

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

-----

Original Application No. 290/00296/2015

**CORAM**

**Hon'ble Ms. Meenakshi Hooja, Administrative Member**  
**Hon'ble Mr. Arvind Jayram Rohee, Judicial Member**

Naresh Chandra Yadav s/o Shri Ram Lal ji aged 60 years by caste Yadav, resident of 6, Ravindra Nagar, Pratap Nagar, Shastri Circle, Udaipur – At present the applicant is posted at Udaipur City under the Railways.

.....Applicant

(By Advocate: Mr. Nitin Trivedi)

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur
2. The Divisional Railway Manager (Estt.), North Western Railway, Ajmer.
3. The Chief Crew Controller North-Western Railway, Udaipur City.

.....Respondents

(By Advocate : Mr. Vinay Jain)

**ORDER**

**Reserved on: 20.08.2015**

**Delivered on: 21.08.2015**

**Per Hon'ble Mr. Arvind Jayram Rohee, Judicial Member**

The applicant who is presently working as Loco Pilot with the respondents in the Pay Band of Rs. 9300-34800 Grade Pay Rs.

4200 approached this Tribunal u/s 19 of the Administrative Tribunals Act, 1985 for seeking the following reliefs:-

"(i) By an appropriate order or direction, order Annex.A/1 dated 29.07.2015 passed by respondent No.3 may kindly be quashed and set aside. The applicant may kindly be reinstated back from the date of his dismissal from service, with all consequential benefits.

(ii) Any other favourable order 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.

(iii) Original Application filed by the applicant may kindly be allowed with costs."

2. The applicant has grievance about impugned order dated 29.07.2015 (Ann.A/1) passed by respondent No.2 and communicated by respondent No.3, by which he was dismissed from service without holding any inquiry. According to the applicant, he has rendered satisfactory service and was due for retirement on superannuation on 31.08.2015. However, the applicant was served with a show-cause notice dated 23.07.2015 (Ann.A/2) issued by respondent No.2 by which he was called upon to submit his explanation regarding authenticity of certificate regarding his date of birth submitted by him at the time

birth. It is alleged that subsequently on verification from the Secondary Education Board, Ajmer, Rajasthan which issued the certificate regarding qualification of S.S.C. Examination, incorporating the date of birth of the applicant, it was found to be 28.08.1952. It is, therefore, alleged that the applicant has submitted forged certificate regarding his date of birth and hence he stands retired on 31.08.2012. Therefore, it was proposed to remove him from service for filing false and fabricated document about his date of birth and to recover the salary and other allowances received by him after 31.08.2012. The applicant was called upon to submit his explanation by 26.07.2015.

3. Instead of submitting explanation, the applicant by a letter dated 27.07.2015 (Ann.A/3) sought time of one month to collect the relevant documents to reply the show-cause notice. However, the impugned order dated 29.07.2015 (Ann.A/1) was passed dismissing the applicant from service, which according to the applicant, is flagrant violation of the principles of natural justice. Ann.A/4 on record is copy of the certificate issued by the Secondary Education Board, Rajasthan on 4<sup>th</sup> July, 1973 filed by the applicant, mentioning his date of birth as 28.08.1955 in words. The impugned order is, therefore, challenged mainly on the ground that the same has been passed without holding any

violative of Article 14, 16 and 21 of the Constitution of India, since major penalty cannot be imposed without any inquiry. That no reasonable opportunity was granted to the applicant to meet out his case. Hence the impugned order results in violation of the principles of natural justice and hence it is liable to be set-aside.

4. The respondents on notice filed reply on 17.08.2015 denying the averments, contentions and grounds raised in the OA. The impugned order is fully supported on the ground that reasonable opportunity was granted to the applicant to submit his explanation and since there is clear indication of manipulation of the certificate issued by the Secondary School Board regarding date of birth of the applicant, which has been duly verified from the issuing authority itself. This was done on receiving a complaint by respondent No.2 disputing the date of birth of the applicant, whereupon copy of the certificate dated 04.07.1973 was, sought from the Secondary School Board, Ajmer vide Ann.R/2. After considering it the impugned order was passed giving full justification for dismissal of the applicant from service and there was no need to make any inquiry. The applicant, therefore, continued in service unauthorisedly for a period of about 3 years since he ought to have retired on 31.08.2012. The OA is, therefore, liable to be dismissed.

