

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE TA. 1574/82
W.P. No. 5679/84 OF

NAME OF THE PARTIES Mohini Mohan Nigra Applicant

Versus

..... Commission of India Govt. Respondent

Part A.

Sl.No.	Description of documents	Page
1	Index sheet	A1 to A3
2	order sheet sad. order dt 17.4.90 is order sheet	A4 to A10
3	writ petition with annexure	A11 to A28
4	Power	A29
5	Intimation Intimation application	A30 to A32
6	stay application	A33 to A34
7	Consent affidavit	A35 to A36
8	Revised affidavit	A37 to A73
9	Power / Notices / application / Tura Cakly	
10		
11		
12		
13		
14		
15		
16		
17		
18		

CERTIFICATE

Certified that no further action is required taken and that the case is fit for consignment to the record room (decided)

This file has been received from record room
Dated 09.09.11 *without Bata*

Counter Signed.....

Section Officer/In charge

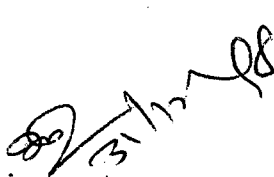
Signature of the
Dealing Assistant

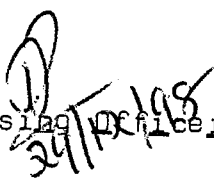
CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

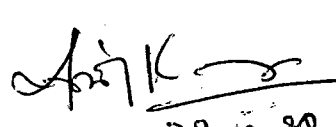
FORM OF INDEX

~~B.A./T.A./R.A./C.C.P./~~ No. 1574/1987
2.9. Nigam ———— W.P. 5679/87
U.O. 1.8.87.
PART - I

1. Index Papers :- 0404.
2. Order Sheet :- 05-11-
3. Any other orders :- (13 H.P. 12, 192/87 (Discontinued).
(14 to 17) H.P. 2006/85 (Discontinued).)
4. Judgement :- Judgement dt. 17-4-90 SAT. Lko Bench.
(Page - 12)
5. S.L.P. :- ————


Dy. Registrar


Supervising Officer


Dealing Clerk 29-12-90

Note :- If any original document is on record - Details.


Dealing Clerk 29/12/98

V.K. Mishra

①

ANNEXURE -A

CAT

CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench, Lucknow
Opp. Residency, Gandhi Bhawan, Lucknow

INDEX SHEET

CAUSE TITLE T. A 1374) of 19NAME OF THE PARTIES M. M. N. Jain

Applicant

Versus

N. C. I.

Respondent

Part A, B & C

Sl. No.	Description of documents	PAGE
1	General Index A ₁ - A ₂	2
2	Ordersheet A ₃ -	1
3	Petition A ₄ - A ₁₆	13
4	Annexure A ₁₇ - A ₂₃	7
5	Vakalatnama A ₂₄	1
6	Duplicate Copy of Petition A ₂₅ - A ₄₇	23
7	Grounds Affidavit A ₄₈ - A ₅₉	10
8	Duplicate copy of C.A. A ₆₀ - A ₆₇	10
9	Application for Interim Relief A ₆₈ - A ₇₀	3
10	Response Affidavit A ₇₁ - A ₈₀	10
11	Duplicate copy of S.R. A ₈₁ - A ₉₂	12
12	Ordersheet of N.C. A ₉₃ - A ₉₈	6
13	B. file B ₉₉ - B ₁₂₉	31
14	No. C. file C ₁₃₀ - C ₁₃₃	4

CIVIL
CRIMINAL

GENERAL INDEX

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case

Name of parties

Date of institution

Date of decision

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee		Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
				Number of stamps	Value			
1	2	3	4	5	6	7	8	9
					Rs. P.			
	1	sub. into affidavit and Annex	19	-	102.00			
	2	Power	1	-	5.00			
	3	Cmt 12 1926 984.	1	-	5.00			
	4	Power	1	-	5.00			
	5	Contn affidavit	10	-	2.00			
	6	Cmt 2006 1985	13	-	7.00			
	7	arch. Bd. el.	3	-	-			
	8	Buch ely	1	-	-			

I have this day of 198, examined the record and compared the entries on this sheet with the papers on the record. I have made all necessary corrections and certify that the paper correspond with the general index, that they bear Court-fee stamps of the aggregate value of Rs. that all orders have been carried out, and that the record is complete and in order up to the date of the certificate.

Date.....

