

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Dated: Allahabad, the 11th day of May, 2001.

Coram: Hon'ble Mr. S. Dayal, A.M.

ORIGINAL APPLICATION NO. 290 OF 1994

Khunni Lal,
s/o Balwant,
r/o Old Chavni, near Hanuman temple,
District Dhaulpur, Rajasthan.

. . . . Applicant

(By Advocate: Sri Anupam Kulshrestha)

Versus

1. The Union of India through the General Manager,
Central Railway, Bombay.
2. The Divisional Railway Manager,
Central Railway, Jhansi Division, Jhansi.
3. The Assistant Engineer,
Central Railway, Agra Cantt., Agra.
4. The Inspector of Works,
Central Railway, Agra.

. . . . Respondents

(By Advocate: Sri A.K. Gaur)

ORDER (ORAL)

(By Hon'ble Mr. S. Dayal, AM)

This application has been filed for setting
aside the order dated 31.8.1993 passed by Respondent
No.4 retiring the applicant w.e.f. 31st August, 1993.

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2.

A further direction to the respondents is sought not to interfere in the working of the applicant as Mali and to pay his salary regularly. Payment of arrears of salary and other allowance has also been prayed for.

2. The case of the applicant is that he was appointed as Gateman on 29-7-1957 and was directed to join Training, vide letter of the Assistant Personnel Officer dated 20-7-1957. In the said letter, the age of the applicant was stated to be 20 years. The applicant applied for leave on 20-7-82 upto 16-11-82. The applicant has alleged that the respondents were annoyed with him on account of his filing Civil Misc. Writ Petition No.893 of 1995, which was later on numbered as TA No.63 of 1996, by which the applicant had to ^{be} given the alternative job of Mali. The applicant also filed an application before the Prescribed Authority under the Payment of Wages Act for back wages, which was allowed by the Prescribed Authority, vide its order dated 27-5-92. Out of annoyance, it is alleged that the respondents placed notice on the Notice Board that the applicant will retire on 31-8-93. The applicant has claimed that the age of retirement of Mali was 58 years and the date of birth of the applicant was 1.1.37 and, therefore, the applicant was to retire on 31-1-95.


3. I have considered the arguments of Sri Anupam Kulshrestha for the applicant and Sri A.K. Gaur for the respondents.

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4. The learned counsel for the applicant has drawn attention to Annexure No.1, which is a letter, by which the candidates were directed for training on the duties of Gatemen and on completion of the same were appointed as Gateman with particulars of medical and age. The name of the applicant appears at Sl.No.4 and in the column of date of birth against Sri Khunni Lal 20 years is mentioned as on 1-1-57 and the no. of certificates of medical examination is also mentioned.

5. The learned counsel for the Respondents was required to produce the service record of the applicant. The learned counsel for the Respondents has brought the Personal File of the applicant, in which Page No.7 of the file contains a certificate dated 19-7-57 given by Surgeon, mentioning his age to be 22 years. At this stage, the learned counsel for the applicant stated that Service-Book should have been brought. However, as the direction was for production of service records, it cannot be said that the respondents' failure to bring Service-Book should be taken adversely against them. Now the question which arises is which of the two documents produced before me should be considered to be one which should be taken into consideration for reckoning the age/date of birth of the applicant. It is clear that the Annexure No.1 produced by the applicant in his O.A. is an order deputing the candidates for training on duties of Gatemen. It cannot be



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4.

regarded as basis of proof of the applicant's age. This document does not mention the date of birth but only mentions that the candidate was 20 years on 1.1.57. As against this, the certificate of Surgeon mentioning that the applicant was 22 years on 19-7-57 after medical examination is much more authentic for reckoning the age of the applicant. The fact that the date of birth has not been mentioned in the order of deputation for training makes it clear that the age of the applicant was to be recorded only on the basis of medical examination.

6. The learned counsel for the respondents in the supplementary counter affidavit has filed seniority list of Pointsmen along with letter dated 1-9-80, circulating the seniority list. The name of the applicant appears at Sl.No.70 and his date of birth is mentioned as 20-8-35 in the seniority list. Thus, the applicant was informed of the date of birth as recorded by the respondents as early as in 1980. He has chosen to file this OA only on 11-1-94 after his retirement on 31-8-93. The learned counsel for the respondents has relied upon the judgments of Hon'ble Supreme Court in Union of India Vs. Harnam Singh, AIR 1993, SC 1367 and Union of India Vs. C. Ramaswamy 1997 (4) SCC, 647 to contend that the applicant is estopped from challenging his date of birth at such a late stage.

7. I have considered the fact as well as law on the issues and I find that the claim of the applicant of the applicant that the order dated 31.8.93 deserves to be set aside is not borne out. The application is, therefore, dismissed. No order as to costs.


(S. DAYAL)
MEMBER(A)

Nath/