

16

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1486 OF 2006

ALLAHABAD THIS THE 24th DAY OF September 2008

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

Jamaluddin, Son of Shadulla,
Resident of Naibasti, Bechupur,
Mughalsarai, District- Chandauli.

. Applicant

By Advocate : Shri S. K. Dey & Shri S. K. Mishra

Versus

1. Union of India, through
the General Manager, E.C. Railway,
Hajipur (Bihar).
2. The G.M. (P) E.C. Rly. Hajipur, Bihar.
3. The G.M. (Vigilence) E.C. Rly.,
Hajipur.
4. The Senior D.P.O. E.C.R.,
Dhanbad, Bihar.

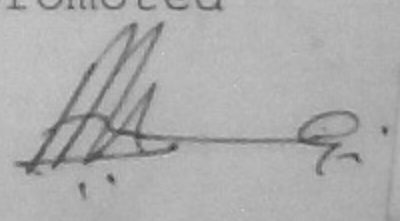
. Respondents

By Advocate : Shri K.P. Singh

ORDER

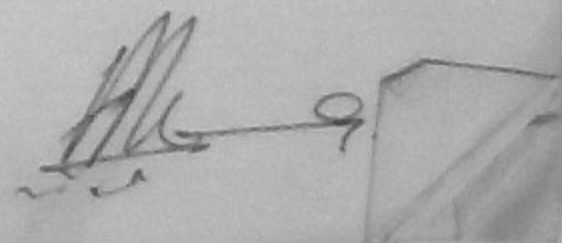
This application is filed seeking quashing of the
impugned order dated 27.04.2006 and the recovery order
dated 19.05.2006, 13.11.2006, and further seeking
reinstatement based on the Date of Birth 07.06.1948.

2. The brief facts of the case are that the
applicant has joined the service on 26.08.1974 as
Khalasi, on the basis of the High School certificate
his date of birth was recorded as 07.06.1948 and
continued in Railway service, the respondents promoted



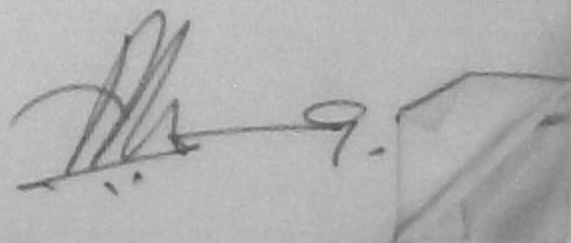
the applicant from time to time and was posted as Technician Grade I in scale of pay Rs.4500-7000. By the letter dated 08.09.2005 for clarification of vigilance case directed the applicant to submit High School certificate/mark sheet, and accordingly he submitted. The respondents without any enquiry and without giving any opportunity to the applicant issued an order to retire with immediate effect holding his date of birth as 07.06.1948 as erroneous, and further to effect his retirement with effect from 30.06.2001 and to recover his paid salary from 01.07.2001 to 12.04.2006. The applicant further states that against the impugned order he made a representation on 24.05.2006, and he has not received any reply for the same, hence this OA is filed.

3. On notice the respondents have filed the counter affidavit and stated that the applicant Ex Tech-1/Electrical (G)/DHN was initially appointed as Khalasi in Railway on 26.08.1974 in the pay scale of Rs.196-232. At the time of appointment, he had submitted an attested copy of passing High School/Matriculation examination in the year 1962 in which he knowingly, with bad & malafide intention arranged to record his date of birth as 07.06.1948 in place of actual date of birth 07.06.1941 with a view to get appointment in the Railway because he was over aged and was not eligible for appointment in the Railway as on 26.08.1974. His age was 33 years 02 months and 19 days against the prescribed age limit of




(18)

28 years at that time. At that very time of his appointment, he also submitted an application form duly filed in his own handwriting for the appointment in which he falsely declared his date of birth as 07.06.1948. That on the basis of the said declared certificate, the date of birth of the applicant in his service record was recorded as 07.06.1948. The applicant has himself signed in the first page of service record below the entry of his date of birth. Thus he got irregular appointment in the Railway by producing forged certificate and declaring false date of birth. That one Mr. Karmatullah, Nai-Basti G.T. Road, P.O. Mughalsarai, H. No.BP-515, Opposite Sah Marriage Hall, District Chandauli, UP, had made a complaint to the General Manager(Vig), E.C. Railway, Hajipur, against the applicant regarding declaration of his date of birth as 07.06.1948 in place of 07.06.1941 falsely and submission of forged High School Certificate in support of his date of birth and his irregular continuation in Railway service beyond the age of superannuation of 60 years fixed for the Railway employees because as per his actual date of birth i.e. 07.06.1941, he should have been retired from Railway Service with effect from 30.06.2001. The General Manager (Vig), E.C. Railway, Hajipur, acknowledge the complaint vide his letter No.ECR/VIG/2/Dy CVO(E)/DHN/07-04/270 dated 16.07.2004. That the vigilance organization of East central Railway, started investigation during the course of investigation the applicant was given all reasonable



