

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 317 of 2009

Thursday, this the 18th day of February, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

M. Ambrose, aged 61 years, S/o. C.G. Mathews, (Retd. Trackmate/Southern Railway/Coonoor), Residing at: Door No. 48/22, Mount Pleasant, Below Social Club, Coonoor-2. **Applicant**

(By Advocate – Mr. Mohana Kumar for Mr. T.C. Govindaswamy)

V e r s u s

1. **Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai-3.**
2. **The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat.**
3. **The Senior Divisional Finance Manager, Southern Railway, Palghat Division, Palghat.**
4. **The Assistant Divisional Engineer, Southern Railway, Podanur Railway Station, Coimbatore.**
5. **The Section Engineer/Permanent Way/Southern Railway/ Coonoor Railway Station, Coonoor Via. Mettupalayam.** **Respondents**

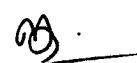
(By Advocate – Ms. Simla for Mr. P. Haridas)

The application having been heard on 18.2.2010, the Tribunal on the same day delivered the following:

ORDER

By Mr. Justice K. Thankappan, Judicial Member -

The applicant who was working as a Trackmate (Gangmate) of the Southern Railway, Palaghat Division, filed this Original Application with



the following prayers:-

"(i) Call for the records leading to the issue of Annexures A5, A6, A9, A14 and A15 and quash the same;

(ii) Call for the records leading to the issue of Annexure A10 and quash the same to the extent it treats the applicant's pension as provisional and direct the respondents to grant the applicant regular pension with effect from the date from which the applicant's pension falls due;

(iii) Direct the respondents to release the applicant's retirement gratuity, leave salary, commuted value of pension and other terminal benefits forthwith with 18% interest calculated with effect from the due dates or from such date as this Hon'ble Tribunal may find just and proper;

(iv) Award costs of and incidental to this application;

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

2. Aggrieved by Annexures A5, A6, A9, A14 & A15 the applicant approached this Tribunal with the aforesaid prayers and the case of the applicant, as averred in the Original Application, are as follows:-

a) According to the applicant he has been appointed as Casual Labour during 1965 and posted as a Substitute Gangman with effect from 21.9.1972. Subsequently he was absorbed in the regular service with effect from 30.12.1978. At the time of his joining in the service he had furnished the documents showing his date of birth as that of 8.12.1947. On the basis of said statement recorded in the service records he continued his service and as per Annexures A1 to A4 the same date of birth has been carried on by the department which are in the seniority list and promotion list of the applicant and have been admitted by the department also.

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b) On the basis of the entries made in the service records the applicant has to retire only on 31.12.2007. However, the department has not given any notice for his retirement till Annexure A5 notice has been issued which is dated 26.3.2007. It is stated in the said document issued by the APO/E for Senior DPO, Palakkad that his services stand terminated with immediate effect as he had been continued in service beyond the age of superannuation, his date of birth being 8.2.1947.

c) On the basis of the above notice a charge sheet has also been issued as Annexure A6 against the applicant initiating disciplinary proceedings against him for quoting his date of birth entry wrongly in the service records and for overstaying in the department. Further Annexures A9, A14 and A15 were issued against the applicant. Hence, he filed this Original Application.

3. The Original Application has been admitted by this Tribunal and notice has been ordered to the respondents. On behalf of the respondents a reply statement has been filed taking the stand that during 2007 a vigilance inquiry has been ordered and in the vigilance inquiry, on the basis of evidence collected therein, it was revealed that the actual date of birth of the applicant is 8.2.1947 and on the basis of that inquiry report of the vigilance department a further charge sheet has been issued against the applicant without giving him any pensionary benefits. The further stand taken in the reply statement is that as per Annexures R1 to R3 documents collected in the vigilance inquiry, it would reveal that the actual date of birth of the



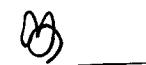
applicant is 8.2.1947. Hence, proceedings initiated against him and non-payment of the service benefits are justified.

4. On receipt of the reply statement a rejoinder has been filed for and on behalf of the applicant reiterating his stand in the Original Application regarding his date of birth as 8.12.1947. It is also stated in the rejoinder statement that only the General Manager has got powers to make any correction or alterations in the service register with regard to date of birth as per Rule 225 of the Indian Railway Establishment Code, Volume-I.

5. We heard Shri Mohana Kumar for Mr. T.C. Govindaswamy, learned counsel appearing for the applicant and Ms. Dhanya B. for Mr. Thomas Mathew Nellimoottil, learned counsel appearing for the respondents and we have also perused all the documents produced and the Original Application.

6. In the light of the arguments addressed to this Tribunal by the counsel appearing for the parties, the question to be decided in this Original Application is that whether the present stand taken by the respondent Department can be accepted or the date of birth entry entered in the service records has to be accepted as true and correct as that of the applicant.

7. The entire case of the applicant as set up in the Original Application is that when he joined in the service in 1965 as a Casual Substitute Gangman, he had given the date of birth statement before the Department as that of 8.12.1947 and as per the records evidently from Annexures A1, A2, A3 and



A4 this date of birth of the applicant has been carried on by the department without any hesitation or any doubt. In the above circumstances the case of the applicant is that if any inquiry subsequent to the services of the applicant namely after 2007 done by the department cannot be sustained and his date of birth in the service book or service record has to be accepted by this Tribunal and this Tribunal may allow this Original Application by directing the respondents to fix the date of birth of the applicant as 8.12.1947 and allow him all his service benefits.

8. In the above context we have to consider one aspect that during 1965 when the applicant joined in the Railway service as a Substitute Gangman he had given his date of birth statement to the reporting officer and the reporting officer himself has entered his date of birth as 8.12.1947. If so, the same has been carried even after the lapse of more than 44 years. The applicant had not taken any step either to make any entry by any method or to get any benefit on that aspect and the department has also kept quiet regarding the date of entry of his date of birth in the service records till at the eve of his retirement. On this background we have to consider the case set up by the respondents in the reply statement.

9. The main thrust now given in the reply statement filed on behalf of the respondents is on Annexures R1 to R3. These are the transfer certificate alleged to have been issued in favour of the applicant and the letter issued by the Headmaster and correspondent of St. Antony's Higher Secondary School, Coonoor. We have perused Annexures R1 to R3 and we have noted



that even the date of birth entry in R1 and R3 are not tallying and further as per Annexure R2 the date of birth recorded is also yet another that means it is recorded as 8.2.1947. In the above circumstances the documents now relied on by the department cannot be accepted as a conclusive evidence for proving the date of birth of the applicant when particularly the alleged vigilance inquiry has been conducted by the department only during 2007 and at the eve of retirement of the applicant and also on a question raised for date of retirement of the applicant on issuing Annexure A5 notice.

10. In the above circumstances as the department accepted the entire records relating to the date of birth of the applicant as that of 8.12.1947 it is only reasonable to hold that the entry made in the service record has to be accepted by the department as correct date of birth of the applicant. Hence, we are of the view that date of birth of the applicant should be treated as 8.12.1947. Consequently we are of the further view that the applicant is entitled for the retirement benefits counting his date of birth as aforesaid. Ordered accordingly. The department has to allow all the service and retirement benefits to the applicant within a reasonable date at any rate within sixty days of the receipt of copy of this order.

11. The OA stands allowed to the extent decided above. There is no order for costs.


 (K. GEORGE JOSEPH)
 ADMINISTRATIVE MEMBER
 "SA"


 (JUSTICE K. THANKAPPAN)
 JUDICIAL MEMBER