Munsarim

Clerk

Honble K.S. Varma, J.
Honble S.S. Ahmad, J.

Issue notice to the opposite parties for 19.12.1984 to show cause why the petition be not admitted. Notices shall be served by registered post acknowledgment due.

List it on 19-12-1984.

In the meantime, it will be open to the opposite parties to dispose of the representation.

Copy

Atm Ks
28.11.1984

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.R. No. 5679 of 198 83

25.

(A 3)

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
28/11/84	Sen K.S. Verma, Sen SS Ahmad, Give notice to the opp. parties for 19/12/84 - Wait it on 19/12/84 - - - - the representation. Sen. K.S. Verma. Sen. SS Ahmad. 28/11/84. cm. An n o 12, 19 2 1984.	
28/11/84	Sen K.S. Verma, Sen SS Ahmad, Put up along with the petition. Sen. K.S. Verma. Sen. SS Ahmad. 28/11/84	
	19.12.84 B B my R. 22/12/84 21/12/84	

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No.

5677

of 1984

25.

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1	2	3
	He - Goyal J. He - D. Kumar J. Dist on 7.1.85. The petitioner's counsel undertakes to serve 'ex parte' notice out of court. For the purpose dist. notice shall be issued if the petitioner will also serve a copy of the order dt. 20.11.84. 21.12.84 Sh	
7.1.85	fixed with CM No. 12192(W)84 for order 7-1-85 fix for attendance of petitioner in case no. 12192(W)84. 21.12.84 21.12.84	RO fixed by ct. (52)
7/1/85		

HOBST
HOBST

Received notice with in
For service on P. 2
S. S. S. S.

11

Act

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. 5679 of 1984

25.

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1 5-2-85 20-2-85	2 proceed with CMA No 12192(W)-84 for 6 days adminin/hearing MOSS A-7 HCOB 12/1/85 CMA A-2006(W)-85 Hou. R. N. G. C.A. B. K. I. Listed 27.2.85 Do. B. K. I.	3 By C.A. Imma. gtr 3 days.
27.2.85	27.2-85 C.A. forwarded CMA 12192(W)-85 and CMA A-2006(W)-85 for order Hou. R. N. G.	
	Wrongly listed. It should be listed before a Division Bench in the week commencing 18th of March, 1985.	
	27.2.1985	
20.3.85 12.4.85	final order CMA 12192(W)-85, 2006(W)-85 for order Hou. S. H. S. Hou. B. K. I.	As per order week B.K.I. on 18.3.85

TA 1574/177

A3

--2

12

4/9

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
14/12/64	No sitting Adj. to 12.2.90 This case has been received on transfer. Notices were issued to the counsel by the Office of All India. None present for the applicant. In A Bhargava present for the report. But notices were issued again to the parties as directed by Hon'ble Mr. D.K. Agrawal, J.M.	or Notice issued 17/1/90
12.2.90 17-4-90	No sitting Adj. to 17.4.90 Hon. Mr D.K. Agrawal, J.M. Hon. Mr P.S. Talwar, J.M. Petitioner does not appear. It appears that he has lost interest in pursuing the matter. The petition is dismissed for want of prosecution. Without any order as to costs. AM J.M.	OR Case has been read on 28.0.04 Case is not admitted. CA filed RO has not Notice was issued to the official on 17-1-90. Notice of applicant has been return back with postal return. GIL sent up of J.M. with the return. S.F.O. 13/4

Dinesh

Copy A-14(1)

(9)

(A2)

9232

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH, LUCKNOW.

A
11

WRIT PETITION NO. 5679 OF 1984.

MUHINI MOHAN NIGA M. ... PETITIONER

VS.

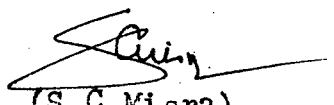
UNION OF INDIA, AND ANOTHER. ... OPP-PARTIES.

16932

I N D E X

<u>S.NO.</u>	<u>PARTICULARS.</u>	<u>PAGES</u>
1.	Writ petition.	1-10
2.	Affidavit.	11-12
3.	<u>Annexure No. 1</u>	13
4.	<u>Annexure No. 2</u>	14
5.	<u>Annexure No. 3</u>	15
6.	<u>Annexure No. 4</u>	16-17
7.	<u>Annexure No. 5</u>	18-19
8.	Power.	20

Lucknow Dated:
November 20 84.


(S.C. Misra)
Advocate.
Counsel for the petitioner.

