

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

ORIGINAL APPLICATION No. 455/1992

Shiv Narain

Applicant.

versus

Union of India through
General Manager, Northern
Railway, Baroda House,
New Delhi and 2 others

Respondents.

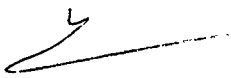
HON. MR. S.N.PRASAD, JUDICIAL MEMBER.

The applicant has approached this Tribunal for declaration to the effect that the correct date of birth of the applicant is 24.10.32 and the premature retirement of the applicant by the respondents is contrary to the aforesaid date, and thus the premature retirement of the applicant ^{on 31.12.85 and the} ~~is~~ impugned order dated 23.6.92 (Vide Annexure A-1) ^{is} ~~is~~ illegal and malafide, and the applicant is entitled to salary and allowances with all consequential benefits from the date of his premature retirement till the actual date of his retirement.

2. Succinctly, the facts of the case, inter alia, are that the applicant was appointed as Loco Khalasi on Northern Railway, Lucknow on 4.11.50; and the applicant, being illiterate having received no schooling, had no certificate of age with him and when the applicant appeared for medical examination before the Assistant Surgeon, Northern Railway, Lucknow, he told him on the basis of his parents/neighbours version that he was 18 years of age; but the Assistant Surgeon declared the applicant's age as 23 years as on 4.11.50.


2. Feeling aggrieved against the above medical examination and assessment of the age by the Assistant Surgeon, the applicant represented the matter to the authorities concerned with the prayer for re-medical examination; and consequently he was medically re-examined by the Divisional Medical officer, Northern Railway, Lucknow on 24.10.52; and after considering the applicant's representation, the said Divisional Medical officer declared the applicant's age to be 20 years on 24.10.92, thus ^{being} ~~shown~~ the date of birth of the applicant as 24.10.32; and accordingly a certificate was issued by the aforesaid Divisional Medical Officer in favour of the applicant and ~~was sent~~ ^{was sent} the same to the respondent No. 2 for entry and correction of date of birth of the applicant accordingly.

3. The main grievance of the applicant appears to be that despite his persistent efforts and representations to the authorities concerned, the date of birth was not corrected and as per letter of respondent No. 2 dated 12.3.81 the applicant's request for change of date of birth was not accepted, and thus, this being so, the applicant, apprehending premature retirement, filed declaratory suit in the court of Munsif Hawali, Lucknow which was numbered as Suit No. 159/84 and in that suit the defendants ^{of} that suit (the respondents in the present case) filed written statement on 15.11.85 which was verified by Divisional Personnel Officer Northern Railway, Lucknow, (vide Annexure A-3) wherein existence of two medical certificates in the



service record of the plaintiff(applicant) was admitted. The aforesaid suit, due to advent of Administrative Tribunals Act, 1985, stood transferred to this Tribunal and was numbered as T.A. No. 837/86 and the same was disposed of with the direction to the respondents to hold enquiry in the matter, associating the applicant and conclude the same within a period of one month from the date he (applicant) appears in the enquiry. It has further been contended that the applicant ~~contended~~ [^] ~~that~~ [^] attended on the dates fixed before the enquiry officer, who asked the applicant to bring his certificate of age and the applicant informed him that he, having no schooling, had no certificate of age and he also told the enquiry officer that the medical reports and the representation of the applicant are available ⁱⁿ ~~and~~ the service record, which may be perused and which have been admitted by the Divisional Personnel Officer in the aforesaid Civil suit, but the impugned order dated 23.6.92 was passed without thrashing out the factual facts and without considering the matter involved in this case, [^] ~~hence~~, the applicant has approached this Tribunal again.

4. The respondents have filed counter reply with the contentions, inter alia that ^{on} the date of [^] ~~applicant's~~ appointment, i.e. on 23.11.50, Assistant Surgeon Lucknow ^{had} ~~examined~~ the applicant and declared the applicant's age as 23 years and accordingly his date of birth was recorded in his service record as 23rd November, 1927; and accordingly the applicant's age of superannuation is 30th November, 1985. It has further been stated that in compliance of



the directions of this Tribunal, as referred to above, the enquiry was conducted but the applicant ^{~ Cooperate in the enquiry ~} did not ~~associate~~ ^{associate} with it and failed to produce any evidence as would be obvious from the perusal of the enquiry proceedings contained in Annexures ~~A-1~~ ^{~ to the counter reply ~} and ~~A-3~~ and accordingly, the impugned order dated 23.6.92 was passed confirming the date of birth of the applicant recorded as 23.11.27 rejecting the stand taken by the applicant regarding his date of birth as 24.10.32 and in view of the above circumstances, the application of the applicant is liable to be dismissed.

5. Rejoinder Affidavit has been filed by the applicant wherein he has almost reiterated the same view points as mentioned in the O.A.

