

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application No.290/00120/2014
with
Misc. Application No.290/00189/2015**

Jodhpur, this the 31st day of May, 2016

Reserved on 24.05.2016

CORAM

**Hon'ble Sh. U. Sarathchandran, Judicial Member
Hon'ble Ms. Praveen Mahajan, Administrative Member**

Teja Ram Gehlot S/o Shri Choru Ram, aged about 57 years, R/o Ranisarbas Mohalla, Near Shiv Mandir, Babulal Railway Phatak, Bikaner, District Bikaner, Rajasthan. Office address-Gangman-Senior Assistant Divisional Engineer (line) NWR, Bikaner.

.....Applicant

Mr. S.S. Nirban, Mr. R.K. Mishra and Mr.G.S. Rathore, counsel for applicant.

Versus

1. Union of India through the General Manage, North Western Railway, Ganpati Nagar, Jaipur.
2. Senior Assistant Divisional Engineer (line), Northern Western Railway, Bikaner, Rajasthan.
3. Assistant Divisional Engineer (line), Northern Western Railway, Bikaner, Rajasthan.
4. Divisional Personnel Officer, Northern Western Railway, Bikaner, Rajasthan.

.....respondents

Mr. Vinay Jain, counsel for respondents.

ORDER

Per Sh. U. Sarathchandran

Being aggrieved by Annexure-A/1 order dated 23.08.2013 issued by respondent No.3 retiring the applicant on 23.08.2013 with immediate effect on

approached this Tribunal. According to him he entered into the services of the respondent Railway on 15.07.1977 stating that his date of birth is 16.09.1956. At that time he was given appointment after following procedure, verification of age, qualification and other antecedents. He alleges that after serving the Railway for nearly 32 years his service records were manipulated and has been issued with Annexure-A/1 order retiring w.e.f. 23.08.2013 in an arbitrary manner without even giving notice. Respondents have also issued Annexure-A/2 letter dated 06.02.2014 asking him to deposit Rs.9,64,230/- towards the salary and allowances received by him for the period from 30.09.2010 to 23.08.2013 i.e. for a period of 2 years 10 months and 23 days stating that he has over stayed in service for that period. Applicant had submitted application for voluntary retirement on 27.06.2013 vide Annexure-A/4 request. Respondents, instead of considering the aforesaid request, took action by issuing Annexure-A/1 order, in a whimsical manner, retired him from 23.08.2013 prior to his actual date of retirement i.e. 30th September, 2016. He states that at the time of joining service he was illiterate and he had furnished his date of birth as 16.09.1956. He challenges Annexure-A/1 on the ground that it is not a speaking order, not clarifying on what facts and documents respondents have come to the decision of retiring him from 23.08.2013. It is also stated by the applicant that the date of birth in his records was changed by the respondents in a whimsical manner without intimating and not giving the opportunity of being heard. Therefore he prays for:

- "A. By an appropriate order or direction, the respondents may kindly be directed to call the record of applicant.
- B. By an appropriate order or direction, the order dated 23.08.2013 (Annexure-A/1) may kindly be declared illegal and

retirement shall be 30.09.2016 considered and to pay salary etc to applicant for the intervening period w.e.f. 24.08.2013 with interest.

- D. Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- E. Application of the applicant may kindly be allowed with costs."

2. The OA is vehemently resisted by the respondents contending that at the time of entering service the applicant being an illiterate person, respondents obtained an affidavit from him vide Annexure-R/1 in which he has clearly stated that his date of birth is 16.09.1950. According to respondents in Annexure-R/2 [page 43 of the paper book] provisional list of casual labour/substitutes to which the applicant originally belonged and was considered suitable for appointment in class IV category the applicant's date of birth is shown as 16.09.1950. It is further contended by the respondents that after joining service the applicant has deliberately and cleverly shown his date of birth as 16.09.1956 in all the subsequent documents produced by him in the Railway and has practiced fraud with the Railway. On 21.08.2013 a vigilance team summoned applicant and the few others for investigation vide Annexure-A/6 communication. After recording the applicant's statements by vigilance team on the next day i.e. 22.08.2013, he submitted Annexure-A/7 application seeking voluntary retirement admitting that his date of birth is 16.09.1950. In pursuance of the Annexure-A/7 application submitted by the applicant he was retired from the department on 23.08.2013 as he had over stayed in the department by 2 years 10 months and 23 days. Respondents pray for rejecting the OA.

3. We have heard the learned counsel appearing on both sides and perused

originals of Annexures-A/1 to A/7. We have carefully examined the aforesaid documents and as the Service Book of the applicant contained dubious corrections we have kept those record in the safe-custody of the Registry.

4. At the outset itself we feel that we must record our observations seen in the original service book of the applicant, a copy of its relevant page is already marked as Annexure-R/3 (at page 46 of the paper book). In the page containing the bio-data of the applicant his date of birth is originally seen written with liquid ink as 16.09.1956. We note that there is an overwriting on the figures 1956 as 1950, putting a '0' over the figure '6' in the year 1956. The overwriting is seen done with a different, new ink, quite distinct both in colour and age from the original entry of date of birth. The date of birth in words is seen written with new ink which is deeper in its tone than the ink used for writing the original writing of the date of birth in figures. It is specifically stated in the bio-data that the applicant is an illiterate and his thumb impression and impression of the others fingers have also been affixed on said bio-data. So the very correction of date of birth and that too with a different ink clearly indicates that there has been a conscious manipulation of the date of birth of the applicant in the bio-data contained in his service book. Accordingly to the applicant the service book is kept by the respondents. The original of the service book was produced before this Tribunal by the respondents themselves. Therefore we come to the conclusion that the aforementioned correction of the date of birth in the service book cannot be ordinarily made without knowledge of the respondents and their official who has the custody of the service book. There is no case for either party that the corrections were made after giving

5. Learned counsel for the applicant brought to our attention the original certificate issued by the Railway Medical Examiner before his regularisation, indicating that fitness of the applicant. The original of that certificate was produced by respondents. A copy of that certificate is seen on the reverse side of the Annexure-R/3 at page 47 of the paper book wherein the date of birth of the applicant is written by the Medical Examiner as 16.09.1956. It is a medical fitness certificate issued on 11.07.1977, immediately before the applicant joined duty with the respondent Railway (15.07.1977). The date of joining of the applicant is not disputed by the respondents in their reply statement. Therefore the earliest documents even before the joining of the applicant in the service clearly indicate that the date of birth of the applicant has been recorded as 16.09.1956.