(A7)

8/2

-: 3 :-

5. That a circular was issued by the opposite parties in the month of November, 1983 containing the names of persons who were due to retire ~~in~~ in the next 24-30 months. From the said circular for the first time the petitioner, came to know that the date of his superannuation was shown as 31.12.1984.

6. That immediately after the issuance of the said circular, the petitioner, ^{represented to} ~~contacted~~ his superior-officers ~~then~~ only he came to know, that at the time of joining of his services, the authorities concerned had mentioned his date of birth as 18.12.1926, in the ~~sergice~~ record of the petitioner instead of 31.12.1930.

7. That immediately he requested the authorities concerned that his date of birth was wrongly mentioned in the Service record as 18th December, 1926, whereas his correct date of Birth is 31st December, 1930, and so a correction to that effect may kindly be made in his ~~xxx~~ service record.

8. That in support of the above he submitted his school certificate and transfer certificate, which were issued to him from Sanatam Dharm Primary for Boys and Girls, District Lucknow and was furnished by the petitioner ~~at the time~~ when he was appointed in 1949. The actual date of birth is mentioned as

(A 8)

1/9

-: 4 :-

31.12.1930. A photo state copy of the said certificates are being annexed herewith as Annexure Nos. 1 and 2 respectively.

9. That petitioner also submitted the Municipality Date of Birth Certificate, which was issued from the Municipality authorities, in which his date of birth was also mentioned as 31. 12. 1930. As the earlier certificate ~~was carried~~ was misplaced the petitioner got issued a New certificate again. A photo state copy of the said certificate is being annexed herewith as Annexure No.3 to this writ petition.

10. That inspite of the fact that the petitioner has taken all necessary steps in this regard his oral and written submission and request to the opp-parties did not yield him any fruitfull result.

11. That on 13.3.1984 the petitioner again made a written representation to the Divisional Railway Manager, Northern Railway, Lucknow in which he stated that, it appeared, ^{that} his date of birth was wrongly mentioned in his service book as 18-12-1926 instead of 31.12.1930. A true copy of the said representation is being annexed herewith as Annexure No. 4 to this writ petition.

12. That again the petition ^{er} on 25.9.1984

M. Nigam

(A15)

A
15

-: 6 :-

the date of birth of petitioner as 16.12.1926 instead of 31.12.1930, should have afforded an opportunity to the petitioner for proving his date of birth, and innot doing so they have acted illegally, arbitrary and unreasonable and without jurisdiction.

17. That the impugned order is ~~xxxxxx~~ wholly arbitrary illegal and unreasonable and violative of Article 14 and 16 of the Constitution of India, the petitioner is illegally being retired at the age of 54 years, ~~xxxxx~~ while the persons are being retired at the age of 58 years. This action of the opposite parties amount to an act of compulsory retirement.

18. That the opposite parties have not passed any orders on the said representation of the petitioner's in which he had requested that his correct date of birth ^{be corrected} as 31.12.1930 ^{which} but due to some mistake ~~it~~ had been recorded as 16.12.1926. The said representations shall ^{now} become infructuous after 31.12.1984. The above said act of the opposite parties are wholly illegal, arbitrary, and without jurisdiction.

19. That the superannuation/retirement of petitioner at this age would visit him with evil consequences and would result in loss of jobs and emoluments and as now the petitioner is to retire

Am Nigam

Ann

A/16

-: 7 :-

shortly he is constrained to file the present writ petition.

21.11.84
M. Nigam

20. That feeling aggrieved and having no other alternative adequate efficacious and speedy remedy available the petitioner is compelled to file the present writ petition amongst others on the following grounds :-

G R O U N D S

A. Because the impugned ~~order~~ action of the opposite parties of retiring the petitioner by way of superannuation on 31.12.1984 is illegal arbitrary and without jurisdiction.

B. Because the opposite parties have totally ignored the date of birth shown in the two school certificates and the Certificate of the Municipal Authorities which ^{was} submitted by the petitioner in which his date of birth is mentioned as 21.12.1930. The said certificates which are authentic documents and proof of age could not have been disbelieved under the present circumstances.

40

C. Because the opposite parties before ~~staying~~ taking the date of birth of petitioner as 16.12.1926 instead of 31.12.1930, should have afforded an opportunity to the petitioner for

(A12)

12

-: 8 :-

proving his date of birth, and in not doing so, they have acted illegally, arbitrary and unreasonably and without jurisdiction.

