

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No. 532/96

Date of order 28-5-2001

Most. Dai Rani Devi, wife of Late Hazari, village Salkhua,
PO Salkhua, District Saharsa.

.. Applicant

-versus-

1. The Union of India through General Manager, N.E. Railway, Gorakhpur.
2. The Chief personnel officer, N.E. Railway, Gorakhpur.
3. The Divisional Railway Manager (P) N.E. Railway, Samastipur.
4. The Assistant Engineer, NE Railway, Saharsa.
5. The PWI, NE Railway, Sahara.

.. Respondents

Counsel for the applicant ... Shri A. Hakim.

Counsel for the respondents .. Shri P.K. Verma.

C O R A M : Hon'ble Mr. Justice S. Narayan, Vice-Chairman
Hon'ble Mr. L.R.K. Prasad, Member (A)

O D E R R

L.R.K. Prasad, Member (A) :-

This application has been filed with the prayer to quash order of premature retirement as contained in Annexure-3 and order passed in appeal as contained in Annexure-8.

2. We have heard the learned counsel for the parties and perused the materials on record.

3. The original application was filed by one Hazari (a Railway employee) challenging the order of the concerned authority by which he was made to retire on premature basis. He died on 6.7.1998 leaving behind his wife and 3 sons. On his death, his wife, Most. Dai Rani Devi, was allowed to be substituted in

place of the original applicant vide order dated 18.12.1998 passed in M.A.207/98.

4. Late Hazari was employed as Casual Labourer in 1954 and in due course, he was recruited to Class IV post. His date of birth is under dispute. While Late Hazari has stated that his date of birth as per medical certificate is 16.11.1936 and, as such, he was due to retire on 16.11.1994. However, by order dated 28.9.1994 (Annexure-3) passed by respondent no.3, he was made to retire with immediate effect on the ground that his correct date of birth is 16.11.1930 and not 16.11.1936. Against the aforesaid order of premature retirement Late Hazari filed an appeal before the Divisional Railway Manager (P) on 16.11.1994 (Annexure-4). As no order was passed in appeal, he filed O.A.536/95. The said O.A. was disposed of by this Tribunal on 9.10.1995 (Annexure-5) directing Divisional Railway Manager, N.E.Railway, Samastipur, to dispose of the representation of the applicant dated 16.11.1994 within two months from the date of receipt of the order. The said representation was to be disposed of by speaking and reasoned order. vide letter dated 27.5.1996 (Annexure-8) Late Hazari was informed that his case has been considered and it has been decided with approval of the competent authority to treat his date of birth as 16.11.1930.

5. The applicant has alleged that date of birth (16.11.1936) of her late husband was never in dispute. But suddenly her husband was informed vide letter dated 28.9.1994 (Annexure-3) that his date of birth is 16.11.1930 and not 16.11.1936. It is pointed out that

if the date of birth of her late husband was 16.11.1930, he should have retired from service in 1988- how he was allowed to continue for about 6 years beyond 1988. Reliance has also been placed on certificate of physical fitness as at Annexure-2. The relevant portion of the certificate is reproduced below:-

"I do hereby certify that I have examined Sri Hazari aged 16.11.36 a candidate for appointment as designation ganman class B-one in the Engg branch department whose signature/thumb impression has been appended below in my presence.

I consider him fit for such appointment."

6. It has been further submitted on behalf of the applicant that no alteration in the date of birth as recorded in service record should be allowed without giving the person concerned a opportunity of show cause which was not done in case of late husband of the applicant. While passing the order as contained in Annexure-8, the competent authority did not give Late Hazari an opportunity of personal hearing even though he was directed to do so by order dated 9.10.1995 passed in O.A.536/95.

7. This application has been opposed by the respondents on the ground that the same is not maintainable as it is barred by principle of res judicata because Late Hazari had filed OA 536/95 with more or less same prayer which was considered and the direction issued vide their order as at Annexure-5. According to respondents, the same is also not maintainable on merit. The late husband of the applicant was engaged on the post of Substitute Labourer on 15.9.1973. At the time of appointment, Late Hazari submitted a certificate of Mukhia of Gram Panchayat Salkhua (Annexure-R-1) wherein his date of birth was disclosed which has been altered. Inadvertently,

the altered date of birth was recorded in the medical certificate dated 23.2.1973 which was issued by Medical Examiner regarding his physical fitness. The altered date of birth (16.11.1936) was carried out in 'A' Card and other documents by mistake. The respondents have further stated that interpolation in original first document submitted by late husband of the applicant came to light in 1994 and the matter was accordingly taken up with the vigilance organisation of the Department. The certificate regarding date of birth given by Mukhia (Annexure-R-1) was sent to Government Examiner/Expert for examining the said alteration. After examining the same, the Government Examiner has given opinion that the date of birth had been altered to 16.11.1936 in place of 16.11.1930. On the basis of the said finding of the Government Examiner and report of the Chief vigilance Officer, it was decided to treat 16.11.1930 as the date of birth of late husband of the applicant and, therefore, he was made to retire as soon as the same came to the notice of the respondents. In pursuance to direction of this Tribunal dated 9.10.1995 passed in OA 536/95, the case of Late husband of the applicant was reviewed by competent authority (Chief Personnel Officer). After going through the entire records of the case including enquiry report and finding of Government Examiner, the competent authority came to the conclusion that date of birth of Late Hazari is 16.11.1930 and not 16.11.1936 as contended by Late Hazari. According to respondents, the actual date of retirement of Late Hazari should be 30.11.1988. Entire retiral dues of Late Hazari has been settled and most of the payments have already been made which have been accepted.

