

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 142/2002

WEDNESDAY, THIS THE 27TH DAY OF FEBRUARY, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

K. Rayan S/o Karuppan
Gang Mate, 7th Gang
Southern Raillway, Koolipalayam
residing at Door No. 206
Nariparasal palaylam, Pooluvetti p.o.
Perumanallur (Via)
Tiruppur -638 666.

Applicant

By Advocate Mr. T. C. Govindaswamy

Vs.

1. Union of India represented by the
General Manager
Southern Railway
Head Quarters Office
Park Town P.O.
Chennai-3
2. The Divisional Personnel Officer
Southern Railway
Palghat Division,
Palghat.
3. The Section Engineer
Permanent Way
Southern Railway Station
Tiruppur.

Respondents

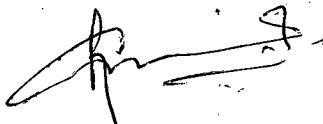
By Advocate Mr.P. Haridas

The Application having been heard on 26.2.2002 the
Tribunal delivered the following on 27.2.2002:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant a Gang Mate working under the third
respondent has filed this Original Application aggrieved by
A-5 order dated 1.2.2002 issued by the second respondent
unilaterally proposing to revise his date of birth recorded
in the Service Register from 20.10.1944 to 21.4.1936. He
sought the following reliefs through this Original
Application:



(a) Call for the records leading to the issue of Annexure A-5 and quash the same, and direct the respondents to allow the applicant to continue in service in accordance with the rules.

(b) Award costs of and incidental to this Application

(c) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case

2. According to the applicant's averment in the O.A. he joined as a Casual Labourer under the respondents on 20.8.1962. He attained temporary status w.e.f. 21.1.1967. He was regularly appointed as a Gang Man w.e.f. 28.9.1970. His date of birth was recorded correctly in his Service Register as 20.10.1944. He claimed that his date of birth was throughout acted upon as 20.10.1944 in support of which he produced A-2 seniority list relating to Gang Mates. According to him he was illiterate. While he was continuing in service his service was terminated by the second respondent w.e.f. 16.7.1997 on the basis of letter No. J/P 301/IX/Havy staff of 12.7.97. Challenging the above order on various grounds the applicant approached this Tribunal in O.A. No. 1390/98 which was allowed by this Tribunal by A-3 order dated 1.2.2001. In obedience with the directions in A-3 applicant was reinstated back to service by an order J/P.OA 1390/98 of 14.8.01. However, no consequential benefits as directed in A-3 was paid. He filed A-4 representation dated 16.12.2001 to the second respondent for which he did not receive any response. While so he received A-5 show cause notice dated 1.2.2002 on 12.2.2002. Alleging that A5 was issued by an authority without jurisdiction on the basis of para 15 of A-3 order and in case A-5 was enforced, substantial prejudice and irreparable damages would be caused to the applicant he filed this Original Application seeking the above reliefs.



3. Heard Shri T. C. Govindaswamy for the applicant and Mr. Ranjit representing Mr. Haridas for the respondents on admission. Shri Govindaswamy relying on A-3 order of this Tribunal submitted that A-5 show cause notice had been issued by an authority who had no competency to alter the recorded date of birth entered in the Service Register. Relying on the A-3 order of this Tribunal and the judgments of Hon'ble Supreme Court in Dr. Smt. Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P) and Others (AIR 1987 SC 2186), Calcutta Discount Co. Ltd. Vs. Incometax Officer, Companies District-I, Calcutta and another (AIR 1961 SC 372) and M/s Baburam Prakash Chandra Maheswari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar (AIR 1969 SCS 556) the learned counsel for the applicant submitted that the O.A. may be admitted. The learned counsel for respondents submitted that A-5 was a show cause notice and it had been clearly brought out in the said notice that the applicant himself had furnished his date of birth as 21.4.36 in his application dated 29.8.62 for the post of Gang Man and have also stated the particulars of the elder and younger brothers of the applicant available with the respondents and the applicant had been given an opportunity, in accordance with the directions of this Tribunal in its A-3 order, to explain as to why his date of birth could not be taken as 21.4.1936 and necessary alteration carried out in his Service Register and the Applicant had no cause of action.