D. Because the impugned order is wholly arbitrary illegal and unreasonable and violative of Article 14 and 16 of the Constitution of India. The petitioner is illegally being retired at the age of 54 years, while the ^{other employees} ~~persons~~ are being retired at the age of 58 years, This action of the opposite parties amount to an act of compulsory retirement.

E. Because the opposite parties have not passed any orders on the said representation of the petitioner in which he had requested that his correct date of birth is 31.12.1930 but due to some mistake it has been recorded as 16.12.26. The said representation shall become infructuous after 31.12.1984. The above said act of the opposite parties are wholly illegal, arbitrary and without jurisdiction.

RELIEFS

Wherefore, it is most respectfully prayed that following relief may kindly be granted to the petitioner :-

Amnigam

-: 9 :-

- (i) To issue a writ order or direction in the nature of Certiorari thereby quashing the impugned circular/notice of the opposite parties issued in November, 1983, after summoning the original from the opposite parties.
- (ii) to issue a writ order or direction in the nature of mandamus thereby restraining the opposite parties from retiring the petitioner with effect from 31.12.1984 on the basis of the impugned order.
- (iii) to issue a writ order or direction in the nature of mandamus thereby commanding the opposite parties to permit the petitioner to work until ~~in~~ he ~~attains~~ attains his age ~~of retirement~~ of retirement according to his actual date of birth which is 31.12.30 and to give him all the benefits till the said date by treating him to be in regular service and not as retired w.e.f. 31.12.1984.
- (iv) to issue, other, writ order or direction which may be deemed fit and proper in the circumstances of the case in favour of the petitioner against the opposite parties.
- 

11 (A15)

In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow.

Writ Petition No. of 1984.

1984
AFFIDAVIT
71
HIGH COURT
ALLAHABAD



Mohini Mohan Nigam. ...Petitioner.

Vs.

Union of India and others. 1..Opp-parties.

AFFIDAVIT :

I, Mohini Mohan Nigam, aged about 54 years, son of late Sri Asharfi Lal Nigam resident of House No. 256/8 Khajuha, Lucknow, do hereby solemnly affirm and state on oath as under :-

1. That the deponent is the petitioner in the above noted writ petition and as such he is fully conversant with the facts of the case.

2. That the contents of paras 1 & 19 are true to my knowledge and those of

M. Nigam

-: 2 :-

paras 20 are ~~existing~~ true
on the basis of legal advice and those
of paras are true on the basis
of the record.

Lucknow Dated:
November 20, 84.

Amnigam
Deponent.

I, the above named deponent, do hereby
verify that the contents of paras/ ~~and~~ 1 and 2 of
of this affidavit are true to my knowledge.
Nothing material has been concealed and no part
of it is false. So help me God.

Lucknow Dated:
November 21, 84.

Amnigam
Deponent.

I identify the deponent who
has signed before me.

Brij Nandan
Clerk.

Solemnly affirmed before me on 21.11.84
at 4.30 a.m. / ~~2 p.m.~~ by Sri H. H. Misra
the deponent who is identified by Sri Brij Nandan
Srivastava, Clerk to Sri S.C. Misra, Advocate, High
Court, Lucknow Bench, Lucknow.

I have satisfied myself by examining the
deponent that he understands the contents of this
affidavit which have been read out and explained
by me.

G. S. Misra

Cath. & Commission
High Court, Allahabad
Lucknow Bench
No. 221/01
Date 21.11.84

14

A 18

A 20062

4/23

BIRTH CERTIFICATE

Page No. 72

54
Book No.

Certified that a ^{male}/_{female} child

was born to अक्षरफा लाल निगम son of सुन्दर लाल निगम

caste हिन्दू

On 3.12.1920 19 in Mohalla खुजवा
(दोतीस दिग्गज 8 नीस से तीस)

Ward चौहानगंज within Municipal limits,

Lucknow.

Dated 9.11.84 198

Medical Officer of Health,

LUCKNOW.
Nagar Mahapalika, Lucknow.

Amnigam
2.11.11

Am No 3 15 (24)

Sanatan Dharm Primary for Boys and Girls Junior High School
LUCKNOW

3. Register No. 15/24

स्वाध्याय रजिस्टर तथा हटो की० कार्ड
Scholar's Register & Transfer Certificate

Admission File No.

Withdrawal File No.