From the pleadings of the parties, it is clear

that main issue for determination in the instant case is with regard to date of birth of Late husband of the applicant. On the one hand, it is stated that the date of birth of Late Hazari is 30.11.1936, and as such, his actual date of retirement should have been 16.11.1994 as per the service rule, on the other hand, the respondents have stated that the date of birth of Late Hazari is 16.11.1930, which is based on the vigilance enquiry report and findings of Government Examiner in connection with birth certificate given by local Mukhia, which is at Annexure-R-1. By mistake, his date of birth at the time of initial appointment was recorded as 16.11.1936 and the mistake was detected sometime in 1994 which was duly enquired into after which it was decided to retire Late Hazari from service with immediate effect on the ground as stated in letter of concerned respondent dated 28.9.1994 (Annexure-3). No rejoinder has been filed on behalf of the applicant refuting the stand taken by the respondents in their written statement. However, during the course of argument, the learned counsel for the applicant insisted that date of birth of Late Hazari is 16.11.1936 and not 16.11.1930.

9. It is noted that Late Hazari had filed O.A. 536/95 praying therewith that the order of premature retirement be quashed contending that at the time of entry in service he was medically examined by Dr. who had recorded his date of birth as 16.11.1936 but the respondent concerned had decided to treat his date of birth as 16.11.1930. This Tribunal disposed of the said O.A. on 9.10.1995 by following

order:-

"Considering the submissions, we think it expedient in the interest of justice that this application can be disposed of by giving a direction to the DRM, N.E.Rly, Samastipur and accordingly we give direction to the DRM, N.E.Rly, Samastipur to dispose of the representation at Annexure-4 dated 16.11.94 filed by the applicant within two months from the date of receipt of this order by speaking and reasoned order after giving personal hearing to the applicant. With this observation, this application is disposed of."

In pursuance to the said order, the matter has been disposed of by concerned authority which was communicated to Late Hazari through letter dated 27.5.1996 (Annexure-8). The letter dated 27.5.1996 does not give impression that it is a speaking order. It is the allegation of Late Hazari that he was not given personal hearing as directed by this Tribunal. We are not aware of the circumstances as to why he was denied personal hearing. Nevertheless, the fact remains that he is no more.

1D. O.A.536/95 was not disposed of on merit. A direction was issued to the respondent concerned to dispose of the representation dated 16.11.1994 filed by Late Hazari by a speaking order. Therefore, the question of res judicata does not arise.

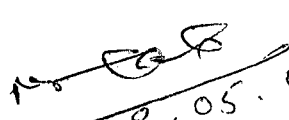
① Now, coming to the merit of the case, it appears that some alteration was made in the birth certificate dated 10.12.1970 (Annexure-R-1) of Late Hazari given by Mukhia of Gram Panchayat Salkhua, which created the whole confusion. When interpolation came to the notice of the concerned respondent, necessary enquiries were made by the respondents regarding actual date of birth of Late Hazari. The expert opinion of Government Examiner was also obtained. ~~in the letter dated 23.9.1994,~~ issued by office of G.M., N.E.Railway, Gorakhpur and

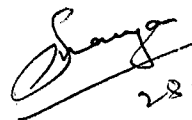
addressed to DRM(P), N.E. Railway, Samastipur, it is mentioned that the birth certificate issued by Mukhia of Gram Panchayat, Salkhua, has been examined by Government Examiner of questioned documents and they have found that the date of birth of the concerned railway employee has been altered and the same can be read as 16.11.1930 instead of 16.11.1936. This letter further states that the employee should have been retired on 30.11.1988. Therefore, he should be retired with immediate effect. All pensionary benefits should be calculated as the applicant retired on 30.11.1988 and his excess period got regularised by the Railway Board. The letter dated 22.5.1996, as at Annexure-R-3 is also relevant.

12. There is no reason to disbelieve the findings of the Government Examiner who is an expert person to examine ^{such} the documents. There is always a possibility of administrative error in the entry of date of birth at the time of entry of government servant into service, if same is not supported by any prescribed School Leaving Certificate. In the instance ^{as} case /Late Hazari had not done school, he had submitted a Mukhia certificate regarding date of birth. The Govt. Examiner has already opined that the date of birth mentioned in Mukhia certificate has been altered. When the mistake came to ^{the} notice of the respondents, immediate action was taken to conduct enquiry. Thereafter, the respondents arrived at a conclusion that the date of birth of Late Hazari ^{was} /16.11.1930 and not 16.11.1936. Therefore, they decided to retire Late Hazari with immediate effect vide order dated 28.9.1994 (Annexure 3).

past mistake through due process of law. In the instant case, the same was done through necessary enquiries and after obtaining opinion of Government Examiner on questioned documents. The fact remains that Late Hazari was allowed to ~~continue~~ ⁱⁿ service till 1994. His case for regularisation has also been recommended to Railway Board for excess period. We are not aware of the final outcome of the said proposal to the Railway Board. While we feel that there is no scope to quash the order of respondent concerned regarding date of birth of Late Hazari, we would suggest that no recovery should be made from the pensionary dues of Late Hazari for the excess service rendered by him beyond 1988.

13). In the result, we have reached conclusion that there is no scope for judicial interference in the matter. Hence, this O.A. is dismissed subject to observation made by us in para 13 above. No order as to the costs.


28.05.01
(L.R.K. Prasad)
Member (A)


28-05-01
(S. Narayan)
Vice-Chairman