

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O. A. No.: 441 of 2006

[Patna, this Friday, the 2nd Day of February, 2007]

C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

Md. Taj,
S/o Late Md. Nasser Khan.

Vs.

Union of India through Secretary,
Ministry of Railway, Rail Bhavan,
New Delhi & Ors.

Counsel for the applicant. :- Shri S.K.Bariar.

Counsel for the respondents.:- Shri Ashutosh Kumar, ASC.

O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- Heard both the sides. The case of the applicant is that he is working as a Khalashi under Senior Sectional Engineer, Carriage & Wagon, E.C.Railway, Rajgir and in the year 1993 he was directed to appear in a screening test in which he appeared and on 12.08.1993 the medical examination of the applicant was done and was declared medically fit. However, it was only on 04.04.2004 that an order of appointment and posting him in a Group 'D' post was issued. The case of the applicant is that an affidavit was sworn by the elder brother of the applicant, Haider Ali, showing his age to be 65 years and swearing therein that the applicant who was his brother was born on 05.02.1947. The case of the applicant is that this averment in the affidavit was an apparent error as the applicant, from very ^{him,} look of ^人 would not appear to be an old man. For this reason the



applicant is sought to be superannuated w.e.f. 28.02.2007 vice Annexure filed in Misc. Application No. 48 of 2007, which has been disposed of today along with certain amendment in the OA.

2. On the face of it, it would appear to be incongruous that the applicant who was to reach the retiring age on 28.02.2007 would be allowed appointment on 04.04.2004, i.e., his being over 57 years of age. There is nothing on record to show that age criteria was so relaxed. Learned counsel submits that the affidavit at Annexure-A/4 sworn in by Haider Ali contains some factual mistakes as his age is shown which would have been the age of his father. It is submitted that Haider Ali not being literate since he has affixed LTI in the affidavit, could not himself locate the mistake, nor the applicant who also was not well conversant in English. However, the subsequent affidavit by Haider Ali which is at Annexure-A/5[a] shows himself to be 45 years of age and swearing in the date of birth of the applicant to be 05.02.1967. Some other documents also have been filed.

3. In such circumstances, this Tribunal sought help of learned counsels for both the sides so that the matter may be resolved and justice be meted out to both the sides. A suggestion came at the Bar that the concerned authority may be directed to treat this OA as a representation and consider the facts mentioned therein, giving an opportunity to the applicant to be heard so that the authority would be in a position to make his own assessment about his age and, if it is found necessary, he may order medical examination of the applicant with ossification test, to reach at a conclusion.

The suggestion at Bar is fair and is accepted.

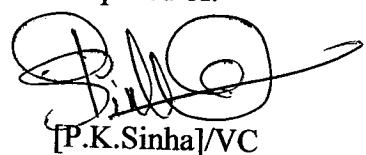
4. In that view of the matter, this application is disposed of with



direction to the DRM, E.C.Railway, Danapur [respondent no.3] to treat this application as a representation of the applicant and to give an opportunity to the applicant to be heard in person, within 15 days of receipt of this order whereafter, if he finds it necessary, to get the applicant examined medically by a Medical Board with the help of ossification test and other medical tests as may be available to determine his age, and then to record an order about the claim of the applicant within two months of receipt of a copy of this order. If the prayer of the applicant finds favour by respondent no.3 and if he passes order in that regard, the applicant, if he has superannuated in the meantime would be ordered reinstatement on his post with his seniority intact.

The applicant is also directed to make available to the respondent no.3 a copy of this order alongwith a copy of the application, with annexures, as also any other document he may have in this regard, within a week of receipt of the certified copy of the order.

With the aforesaid directions, this application is disposed of.



[P.K.Sinha]/VC

skj.