

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 1414 of 1996

Present : Hon'ble Mr. Justice R. N. Ray, Vice-Chairman

Hon'ble Mr. B. P. Singh, Administrative Member

Jagannath Das, S/o Late Raghu residing at
C/o Sri Sukumar Kauri, Bengali Para, Kharida,
Mandirtala, P.O. Kharagpur, PS. Kharagpur
(Town), Dist. Midnapore

... Applicant

VS

1. The Union of India through the General
Manager, South Eastern Railway, Garden Reach,
Calcutta-43

2. The Chief Personnel Officer (Administration
South Eastern Railway, Garden Reach, Calcutta
3. The Divisional Railway Manager (Engineering
South Eastern Railway, Kharagpur, Dist.
Midnapore

4. The Sr. Divisional Personnel Officer,
South Eastern Railway, Kharagpur, Dist.
Midnapore

5. The Sr. Divisional Engineer, South Eastern
Railway, Kharagpur, Dist. Midnapore

6. The Assistant Engineer (Workshop), South
Eastern Railway, Kharagpur, Dist. Midnapore

7. The Inspector of Works (Workshop), South
Eastern Railway, Kharagpur, Dist. Midnapore

... Respondents

For the Applicant : Mr. P. K. Nag, counsel

For the Respondents : Mr. B.P. Roy, counsel

Heard on 27.02.2001

... Date of order: 17-04-2001

O R D E R

R.N. Ray, VC

The applicant who was working as a Khalasi Helper under the S.E. Railway has filed this application being aggrieved by the order dated 13.5.95 (Annexure 'A/5') issued by the respondent authorities by which he was booked off from duty with effect 13.5.95 (FN) due to overage.

2. The case of the applicant, in short, is that he was appointed as a Gangman under the Asstt. Engineer, S.E.

Kharagpur with effect from 28.12.1962. He was posted as a Trolleyman with effect from 6.10.1970 and subsequently he was appointed as a Khalasi in the year of 1972. The applicant stated that at the time of his confirmation he was asked to produce evidence of his actual date of birth and accordingly he produced a school leaving certificate issued by the Head Master of Kushbasan High School, Kushbasan, P.O. Kushbasan, Dist. Midnapore. According to the applicant the respondent authorities at the time of opening his Service Book recorded his date of birth as 1.7.32 and the applicant claims that his actual date of birth is 25.10.39. Thereafter on the basis of the said school certificate the Asstt. Engineer accepted his date of birth as 25.10.39 and accordingly corrected the entry in the Service Book. Thus though originally his date of birth was recorded as 1.7.32, it was subsequently rectified to that of 25.10.1939 on the basis of the school leaving certificate produced by the applicant. According to the applicant, in all his service records his new date of birth was appearing and the respondents also acted on the same. But suddenly on 12.5.95 the impugned order was issued by which he was booked off from duty on the ground of overage. The applicant states that this order was passed without giving him any opportunity and being aggrieved he filed three representations to the authorities for allowing him to continue till the date of his superannuation as per his date of birth being 25.10.1939 i.e., upto 31.10.1997. But he did not get any reply; nor any retirement benefit had been given to him. He has filed this application before this Tribunal with the prayer to quash the impugned order dated 12.5.95 and to allow him to work till 31.10.1997 on attaining the age of 58 years based on the recorded date of birth of 25.10.1939. He has also prayed for a direction for payment of his back wages/salaries with 18% interest.

3. The application has been contested by the respondents. The facts stated by the applicant have not been disputed in the reply. It is only stated that initially the date of birth of the

applicant was recorded as 1.7.32 as per his declaration and at the time of medical examination also the doctor certified his age as 32 years in the year of 1964. However, in the year of 1972-73 the said recorded date of birth of 1.7.1932 was corrected by the Asstt. Engineer as 25.10.1939 and the previous entry was scored out. It is contended that this was done by the Asstt. Engineer without obtaining the prior approval of the competent authority. Therefore, this correction is irregular as according to the respondents the power to correct the recorded date of birth lies only on the D.R.M. and the Asstt. Engineer has no authority to correct the recorded date of birth. It is further stated that when this mistake was detected in the year of 1995, the applicant was ~~booked~~ ^{from} off/duty with effect from 13.5.1995 as per order of the Asstt. Engineer. It is stated that as per his original date of birth of 1.7.1932, the applicant would have retired from service with effect from 1.7.1990, but due to administrative error he was allowed to continue beyond that period upto 12.5.1995 and therefore, his settlement dues could not be finalised because the period he worked beyond his date of superannuation on the basis of his original date of birth i.e., from 1.7.90 to 13.5.95 has to be regularised by the Railway Board. In short, the case of the respondents is that the date of birth though corrected by the Asstt. Engineer, it was done irregularly without any authority and therefore, the the original date of birth recorded in the service book should be taken as correct and on that basis the applicant should have retired with effect from 1.7.90, but he was allowed to continue beyond that period. When this mistake was detected he was immediately booked off from the duty with effect from 13.5.1995.

