

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, Jodhpur**

**Original Application Nos.225/2006
&
Misc. Application No. 115/2006**

Date of decision: 14th November 2008

Hon'ble Mr. K.V.Sachidanandan, Vice Chairman.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Ghanshyam Lal Joshi, S/o Shri S.N. Joshi, aged about 65 years, resident of D-6, Ashirvad Nagar, Krishna Complex, inside, Keshav Nagar, Roop Sagar, Udaipur (Rajasthan) Ex Station Master, NWR, Umra District Udaipur (Rajasthan)

: Applicant.

Rep. By Mr. S.K. Malik : Counsel for the applicant.

Versus

1. Union of India through General Manager, N.W.R., Jaipur.
2. Divisional Railway Manager, NWR, Ajmer.
3. Senior Divisional Operating Manager, N.W.R., Ajmer.

: Respondents.

Rep. By Mr. Salil Trivedi : Counsel for the respondents.

ORDER

Per Mr. Tarsem Lal, Administrative Member.

The applicant was initially appointed on 08.03.1967 under the respondents and he earned various promotions in the department. The date of birth entered in the service records of the applicant was 03.12.1941 and accordingly he ought to have been retired on 31.12.2001. But no orders were passed by the respondents retiring him from service nor he was relieved from his duties on 31.12.2001. Therefore, he continued to work as Station



Master Umra, Distt. Udaipur, upto 15.09.2004. The applicant was paid pay and allowances till 31.07.2004 and he was not paid salary for the period from 01.08.2004 to 15.09.2004. The 2nd respondent, vide memorandum dated 15.09.2004, (Annex. A/4), superannuated the applicant from service with retrospective effect w.e.f. 31.12.2001. In the said memorandum full details of his case were also given. Another memorandum of the same date pertaining to charge sheet (Annex. A/1) containing allegations against the applicant were issued under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, (RSDA for short).

2. The applicant was issued a P.P.O dated 16.09.2004 (A/5) by respondents, wherein his date of birth has been shown as 03.12.1941 and the date of cessation from service was shown as 31.12.2001.

3. After receipt of charge sheet dated 15.09.2004 (A/1) the applicant submitted a reply on 24.09.2004 (A/6) denying the allegations levelled against him. He categorically stated that the administration did not spare him from duties and because of that he continued in service and has not committed any misconduct or violation of any rules. After receipt of the reply, the Disciplinary Authority appointed an Inquiry Officer vide order dated 19.11.2004 (Annex. A/7). The inquiry was conducted against the applicant and the inquiry officer submitted his report to the Disciplinary Authority vide letter dated 06.03.2005 (Annex. A/8). The Disciplinary



2

Authority imposed the punishment of recovery of pay and allowances for the period of 2 years, 8 months and 13 days, vide order dated 15.03.2005. (A/2). But this was not the subject matter of inquiry.

4. The respondent no. 2 vide his order dated 19.05.2005 (A/3) adjusted his DCRG, commutation of pension against the pay and allowances that were paid to him for the period from 01.01.2002 to 15.09.2004, and ordered further recovery of Rs. 84,973/- which has to be deposited in the nearest Railway Station and submit a report to that effect by the applicant. The applicant has submitted representation on 26.07.2005 (Annex.A/9), stating that he had rendered railway service during the period from 01.01.2002 to 15.09.2004 and as he was never relieved from the post of Station Master, there was no question of any excess service beyond the period of superannuation. He submitted that he served in the department upto 15.09.2004 and therefore, he is entitled to the pay and allowances for the period from 01.01.2002 to 15.09.2004 and the respondents have no right to deduct the same from his retiral benefits. He has questioned that under what rules/law the respondents have adjusted the gratuity, commutation of pension and other retiral benefits towards the pay and allowances paid to him after 31.12.2001. He further submitted that he was not paid salary for the period from 01.08.2004 to 15.09.2004, whereas he was granted pension from 16.09.2004. Aggrieved by the above