6. I have heard the learned counsel for the parties and have thoroughly perused the record.

6. The learned counsel for the applicant while drawing my attention to the contents of the application and the papers annexed thereto, has argued that the written statement filed by the respondents (dependants) of the aforesaid suit (vide Annexure A-3) it has been clearly admitted therein that there are two medical certificates ⁱⁿ and the service record of the applicant, one shows the age of the applicant as 23 years ^{as} on 4.10.50, issued by the Assistant Surgeon, Lucknow, and the other medical certificate shows the age of the applicant as 20/1 years ^{as} on 24.10.52 issued by the Divisional Medical Officer, Lucknow and as such since the Divisional Medical Officer, Lucknow is the senior Medical Officer/higher authority in

comparison to the Assistant Surgeon^{and} the opinion given by the aforesaid Divisional medical officer, Lucknow should have been accepted by the respondents, but for the reasons best known to the respondents, they did not do so and arbitrarily and whimsically turned down the request for correction of date of birth of the applicant as per letter dated 12.3.81; and has further argued that the applicant associated with the enquiry wholeheartedly^{and} answered rationally^{all} the question^{he} asked by the enquiry officer as would be obvious from the persual of the enquiry proceedings, and since the applicant's assertion has been to the effect that he had no school certificate and he had no schooling career, then how he could produce any certificate before the enquiry officer; and has further argued that in the face of the above medical opinion regarding the age of the applicant given by the Divisional Medical officer, Lucknow, the respondents had to accept the medical opinion of the superior or the Senior Medical Officer, but without assigning any reason in this regard, they rejected the request of the applicant and as such the application of the applicant should be allowed and in support of his arguments, has placed reliance on the ruling reported in (1992) 1 U.P.L.B.E.C. 399[~] 'Moti (petitioner) versus Mukhya Nagar Adhikari, Nagar Mahapalika, Kanpur and another (respondents).

wherein it has been enunciated.

"When the medical report was called for by the Mukhya Nagar Adhikari before superannuation of of the petitioner, the Mukhya Nagar Adhikari should have considered the medical report and should have recorded the reasons for its acceptance ~~of~~ non-acceptance. After referring the matter regarding the determination of age to the Medical Officer, he cannot resile and act in an arbitrary manner."

7. The learned counsel for the respondents while drawing my attention to the pleadings of the parties and the papers annexed thereto and while reiterating the view - points as mentioned in the counter-reply has stressed

that from the perusal of the enquiry proceedings (Annexure C-1) and from the perusal of the impugned order (Annexure ~~A-1~~ ^{the O.A.}) it would be ~~obvious~~ clear that the applicant did not produce any evidence before the enquiry officer and did not cooperate with the enquiry officer wholeheartedly and did not answer properly and as such there is no illegality in retiring the applicant according to his date of birth as 23.11.27 as recorded in his service record and in the seniority list; and as such the application of the applicant should be dismissed.

8. I have perused the above ruling.

9. This is important to point out that from the perusal of the pleadings of the parties and from the perusal of Annexure A-3, as referred to above, it is crystal clear that according to their own admissions of the respondents, there are two medical certificates, one issued by the Assistant Surgeon, Lucknow dated 4.10.1950 showing the age of the applicant as 23 years on 4.10.1950; and the other medical certificate dated 24.10.52 issued by the Divisional Medical Officer, Lucknow showing the age of the applicant as 20/1 years on 24.10.52.

10. Thus, this being so and in absence of any other authentic and reliable documentary evidence on record, the crux of the entire controversy lies in ascertaining as to which of the above two medical certificates, be relied upon.

11. This is needless to emphasise that the Divisional Medical Officer, in comparison to the Assistant Surgeon, Lucknow, who is senior and superior in all respects and more

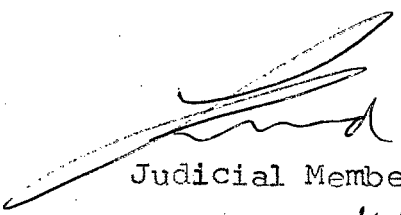
~ and as such ~
experienced than the Assistant Surgeon, his opinion
should be preferred, and there is no any cogent reason and
ground to discard the above ^{opinion} ~~opinion~~ of the Divisional
Medical Officer when that was sent by the Divisional
Medical Officer concerned ^{in proper manner} after having been referred by the
respondents on the representation of the applicant at the
very outset in the beginning of his ^{career} service not being
satisfied by the opinion of the Assistant Surgeon, Lucknow
regarding his age.

12. This is also important to point out that from the
perusal of the enquiry proceedings and impugned order
dated 23.6.92 (Annexure A-1), as referred to above, it
becomes obvious that since the very inception, ^{to} the applicant
^{has been} ~~is~~ assertion ^{is} that he ^{had not read in any school} ~~is illiterate~~ and that is why
he had no certificate of his age i.e. ~~x~~ date of birth from
any school and that ^{is why} he did not produce any certificate
regarding his date of birth ^{during the course of enquiry} but he answered all the questions
rationally and properly and thus this being so and from
the scrutiny of the entire material on record ; I find
that the impugned order dated 23.6.92 (Annexure A-1) is not
sustainable and I find that the above ruling relied upon by
the learned counsel for the applicant goes a long way in
supporting the above arguments of the learned counsel for
the applicant.

13. After considering all the facts and circumstances
of the case and all aspects of the matter, I have come
to the conclusion that the premature retirement of the
applicant on the basis of the date of birth of the applicant
as ^{contrary to his correct date of birth as 24.10.32} ~~23.11.27~~ is illegal and invalid and the impugned order
dated 23.6.92 (Annexure A-1) is also illegal and the same
is ~~quashed~~ ^{quashed}.

14. In the result the application of the applicant
is allowed and the applicant shall be deemed to have

continued in service and to have retired on reaching his age of superannuation deeming his correct date of birth as 24.10.32, and the applicant is entitled for all the consequential benefits accordingly, which shall be paid by the respondents within a period of six months from the date of receipt of the copy of this judgment. No order as to costs.



Judicial Member

24.12.93

Girish/-

Lucknow; Dated 24.12.93