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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 93 of 2003
Cuttack, this the ୧୫th day of May' 2005

Onkala Punnama Applicants

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ? ୪୧
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? ୪୨


(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NOS. 93 OF 2003
Cuttack, this the 8th day of May, 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

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Onkala Punnama, aged about 40 years, widow of Dharmaiah, Sr. Trackman
under S.E.(P.Way), Berhampur, At/PO, Konisi, Dist. Ganjam

....

Applicant

Vrs.

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Kolkata 43.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata 43.
3. Divisional Railway Manager, South Eastern Railway, Khurda Road, P.O. Jatni, Dist. Khurda.
4. Senior Divisional Personnel Officer, South Eastern Railway, At-Khurda Road, P.O. Jatni, Dist. Khurda.
4. Asst. Engineer, South Eastern Railway, Berhampur, Dist. Ganjam

..... Respondents

Advocates for the applicant - M/s S.Devdas, A.P. Misra, M. Babu

Advocate for the respondents - Mr. P.C. Rath, Panel Counsel (Railway)

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Smt.Onkala Ponnama, widow of late Dharmaiah (son of late Lachaiah)
has filed this Original Application seeking the following reliefs:

“In view of the facts mentioned in para 4 and 5 above, the applicant prays for the following relief(s):-

- i) hold/declare the action of the Respondents in correcting the date of birth of the applicant's husband and in terminating him from Rly. Service are bad and illegal;
- ii) quash/set aside the impugned letter dtd.5.9.2001 and impugned order dtd.29.12.2001 vide Annexures 2 and 5 respectively;
- iii) direct the Respondents to release all the consequential service benefits to the family of the deceased employee;
- iv) And pass such other order/s as may deem just and proper.”

2. The case of the applicant is that her husband entered casual service as Gangman on 24.12.1969 and was regularised against a departmental post with effect from 14.2.1984. Her claim is that at the time of entry in service her husband declared his date of birth as 3.8.1947, but Respondent No.3 on his own motion by his order dated 5.9.2001 declared that the date of birth of her late husband is 15.7.1941 and not 3.8.1947. Thereupon it was decided to ‘terminate his service’ from railways forthwith. Accordingly, by order dated 29.12.2001 Assistant Engineer, S.E.Railway, Berhampur, notified that the services of her husband stood terminated with effect from 6.9.2001 and also

stated that the applicant would be paid settlement dues on receipt of the requisite documents from him. Her allegation is that at no point of time the date of birth of her husband was ever recorded as 15.7.1941 and therefore, the question of correction of his date of birth from 3.8.1947 to 15.7.1941 did not arise. In fact, by premature termination of service, her husband was deprived of 5 years 10 months and 27 days of service as his scheduled date of retirement was 3.8.2007. She also submitted a copy of the letter dated 15.1.2002 issued by General Secretary, S.E.Railway Mens' Union by which the General Secretary of the Union had also urged upon the Respondent No.2 to recognise 3.8.1947 as the correct date of birth of the husband of the applicant as otherwise he could not have been recruited as Casual Gangman on 15.7.1941 as he would have been over aged on that date.

3. The Respondents have stoutly resisted the application. On the facts of the case, they have stated that as per Estt. Sl. No.17/72 no alteration in date of birth is allowed after completion of the probation period or 3 years of service. They have also submitted that the date of birth as entered in the Service Book on his enrolment as Casual Gangman was recorded as 15.7.1941 both in figures as well as in words and the same was attested by the Permanent Way Inspector, Berhampur ('PWI/BAM' in short). It is further stated that later on in 1972 the applicant's husband had obtained a certificate from the Sarpanch of his village issued on 28.6.1972 wherein his date of birth was certified as 3.8.1947. It appears that on the strength of this certificate, PWI/BAM carried out correction of his date of birth in the Service Book. Their contention is that

Sarpanch is not the competent authority to issue birth certificate and no PWI has been delegated with power to accept proposal for correction of date of birth. They have also disclosed that the appointing authority became aware of this change in the date of birth only in the year 2001 when the matter was referred to the Chief Personnel Officer, Calcutta, who on examination of the facts of the case and the departmental instructions/ ruling on the subject directed that PWI/BAM had no authority to accept on his own motion any application for correction in the date of birth as the power of alteration of date of birth of Groups C and D employees has been delegated to the Chief Personnel Officer only. He, therefore, not only did not agree to the aforesaid change in the date of birth of the applicant's husband, but directed that action should be taken against the concerned PWI/BAM on account of the lapse noticed in this case on his part.

4. The matter was listed on several occasions for hearing, but, except on 13.10.2004 and 19.11.2004, the learned counsel for the applicant was not present, nor did the applicant appear in person. However, by order dated 7.3.2005 after perusing the documents placed before me, I directed the learned counsel for the Respondents to obtain written clarification from the Respondents for proper adjudication of the matter. The matter was finally heard on 1.4.2005 on which date none appeared for the applicant and the learned counsel for the Respondents though present was unable to answer any of the queries/issues raised by me in my order dated 7.3.2005. In this case, from the applicant's side no rejoinder was filed to the counter. I am

constrained to point out that the Respondents have also not shown due diligence and devotion in assisting the Court in finding out answers to some of the queries raised in the matter. As this is a case of the year 2003 and is being unnecessarily dragged on and as neither the Respondents nor the learned counsel appearing for them was of great assistance to the Court, I have perused the records myself and have come to the following findings.

