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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad, this the 26/11 day of November, 1999.

ORIGINAL APPLICATION NO.673 OF 1993

Present :-Hon'ble Mr.L.Hmingliana, Member(A)

1. Smt.Gomti Devi,
W/o. Late Babadin,
R/o. Village Ajnai,
Post- Khaga,
Distt. Fatehpur.
2. Shri Ram Pal,
S/o. Babadin,
R/o. Village Ajnai,
Post- Khaga,
Distt. Fatehpur.

.....Applicants

(By Shri B.N.Singh, Counsel for the applicant)

Versus

1. Union of India through Chairman
Railway Board, New Delhi.
2. Divisional Railway Manager,
Northern Railway, Allahabad Division,
Allahabad.
3. The Assistant Engineer (I),
Northern Railway, Kanpur.

.....Respondents

(By Shri G.P.Agrawal, Advocate)

O R D E R

(By Hon'ble Mr.L.Hmingliana, Member(A))

The applicant who filed the original application
in the month of April 1993 died on 1-11-97 and his wife
Gomti Devi ^{and her son have} has been substituted for the late applicant.

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2. The original application is against the letter of the Assistant Engineer(I) Northern Railway's dated 21-3-92 (annexure-I) to the late applicant, informing him that he would be retiring from service on 31-7-92, which date of superannuation was on the basis of the entry of his date of birth as 7-7-1934. It was the case of the late applicant that he was 27 years in May, 1966 as per his medical certificate of fitness issued by the Railway Hospital, Kanpur vide Memo No.71, dated 25-5-1966 and he was not due for retirement. The Medical Certificate has not been produced.

3. The undisputed facts of the case are as follows:-

The late applicant joined service on 15-7-1966. The date of birth of the late applicant was not entered in his service book till 1986 when Shri Virbhadra Prasad took over the charge of Establishment Clerk and made the entry as 7-7-1934. The impugned letter dated 21-3-92 was issued to the late applicant on the basis of that entry. The late applicant immediately made a representation (annexure-2) to the Asstt.Engineer, which was given by the late applicant to the office of the C.P.W.I. on 31-3-92. The Assistant Engineer wrote to the Medical Superintendent of the Kanpur (Hospital) letter dated 31-3-92 (annexure-3) to send to him copy of the Medical Fitness Memo No.71 dated 25-5-1966 as the original was not in the service book of the late applicant. The Medical Superintendent sent reply dated 18-7-92 that copy of the Memo was not available in the Hospital. The late applicant filed original application No.1037/92 in the Tribunal and the Tribunal vide order dated 31-7-92 (Annexure-10) directed the respondents to dispose of his representation with a speaking order within one month from communication of the order. The respondents conducted a detailed enquiry and the Assistant Engineer recorded his finding confirming the record of 7-7-1934 and disposed of the representation of the late applicant.

4. Shri B.N.Singh , learned counsel for the applicant pointed out the contention at para-4(w) of

the original application that if the late applicant was born on 7-7-1934, he would be 31 years and 9 months old and clearly overaged when he joined service, even though as a candidate from a Scheduled Caste he was then entitled to age concession of 3 years above the maximum age limit of 25 years for general category candidates. To this, there is no reply from the respondents in their counter affidavit or from their learned counsel Shri G.P.Agrawal.

5. The contention of Shri Agrawal on behalf of the respondents was that the age of a person as given in the Medical Certificate could be no more than an estimate of the Doctor who gave the certificate and it is not a reliable evidence. The learned counsel was quite right, but not in his next contention that the entry of 7-7-34 as the late applicant's date of birth was a better evidence as it was confirmed by a speaking order following the direction given by the Tribunal.

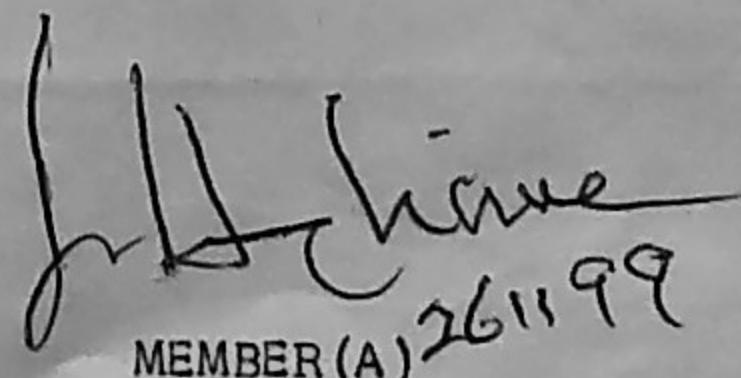
6. The late applicant's statement that his age was mentioned of 27 years in the Medical Fitness Memo dated 25-5-1966 has not been disputed. It was the responsibility of the respondent authorities to enter my date of birth when he joined service, and in the absence of any other documentary evidence, the date of birth of the late applicant should have been worked out on the basis of that medical fitness certificate and entered in his service book and he should have been made to confirm that by putting his signature or thumb impression to it. It is not necessary to establish the exact biological date of birth of a government servant. What is needed is to establish the date of birth for the purpose of government service. In the present case, the age of the applicant being 27 years as given in his medical fitness was the only evidence available and to be the basis for making entry in his Service Book.

7. The late applicant has not given his date of birth and that remains to be worked out. As we have already

said, he was estimated to be 27 years in the month of May, 1966. We have to remember that there was only an estimate of the Doctor who gave him the Medical Fitness for joining service. On that basis his date of birth could be anywhere between 01-5-1939 to 31-5-1940. The respondents will have to be given the benefit of the earliest date, in view of the omissions on the part of the late applicant to give the date himself. The date of birth of the ^{late} applicant will have to be taken as the 01-5-1939 and the date of his superannuation from service will have to be calculated on that basis and it will have to be 01-5-1997. He will have to be treated as continuing in service till the end of April, 1997.

8. The next question is as to whether his salary for the period after his ~~forced~~ ^{first} retirement to 30-4-1997 should be paid to the substituted applicants namely Smt. Gomti Devi and Shri Ram Pal. On the principle of 'no work no pay', it may be reasonable to hold that no salary should be paid to them as the late applicant was not on duty during that period. But, he was entitled to continue in service and be on duty, and it was only because of the wrong decision of the respondents that he was forced to retire from service earlier. Had the Tribunal granted him interim relief, he could very well have continued in service. While refusing interim relief, the applicant is entitled to expect ^{to} get back all the benefits if in case his application is allowed. Then the substitute applicants must be paid the salary of the late applicant for ^{the} period from 01-8-1992 to 30-4-1997.

9. The application is accordingly allowed. The late applicant shall be deemed to have continued in service upto 30-4-1997 and the substituted applicants shall be paid the salary he was entitled to for that period within six months from the date of receipt of this order by the respondents.


MEMBER (A) 26/11/99