4. We have heard the learned counsel of both the parties. The learned counsel of the respondents has also produced before the relevant service book and other departmental files for our perusal. It is not disputed that the applicant entered service as a Gangman

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on 28.12.1962. At that time his date of birth was recorded as 1.7.32. But some time in 1972-73 at the time of confirmation of the applicant, he was asked to produce authentic document in respect of his age. The applicant produced a school leaving certificate issued by the then Head Master of Kushbasan High School, which was dated 19.1.1972 (Annexure 'A/3'). It appears that it is certified in that certificate that as per admission register of the school the date of birth of the applicant was 25.10.1939 and that he was reading in Class VII and he left the school in January 1952. The Asstt. Engineer concerned accepted this school leaving certificate to be true and altered the date of birth accordingly. We find from the Service Book that earlier entry of 1.7.1932 was scored out and the new entry was made by the Asstt. Engineer concerned under his signature and seal. Thereafter also this new date of birth was acted upon by the respondents, but suddenly on 13.5.1995 by the impugned order the applicant was booked off from duty on the ground of overage. The learned counsel for the applicant has contended that this impugned order was issued without giving any opportunity to the applicant which is against the principle of natural justice. He made several representations but to no effect. The respondents have also not yet settled his retirement dues. The learned counsel for the respondents, on the other hand, submits that as per relevant rule 145 of IREM it is provided that once the date of birth is recorded it cannot be changed and even in the case of non-gazetted Railway servant such a change is permitted only by the General Manager, but in the instant case the Asstt. Engineer has altered the date of birth without any authority and, therefore, his new date of birth cannot be accepted.

5. If it is taken for granted that the applicant's date of birth was correctly recorded originally i.e., 1.7.1932, then it is clear that at the time of his entry into service in the year of December, 1962 he was more than 30 years old. Therefore, under the normal rules he was not eligible to be appointed as a Railway servant

at that age. There is nothing on record that such excess in age beyond the prescribed age limit was condoned by any competent authority. On the other hand, if the date of birth of 25.10.1939 is accepted then he entered service at the age of about 22-23 years which is within the prescribed age limit. From the records we find that the Asstt.Engineer in response to the query made by the DRM stated that as per para 2225 of the Railway Establishment Code the date of birth should be incorporated in the top sheet by following the authenticated document i.e., Matriculation certificate or the Municipal birth certificate or school leaving certificate etc. It is also stated that in the case of literate staff if the date of birth etc. was recorded in the Service Book by any other official it has to be attested by another official. It is further stated that in the case of the applicant the date of birth of 1.7.1932 was recorded ignoring the presence of any authentic document which the applicant did not accept and therefore, the rectification was made on the basis of the school certificate. It was also pointed out that as the original entry of date of birth was due to procedural mistake, the Asstt. Engineer corrected the entry and attested the same as per procedure. Secondly, the respondents have relied on two medical certificates and according to these certificates the applicant was shown to be 32 years of age on the date of medical examination i.e., in the year of 1964. The certificates are annexed at Annexures R1 and R2 of the reply. We, however, find that this certificate is only a physical fitness certificate which was done in the year of 1964 and it is certified that the applicant was fit for appointment. The certificate at Annexure 'R/2' which was dated 27.7.1970 is also a physical fitness certificate. There is nothing to show that the concerned Medical Officer has examined the applicant to verify his age. On the other hand, these two certificates are only general fitness certificates and not medical examination/particularly made for determination of age. Therefore, these two certificates cannot be relied upon. From

From para 145(2)(c) of the IREM we find that "where the person concerned is unable to state his age, it should be assessed by a Railway Medical Officer and the age so assessed entered in his record of service in the manner prescribed above, the railway servant being informed of the age so recorded and his confirmation obtained thereto." Therefore, the contention of the respondents does not seem to be correct. It is not clear from the certificates at Annexures 'R/1' and 'R/2' that the Medical Officer concerned has assessed the age of the applicant. So, no reliance can be placed on this medical certificate. We further find from the Service Book produced before us that the applicant's educational qualification was recorded as Class-VI and ~~in~~ the school certificate produced by the applicant it is also mentioned that he was reading at Class-VII at the time of leaving the school in 1951. So, from other connected evidence it is clear that the said school certificate seems to be genuine. The respondents have also not questioned the ~~genuineness~~ of this certificate. On the basis of the said school certificate the Asstt. Engineer corrected the date of birth ~~under~~ under his own signature and seal. The applicant cannot be blamed for the same. If the said correction was done by the said Asstt. Engineer without obtaining prior approval of the competent authority i.e., the D.R.M., the applicant also cannot be held responsible for that. It is for the Asstt. Engineer concerned to act according to the procedure. If he did not follow the same the applicant cannot be allowed to suffer.

6. Furthermore, we find that the impugned order was passed without giving any opportunity to the applicant and he was suddenly booked off from duty with effect from 13.5.1995. Had the original date of birth of the applicant was accepted to be correct, then he would have retired from service on 1.7.1990, but the respondents did not take any action and they allowed him to continue in service for more than 5 years after his date of superannuation was over. Therefore, it is only reasonable to hold that the respondents have

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also acted on the changed date of birth of the applicant and did not take any action for his retirement in 1990. In that view of the matter we are of the opinion that the impugned order dated 13.5.1995 which was issued without giving any opportunity to the applicant was bad and cannot be sustained.

7. In view of the above we allow this application and quash the impugned order dated 13.5.1995. The applicant shall be deemed to be in service upto 31.10.1997 on the basis of his recorded date of birth i.e., 25.10.1939. Since the applicant was prevented from doing his duty by the impugned order we ~~direct~~ ^{13.10.52} that the applicant is entitled to get salary for the period from 13.5.1995 till the date of his superannuation on 31.10.1997. The respondents are further directed to settle his pensionary dues on the basis of the above direction and pay him all his dues including the arrears of salary etc. within three months from the date of communication of this order. There shall be no order as to costs.

B. P. Singh

(B. P. Singh) 17042001

MEMBER (A)

R. N. Ray

(R. N. Ray) VICE-CHAIRMAN