

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. 281/93

Wednesday, the seventeenth day of November, 1993

MR. N. DHARMADAN MEMBER (JUDICIAL)

MR. P.V. VENKATAKRISHNAN MEMBER (ADMINISTRATIVE)

S.A. Ramiah Asary  
S/o Solliandi Asari  
Prathap Bhavan  
Near Edamon Rly Station  
Quilon

Applicant

By Mr. P. Sivan Pillai

vs.

1. The Divisional Personnel Officer  
Southern Railway, Madurai-10
2. The Divisional Railway Manager  
Southern Railway, Madurai-10
3. The Permanent Way Inspector  
Southern Railway, Sivakasi
4. The Union of India through the  
General Manager, Southern Railway  
Madras-3

Respondents

By Mr. P.A. Mohammed

ORDER

N. DHARMADAN

A question relating to the correct date of birth of the applicant arises for consideration in this case.

2. The applicant is aggrieved by two orders Annexure A-1 and A-4 passed by the respondents. They unilaterally decided about the correct date of birth of the applicant without giving sufficient opportunity to the applicant to establish his case. According to the applicant, the decision to fix the date of birth of the applicant as 4.5.1933 is arbitrary and made without issuing any notice or affording any opportunity of being heard to the applicant. Hence, both these orders are illegal and liable to be set aside.

3. According to the applicant, he was appointed in the Railways as casual mazdoor in the year 1973. He was regularly absorbed as Gangman on 24.5.84. With the knowledge of the applicant, the respondents 3 & 4 entered his date of birth in the Service Register as 4.5.43. Based on that date of birth the applicant is entitled to continue in service till he attains the age of superannuation. Contrary to this, Annexure A-1 was issued by the Inspector terminating his service prematurely w.e.f. 8.10.92. His objection Annexure A-3 was disposed of by subsequent order Annexure A-4.

4. Learned counsel for applicant, Shri P. Sivan Pillai, placed reliance on official documents Annexure A-2 which is an application for loan, containing the service particulars as certified by the Sr. Officer and the seniority list of Engineering Artisans, Annexure A-5 of Madurai Division as on 1.4.88 containing the date of birth of the applicant as 4.5.43. He has also a case that Ext. R-4, copy of the relevant page of medical examination, supports his case that his correct date of birth as 4.5.43. If the date of birth as entered in these documents are taken into consideration, the impugned orders are unsustainable.

5. The respondents on the other hand, produced for our perusal even at the time of admission the seniority list of casual labourers/substitutes as on 31.12.85 in which the applicant is shown as Sl. No. 13 having date of birth as 4.5.33. Along with the reply, respondents have produced Ext. R-1 to R-7 to support the case of the respondents that the correct date of birth of the applicant as entered in the service register and other official documents is 4.5.33. They have also stated in the reply that there is some correction of the date of birth of the applicant as entered in the service register and accordingly

they have ordered enquiry to find out the correct position so as to satisfy them that the correct date of birth of the applicant is 4.5.33. On the completion of the enquiry, it was found that the applicant is not entitled to continue in service, ~~as~~ he has already attained the age of superannuation on the basis of the entries in the Service Register. Hence, the original application is liable to be dismissed.

6. The learned counsel for the applicant submitted that if the case of the respondents is to be accepted, the applicant has already attained the age of superannuation on 31.5. 1991; but the respondents allowed him to continue upto October, 1992, nearly one year and seven months after the date of superannuation as alleged by the respondents. This circumstance causes some doubt on the stand taken by the respondents. The learned counsel for respondents produced for our perusal the original entries in the service register. On a perusal of the register, it is not clear as to whether the correct date of birth as entered in the register is 4.5.33 or 4.5.43. However, there is some overwriting and correction without proper initial. The applicant, as also the respondents, produced records in support of their respective cases. Since there is lingering doubt about the date of birth as entered in the service register, we are satisfied that a further enquiry on this issue at a higher level is necessary to find out the real position in the interest of justice. The applicant has also raised a contention that the enquiry which has already been conducted by the respondents without giving opportunity to the applicant, cannot be treated as a proper enquiry for arriving at the correct conclusion in this case. It is violative of principles of natural justice. There is considerable force in the argument of the learned counsel for the applicant. A

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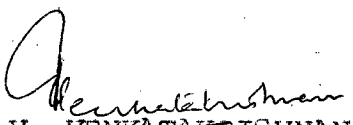
final decision can be taken only after offering an opportunity of hearing to the applicant. In the enquiry already conducted, no such opportunity was given to the applicant. Hence, the enquiry and the decision is not binding on the applicant.

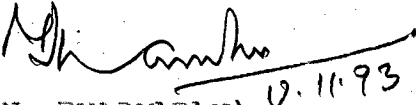
7. Having regard to the facts and circumstances of the case, a fresh enquiry regarding the correct date of birth of the applicant is necessary in the light of the documents produced in this case. Accordingly, we direct the second respondent to conduct a fair and impartial enquiry on this issue through a senior officer of the Railway. This shall be done in accordance with law after affording sufficient opportunity to the applicant to produce evidence and materials in support of his case and also make his submissions. This shall be done within a period of six months from the date of receipt of the copy of this judgment.

8. In the light of the decision already taken by us the impugned orders cannot be sustained. Accordingly, we set aside those orders and make it clear that the Railway is free to pass fresh orders after conclusion of the enquiry in the light of the result of the enquiry and correct date <sup>to be</sup> ~~in the enquiry.~~ of birth/arrived at. It goes without saying that status quo as of today be maintained till a final decision is taken by the competent authority on the report of the enquiry.

9. The application is disposed of with the above observations.

10. There shall be no order as to costs.

  
(P.V. VENKATAKRISHNAN)  
MEMBER (ADMINISTRATIVE)

  
(N. DHARMADAN) 12.11.93  
MEMBER (JUDICIAL)