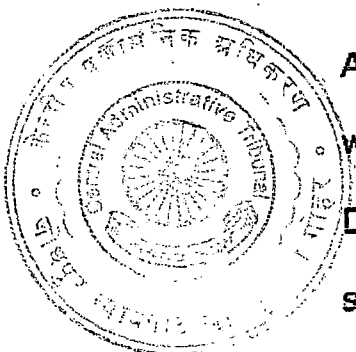
②

applicant has filed this O.A under Sec. 19 of the Administrative Tribunals, Act, 1985, and prayed for the following reliefs:

- " (a) By an appropriate order, writ or direction, Impugned order dated 15.09.2004 (Annex. A/1) Impugned order dated 15.03.2005 (Annex. A/2) Impugned order dated 19.05.2005 (annex. A/3) be declared illegal and be quashed and set aside as if they were never issued against the applicant.
- (b) By an appropriate writ, order or direction respondents may be directed to release gratuity (DCRG), commutation of Pension, leave salary and packing allowances which the applicant is entitled at the time of his retirement along with interest @ 12% annum.
- (c) By an appropriate writ, order or direction, the respondents may be directed to make payment of pay and allowances of Station Master w.e.f. 01.08.2004 to 15.09.2004 along with interest @ 12 % p.a.
- (d) Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- (e) Any other relief, which is found just and proper, may be passed in favour of the applicant in the interest of justice by the Hon'ble Tribunal.

5. The respondents have contested the O.A by filing a detailed reply, inter alia pleading that the applicant has prayed for multiple relief and the O.A is barred by limitation under Sec. 21 of the A.T. Act, 1985. Respondents have therefore prayed that the O.A may be dismissed.

6. The applicant was initially appointed in Sholapur Division of South Central Railway and from there he was transferred to Hubli Division and in the year 1976 he was transferred to Ajmer Division. After transfer of the applicant to Ajmer Division, his service sheet was requested but the same was not received from the erstwhile Division. The applicant himself had filled the prescribed service sheet in his own handwriting and he mentioned that his date of birth as 18.12.44 (both in words and figures) against the relevant



2

column and he affixed his signature also for the same. However, no documentary proof was submitted in respect of his above mentioned date of birth. As no proof was submitted, the competent authority had observed that the date of birth of the applicant may kindly be verified with school leaving certificate.

7. On verification it was found that the date of birth recorded in the said certificate was 03.12.41 and he should have been retired on attaining the age of superannuation on 31.12.2001. But he continued in service after his due date of retirement on account of the wrong entry made by the applicant in his own hand writing in the service record. The copy of the certificate issued by the Board of Secondary Education, Rajasthan has been produced by the respondents and is placed at annex. R/2. In view of the certificate issued by the Board of Secondary Education, Rajasthan, the retention of the applicant in service beyond the actual date of his retirement is irregular in view of the provisions contained in the Railway Board circular, which was issued on the basis of judgement rendered by the Hon'ble Supreme Court in the case of **Radha Kishun vs. UOI and ors.** [1997 SCC (L&S) 1185].

8. A notification containing names of employees whose date of birth fell between 02.01.1941 and 01.01.1942, and who were to be retired during the year 2001 was published by the respondents on 14.09.2000. It has been specifically mentioned therein that if any of the employee is left, it will be responsibility of the employee

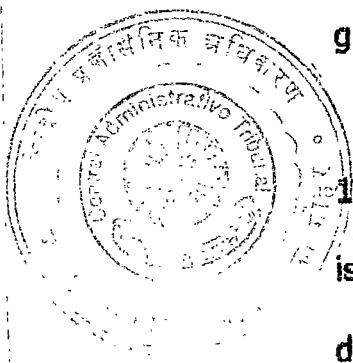


2

concerned to intimate the competent authority that his name is required to be included in the list which has been left out by mistake. It was further intimated that if the employee whose name is left out did not intimate the administration then he is liable for his deliberate inaction. Admittedly, the applicant is well aware of his date of birth and retirement and his name should have been included in the list but he deliberately did not bring this fact to the notice of the authorities concerned. As such the retention of the applicant after his actual date of retirement is nothing but an irregular service for all purposes. The irregular retention of the applicant came to the notice of the respondents in the month of August 2004 and thus he was not paid salary for the month of August 2004 and upto 15th September 2004, as per rules.

