

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 424 of 2010

**Reserved on 5.4.2013
Pronounced on 12th April, 2013**

Hon'ble Mr. Navneet Kumar, Member-J

Raghunath, aged about 52 years, S/o late Sukat, R/o Office of Section Engineer, Construction, Badshahnagar, Lucknow

.....Applicant
By Advocate : Sri Manish Mishra

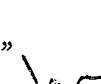
Versus.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Lucknow.
3. Deputy Chief Engineer (Construction), NER, Lucknow.
4. G.M. (Personnel), NER, Gorakhpur.
5. Senior Personnel Officer (Construction) for Chief Administrative Officer (Construction), NER, Gorakhpur
.....Respondents.

By Advocate : Sri S. Verma

O R D E R

The present O.A. has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 with the following relief(s):

- "(i) *quash the illegal, arbitrary beyond jurisdiction without any show cause notice has been issued by non-competent authority dated 16.7.2010 may kindly be set-aside.*
- (ii) *that the respondents may kindly be directed to supply the detailed enquiry report conducted by General Manager (Personnel), North Eastern Railway, Gorakhpur.*
- (iii) *To issue the respondent may kindly submit the detailed enquiry report conducted by General Manager, North Eastern Railway, Lucknow.*
- (iv) *To direct Mukhya Lekhadhikari Construction, North Eastern Railway, Gorakhpur to submit his objection in this regard.*
- (v) *Any other relief which this Hon'ble Court may deem fit in the interest of justice.*
- (vi) *Cost may be awarded in favour of the applicant."* 

2. The brief facts giving rise to this Original Application are that the applicant, who was initially engaged as Casual Labour/Substitute in the year 1976, was subsequently allowed to work on different spells till 1993. In 1996, the competent authority issued a seniority list of Gangmen wherein the name of the applicant finds place at sl. No. 24 and in the said list the date of birth of the applicant was recorded as 02.10.1956. It is said that while working at Siwan Station, the applicant was directed for medical examination and medical memo was issued wherein the date of birth of the applicant was recorded as 2.10.1956. Thereafter, the applicant had obtained a certificate issued by the Secretary, Nagar Panchayat wherein also, the date of birth of the applicant was recorded as 02.10.1956. Not only this, even the identity card which was issued by the competent authority under the signature of Deputy Chief Engineer (Construction) also bears the date of birth of the applicant as 02.10.1956. It is said that on the basis of the aforesaid facts, the applicant would be still in service, but he was superannuated from service treating his date of birth as 2.10.1950. Feeling aggrieved, the applicant preferred a representation before the competent respondent authorities and finally vide order dated 16.7.2010 the respondents rejected the representation of the applicant stating that after due inquiry, the date of birth of the applicant was found as 2.10.1950 and not 2.10.1956, hence this O.A.

3. Sri S. Verma, learned counsel appearing on behalf of the respondents filed their Counter Reply and through their Reply, it was pointed out by the respondents that since the applicant had already retired from service on the basis of recorded date of birth as 2.10.1950 and the said retirement has already given effect to. The respondents have also pointed out that the applicant was initially engaged in the year 1976 and after working for some time, he was granted temporary status in the year 1985, but before attaining the temporary status, the applicant was sent for medical examination by the Railway Medical Officer where he declared his date of birth as 2.10.1950 and as such at this belated stage, the applicant cannot claim his date of birth as 2.10.1956. Learned counsel for the respondents has also pointed out that after due inquiry, 'A' card was issued wherein the date of birth was recorded

as 2.10.1950. But there is over-writing in the column of date of birth and instead of 1950 it was mentioned as 1956 and on the basis of said over-writing, the age of the applicant cannot be taken as 2.10.1956 and accordingly the respondents have prayed for dismissal of O.A.

