

Original Application NO. 328/1996.

Jodhpur, the 3RD day of Feb. 1998.

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Nazir Bhutto S/o Sh. Ilahi Bux, retired Fitter Gr-III,
Loco Shade, Northern Railway, Hanumangarh, r/o Behind
I.T.I. College, Kachchi Basti, Hanumangarh Junction.

... Applicant.

VS.

1. The Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway,
Bikaner.
3. The Loco Foreman (GFO) Loco Shade, Northern
Railway, Hanumangarh Junction.
4. Assistant Personnel Officer, Northern Railway,
Bikaner.

... Respondents.

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Mr. R.S. Saluja, counsel for the applicant.

Mr. R.K. Soni, counsel for the respondents.

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HONOURABLE MR. A.K. MISRA, JUDICIAL MEMBER

HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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ORDER

PER HONOURABLE MR. A.K. MISRA :

The applicant has filed this O.A. with the prayer
that the impugned action of the respondents whereby
they made the applicant to retire on 10.3.1995, may be
declared illegal and the applicant may be given benefits

as if he had served the respondents upto 31.3.1995. The respondents be further directed to prepare and settle the retiral dues of the applicant within a reasonable time alongwith interest on delayed payments.

2. Notice of this O.A. was given to the respondents who have filed their reply to which no rejoinder has been filed.

3. We have heard the learned counsel for the parties and gone through the record.

4. The applicant has alleged in his O.A. that he was appointed as Khalasi on 4.8.1957. At the time of applicant's entry in service 15.3.1937 was entered in service book as his date of birth. During the course of service he got promotions. Lastly, applicant was promoted as Fitter Grade III. On 10.3.1995, on which date, he was wrongfully retired he was working on the said post. Further, as per the date of birth, applicant ought to have been retired on 31.3.1995. It is also alleged by the applicant that in the staff register, his date of birth is entered as 15.3.1937 but somehow his name was not included in the list of the persons retiring on 31.3.1995. When the clarification in this respect was sought, the applicant all of a sudden was retired on 10.3.1995 by the respondents. The applicant has challenged the action of the respondents alleging that the applicant could not have been retired by the authorities by predating his date of birth, therefore, he has claimed arrears of pay upto 31.3.1995. Since the retiral benefits were also not released to the applicant

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promptly after his retirement, therefore, he also claims retiral benefits alongwith interest.

5. The respondents in their reply have stated that the claim of the applicant is time barred as he was retired on 10.3.1995 and he had filed this O.A. on 23.09.1996. It is also alleged by the respondents that when the applicant entered into service as Khalasi, his date of birth was mentioned as 17.11.1935 in the application form Annex.R/1 signed by the applicant himself. There is no documentary proof of applicant's date of birth being 15.3.1937. It is alleged that as per the office record the date of birth of the applicant is 17.11.1935 as is revealed from the Seniority lists dated 10.5.1972 (Annex. R/3), 15.4.1972 (Annex.R/4) and the Provisional Seniority list dated 7.3.1990 (Annex.R/5). These documents are based on the application Annex.R/1 which is signed by the applicant himself wherein his date of birth has been entered as 17.11.1935. As per the date of birth mentioned in the official records, the applicant ought to have been superannuated on 30.11.1993 but because of some administrative lapse he continued to serve and when in the month of March 1995, the mistake came to the notice of the authorities, the applicant was superannuated with immediate effect on 10.03.1995. In these circumstances, the applicant is not entitled for arrears upto 31.3.1995. Further, the applicant inspite of all the efforts by the respondents, did not cooperate in reconstruction of his service book, therefore, pensionary benefits were delayed. The delay is squarely

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attributable to the applicant and thus, he is not entitled to any interest also.

6. We have heard the learned counsel for the parties and gone through the record.

7. The applicant has not been able to support his claim that his date of birth is 15.3.1937 by any documentary proof. He claims to be an illiterate person and takes shelter of the argument that the department ought to have asked for his affidavit in absence of any document but in our opinion, this argument is devoid of merits. The Application Form Annex.R/1 which the applicant had signed, shows his date of birth as 17.11.1935. In this column, '1935' is clearly written. There is some over-writing near the figure '1935' but in no case it can be interpreted as correction in date of birth by altering '1937' into '1935'. Since there is no alteration in the date of birth, therefore, in our opinion, no notice was required to be given to the applicant before he was retired on 10.03.1995. This is a case where due to some mistake somewhere, the applicant who should have been retired on 30.11.1993 continued to work thereafter upto 10.3.1995 and as soon as this mistake was discovered by the concerned authorities, the applicant was retired immediately. Therefore, the retirement of the applicant cannot be said to be a retirement by pre-dating his date of birth. There is no documentary proof to support the claim of the applicant that his date of birth is 15.03.1937. While in service, the applicant did not raise any objection against

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his date of birth being shown as 17.11.1935 in the various seniority lists issued from time to time which are marked as Annexs. R/3, R/4 and R/5 respectively. These seniority lists were circulated amongst the officials inviting objections within one month from the date of issue of the same. Therefore, now the applicant cannot say that he never came to know that his date of birth has been entered in official records as 17.11.1935. Therefore, applicant's claim that his date of birth is 15.03.1937 is not acceptable.

8. From a perusal of the official record produced by the respondents the date of birth of the applicant can safely be taken to be 17.11.1935 and on that basis, the natural date of superannuation of the applicant from service on attaining the age of 58 years would be 30.11.1993. However, due to administrative mistake, he has been allowed to work upto 10.03.1995. Therefore, it would be deemed that he was granted extension of service upto 10.3.1995. Because of administrative mistake or lapse, the applicant has actually worked upto 10.3.1995 and has rendered his services for which he has been paid salary and allowances as per rules, therefore, it would be illogical to recover from the applicant payments made by the respondents towards Pay and Allowances from 1.12.1993 to 10.3.1995 to the applicant. However, the applicant shall be entitled to payment of pension as per rules calculated on the basis of pay drawn on 30.11.1993 from 11.03.1995 onwards.

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9. In view of the above discussion, the applicant is not entitled to any pay for the remaining period of the month of March 1995 i.e. for 21 days. His claim in this respect is liable to be rejected.

10. From the record, it appears that applicant was requested to sign the reconstructed service book but he did not co-operate in this matter and, therefore, under the orders of the Tribunal service book of the applicant for purposes of pension was reconstructed. Therefore, in our opinion, the applicant is not entitled to any interest on the delayed payment of his retiral benefits.

11. The Original Application deserves to be accepted in part.

12. The Original Application is, therefore, partly accepted and the respondents are directed to settle all the retiral benefits of the applicant calculated on the basis of pay drawn as on 30.11.1993 within a period of four months from the date of communication of this order.

13. Applicant's claim for pay for 21 days for the month of March, 1995 and interest on the retiral benefits, is hereby rejected.

14. Parties are left to bear their own costs.

Gopal Singh
(GOPAK SINGH)
Administrative Member

A.K. Misra
(A.K. MISRA)
Judicial Member

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Part II and III destroyed
in my presence on 25-3-2004
under the supervision of
section officer (1) as per
order dated 22/12/2003

[Signature]

Section officer (Record)

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*copy to master
sent to pet
by Regd AD
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