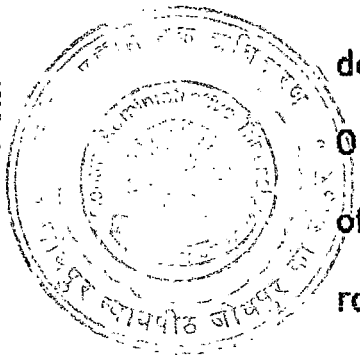
9. The applicant was retired from service by order dated 15.09.2004 (Annex. A/4) with effect from 31.12.2001, retrospectively. In this order a specific mention has been made that retention of the applicant beyond the normal date of superannuation was irregular and therefore the pay and allowances received by the applicant beyond his actual date of superannuation are liable to be recovered under the rules governing the issue.

10. The charge sheet dated 15.09.2004 (Annex. A/1) was issued to the applicant. However, the same was subsequently dropped on account of the fact that during the course of the inquiry



the applicant gave his consent before the inquiry officer for deduction of pay and allowances drawn by him from 01.01.2002 to 15.09.2004. Thus in the totality of circumstances the respondents in their wisdom dropped the charges. This being the position, the challenge to the charge sheet after the same being dropped by the respondents themselves, is not available to the applicant, as the relief sought in respect to the quashing of charge sheet does not survive. A provisional PPO was issued vide order dated 16.09.2004(Annex. A/5). It is stated that after adjustment of DCRG and the arrears of pension for the period from 01.01.2002 to 15.09.2004, a sum of Rs. 84,973/- is still outstanding and the applicant has not deposited the same. As the applicant was retired retrospectively with effect from 31.12.2001 vide order dated 15.09.2004, arrears of pension were calculated for the period from 01.01.2002 to 15.09.2004 and the regular pension has been shown in the provisional PPO payable from 16.09.2004.

11. During the course of inquiry, the applicant had admitted all the charges leveled against him in SF 5 and he himself accepted the retirement from 31.12.2001. He further agreed for the deduction of pay and allowances paid to him for the period from 01.01.2002 to 15.09.2004 from the retiral benefits such as arrears of pension and gratuity. Therefore the applicant cannot now turn round and travel beyond his own admission. In view of categorical admission during the course of inquiry as well as tendering apology in writing, the Disciplinary Authority instead of proceeding with the



2

inquiry further in its wisdom dropped the charges with a direction to deduct the pay and allowances and adjustment of the same towards pension and gratuity as accepted by the applicant.

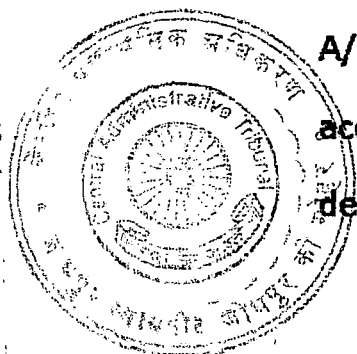
12. The respondent No. 3 is fully empowered to issue the charge sheet and the inquiry officer submitted his report on the basis of record along with evidence adduced by the applicant during the course of inquiry. A perusal of the inquiry report reveals that the applicant himself had admitted the charges leveled against him and therefore there is no infirmity in the inquiry proceedings.

13. The pay and allowances paid to the applicant for the period from 01.01.2002 to 15.09.2004 and the arrears of pension and DCRG payable to the applicant reads as under:

Pay and allowances given to the applicant for the Period from 01.01.2002 to 15.09.2004	= Rs. 4,32,910
DCRG and arrears of pension (from 01.01.2002 to 15.09.2004)	= Rs. 3,47, 937
Excess amount paid to the applicant	= Rs. <u>84,973</u>

After adjusting the above amount, a sum of Rs. 84,973/- is still payable by the applicant. Therefore, the order issued at annex.

A/3 is perfectly in accordance with the rules coupled with the acceptance given by the applicant during the course of departmental inquiry.

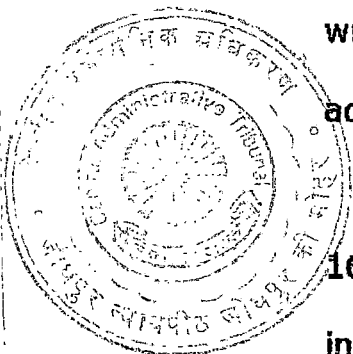


⊗

14. In view of the settled legal position by the Hon'ble Supreme Court in the case of **Radha Kishun**, (supra) the service rendered by an employee beyond his actual date of retirement is an irregular service and the period of overstay would be treated as irregular for which the applicant is also equally responsible and every steps would be taken to recover the pay and allowances paid for the overstayed period. Therefore the respondents have prayed that in view of the settled legal position the present OA deserves to be dismissed.