4. We have considered the rival submissions and what is contained in the O.A.

A handwritten signature in black ink, appearing to be in cursive script, is placed here.

5. When the applicant approached this Tribunal earlier while quashing the order dated 12.7.97 terminating the service of the applicant this Tribunal held in para 19 as follows:

" Accordingly the order dated 12.7.97 terminating the services of the applicant is quashed. The applicant shall be deemed to be in service and whatever monetary benefits he is entitled to shall be paid to him after adjusting the amount paid to him by way of pension. We make it clear that this will not stand in the way of the official respondents in proceeding against the applicant in accordance with law and in strict compliance with the principles of natural justice."

It is evident from the above that liberty was granted to the respondents to take action in accordance with law and in strict compliance with the principles of natural justice. On a perusal of A-5 show cause notice we find that the same had been issued in compliance with A-3 order of this Tribunal in O.A. No. 1390/98. Applicant relied on para 15 of A-3 order to submit that A-5 had been issued by an authority not competent. In our view such a show cause notice could be issued by any authority under the respondents-Railway Administration in the light of what is contained in para 19 of A-3 order of this Tribunal reproduced above. The Tribunal had not held that only General Manager can proceed in the matter. In para 15 of A-3 order this Tribunal held:

" The date of birth referred to in Rule 225(4) recorded is the date of birth recorded in the service register. That being the position, as far as the applicant is concerned, only the General Manager is the authority competent to alter the date of birth if found necessary. The Divisional Personnel Officer has no right or authority to do so. That being the position the impugned order is ab-initio void."

What this Tribunal had held was that the Divisional Personnel Officer was in accordance with the Rule 225(4) of the Indian Railway Establishment Code Vol.I not competent to alter



recorded date of birth in the service register. From A-5 it is evident that no alteration of the date of birth in the service register has taken place in this case. It is only a show cause notice by which the applicant is getting an opportunity to place his version before the authorities. By A-5 show cause notice the applicant has not suffered any civil consequence. Whatever pleas he is advancing in this O.A. he can as well make in the reply to A-5 show cause notice.

6. Reliance placed by the learned counsel for the applicant on the judgments of the Hon'ble Supreme Court in our view do not have any applicability in the facts and circumstances of the present O.A.

7. When this Tribunal has specifically held that the respondents were at liberty to take action in accordance with law and principles of natural justice and if the respondents have proceeded to issue show cause notice to the applicant as in A-5, in our view any interference at this stage will be making a nullity of this Tribunal's A=3 order. In xxxx view of the forgoing, we hold that this O.A. is premature and there is nothing to be adjudicated by this Tribunal at this stage. Accordingly we do not find any reason to admit this O.A.

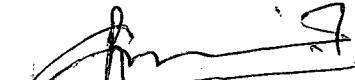
8. In the result this Original Application is dismissed under Section 19(3) of the Administrative Tribunals' Act, 1985.

Dated the 27th February, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

Kmn



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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APPENDIX

Applicant's Annexures

- A1 A true copy of the service particulars of the applicant as submitted by the PWI/East/Southern Railway, Poddanur dated 26th May.
- A2 A true copy of the seniority list bearing No. J/P.612/IX/PWI of 17.3.94 issued by the 2nd respondent.
- A3 A true copy of the order of this Tribunal in OA No. 1390/98 dated 1st February, 2001
- A4 A true copy of the representation dated 16.12.2001 submitted by the applicant to the 2nd respondent.
- A5 True copy of the letter No. J/P.OA. 1390/98 of 1.2.2002 issued by the 2nd respondent.