

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD.

Dated : Allahabad this 29 day of July, 1995. *Afternoon*

Original Application No. 677 of 1992.

QUORUM :- Hon'ble Mr. S. Das Gupta, Member-A.
Hon'ble Mr. T. L. Verma, Member-J.

Chhedi Prasad Pandey son of Sri Paras Nath
Pandey, Resident of Village Barhaganj,
District Gorakhpur at present posted as Carriage
Fitter, Grade-I Coaching Depot. Office (C.D.O.),
Northern Railway, Varanasi..... applicant.
(By advocate Sri R. K. Tewari & Sri M.P.Sinha)

Versus

1. Union of India through Ministry Railway,
Rail Bhawan, New Delhi.
2. General Manager, Northern Eastern Railway,
Gorakhpur.
3. Chief Personnel Officer,
Northern Eastern Railway, Gorakhpur.
4. Divisional Railway Manager,
Northern Eastern Railway, Varanasi.

..... Respondents

(By Advocate Sri V. K. Goel).

O R D E R
(By Hon. Mr. T. L. Verma, Member-J)

The applicant was appointed as Carriage
Khalasi on 5.1.1959. In ~~course of appointment~~
his passing departmental tests, he was promoted

to Higher Grade. At the relevant time, he was working as Carriage Fitter Grade-I, in North-Eastern Railway, Varanasi. It is stated that the applicant, at the time of entering in Railway service, had declared his date of birth as 20.5.1938 and ~~he~~ had furnished documentary evidence in proof of his date of birth. According to him, his date of birth in his Service record was accordingly recorded as 20.5.1938.

2. The applicant, it is stated, was all along under the impression that his recorded date of birth was 20.5.1938 and that he was to retire on 31.3.1998. ⁷² He, however, was surprised to receive letter dated 27.11.1990 from Divisional Personnel Manager (Personnel), Varanasi asking him and others to report to the office of Divisional Personnel Manager with his caste certificate and certificate of his educational qualification in which his date of birth is recorded. It appears that the Service Record of 133 railway employees including the applicant were lost and the above communication was sent to the said railway employees with a view to re-constructing their service records. The applicant submitted his school leaving certificate in proof of his educational qualification as also date of birth. The respondents, it is alleged, instead of relying on the documents furnished by the applicant in proof of his date of birth issued impugned order dated 7.10.1991 informing the applicant that he was to retire with effect from 31.5.1994 treating his date of birth as 20.5.1934. The applicant submitted representation dated 12.2.1992 followed by ~~another~~ representation dated ~~12.2.1992~~ ~~12.2.1992~~

representations dated 27.2.1992 and 20.3.1992 praying
~~therein to make~~
~~for making~~ necessary correction in his recorded date of birth in the service book from 20.5.1934 to 20.5.1938 and permit him to serve till 31st of May, 1996. The representations filed by the applicants, it is stated, did not evoke any response from the respondents and he was made to retire with effect from 31.5.1994. Hence this application for quashing the order contained in letter dated 7.10.1991 (Annexure-7) and for issuing a direction to the respondents to treat the applicant in service till 31.5.1996 with all consequential benefits including arrears of pay and allowances.

3. The respondents have resisted the claim of the applicant, inter-alia, on the ground that the transfer certificate submitted by the applicant, on enquiry, was found to be forged and as such no reliance could have been placed thereon and that the applicant has been rightly made to retire with effect from 31.5.1994 on his attaining the age of superannuation.