15. We have heard Mr. S.K.Malik learned counsel for the applicant and Mr. Salil Trivedi learned counsel for the respondents. It is seen that the applicant has filed M.A. No. 115/2006, wherein he has stated that his case cannot be dealt with under RSDA Rules, 1968 and his case ought to have been dealt with under Railway Services Pension Rules 1993. As the statutory provisions have not been followed, the impugned action of the respondents is contrary to the rules and the same is without jurisdiction. The contention of the respondents, that the applicant has to still pay Rs. 84,973/- and the same are to be deposited in the nearest Railway station, is wrong. The applicant has prayed that this M.A may kindly be accepted and the delay, if any, may kindly be condoned.

16. The respondents have contested the above M.A by filing reply inter alia pleading that the applicant has not uttered a single word with regard to condonation of delay. As per Sec. 21 of the A.T.



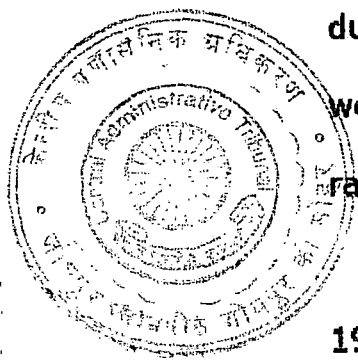
2

Act, 1985, sufficient and cogent reasons are required to be established so as to make the applicant entitled for seeking condonation of delay, whereas nothing has been stated in this regard in the instant M.A. The respondents have further stated, that in the reply filed to the main O.A, they have thoroughly replied to all contentions raised in this M.A and need not want to reiterate the same herein. They have further stated that condonation of delay is not an empty formality. In view of the above, the respondents have prayed that the M.A as well as the O.A filed by the applicant may be dismissed.

17. The learned counsel on both sides generally reiterated the arguments already made in their respective pleadings and made us to traverse through various documents placed on record.

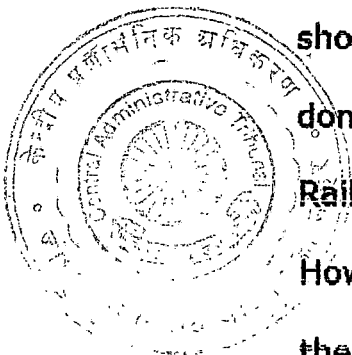
18. The learned counsel for the applicant produced a copy of attestation form, wherein against Col. No. 7 (a) the applicant has clearly stated that his date of birth as "Third Dec. 1941". Relying on the same, the learned counsel contended that it is the responsibility of the respondents to issue discharge orders on the due date of retirement i.e. on 31.12.2001. Since no such orders were issued, he continued to discharge his duties as a responsible railway servant.

19. The learned counsel further contended that applicant was issued charge sheet on 15.09.2004 and he was retired from service



on the very same day with retrospective effect from 31.12.2001. Since the applicant was retired, his case should have been dealt with under Railway Pension Rules and for that the powers are vested with the President and not with the respondent authorities under RSDA Rules, 1968. Therefore, he pleaded that the charge sheet issued is irregular in this case. He also pleaded that since he had worked upto 15.09.2004, adjustment of pay and allowances paid for the period from 01.01.2002 to 15.09.2004, from the payment of pension due from 01.01.2002 and from retiral benefits is not at all justifiable. In this regard he placed reliance in the cases of High **Court of Punjab and Haryana vs. Amrik Singh** [1995 SCC (L&S) 471]; **State of Orissa and ors vs. Adwait Charan Mohanty and ors** [1995 SCC (L&S) 522]; **The State of Madhya Pradesh vs. Syed Qamarali** [1967 SLR 228]

