

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
ALLAHABAD

Allahabad this the...^{6th}...day of June...1997

CORAM : HON'BLE MR. T. L. VERMA, MEMBER (J)
HON'BLE MR. D.S. BAWEJA, MEMBER (A)

ORIGINAL APPLICATION NO. 1235 of 1992.

ASIT KUMAR ROY SON OF LATE J. C. ROY
RESIDENT OF HOUSE NO. 378 C/o. DR. RAJNI BHATNAGAR
CIVIL LINES, CHOPIA, BAREILLY.

...PETITIONERS.

(THROUGH COUNSEL A. S. DIWAKAR)

VERSUS

1. UNION OF INDIA THROUGH THE SECRETARY, MINISTRY
OF RAILWAYS, RAIL BHAWAN,
NEW DELHI.

2. DIVISIONAL RAILWAY MANAGER (PERSONNEL) NORTH
EASTERN RAILWAY, IZATNAGAR, BAREILLY.

.....RESPONDENTS.

(THROUGH COUNSEL SHRI A. K. SHUKLA)

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O R D E R.

(By Hon'ble Mr. T.L. Verma, Member J.)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing the order dated 21.3.1994 and Order dated 9.6.1994 and for issuing a direction to the respondents to pay salary to the applicant for the month of October, 1991 and for issuing further direction to pay the retiral benefits to the applicant treating 28.10.93 to be the date of his birth.

2. The relevant facts of the case are that the applicant was appointed as Khalasi in the Railways on 13.11.1954. His date of birth as recorded in the High School Certificate is 20.10.1933. The respondents it is said recorded his date of birth as 21.1.1932 at the time of his appointment. He, therefore, submitted a representation for correcting his recorded date of birth on the basis of the High School Certificate. In 1957, according to the applicant, his date of birth was corrected and recorded as 20.10.1933. In 1988 when the list of employees due to retire in 1990 was published, the applicant was surprised to find that his name included in the said list ^{and} his date of birth shown as 28.1.1939. He, therefore, submitted a representation to the Divisional Railway Manager for correcting his date of birth to 20.10.1933. His representation was allowed by the Divisional

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Railway Manager by order dated 6.10.1989 and his recorded date of birth was corrected from 28.1.1932 to 20.10.1933 and accordingly his date of retirement was fixed as 31.10.1991. He accordingly retired from service w.e.f. 31.10.1991 on the basis of ~~recorded~~ ^{Corrected} date of birth. The respondents, however, raked up the ~~dispute~~ ^{matter} ~~against his recorded date of birth~~ ^{about} again and declined to pay retiral benefits ^{to the applicant} treating him to be in service till 31.10.1991. Not only that the applicant was informed by letter dated 21.10.1994 ^{that} ~~that~~ ^{his} date of birth of the applicant shall be taken to be 28.1.1932 and he will be deemed to have retired on 31.10.1990. By communication dated 21.3.1994 he was deemed to have been re-employed between 1.10.1990 and 31.10.1990 and order~~s~~ accordingly for making recovery of excess payment made during the aforesaid period was passed. It is alleged that order dated 21.3.1994 and 9.6.1994 were passed by the respondents without giving any notice and ~~also~~ opportunity of ^{it is alleged,} hearing to the applicant. Therefore, these orders ^{are} are bad in law and violative of principle of natural justice. Hence this application for the reliefs mentioned above.

3. The respondents have contested the claim of the applicant. In the counter-affidavit filed on their behalf, it has been stated that the date of birth as given in the High School certificate cannot be treated as binding as the applicant had passed the said examination after joining service of the

respondents. It has also been stated that the order for making correction of the recorded date of birth has been passed by the Divisional Railway Manager who is not competent to pass the same. According to the respondents, C.P.O. is the only authority who can pass such an order. Since the order ^{for} changing the date of birth has been passed by an authority not competent to pass the same, the applicant is not entitled to get any benefit *therefrom*

4. We have heard the learned counsel for the parties and perused the record very carefully. From the facts admitted in the respective pleadings of the parties it emerges that at the time the applicant was initially appointed, his date of birth was recorded in his service book as 21.1.1932. He passed High School Examination after entering the services of the respondents in 1954. In his High School certificate his date of birth was recorded as 20.10.1933. On his representation, his date of birth was corrected from 21.1.1932 to 20.10.1933. The applicant was allowed to retire on the basis of the corrected date of birth. After his retirement on 31.10.1991 he submitted his papers for finalisation of his terminal benefits. At this stage objection to the correction of his date of birth was taken ~~by~~ up by the Accounts Office~~f~~ and on the basis of that objection impugned orders dated 31.3.1994 and 9.6.1994 have been passed.