5. On 20.08.2015, we have heard oral submissions of Shri Nitin Trivedi, learned Advocate for the applicant and reply arguments of Shri Vinay Jain, learned Advocate for the respondents. We have carefully perused the pleadings of the parties, the documents relied upon by them and have also given thoughtful consideration to the oral submissions advanced by both the learned Advocates.

### **FINDINGS**

6. The only ground raised by the learned Advocate for the applicant to challenge the impugned order is violation of principles of natural justice since fair opportunity was not granted to the applicant to meet out his case by submitting reply to the show-cause notice and hence the impugned order imposing penalty of dismissal, without holding regular inquiry is violative of Article 14 and 16 of the Constitution of India.

7. As against this, the learned Advocate for the respondents submitted that reasonable opportunity was given to the applicant to show-cause but he failed to reply the show-cause notice. Further from comparison of photocopies of two certificates available on record, one filed by the applicant and other obtained from Secondary School Board regarding date of birth of the applicant. there was no need to make any inquiry and hence there

is no question of violation of principles of natural justice and the impugned order, is therefore, perfectly right which calls for no interference by invoking the power of judicial review vested in this Tribunal.

8. We have perused the original Service Record of applicant produced by the respondents and the record concerning the impugned order. It reveals that respondent No.2 received one anonymous complaint in which it has been specifically mentioned that date of birth of the applicant is 28.08.1952 and he has interpolated the year 1955 in place of 1952 in words in the certificate issued by Secondary School Board. The respondent No.2 has, therefore, rightly taken cognizance of the said complaint and sought copy of the certificate issued by the Secondary School Board which was promptly forwarded alongwith letter Ann.R/2. Photo copies of both the above certificates are available on record.

9. In order to resolve the controversy and to consider the salient features of basic difference in handwriting portion in photo copies of the two certificates viz. Ann.A/4 produced by the applicant and Ann.R/2 forwarded by the Secondary School Board, the photo copies are annexed herewith, which shall form part of

10. Careful scrutiny of both the certificates even by naked eyes would reveal that photo copy submitted by the applicant prima-facie seems to be forged one including the word "बावन" which was replaced by "पचपन". It is obvious that interpolation/forgery has been ingenuously and artistically done by the applicant in the original certificate with the help of xerox machine/photocopier. It appears that the applicant has submitted the certificate issued by the Secondary School Board as the only proof for his date of birth, at the time of joining the service. If Ann.A/4 had been the xerox copy of the original certificate issued by the Board, it should have contained the year 1952 instead of 1955 and mode and nature of hand writing incorporated therein should also have been the same style. However, as stated earlier, there is remarkable difference and deviation between the two forms of handwritings from which reasonable and plausible inference can be drawn that the certificate produced by the applicant was forged. This is so because the original certificate produced by the respondents along with Service Record of applicant during the course of hearing also show the same mode and size of hand writing as mentioned in Ann.A/4 and not the one as mentioned in Ann.R/2.

11. From the above discussions, it is obvious that respondent No.2 was right in drawing inference that the applicant has submitted forged and concocted document regarding his date of birth which is infact 28.08.1952 and not 28.08.1955. This is for the reason that during the course of hearing, the applicant has not produced any other documentary evidence such as School Leaving Certificate, or the birth certificate issued by the competent authority to show that his date of birth is 28.08.1955 and not 28.08.1952. This being so, although the applicant's request for extension of time to submit reply to the show-cause notice was not considered, it cannot be said that no fair opportunity was given to him. Further, the applicant has not filed any rejoinder in the OA disputing or denying the contentions of the respondents, nor produced any cogent and reliable documentary proof to corroborate his contention that his date of birth is 28.08.1955 and not 28.08.1952.