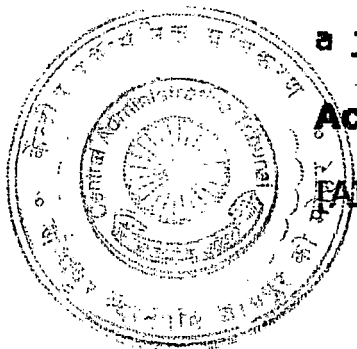
20. The learned counsel for the respondents pleaded that the actual date of birth of the applicant as per the certificate issued by the Board of Secondary Education Rajasthan (R/2) is 03.12.1941, whereas the applicant knowing fully well entered his date of birth as 18.12.44 under his own signature without any documentary evidence. Therefore the authority concerned has written that it should be verified with reference to certificates, which could not be done by the respondents since the applicant served in other Railways earlier and was transferred to Ajmer Division later on. However, when it came to the knowledge of the respondents that the applicant has given a wrong date of birth, he was immediately



retired from service on 15.09.2004 with retrospective effect from 31.12.2001, an inquiry was ordered on the same date. After the issuance of charge sheet, during the course of inquiry, the applicant had agreed to his retirement from 31.12.2001 and was willing to pay the pay and allowances received by him for the period from 01.01.2002 to 15.09.2004. Hence depending upon the circumstances, the charges were dropped and his pay and allowances were adjusted against the payment of DCRG, and pension from 01.01.2002 to 15.09.2004. This was done within the powers vested with the respondents. In support of the contention of recovery of pay and allowances for the overstayal period from 01.01.2002 to 15.09.2004, the learned counsel for the respondents relied on the decision of the Hon'ble Supreme Court in the case of Radha Kishun vs. UOI and ors. [1997 SCC (L&S) 1185]. He further contended that on the basis of the above judgement, the Railway Board issued a circular No. RBE 139/99.

21. We have given our thoughtful consideration to the pleadings and perused the documents carefully placed on record. Firstly, we shall deal with the question of condonation of delay. With regard to the condonation of delay in filing O.A, following has been held in a judgement by the Apex Court in the case of **Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others** [AIR 1987 SC 1353], particularly on Para 3, which reads as under:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.



2

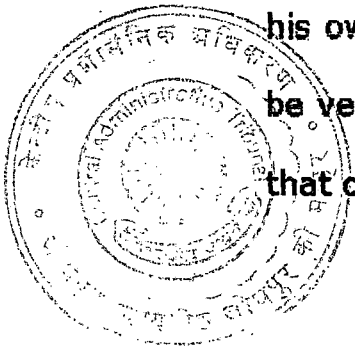
As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's must be explained" does not mean that a pedantic approach should be made. Why every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or an account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. "

22. In view of the above position, we are inclined condone the delay and treat the O.A as filed in time.

23. As regards the question of multiple relief, we hold the reliefs prayed for are connected with each other and they are not independent and they are consequential and incidental to one another.

24. On the merits of the case, it is quite clear from the certificate issued by the Board of Secondary Education, Rajasthan (R/2), that the date of birth of the applicant is 03.12.1941. It is seen that the applicant himself had entered his date of birth as 18.12.1944 under his own signature in his service sheet (R/1), which was required to be verified by the authorities from his school leaving certificate, but that could not be done before 31.12.2001.

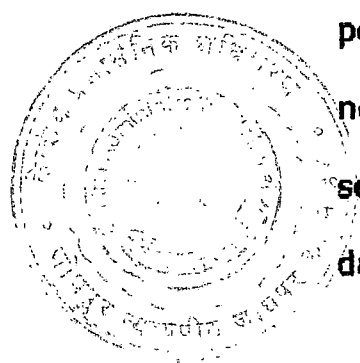


2

25. It is well known to the applicant that his date of birth is 03.12.1941 and not 18.12.44. He was also aware that his date of birth had not been changed under the due process of law. Since the name of the applicant was not published by the respondents in the list of persons to be retired during year 2001 vide their letter dated 14.09.2000, i.e. in respect of employees whose date of birth has fallen between 02.01.1941 and 01.01.1942. It was specifically mentioned that if any of the name of the employee has been left out, it is the duty of the concerned employee to bring it to the notice of the authorities. But the applicant has failed to inform the authorities that his name has been left out by mistake. It was further mentioned if the employee did not intimate the administration, then he is liable for his deliberate inaction. In these circumstances, it was the responsibility of the applicant to bring it to the notice of the authorities that his name has been left out in the said list. Thus the applicant has failed in his duties.