5. The issues raised in the O.A. are as follows:

- (i) Whether the correct of date of birth of the applicant's husband, as entered in the Service Book is 3.8.1947 or 15.7.1941;
- (ii) Whether the birth certificate issued by Sarpanch, Konisi G.P. is admissible for this purpose; and
- (iii) Whether the order dated 5.9.2001 (Annexure 2) issued by the Sr.D.P.O., Khurda Road, is legally valid.

5. The Respondents in their counter have taken the plea that the date of birth of the applicant's husband as originally recorded in the Service Book was 15.7.1941 both in figures and words which was later on changed to 3.8.1947, both in figures and words, on the strength of the certificate dated 28.6.1972 issued by the Sarpanch, Konisi G.P.C. through interpolation in the Service book by the P.W.I/BAM. This came to the notice of the appointing authority only in the year 2001 whereupon the matter was examined and it was decided to terminate the service of the applicant's husband as he had already completed 60 years of age and therefore, has to go on superannuation. It is in these circumstances that the Respondents had issued the order at Annexure 2.

They have also taken the position that on receipt of the order at Annexure 2 the applicant's husband had never protested nor submitted any representation. By referring to the decision of the Tribunal in OA No.216 of 2001, dated 16.7.2003, they have submitted that the issues raised in this O.A. have already been answered by their order in OA No.216 of 2001.

6. The order of the Respondents at Annexure A/2 is being contested by the widow of the Railway servant. It is not disputed by the applicant that her husband, who died on 9.11.2001, as it reveals from the death certificate filed by the applicant vide Annexure 3, had never contested his order of superannuation. It is the allegation/grievance of the widow that her husband has not been given the service benefits admissible to Railway servant on superannuation. She has stated in paragraph 8 of the O.A. that the Respondents may be directed to release all consequential service benefits to the family of the deceased employee. This point has also not been clarified during oral hearing as none appeared for the applicant nor was the applicant present in person. I am also constrained to point out that the counter was filed by the learned counsel without his signature at page 9 although the counter has been verified by Respondent No.4.

7. The Respondents have not questioned the right of legal heir of the Railway servant to sue the Respondents with regard to the conditions of service of the deceased Railway servants. The law is already well settled that the legal heirs have no vested right to sue regarding conditions of service which are the exclusive contract between the employer and the employee. On

this ground alone, this O.A. can be disposed of as without merit. However, I would like to dispose it of with the observation that I see lot of force in the contentions of the Respondents that the husband of the applicant before his death did not think it necessary to challenge the order at Annexure 2. That gives the answer to the issue raised by the applicant in this O.A. as to what was the correct date of birth initially entered in the Service Book at the time of entry of the applicant's husband in service. I have perused the sheet containing particulars of service of the husband of the applicant. From a perusal of the particulars of service it is clear that the entries in Col.6 of the service sheet were made without authority as Sarpanch of a Gram Panchayat has no authority to issue birth certificate in respect of any citizen under law. The documents which are considered as valid for determining the date of birth are as follows: School Leaving Certificate issued by the school authority/Board of Secondary Education of a State, birth certificate issued by Municipality or the certificate issued by the Registrar of Births and Deaths and none else. As the date of birth initially noted in the Service Book of the applicant's husband was changed/corrected on the basis of a certificate issued by the Sarpanch of Gram Panchayat, I have no hesitation to hold that the decision taken by the Chief Personnel Officer, Garden Reach, Kolkata, on the basis of the instructions issued by the Railway Board in Estt. Srl.No.17/72 cannot be questioned either in law or in fact. I am also bound by the decision taken by the Tribunal in OA No.216 of 2001. Accordingly, the main issue raised in this O.A. must be rejected being devoid of merit.

8. However, what has not been answered in the counter field by the Respondents and which could not be clarified by the learned counsel during the oral arguments is, whether the Respondents had paid superannuation pension to the applicant and other retiral benefits before his death on 9.11.2001 and whether after his death the widow and/or the family was given the benefit of family pension. In the circumstances, while disposing of this O.A., I direct the Respondents to settle all retirement dues of the husband of the applicant and also the family pension payable to the applicant as widow within a period of 120 days from the date of receipt of this order, if not already settled, and submit compliance to the Registry of this Tribunal. I also hereby order that the Registry of this Bench shall keep a watch on the receipt of the compliance report from the Respondents. A copy of this order be sent to the applicant, i.e., the widow of the deceased Railway servant to pursue the matter with Respondent No.4 to ensure that she receives her dues within the time frame fixed by me. No costs.


(B.N.SOM)
VICE-CHAIRMAN