

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.

O.A.No.1179 of 1991. (T.A.169/92 TL)

(2)

Chandra Pal :::::::::: Applicant

Vs.

Union of India &
Others :::::::::: Respondents.

Hon. Mr.Justice R.K. Varma, V.C.

Hon. Mr. V.K. Seth, A.M.

(By Hon. Mr.Justice R.K. Varma, V.C.)

By this petition the petitioner has sought quashing of the order of his retirement and to pass a just and proper order in the case.

2. The petitioner was engaged as a casual labourer in the capacity of Khalasi under respondent No.2 since 13-3-1959. After putting in 10 years of service as Khalasi on casual basis in the Construction Division of Northern Railway, the petitioner along with 8 other employees raised an Industrial dispute for regularisation of their services and the matter was referred to Central Government Industrial Tribunal, Kanpur.

3. The Industrial Dispute was registered as No.21 of 1986 and was decided on 4-2-87 and an award was given in favour of the petitioner. The respondent No.2 then filed a Writ Petition No.4856/1987 against the said award, but the said Writ Petition has been pending for decision in Lucknow Bench of the High Court, while the matter has been sub-judiced in the Lucknow Bench of High Court, the respondent No.2 retired the petitioner on 28-11-1991 orally and did not allow him to join duty.

4. The petitioner has submitted that the action of the respondent No.2 is illegal and without jurisdiction since according to the respondent, the petitioner holds the

status as 'Casual Labourer' and there is no existing rule prescribing the age of the retirement of the Casual Labourer. The action of retiring the petitioner is alleged to be arbitrary and discriminatory since it is made to oust the petitioner only and not other employees who also raised Industrial Dispute for their regularisation. The retirement order, oral, is alleged to be malafide as it has been made in order to deprive the benefit of regularisation to the petitioner. It has also been contended that the order of retirement in fact amounts to retrenchment in violation of Section 25-f of Industrial Disputes Act, 1947.

5. According to the written statement of the respondents the petitioner's date of birth is 28-9-1933 as per the record maintained in the office of the respondents and the respondents contended that the petitioner cannot be retained in service beyond the age of 58 years as per the Railway Board's letter No.1-E(NG)64-CL/25 dated 29-1-1966. It is the contention of the respondents that the petitioner had not been given temporary status for want of medical fitness and hence he is not entitled for the privileges like permanent employee.

6. In the rejoinder affidavit the petitioner has disputed the correctness of the record of the respondents as regards the entry of his date of birth which according to the written statement of the respondents is 28-9-1933. The petitioner alleges that his date of birth related to the year 1934 and as such he attains the age of 58 in the year 1992 and not in 1991.

7. If the date 28-9-1933 is regarded as the date of birth of the petitioner on the basis of the averment made in the written statement of the respondents, the petitioner completed the age of 58 years on 28-9-1991, but the petitioner was orally retired on 28-11-1991 i.e. 2 months after 28-9-1991. The learned counsel for the parties have placed reliance on a decision of this Tribunal dated 9-11-1992 passed in O.A.No.1124/91 - Takuri Vs. Union of India & Others - which

it appears to be a case similar to the present one. Following the said decision, it must be held that the petitioner, after working for a requisite period, attained temporary status and the temporary status did not depend upon medical examination and declaration of fitness which the respondents do not appear to have thought necessary all these years. The respondents did not regularise the services of the petitioner taking the plea that he did not appear in medical examination and not found fit. The petitioner had been working all these years and there is no question of medical examination for attaining temporary status which one gets after completion of 120 days of working.

8. Accordingly this petition deserves to be allowed and is hereby allowed. The petitioner will be deemed to have attained temporary status after completion of the requisite period. The petitioner attained the temporary status long before he was retired

9. The respondents are directed to consider the case of the petitioner for regularisation with retrospective effect. The respondents will hold enquiry in the matter, associating the petitioner in the enquiry, which shall be concluded within a period of 3 months. In case the petitioner's date of birth is found to be incorrectly recorded, the petitioner will be entitled to all benefits of service till the date of his retirement determined on the basis of correct date of birth. The petitioner shall be entitled for all retiral benefits when regularised. The respondents shall fix a date for holding enquiry within a period of one month calling upon the petitioner to tender evidence. There shall be no order as to costs.

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ADMINISTRATIVE MEMBER.

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VICE-CHAIRMAN.

Dated: 4 /2/1994, Lucknow.
(tgk)