6. The subsequent documents like Annexure-R/4 seen in page Nos. 48, 49, 50, 51, 52 and 53 also indicates that the date of birth of the applicant is 16.09.1956. Annexure-R/5 is a copy of the electoral identity card issued by the Election Commissioner of India where also the age of the applicant shown as 40 years as on 01.01.1995. Applicant has produced the pay slips issued by the respondents for various periods as Annexure-A/3 (collectively). In all those pay slips his date of birth is noted as 16.09.1956. Page 23 of the paper book is a copy of the Pan Card issued by the Income Tax Department. It also shows that the applicant's date of birth is 16.09.1956.

7. Respondents point out that all the aforesaid documents have been cleverly caused to be created by the applicant in order to make it appear that his date of birth is 16.09.1956 contrary to Annexure P/1 affidavit he had

Railway rules the certificate of school authorities will be ordinarily accepted for the purpose of date of birth of an employee but in the case of illiterates, an affidavit have to be obtained from the employee. According to respondents annexure-R/1 affidavit was submitted by the applicant on 20.01.1971 indicating that his date of birth is 16.09.1950. The respondents further states that after questioning the applicant by the Vigilance Department on 21.08.2013, the applicant submitted Annexure-R/7 application for voluntary retirement on the very next day.

8. We have carefully perused Annexure-R/7. It is a typed document where again the left thumb impression of the applicant is seen affixed. A signature in Hindi in a crude handwriting is also seen on the top of his name. Two witnesses also have affixed there signature in Annexure-R/7. From the designation of the aforesaid witnesses it appears that they are the Railway officials in the Engineering Department of Bikaner Division. The respondents are heavily relying on Annexures-R/1 and R/7 for their contention that real date of birth of the applicant is 16.09.1950, not 16.09.1956 as the applicant's claim. Nevertheless the respondents keep studious silence about the corrections and overwriting in the bio-data page of the service book of the applicant which we have already found above that they are made with a different, new ink.

9. Service book is an authentic official document maintained by the employer pertaining to the identity and service particulars of the applicant including the date of birth. It is for the purpose of making entries in the service book relating the date of birth the Railway rules prescribe that in the

respondents claim that the Annexure-R/1 affidavit obtained from the applicant states that the original entry of the applicant's date of birth in the service book is 16.09.1950, nothing was brought in by the respondents to establish that before the overwriting and corrections have been made in the date of birth entry in the service book the applicant was heard. Instead the respondents gleefully project Annexure-R/7 as a sufficient and adequate evidence of the applicant's admission his actual date of birth is 16.09.1950, not 16.09.1956. As indicated above, we are reluctant to accept Annexure-R/7 as an authentic document. Annexure-R/7 appears to be a doctored application obtained by the respondents after subjecting the applicant to an intimidating quizzing by the vigilance officials. The date on which he was questioned by the vigilance officials and the date of Annexure-A/7 strengthens the dubious circumstances under which it has been made. Annexure-R/7 is a typed one wherein again the left thumb impression of the applicant have been obtained and is attested by official witness who are none other than officials of the respondent Railway. We feel that such a document has to be viewed with suspicion, especially in the light of the contention of the applicant fortified with the obvious corrections seen to have been made in Annexure-R/3 (bio-data page of the service book of the applicant).

10. Yet another matter which persuades us to come to the above conclusion is that the applicant is a low level employee with little education. It is not ordinarily possible for him to manipulate his service book which in the custody of the employer. The medical fitness certificate issued by the Railway Medical Examiner on 11.07.1977 much before his entry into the service of the

appears to us that the whole controversy sprang up only when the vigilance team quizzed the applicant on 21.08.2013 relating to his date of birth. According to the respondents Annexure-R/7 request for voluntary retirement was made by the applicant in order to escape from the findings of the Vigilance authorities. We feel that Annexure-R/7, on the other hand, was caused to be signed by the applicant under duress. It has to be noted that immediately on receipt of Annexure-R/7 from the applicant the respondents pounced upon him and has issued the impugned Annexure-A/1 order, retiring him from service. All these matters leave room for the dubious and highly suspicious role played by the respondents, rather than the alleged clever concoctions of the applicant. Therefore we feel that the order of Annexure-A/1 of the respondents retiring the applicant from service w.e.f. 23.08.2013 treating that he has over stayed in the department for 2 years 10 months and 23 days has to be quashed and set aside. We do so.

11. In the result Annexure-A/1 is quashed and set aside. The respondents are directed to take the applicant on duty immediately treating his date of birth as 16.09.1956 and his date of retirement as 30.09.2016 and to pay all consequential benefits. We take note that the order for recovery of the salary and allowances for the period of the alleged over stay of the applicant in the department was already quashed and set aside in the order dated 17.05.2016 in OA No. ¹¹⁹120/2014.

12. The OA is disposed of as above. MA No.189/2015 is closed. Parties are directed to suffer their own costs.

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