4. It is admitted fact that the service record of the applicant had been lost. It is also an admitted fact that in response to communication dated 27.11.1991, the applicant furnished School Leaving Certificate in proof of his date of birth. The respondents have admittedly not accepted the documents furnished by the applicant in proof of his date of birth. In view of the above, admitted position the only question, that falls for our consideration is whether the respondents were justified in not

relying on the documents furnished by the applicant in proof of his date of birth. We have heard the learned counsels for the parties and perused the record. The applicant has filed copy of School Leaving Certificate (Annexure-2) and photostat copies of extracts of Kutumb Register, maintained by Gaon Sabha (Annexure-3) in proof of his date of birth. The date of birth of the applicant, as recorded in the aforesaid documents is 20.5.1938. The learned counsel for the respondents submitted that the Welfare Inspector had ^{held} an enquiry in respect of genuineness or otherwise of the School Leaving Certificate furnished by the applicant and found that the same was fake. The report of the Welfare Inspector, although, has been mentioned in paragraph No.5 of the counter-affidavit as Annexure-R-1, but the same is not on record. It was also submitted by the counsel for the respondents that the applicant had submitted Transfer certificate dated 20.8.91 and thereafter another certificate on 25.11.1991. Both the certificates according to learned counsel for the respondents were found not having been issued by the concerned college on enquiry by the Welfare Inspector. These two certificates have ^{also} not been annexed with the counter-affidavit, as mentioned in paragraph No.6 of the counter-affidavit. There is, thus, absolutely no material before us to support the contention of the learned counsel for the respondents.

5. Learned counsel for the respondents at the time of his argument submitted that only part I of the service record has been lost and that the 2nd part thereof on the basis of which the date of birth of the applicant was ascertained, was very much available. In order to

satisfy ourselves that reliable material was available with the respondents, for ascertaining the date of birth of the applicant, we directed the counsel for the respondents while reserving the order, ~~after~~ ^{to} ~~hearing the parties~~ to produce the same for our perusal by 7.7.1994. The learned counsel for the respondents had undertaken to produce the same, if it was still available with the respondents. The record has not been produced for our scrunity hence we are left with no alternative but to decide this application on the basis of the material already on record.

6. Railway Board by its letter No. E(NG)60 ITNR /3 dated 28.3.1960 have issued instructions for re-construction of the service register of non-gazetted staff. According to these instructions, in cases where service registers are missing and are not traceable even after extensive search, this would be re-constructed on the basis of details available in ^{files of the} ~~Personal~~ Officer as also in consultation with the Account Department. If such records are not available, the Railway Board should be approached for their sanction for re-construction of the service record. ^{mentioned}

We have already ^{mentioned} above, that the respondents have failed to bring to our notice as to whether they followed the procedure as laid down in the above instructions for re-constructing the service record of the applicant. Not only that, the personal file/part 'B' of the service record which according to the learned counsel for the respondents was available and on the basis of which the date of birth of the

applicant was ascertained as 20.5.1984 were not produced for our scrutiny inspite of direction given by us and undertaking given by learned counsel for the respondents.

7. The enquiry which the Welfare Inspector of the respondents is stated to have conducted for ascertaining the genuiness or otherwise of the School Leaving Certificate furnished by the applicant in proof of date of birth, it appears, was conducted ex parte. The applicant, as is evident from the material on record, was not given an opportunity to present his case. The age old dictum that administrative orders having civil consequences should abide by the principle of natural justice does not appear to have been complied with in this case. The administrative order of the respondents in not accepting the date of birth as given by the applicant does have civil consequences inasmuch as the applicant has been made to retire four years before the date on which he would have retired had the date of birth given by him been accepted.

8. In view of the discussions made above, we find and hold that the decision of the respondents in rejecting the document furnished by the applicant in proof of his date of birth by holding an enquiry without giving notice of the same to the applicant and giving him opportunity to defend himself is violative of principle of natural justice and as such cannot be sustained.

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9. In the result, this application is allowed and the respondents are directed to hold 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 appropriate orders within three months from the date of service of this order, in the light of instructions issued for reconstruction of the Service Register of the applicant. In case, on enquiry, it is found that the date of birth of the applicant is 20.5.1938, the same shall be recorded in his service book and he will be deemed to be in service as if he had not been retired from service and will be entitled to all service benefits including arrears of salary. There will be no orders as to cost.

J.S. J.S. J.S.
J.S.

A.M. A.M. A.M.
A.M.

VKE/-