

Shri Ramswaroop Sharma,
Plot No.156,
Sector No.4,
Gandhidham (Kutch)

: Applicant

Versus

1. Union of India
Through: General Manager,
Western Railway,
Churchgate, Bombay.
2. Divisional Railway Manager,
Western Railway,
Ajmer

: Respondents

JUDGMENT

Date: 15-12-1989

Per: Hon'ble Mr. J.N.Murthy

: Judicial Member

This is a petition filed by the petitioner to direct the respondent to immediately release all the retirement benefits due to the applicant, compute his all retirement dues including pension etc. on the basis of last pay drawn on 1.1.1982 with other consequential benefits as available under rules and also be paid with interest on such withheld amounts at the rate of 12% from the date the settlement dues were payable to him.

The petitioner is a railway employee and working as Head Train Examiner in Western Railway, Ajmer Division at Gandhidham Railway Station. His date of birth was recorded in railway records as 19th April, 1922 erroneously and accordingly he was due to retire from railway service on the basis of that date of birth on 30th April, 1980. However, his correct date of birth was 2.1.1924 and on the basis of the same he filed a Regular Civil Suit No.86/1980 in the Court of Civil Judge, Junior Division, Gandhidham along with prior for interim injunction, restraining the Railway Administration from retiring ~~from~~ him from railway service, on the injunction he continued in service. Meanwhile the railway administration carried out the said matter in the District Court, Bhuj (Kutch) by filing Civil Miscellaneous Appeal No.26/80 wherein the

said appeal was allowed by the District Judge, Bhuj on 14th December, 1981 and set aside the order passed by the Civil Judge, Jr.Division, Gandhidham dated 24th April, 1980. The applicant was retired on 1.1.1982 also he continued in service as per the court's orders. Otherwise he ought to have retired earlier ~~than~~ as per his old date of birth. He vacated the railway quarter on 31.7.1983 because his retirement benefits were not paid and he could not vacate the railway quarters earlier. His provisional pension was fixed at Rs.431 and it is also not yet finalised. The petitioner has moved the Hon'ble High Court of Gujarat by Special C.A.No.830/84 against the Railway Administration to grant him all the legitimate dues of retirement such as PF, Gratuity, pension, etc. and the Hon'ble High Court directed the respondent to finalise the petitioner's case within a period of four months from the date of the order even after the High Court's direction the petitioner waited for a long time, but they did not respond. He made representation to the Minister also for his retirement benefits. According to the petitioner, he is entitled to the pension to be calculated on the basis of the last pay withdrawn i.e.1.1.1982 and his claim for the pensionary benefits as on 1.1.1982 has ^{to} ~~been~~ taken ~~in~~ to consideration.

The respondent filed the counter with the following contentions:-

He denied as per the original date of birth of the applicant he has to retire on 30.4.1980 and obtained an injunction from the Court he continued. He has made to retire on 1.1.1982 and ~~only~~ his pensionary benefit can be calculated from 1.5.1980 only but not ~~from~~ 1.1.1982 and the respondent also contended that treated the services after 1.5.1980 as fresh appointment so they did not take into consideration the services after 1.5.1980 as continuity of service so after calculating the amounts as per the

the date of birth from 1.5.1980. The respondents offered emoluments to the petitioner but the petitioner has claimed that his emoluments is calculated from 1.1.1982 only.

As per the railway date of birth ~~his~~ the applicant was to retire on 1.1.1980 but he contended that his date of birth given in the railway administration is not correct and his original date of birth is 2.1.1924 and so as per the date of birth he has continued upto 1.1.1982 and he approached the Court. The Court gave an injunction and they continued ~~for~~ him till 1.1.1982 and the order was passed to the knowledge of the respondent. The respondent also admitted the injunction order given by the Court and continued him on service and paid his salary. In the appeal the injunction was vacated by the District court. He was made to retire on 1.1.1982. The services of the petitioner was continued after 1.5.1980 till ~~the~~ 1.1.1982. The question of treating ^{it} as a fresh appointment will not arise. The petitioner did not made any mischief^{es} and committed any fraud and obtained from the permission from the Court. The Court after hearing the parties granted an injunction and asked the petitioner to continue his service so he continued the service and received his pay scale so he was made to retire on 1.1.1982 so it is just ^{and} proper to calculate his pensionary benefits from 1.1.1982 but not on 1.5.1980. So the contention of the respondent is proper to claim the pensionary benefits from 1.1.1982. The petitioner is entitled to get his pension and other emoluments basing on the salary drawn upto 1.1.1982 so we hold that the contention of the respondent that they have treated the service after 1.5.1980 to 1.1.1982 as a fresh appointment is not justified and the petitioner is entitled to his retirement benefits from 1.1.1982. Accordingly the petition is