

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1134 of 1992

Mohd. Farooq ..... Applicants.

Versus

Union of India & ors. .... Respondents.

Hon'ble Mr. A.K.Sinha, Member-3

The applicant, Mohd. Farooq has challenged the impugned order dated 7.10.1991 (Annexure-8) passed by the respondent No. 1 denying the claim of the applicant for correction of his date of birth, stating that his date of birth is 16.10.1938 instead of 16.10.1933 shown in the seniority list dated 15.11.1990 displaying the list of Railway employees retiring from January, 1991 to December, 1991 including the name of the applicant. The applicant has prayed that the impugned order be set aside and quashed and direction be issued to the respondents not to retire the applicant till 31.10.1996, the date on which he attains the age of 58.

2. The short facts giving rise to this application are as follows:

The applicant was appointed as Khalasi in the Railway Department Kanpur on 10.2.1957 and he was promoted as Fitter on 4.5.1963 and subsequently, he was upgraded as Fitter Class II and thereafter as Fitter Class I since 1982 and since then he has been performing his duties as such.

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3. The claim of the applicant is that, his date of birth is 16.10.1938 and this date of birth was recorded at the time of his appointment and there is no documentary evidence for that and he did not hold any educational qualification. His date of birth, it was alleged, was supported and substantiated by the medical examination which was conducted at the time of his appointment.

4. The Railway Administration had declared the seniority list on 18.8.1963, a copy of which is annexed as Annexure A-1, which, on perusal would show that his date of birth is noted at S.No. 51 as 16.10.1938 in column No. 6. This seniority list is conclusive proof of the fact that at the time of his appointment, his date of birth was noted as 16.10.1938 and after his appointment, the first seniority list (Annexure A-1) dated 18.8.1963 was released showing his date of birth as 16.10.1938.

5. It is further averred that the employees of the Railways are provided with special facilities with regard to medical treatment and medical pass/ card are issued for treatment of the family members and the medical card issued to the applicant would show that his date of retirement mentioned there as 31.10.1996 and in this connection, he has produced the photo copy of the medical card bearing No. 1851 in his name issued on 31.10.1990 by the Railway Administration, which is Annexure A-2.

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6. The applicant had taken loans time to time from Railway Employees Co-operative Credit Society which had issued the slip of loan and in the said

slip, the date of appointment of the applicant was noted as 10.2.1957 and his date of birth has been shown to be 16.10.1938 and a copy thereof has been filed, which is Annexure A-3 to A-5 respectively.

7. It is further alleged that in the month of August, 1991, he learnt that he was due to retire on 31.10.1991 and he rushed to the office for making enquiry about the actual position and having learnt, he filed his representation dated 23.8.1991 and 27.8.1991 addressed to the respondent No. 1 explaining his case and emphasizing that his date of birth has been consistently accepted and shown in the service record as 16.10.1938 and there was no justification in passing orders regarding the date of his superannuation - as 31.10.1991 holding his date of birth as 16.10.1933. Annexure-6 dated 27.8.1991 is the representation of the applicant. Thereafter, the applicant filed several representations (Annexure A-7) dated 21.9.1991 and finally, the applicant was served with the impugned order. Hence, the necessity of this application for the above relief.

8. Registered notices to the respondents were sent on 11.11.1992 and it appears that Shri R.K.Ozha Advocate had appeared and filed his Vakalat Nama on behalf of the respondents. The order sheet of this case would show that since six adjournments were allowed to the respondents to file their Counter Affidavit, but, no Counter Affidavit was filed on behalf of the respondent and consequently, a stop order was passed by this Court on 28.5.1993 giving last chance to file Counter Affidavit, and when the same was not availed off by the respondent's lawyer, finally, on 6.7.1993

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arguments were heard, and the case is being decided on the materials already available on the record.

9. The only question that arises for consideration is whether the impugned order is fit to be set aside and whether the respondents be directed to correct the date of birth of the applicant and allow him to continue in his service till he attains the age of superannuation!

10. Having heard the learned counsel for the parties and having gone through the relevant documents, it is obviously clear that applicant was appointed as Khalesi on 10.2.1957 and at the time of his appointment, the applicant had given out his date of birth as 16.10.1938. This date of birth was reflected in the seniority list issued by the respondents on 18.8.1963, a copy of which is Annexure A-1, which, on perusal, would show that the date of birth of the applicant was 16.10.1938 mentioned at S.No. 51 in column No. 6.

11. The contention of the learned counsel for the applicant is that at the time of his initial appointment, he had given out his age as 16.10.1938 and he being illiterate and having no educational qualification, he had no documentary proof regarding his date of birth and at the time of his appointment, he was medically examined by the Railway Doctor and his age was found to be consistent with his declaration as regards his date of birth as 16.10.1938. He worked in the Railway Administration from 1957 to 1963 when the first seniority list was published by the Railway Administration and it was

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(8)

shown to be 16.10.1938. On the basis of these material facts, it has been sought to be contended that where, there is an ex-parte evidence on behalf of the applicant and contrary to it, there is no cogent and reliable evidence adduced on behalf of the respondents, it must be held that the date of birth, which was initially recorded at the time of his appointment by the Railway Administration and displayed subsequently in the seniority list ~~in~~ 1963 as 16.10.1938 must be accepted as correct.

It was submitted that the seniority list (Annexure A-1) displayed by the Railway Administration is an admission of the fact that the date of birth of the applicant when he was appointed was recorded as 16.10.1938.

12. That apart, the applicant has produced the family medical card issued in his favour by the Railway Administration which is Annexure-2 and, on perusal of which, it will be seen that this medical card stands in the name of the applicant bearing No. 1851 and it is dated 31.10.1990 and it is shown that the date of retirement of the applicant was mentioned as 31.10.1996. This corroborates the contention of the learned counsel for the applicant that the date of birth of the applicant recorded by the Railway Administration at the time of his initial appointment was 16.10.1938 otherwise his date of retirement could not have been shown as 31.10.1996. In the absence of any evidence to the contrary, there appears to me that there is merit in this contention and further it finds corroboration from Annexure-3 to Annexure-5 which are loan slips issued in favour of the applicant by the Railway Employees Primary Co-operative Bank, Lucknow, and these

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slips also shows that the date of appointment of the applicant was recorded as 10.2.1957 and the date of his birth was recorded as 16.10.1938.

13. In the conspectus of facts and circumstances of the case and taking into consideration, the submissions of the learned counsel for the applicant and in view of the fact that there is no contrary evidence adduced on behalf of the respondents, it must be held that the impugned order issued by the respondent No. 1 is illegal and bad in law.

14. In that view of the matter, the application is allowed. The impugned order (Annexure-8) dated 7.10.1991 passed by the respondent No. 1 is hereby quashed and set aside and the respondents are directed to correct the date of birth of the applicant as 16.10.1938 and they are directed not to retire the applicant till 31.10.1996, the date of his superannuation. In case, the applicant has been retired, he shall be deemed to be in service with all consequential benefits till he attains the age of his superannuation on 31.10.1996 as per his date of birth dated 16.10.1938.

However, in the circumstances, there will be no order as to cost.

*Ashou Kumar Datta,*  
Member-J 14/7/93

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Allahabad Dated: 14.7.1993

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