

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. O.A. 373 of 1997

Date of Order : 07.01.2004.

Present : Hon'ble Mr. Nityananda Prusty, Judicial Member

JOY PRAKASH

VS.

- 1) Union of India, service through the General Manager of Eastern Railway, Fairlie Place, N.S. Road, Calcutta-1.
- 2) Divisional Railway Manager, Eastern Railway, Malda, West Bengal.
- 3) Divisional Personnel Officer, Eastern Railway, Malda - West Bengal.
- 4) Senior Divisional Engineer, Incharge of Eng. Section - Malda, Eastern Railway, Malda -West Bengal.
- 5) Chief Permanent Way Inspector, Eastern Railway, Bhagalpur - 812 002.

For the Applicant : Mr. A.K. Bairagi, counsel

For the Respondents : Mr. M.K. Bandyopadhyay, counsel

ORDER

The applicant who was working as Casual Gangman under the respondent authorities ~~has~~ filed the present application for the following reliefs:

- a) To cancel and set aside the order of superanuation asking the applicant to retire with effect from 31st March, 1996.
- b) To pay compensation and/or damages equivalent to the loss of 07 years service of the applicant.
- c) Alternatively to treat him in service in terms of his own declaration of date of birth i.e. 31.3.1945 and to cancel the purported record changed by the authority without any authority of law by over writing the original declaration.
- d) Any order or orders as to the Hon'ble Tribunal may seem fit and proper."

2. As such the main prayer of the applicant is for cancelling the order of superanuation and correction of his date of birth from 26.03.1938 to 26.03.1945.

Contd....2.



3. Heard Mr. A.K. Bairagi, 1d. counsel for the applicant and Mr. M.K. Bandyopadhyay, 1a. counsel for the official respondents and gone through the pleadings and documents of the respective parties.

4. Mr. Bairagi, 1d. counsel for the applicant submits that the applicant was initially engaged as casual labour since 30.09.1959 and was permanently appointed as gangman on 16.03.1975. 1d. counsel submits that by mistake the date of birth of the applicant has been wrongly recorded as 26.03.1938 instead of 26.03.1945. Later on the applicant was examined by a competent medical officer on 26.03.1975 and the medical certificate (Annexure-A) clearly indicates that the applicant's age was 30 years. As such the date of birth of the applicant was 26.03.1945. 1d. counsel alleges that the official respondents have manipulated the record and made a wrong entry of his date of birth as 26.03.1938 and accordingly the applicant was made to retire much prior before to his actual date of superannuation while he was having another 07 yrs of service. In view of the above position, the date of birth of the applicant has to be corrected in the service record as 26.03.1945 and accordingly he is entitled to all the consequential service benefits treating his date of retirement as 31.03.2003.

5. Mr. Bandyopadhyay, 1a. counsel appearing on behalf of the official respondents submits that the applicant has already retired from service on 31.03.1996. The applicant himself declared his date of birth as 23.3.1938 at the time of his initial casual engagement in the year 1959. He was about 21 years 06 months at the time of his initial engagement. Accordingly, his date of birth was recorded in his service book. In case the date of birth is taken as 26.3.1945, then his age at the time of initial engagement in 1959, ^{her} would be only 14 years, which is much less than the required age for casual engagement. Later on the applicant was appointed on Regular basis as Gangman w.e.f. 16.03.1975. The applicant never raised any objection for correction relating to his date of birth nor represented anything for the same to his higher authority during his service period.

As such at this belated stage, the applicant can not raise any objection relating to the initial entry of his date of birth. However to this Ld. counsel for the applicant submits that the applicant made a representation along with all similarly placed persons for correction of the date of birth, which has been filed as Annexure-B to the O.A.. On verification of the record, it is seen no date has been mentioned on the said representation. Later on the advocate for applicant served a demand of Justice notice on the official respondents by letter dated 24.05.1996. Since the said representation of Demand of Justice was not considered, the applicant has approached this Tribunal for appropriate relief.

6. Ld. counsel for the respondents mainly objected to this application on the ground of limitation. He submits that it is well settled that the application for correction of date of birth is to be submitted before the concerned Authority at ~~least~~ within 05 years from the date of appointment of an employee. But the present applicant had never made any such application/representation for correction of his date of birth within a reasonable period. The date of birth recorded in the service record as 26.03.1938, was on the basis of the declaration given by the applicant himself at the time of his initial engagement. But the applicant never raised any objection relating to the alleged wrong entry of the date of birth made in the service record during the course of his entire service career and treating his date of birth to be 26.03.1938, accordingly he was reitred on 31.03.1996. The applicant was about 21 years 06 months as on 30.09.1959 i.e. at the date of his initial engagement on casual basis ~~xxxx~~ and in case his date of birth is treated as 26.03.1945, then the applicant will be aged less than 14 years. As such under no circumstances he would have been eligible for any appointment under the Railway Administration. Further, Mr. Bandyopadhyay, ld. counsel submits that the applicant has retired from service on 13.06.1996 treating his date of birth as 26.03.1938 and he has received all his retiral dues as per his entitlement.

7. Considering all the materials available on record, taking into account that in case the date of birth is accepted as 26.03.1945, then the applicant's age at the time of joining service in 1959 would be 14 years only and keeping in view of the fact that the applicant has never raised any objection regarding wrong entry of his date of birth during his entire service period and filed this belated application after his retirement. Hence, I am not inclined to interfere in the matter. The O.A. is accordingly dismissed. However, there shall be no order as to costs.



MEMBER (J)

ASVS.