5. In view of the above admitted position, the only ~~one~~ question that arises for our consideration is whether the respondents were justified in re-opening the matter after the retirement of the applicant that too without giving him any opportunity of hearing. The only objection in accepting 20.10.1933 as the date of birth of the applicant, ~~is~~ that the order for making correction of the date of birth in the Service Book of the applicant was passed by the Divisional Railway Manager who is not a competent authority. The Hon'ble Supreme Court has, in the leading case of Union of India Vs. Harnam Singh reported in 1993(2) S.C.C. Page 162, ~~has~~ held that a Govt servant who has declared his age at the initial stage of ~~employment~~^{is} not precluded from making a request at a latter stage for correction of the same. The correction of the recorded date of birth, however, ~~should~~^{is} not be lightly made. The authority competent to order for correction should ordinarily seek for irrefutable proof ~~of~~^{relating to} the date of birth and also ~~that~~^{see} that such a request for correction has been made without unreasonable delay. From the averments made in the application, it is apparent that request for making correction in the date of birth was made way back in 1956. The applicant ~~adduced~~^{claims to} ~~have seen in 1957 in his previous medical report~~^{have seen in 1957 in his previous medical report} ~~that his date of birth has been corrected~~^{as} 20.10.1933. In 1988, however, when the list of employees who were due to retire in 1990 was circulated, the applicant ~~was~~ surprised to find his name in the said list. He again submitted representation to the Divisional Railway Manager who passed order dated 6.10.1980 accepting date of birth of the petitioner to be 20.10.1933. From para 7 of the counter-affidavit it appears that the applicant was sent for medical examination in 1957. The averments made in this para further disclose

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that the respondents did not deny that the date of birth of the applicant in the folio of Medical Report was shown as 20.10.1933. All that has been averred in this para of the Counter affidavit is that the Medical Memo cannot be treated as authenticated document because the applicant did not challenge the seniority list published from time to time. Be that as it may, the fact remains that the folio of the medical report of the applicant bore 20.10.1933 as the date of birth of the applicant in 1957. That apart the Divisional Railway Manager by his order dated 6.10.1989 accepted the date of birth of the applicant as recorded in his High School Certificate as 20.10.1933. The evidence accepted by the Divisional Railway Manager for passing order on the representation of the applicant for correction of his date of birth obviously is the High School Certificate. High School Certificate generally is accepted to be the best proof of date of birth, so this document may be treated as irrefutable evidence of the date of birth of the applicant. The decision of the Divisional Railway Manager in accepting the representation of the applicant for correction of his date of birth ~~on the basis of~~ on the basis of the High School Certificate cannot be said to be unjust. The said decision of the Divisional Railway Manager in accepting the date of birth as of the applicant was given effect in as much as the applicant was allowed to retire treating his date of birth as 22.10.1933. In view of this the respondents are estopped from reopening the matter and treating the applicant as having retired on 1.2.90.

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6. In 'Sanatan Gand Vs. Berhampur University and Ors' AIR 1990 SC 1075 the appellant was admitted in Law College. He had pursued his studies for two years. He had also been granted admit Card for pre-law and Intermediate Law Examinations. He was permitted to appear in this said examination. He was also admitted to the final year course. It was the stage of declaration of result of pre-law and Inter-law that the University raised objection to his so called ineligibility to be admitted in Law Course. The Orissa High court dismissed the Writ filed by appellant. In appeal the Hon'ble Supreme reversed the decision of the High Court and held that the University was clearly estopped from refusing to declare the result of the appellants' examination or preventing him from pursuing his final year examination. The ratio of this decision of the Hon'ble Supreme Court is ~~equally~~ applicable to the facts of the case under consideration on all the four. The plea that the D.R.M is not competent authority now is not tenable. The D.R.M. who is one of the highest functionary of the Railways cannot be indicted for having passed wrong order in allowing the representation of the applicant for correction of date of birth. The respondents ought to have examined the matter before allowing his representation and allowing him to continue in service on the basis of corrected date of birth. The respondents cannot be permitted to reopen this matter after his retirement.

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7. In addition to the above it is settled principle of law that executive orders having adverse civil consequences should abide by principles of natural justice. The impugned orders do have viciated the applicant with adverse Civil consequences inas much as, the same have

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affected his pension and other terminal benefits as well as, he has been asked to refund the part of the salary he has received. Admittedly, no notice was given to the applicant to explain his position before the impugned orders reversing the decision of the D.R.M. and ordering recovery of the alleged excess payment was passed. This is contrary to the law, therefore, cannot be sustained.

8. Since the applicant has already retired on the basis of the corrected date of birth we do not consider it to be fair to give respondents liberty to reopen the matter again by giving notice to the applicant to show cause why he should not be treated to have retired on 31.1.1990 and treat his service from 1.2.1990 to 31.10.1991 as-re employment.

9. In the facts and circumstances of the case discussed above, we hold that impugned orders dated 21.3.1994 and 9.6.1994 are arbitrary and ~~unreasonable~~, allow him this application and quash orders dated 21.3.1994 and 9.6.1994. The respondents are directed to refund the amount to the applicant if recovered pursuant to order dated 9.6.1994. The applicant will be deemed to have retired with effect from 31.10.1991 and will be entitled to receive terminal benefits accordingly. The respondents are directed to fix pension and make payment of terminal benefits to the applicant on that basis within a period of three months from the date of communication of the order.

There will be no order as to costs.

G. K. Verma
MEMBER (A)

J. K. Verma
MEMBER (J).