

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 2nd DAY OF JANUARY 2003

Original Application No.418 of 1995

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Heera Lal, a/a 57 years  
Scn of Late Jokhu, Resident of  
Mohalla Alahdapur, Near Dental  
Hospital, Gorakhpur.

... Applicant

(By Adv: Shri B.P.Singh)

Versus

1. General Manager, North Eastern Railway, Gorakhpur.
2. The Chief Workshop Manager, (Signal Workshop) N.E.Railway Gorakhpur Cantt.
3. D.S.T.E(Signal workshop) N.E.Railway, Gorakhpur Cantt.
4. Production Engineer(Signal Workshop) N.E.Railway,Gorakhpur.

... Respondents

(By Adv: Shri D.C.Saxena)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has prayed to quash the order dated 22.9.1995(Annexure 2). He has also prayed to quash the memo of charge dated 15/17.2.1995(Annexure A-1). Finally he has prayed that the respondents may be directed to treat the applicant in service as Fitter Grade-1 in Signal Workshop of N.E.Railway Gorakhpur till July 1996. He has also prayed for the payment of the retiral benefits and salary and allowances which were due to him.



The facts of the case are that applicant Herra Lal joined service as Khalasi in North Eastern Railway Gorakhpur on 1.12.1959. He was promoted to the post of Fitter on 15.1.1969. Thereafter he was promoted to the post of Fitter Grade II and Fitter Grade-I. While the applicant was serving as Fitter Grade I respondents passed order dated 22.2.1995 holding that the date of birth of the applicant in service records shown as 1.7.1938 is not correct, it should have been 1.7.1928. From perusal of the order it appears that some inquiry was conducted by General Manager(Vigilance). On the basis of this order applicant was retired from service w.e.f. 22.2.1995. Applicant was also served with a memo of charge dated 15/17.2.1995, ~~a copy of~~ which has also been challenged by the applicant. Learned counsel for the applicant has submitted that the order dated dated 22.2.1995 altering the date of birth of the applicant could not be legally passed without giving applicant an opportunity of hearing. The learned counsel for the applicant has placed reliance on the judgment of Hon'ble Supreme court in case of Sarju Prasad Vs. General manager and Anr. 1981 (43) F.L.R pg 4.8. The learned counsel for the applicant has further submitted that the service of the charge sheet on the applicant was effected after the retirement and it was not legally maintainable and charge sheet is liable to be quashed.

Shri D.C.Saxena learned counsel for the respondents, on the other hand, submitted that the correct date of birth of the applicant was 1.7.1928 which was recorded in service records on the basis of the School leaving certificate at the time he joined the service. The date of birth was made as 1938 subsequently by manipulation. For this misconduct the applicant was served memo of charge before he was retired on 22.2.1995 and the disciplinary proceedings against the applicant do not

suffer from any legal infirmity. It is also submitted that on the basis of the memo of charge served on the applicant inquiry has already been completed and Inquiry officer has submitted his report on 4.8.1999. However, the disciplinary proceedings could not be concluded on account of the pendency of the present OA in view of the provisions contained in Section 19(4) of A.T.Act.

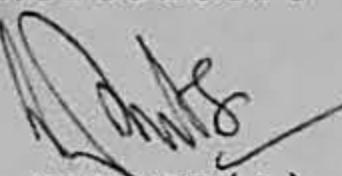
We have carefully considered the submissions of the counsel for the parties. There is no doubt about the legal position that the date of birth mentioned in their service record could not be altered without giving opportunity of hearing to the employee concerned. Hon'ble Supreme Court in case of 'Sarju prasad Vs.General Manager and Anr(Supra) has already held that date of birth could not be altered without giving opportunity of hearing, Reliance has been placed on an earlier judgment of Hon'ble Supreme Court in case of State of Orissa Vs.s Dr(Mrs) Veenapani Devi, (1967) 2 LLJ 266. In the circumstances, applicant is entitled for relief against the order dated 22.2.1995(Annexure 2) and the order cannot be sustained. However, as the issue, <sup>as to</sup> ~~whether~~ what was the correct date of birth of the applicant has yet to be decided and the responsibility has also to be fixed whether the date of birth was actually altered by the applicant or not, <sup>as to</sup> ~~in~~ these circumstances, it will not be appropriate for this Tribunal, at this stage, to interfere with the disciplinary proceedings which were initiated against the applicant by serving the memo of charge dated 15/17.2.1995.

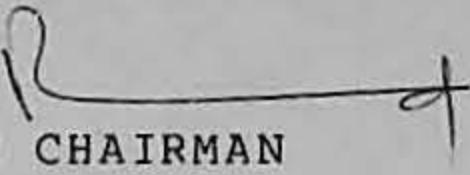
For the reasons stated above, this OA is partly allowed. The order dated 22.2.1995(Annexure 2) is quashed. However, the respondents are being given liberty to pass a fresh order after giving a show cause notice to



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*to which ever*  
the applicant as the date of birth in the service record  
may be altered/corrected, *and on the receipt of the reply of applicant* ~~such~~ order shall be passed  
within a period of three months. The Disciplinary  
proceedings initiated against the applicant on the basis  
of the impugned memo of charge shall also be concluded  
within the same period. The payment of retiral benefits ,  
salary, allowances and other arrears shall depend on the  
result of the disciplinary proceedings. If / applicant is  
found entitled for ~~the~~ payment, it shall be paid to him  
which two months thereafter. No order as to costs.

  
MEMBER(A)

  
VICE CHAIRMAN

Dated: 02.1.2003

Uv/