26. It is seen from RBE No. 139/99, which was issued on 07.07.99 that date of retirement is automatic in the absence of specific order to the contrary by the competent authority and a person continuing in service beyond the age of superannuation has no right to claim pay and allowances etc as his continuance in service was not as per law. RBE No. 139/99(No. E (G)/97 RTI-I, dated 07.07.99 reads as under:

" The rules regulating the age of superannuation or the terms and conditions of service prove for retirement from service of a Government servant on his attaining the specified age or after completion of a specified period of service. In all such cases, retirement is automatic



2

and in the absence of specific orders to the contrary by the Competent Authority a Government servant must retire on the due date. However, there have been instances of certain railway employees being erroneously retained in service beyond the prescribed date of retirement. Hitherto, the period of erroneous retention in service beyond the prescribed age of retirement used to be regularized as re-employment.

2. In the case of Radha Kishun vs. UOI and ors. In SLP (C) No. 3721 of 97 arising out of O.A No. 6521 of 95 dated 26.11.96 of CAT, Patna, the Hon'ble Supreme Court of India have ruled that the person continuing in service beyond the age of superannuation has no right to claim the pay and allowances as his continuance in service was not as per law. The Hon'ble Supreme Court has taken the view that the employee is equally responsible for his stay in office beyond his age of superannuation and hence no illegality would be involved if such a person is refused the benefits of pay and allowances etc for the period of over stay

(Emphasis supplied)

3. The matter has been considered in this Ministry in the light of the judgement of the Supreme Court and it has been decided that, in all cases of irregular continuance in service beyond the age of superannuation, the period of over stay will be treated as wholly irregular for which the employee will be considered to be equally responsible and immediate action will be taken to recover the pay, allowances, etc paid to the employee for the entire period of over stay.

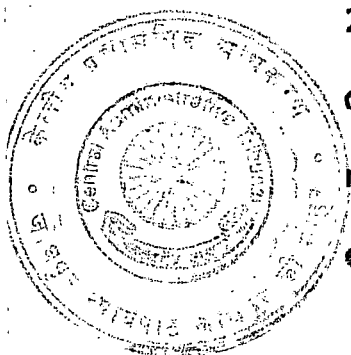
(Emphasis supplied)

4. These orders will take effect from the date of issue and all the cases of erroneous retention which have not yet been decided will be decided in terms of these orders. The cases already decided otherwise need not be re-opened.

5.	xx	xx	xx
6.	xx	xx	xx

As the applicant's case falls after the date of issue of the above circular (i.e. 31.12.2001), RBE circular No. 139/99 would be applicable to the instant case.

27. Even assuming for a moment that the applicant has asked for correction of his date of birth in the service records, the said request has to be made within a period of five years of his date of entry into Government service, as per Government of India,



②

Department of Personnel and Training OM No. F.No. 19017/2/92 Estt. (A) dated 19.05.1993. It is seen that in the instant case the applicant has joined railway service on 08.03.67 and a different date of birth entry was made in the year 1975, by his own handwriting i.e. beyond period of five years as stipulated under the rules. Hence on this count also the applicant has not made out any case for our interference.

28. We have gone through the judgements relied on by the learned counsel for the applicant. They were not much helpful to the applicant. In the case of **Amrik Singh** (supra), the issue involved is that the concerned authority extended Shri Amrik Singh's service and during the extended period it came to light that the individual was involved in embezzlement and therefore this case is not of much helpful to the facts of this case. In the case of **Adwait Charan Mohanty** and ors. (Supra) the individuals were continuing in service as per the orders of the Hon'ble Supreme Court but that is not the case here. The judgement in Syed Qamarali case was rendered in a different context. Therefore, the decisions are not of much useful to the applicant. Therefore, the above cases are distinguishable on facts.

29. In case of **Radha Kishun vs. Union of India and ors.** (supra) the Hon'ble Apex Court has held as under:

- "1. This is an astonishing and more shocking case. The petitioner, who was, admittedly, to retire on 31.05.1991, remained in office till 31.05.1994 as if he was not to retire from service, enjoying all the benefits of service.