12. It cannot be disputed that any order passed by the quasi-judicial or administrative authority has to qualify the test of compliance of principles of natural justice. In this respect, learned Advocate for the applicant placed reliance on the following citations viz.:-



(a) Union of India and Others vs. Central Administrative Tribunal and another, 2005 Rajasthan Law Weekly 283. However, in this case principle of 'no work no pay' was expounded and hence the law laid down is not relevant for the purpose of this OA.

(b) Union of India and others vs. K.V.Jankiraman and others, 1991 (4) SCC 109. However, it was a case of promotion of an employee and adoption of sealed cover procedure, which is not relevant in the present case.

(c) D.K.Yadav vs. J.M.A. Industries Ltd., 1993 (3) SCC 259. In that case although the issue regarding termination of service was involved, it was under Labour Law concerning private employment, although principles of natural justice were also considered in it and it has been held that just, fair and reasonable action is an essential inbuilt of natural justice. The law laid down cannot be denied and in the present case, as stated earlier, the respondents have given fair and reasonable opportunity to applicant to give justifiable explanation to show-cause notice action before passing the impugned order. This being so, it cannot be said that there is violation of principles of natural justice.

(d) S.L.Kapoor vs. Jag Mohan and others, AIR 1991 SCC 136. In this case it has been held that requirement of natural justice are

action, the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him and if that is known, requirements are met. Applying the above ratio to the facts and circumstances of the present case, it can safely be said that respondent No.3 has observed the principles of natural justice in spirit since reasonable opportunity was given to the applicant to submit his explanation in order to remove doubt about genuineness of the certificate produced by him containing date of birth as 28.08.1955, which he failed to do.

13. During the course of arguments learned Advocate for the applicant submitted that impugned order has been passed without making full fledged inquiry and that too at the fag end of service of the applicant and hence the same is liable to be set-aside. So far as this aspect of the case is concerned, the provisions of Article 311 of the Constitution of India are attracted. The entire text is reproduced here for ready reference:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.- (1) No person who is a member of a civil service of the Union or as an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
  - (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
  - (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.
- (3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

14. It is obvious that Article 311 (2) is an exception to the general rule that an employee cannot be dismissed, removed or reduced in rank without holding an inquiry. It is true that the impugned order does not specifically mention that the respondent

No.3 did not feel it necessary or stated it is not reasonable to hold inquiry as mentioned in second proviso to Article 311 (2). However, it is not disputed that respondent No.2 is the appointing authority of the applicant and this being so, he is competent to dismiss or remove the applicant from service. From the text of the impugned order, it can safely be said that reasons for dispensing with the inquiry are impliedly or implicitly stated therein and this being so, it cannot be said that the impugned order is not in accordance with the provisions of second proviso to Article 311 (2) of the Constitution of India. Simply because it is not specifically mentioned in the impugned order that it is not reasonably practicable to hold the inquiry, adequate reasons are recorded for dismissing the applicant from service on satisfaction of the appointing authority that the document regarding date of birth produced by the applicant is found to be forged/concocted/manipulated. Perhaps, there was no opportunity to verify correctness of the certificate produced by the applicant at the time of joining the service and the respondents bonafidely believed upon it, since it was issued by the competent authority i.e. Secondary School Board.

15. For the above reasons, we do not find any force in the contentions of the learned Advocate for the applicant that since a

applicant has rendered unblemished service, the impugned order should be set-aside and at the most, the respondents should be directed to hold regular inquiry. We are of the opinion that no fruitful purpose will be served if full fledged inquiry is directed, particularly in the light of the serious and illegal act committed by the applicant. It therefore, cannot be said that the impugned order is illegal, arbitrary, improper or unjust so as to set-aside the same, by exercising the power of judicial review vested in this Tribunal.

16 (a) In the result, we do not find any merit in the present OA. The OA, therefore, stands dismissed.

(b) Parties are, however, directed to bear their respective costs of this OA.

  
(ARVIND JAYRAM ROHEE)  
Judicial Member

  
(MEENAKSHI HOOJA)  
Administrative Member

R/

Received 1099  
H. H. H. H.  
24/8/15

R/C  
25/8/15