4. Learned counsel for the applicant also filed Rejoinder Reply reiterating almost all the pleadings made in the Original Application and denying the averments made in the Counter Reply. Apart from this, learned counsel for the applicant has relied upon certain case laws of Hon'ble Supreme Court as well as Hon'ble High Court wherein it has been observed that incase there is any discrepancy and in absence of notice given to the employee concerned, the date of birth as mentioned in the service book is required to be treated as correct and the applicant was allowed to continue in service till he superannuates in accordance with law.

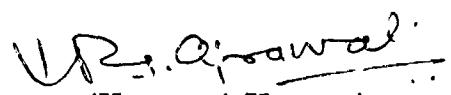
5. Heard the learned counsel for the parties at length and have also perused the pleadings of the case as well as the original service records produced by the respondents' counsel.

6. Admittedly, the applicant joined the respondents' organization as Casual Labour in the year 1976 and subsequently he was granted temporary status in the year 1985. Annexure annexed with the O.A. at page 23 is the personal details to be filled in by the applicant himself wherein the date of birth of the applicant was shown as 2.10.1956. Subsequently, the respondents issued a seniority list of Gangmen and in the said seniority list the name of the applicant finds place at sl. No. 24 and in that also, his date of birth is shown as 02.10.1956. That before granting temporary status, the applicant was sent for medical examination before Railway Medical Officer who issued medical memo wherein also the date of birth of the applicant was shown as 2.10.1950. The applicant also emphasized on the certificate issued by the Secretary, Nagar Panchayat in which also the date of birth of the applicant is the same as mentioned above i.e. 02.10.1956. The contention of the learned counsel for the respondents cannot be accepted to this extent that all these documents were filled up by the applicant himself and as such it cannot be relied upon, but the same was also verified by the '✓✓'

respondents themselves. As regards 'A' card is concerned, there is over-writing in the column of date of birth as 2.10.1956 in place of 2.10.1950 and the same does not bear signature of the applicant. It was all done by the respondents themselves. Not only this, Annexure CA-1 which is the certificate of physical fitness of the applicant issued by the Railway Medical Officer, which does not bear the signature of the applicant. Further, the contention of the respondents may be accepted to the extent that the date of birth of the applicant was ascertained by the respondents after due inquiry, but in the said alleged enquiry the applicant was not associated in any manner whatsoever and he was not given any opportunity of hearing to defence his case and as such any decision taken at the back of the applicant is unjustified and uncalled for. Learned counsel for the respondents has also produced the original records and after going through the said original records, it clearly establishes that the entire enquiry proceedings the applicant was not associated at all. A bare perusal of note-sheet of original records at page nos. 5, 6 and 7, it reveal that the date of birth of the applicant was considered to be correct as 2.10.1956; whereas in all other documents such as service book, Casual labour card, seniority list of Gangmen, certificate issued by the Secretary, Nagar Panchayat, Pariwar Register etc. the date of birth of the applicant has been shown as 2.10.1956.

7. As observed in the case of ***Hari Singh Vs. State of Bihar reported in 2000 SCC (L&S) 832***, the Hon'ble Supreme Court has been pleased to set-aside the impugned order altering the date of birth of the appellant by directing that the appellant must be deemed to be continuing in service until duly superannuated in accordance with law. The factual position as emerged in the instant case is clear to the extent that at every stages except the certificate of physical fitness, every where the date of birth of the applicant has been shown as 02.10.1956 and as such the action of the respondents retiring the applicant from service treating his date of birth as 02.10.1950 appears to be unjustified and uncalled-for and as such the impugned order is bad in the eyes of law and is liable to be quashed. \~

8. In view of the above, the O.A. succeeds. The impugned order dated 16.7.2010 is hereby quashed. The applicant will be treated as being in service as per his date of birth being 2.10.1956. The applicant will be entitled to reinstatement with all consequential benefits including arrears of salary after deducting the terminal benefits, if received by the applicant. The above order shall be complied with by the respondents within a period of three months from the date of receipt of a certified copy of this order. No costs.


(Navneet Kumar)
Member-J

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