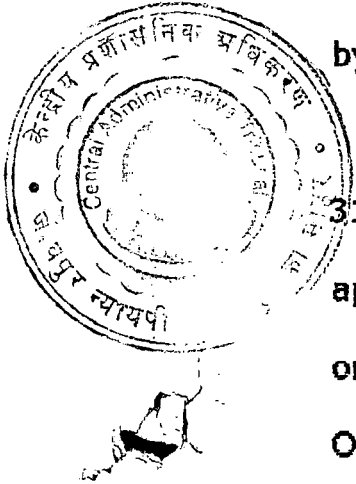
10

2. The special leave petition arises from the order of the Central Administrative Tribunal, Patna Bench, made on 26.11.1996 in O.A. NO. 652 of 1995. The petitioner had joined the service in Telecommunications Department. Admittedly, his date of birth is 13.05.1933. On attaining the age of superannuation, he was to retire on 31.05.1991. Instead, he remained in service till 31.05.1994. When action was taken to recover the amounts paid to him for the period beyond the date he was to retire viz. 31.05.1991 and to which he was not entitled, he filed O.A in the Tribunal and the same has been dismissed. Thus this special leave petition.
3. The learned counsel for the petitioner contends that since the petitioner has worked during the period, he is entitled to the payment of the pay and allowances from 01.06.1991 to 26.06.1994 and that he is also entitled to the payment of provisional pension, death cum retirement gratuity, leave encashment, commutation of pension amount, GPF money and the amount deposited under CGHS on the plea that he retired from service on 31.05.1994. We are aghast to notice the boldness with which it is claimed that he is entitled to all the benefits with effect from the above said date when admittedly he was to retire on 31.05.1991. It would be an obvious case of absolute irresponsibility on the part of the officer concerned in the establishment in the section concerned for not taking any action to have the petitioner retired from service on his attaining the superannuation. It is true that the petitioner worked during that period, but when he is not to continue to be in service as per law, he has no right to claim the salary etc. It is not the case that he was re-employed in the public interest after attaining superannuation. Under these circumstances, we do not find any illegality in the action taken by the authorities in refusing to grant the benefits.
4. It is then contended that the petitioner would have conveniently secured gainful employment elsewhere and having worked, he cannot be denied of the legitimate salary to which he is entitled. Though the argument is alluring, we cannot accept the contention and given legitimacy to the illegal action taken by the authorities. If the contention were given acceptance, it would be field day for manipulation with impunity and one would get away on the plea of equity and misplaced sympathy. It cannot and should not be given countenance.
5. Under these circumstances, we dismiss the petition with a direction to the Government of India to take appropriate disciplinary action against all the persons concerned for their deliberate dereliction of duty in not ensuring the petitioner's retirement on his attaining the age of superannuation."

30. In view of the above discussion, it is clear that the date of birth of the applicant is 03.12.1941, as per the entry made in the certificate issued by the Board of Secondary Education, Rajasthan. The date of birth entry made by the applicant in his own hand

②

writing in his service sheet dated 15.7.75 (R/1) was not approved by the competent authority by following due process of law.



31. In view of the clear rule and settled legal position, the applicant has not made out any case for interference, with the orders passed by the respondents, by this Tribunal and thus the O.A is hereby disallowed.

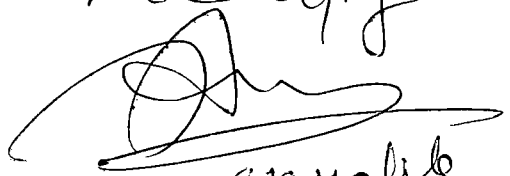
32. No order as to costs.

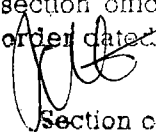
Tarsem Lal
[Tarsem Lal]
Administrative Member.

Jsv.

[Signature]
[K.V.Sachidanandan]
Vice Chairman.

18.11.08
Rec Copy

Rec Copy

S. K. Malik
Adv
25/11/08

Part II and III destroyed
in my presence on 19/11/07
under the supervision of
section officer (J) as per
order dated 19/8/2014

Section officer (Records)