(19)

opportunities to explain the fact. His statement was recorded and he was asked to produce the original High School Certificate i.e. Matriculation certificate issued by the concerned Board of High School, Allahabad, UP but the applicant failed to submit the original certificate saying that he had lost the original certificate saying that he had lost the original certificate while traveling. As a result of the investigation, it was established that actual date of birth of the applicant is 07.06.1941. In authenticated copy of certificate issue the Principal of Nagar Palika Inter College Mughalsarai dated 25.02/2003 and the documents of the cross list of result of class X for the year 1960, the actual date of birth of the applicant recorded is 07.06.1941. The Secretary Madhyamik Siksha Parishad, Allahabad UP, vide his letter no.30/1000/2004-05/1041 dated 06.08.2005 confirmed that as per records available with them the date of birth of the applicant is 07.06.1941. That in clarification on dated 20.09.2005 the applicant clearly admitted that his date of birth is -7.06.1941. He also admitted that he appeared in the examination from 1960 to 1962 and cleared it in the third attempt. During investigation, the version of the applicant was full of contradiction and he had tried to deceive the investigation process, which is the malafide intention on his part. In the first clarification dated 25.04.2005, he had stated that he had cleared the examination in the year 1962 in one attempt only and subsequently on 20.09.2005, he has

 8.

20

admitted that he appeared in the examination three times. Similarly about original certificate, he had stated that he lost it while traveling from Dhanbad to Mugalsarai and on 20.09.2005 he stated that he lost it while traveling from Dhanbad to Chopan. Meanwhile the office of Divisional Railway Manager, E.C. Railway, Dhanbad also received a letter No.SA/2005/1 dated 01.06.2005 from Mr. Sahid Alam the complainant S/o Lt. Md. Karamtulla, Nai Basti G.T. Road, Opposite Sah Marriage Hall, Dist-Chandauli, U.P. regarding the false declaration of date of birth given by the applicant and submission of false date of birth certificate and irregular continuation in Railway Service. That the applicant was also given opportunity by the office of the Divisional Railway Manager, Dhanbad, to produce the Original High School Certificate but he failed to produce the same rather he submitted the copy of the same forged certificate, which was also sent to the Secretary, Madhayamik Siksha Parishad Allahabad, U.P., Board for verification. The Secretary in response vide his letter no.Satyapan-30/41/2005-06/jail/2495 dated 28.01.2006 confirmed that the date of birth of the applicant is 07.06.1941. That the investigation report regarding the date of birth of the applicant was put up to the competent authority of E.C. Railway, Headquarter, who decided his date of birth as 07.06.1941 and directed vide letter No.ECR/HRD/14/Date of birth/electric dated 07.04.2006 to Divisional



Railway Manager (P), E.C. Railway, Dhanbad, to arrange to retire the applicant immediately.

4. The applicant has filed the rejoinder and denied the admission regarding his date of birth as 07.06.1941, and also that he has produced the certificate at the time of his appointment i.e. Annexure R-1, and further stated that he has not given any opportunity before passing the impugned order and his correct date of birth is 07.06.1948.

5. I have heard the learned counsel for the parties and perused the pleadings and the materials on record. The learned counsel for the applicant contended that there is no fault on the part of the applicant, and the respondents have passed the impugned order without giving any opportunity to the applicant and further the impugned order is not a speaking order. ON the other hand the learned counsel for the respondents submits that the impugned order does not suffer from any of the illegalities but the same is in accordance with law. On perusal of the impugned order it is stated that the applicant declared his dated of birth as 07.06.1948 and furnished wrong birth certificate, and thereafter on enquiry the competent authority has decided the date of birth of the applicant as 07.06.1941, and the superannuation date as 30.06.2001. The entire case between the parties is with regard to the date of birth of the applicant, the date of birth which was entered in the respondent's office as




(2)

07.06.1948, and subsequently the same was changed by the respondents as 07.06.1941, and accordingly the steps are taken against the applicant for superannuation. The action of the respondents it appears from their statements on investigation done and report submitted with regard to applicant's date of birth was put up before the competent authority, who decided his date of birth as 07.06.1941, that being so the impugned order does not contain any brief facts of the case nor the materials with regard to the decision taken against the applicant, by affording an opportunity to the applicant, and therefore, even though the respondents have stated in the counter affidavit in detail, I do not find any justification to accept the same as a speaking order as the same does not contain details of the findings recorded against the applicant, by following due process of law, and further when the decision is taken on the reasoning and the materials against applicant, those reasoning and the materials, and the findings are forthcoming in the order. Therefore, I find justification in the contention of the learned counsel for the applicant that the impugned order is not a speaking order, and accordingly as the respondents have not passed any orders on the representation submitted by the applicant to the respondents, proper to direct the respondents to pass a speaking order in accordance with law after affording an opportunity to the applicant.

A handwritten signature in dark ink, appearing to be 'S.!', is located at the bottom right of the page.

6. In view of the foregoing reasons the OA is allowed. The impugned order is quashed, the respondents are directed to pass a speaking and reasoned order in accordance with law, after affording an opportunity to the applicant, and decide the representation of the applicant within a period of two months from the date of receipt of a certified copy of this order. Since the matter is remitted to the respondents to pass order, all the contentions of the parties are left open. No Costs.


Member-J

/ns/