to have replied it, but it was not done. It means that the said brother namely Tara Shankar (or Tara Chand) was younger to the applicant and he had retired before the retirement of the applicant. In view of this fact, the appellate authority was not correct in entertaining the evidence of date of birth and restoring the applicant to his post. However, the restoration to the post is a fact ~~accomplished~~ and it cannot be undone or ignored. Therefore, we do not take this aspect into consideration that Tara Shankar was elder or younger to the applicant. The fact remains that the respondents have admitted 13.7.1993 as the date of birth of the applicant and accordingly the order of retirement was taken back and the applicant was restored ^{to} ~~on~~ the post.

7. The question, however, arises whether the applicant should be made entitled to the salary for the period for which he had not worked. There is

no evidence or averment on the part of the applicant that during this period he had not been gainfully employed. As such, he is not entitled for the salary of that period.

8. The facts and circumstances of the case disclosed^{be} that on the one hand, the respondents had been basing its case on the ground that the applicant was retired because he had failed to furnish the documentary evidence in support of his date of birth and on the other hand, the proof which was furnished by him at the time of the disposal of the appeal^{was accepted} ^{the} said date of birth was accepted. It could have been done by giving a notice to the applicant before the order of retiring him on 26.9.1991, was actually passed. In such a situation, all these proceedings could have been avoided. Thus, we find that no doubt, the applicant is not entitled for any salary for the period in which he remained out of job and for which no proof of his being not gainfully employed, was furnished^{at} the latches on the part of the respondents are great. The respondents should have proved themselves as model employer but, it has not been done. We, therefore, no doubt dismiss the case of the applicant but, at the same time we allow the amount of Rs.500/- as compensation to the applicant. The O.A. is decided accordingly. No order as to costs.

Member (A)

Member (J)

/M.M./