T. C. File No.

छात्र का नाम तथा धर्म Name of the Scholar with Caste if Hindu, otherwise religion श्री हजो मोहन प्रसाद हिन्दू धर्म कायम है	पररक्षक का नाम व्यवसाय तथा पता Name occupation and address of parent or guardian श्री 3122 को. 7. ज. ज. म. म. कमला प्रसाद जी पुस्तक	छात्र की जन्म तिथि Date of Birth 31 12-30 शुक्रवार कलकत्ता-4 भारत	अन्तिम संस्थान या कि विद्यापीठ से प्रवेश पहले किया था श्री 3122 को. 7. ज. ज. म. म. कमला प्रसाद जी पुस्तक
--	---	---	--

Class	Date of Admission	Date of Promotion	Date of Removal	Cause of removal i. e. Non payment of dues removal of family, expulsion, etc.	Year	Conduct and work
K. G.						
1	I					
2	II					
3	III					
4	IV					
5	V					
6	VI	7-7-43	15-5-44		1943-44	
7	VII	8-7-44	14-5-45		1944-45	
8	VIII	8-7-45	13-5-46		1945-46	
9	IX					
10	X					
11	XI					
12	XII					

Certified that above Scholar's Register has been posted up to date scholar's leaving as required by Department Rules.

Amnigam

76 (A20)

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH LUCKNOW.

—
WRIT PETITION NO. OF 1984.
—

Mohani Mohan.

... Petitioner.

Vs.

Union of India and otherw.

... Opposite-parties.

ANNEXURE NO. 4.

To

The Divisional Railway Manager,
Northern Railway,
LUCKNOW.

Sir,

Reg: Alteration in Date of Birth.

With due regards, I beg to submit that I was appointed as Coolie on 18.12.1945 against Temporary sanction and were discharged from service a number of times myself being non matriculate could not produce my documentary evidence regarding my date of birth at the time of regular appointment as Hammer-man on 18.5.1949.

That due to immaturned brain and illitracy, I was not in full knowledge of my date of birth, as such I mentioned my date of birth in the month of December, 1926 by mistake.

That after a long time I was in search of some important papers where I could get my T.C. issued by Sanation Dharm Primary for Boys and Girls Junior High School, Nagar Mahapalika Lucknow in which my date of

M. Nigam

17

A21

-: 2 :-

birth is mentioned as 31.12.1930.

That according to my present date of birth, my retirement is due on 31.12.1984 and still I have to marry my 3 daughters which rather difficult in these hard days without any source of income.

I, therefore, request your honour kindly to alter my date of birth as 31.12.1930 instead of 18.12.1926 and my date of retirement may also be changed.

A Photostat copy of TC is also enclosed for your kind perusal.

Thanks.

D.A./1.

Yours faithfully.,

Sd. Mohani Mohan Nigam.
(M.M. Nigam)

Dated: /3/1984.

SR. CLERK UNDER CTI/II/LKO.

True Copy.

M. M. Nigam

18 (A-22)

A/12

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH, LUCKNOW.

—
WRIT PETITION NO. OF 1984.
—

Mohani Mohan. ... Petitioner.
Vs.
Union of India and others. ... Opp-parties.

ANNEXURE NO. 5.

...

To

The General Manager (P),
Baroda House,
New Delhi.

THROUGH PROPER CHANNEAL.

Sir,

Subject:- Correction of date of retirement.

...

I have the honour to submit a few lines for your
kind consideration:-

(1) That I have been served with an information
that I have to be retired from service with effect
from 31.12.1984 whereas my date of retirement should
be 31.12.1988.

(2) The unexpected information hurt me so much
that I suffered with HEART ATTACK and now under
the treatment of C.M.O. Indoor Hospital, Lucknow as
an Indoor patient.

(3) My date of birth as recorded in the service
record at the time of appointment is written as

13 (A23)
-: 2 :-

18.12.1926 by the then Clerk concerned without asking any proof for date of birth being myself appointed in Class IV.

(4) My actual date of birth as per by educational certificate i.e. Transfer Certificate is 31.12.1930 (copy enclosed) for ready reference. This documentary proof will very clearly justify my claim that I should be retired on 31.12.1988 and not on 31.12.1984 as arranged.

(5) I have three marriageable daughters and huge burden of domestic problems is being carried by me. If the wrong and untimely retirement will be effected, it will paralise my whole family and whatever arrangement is being made for the marriage of my three daughters will be washed away.

(6) I being a poor railway employee, having very meagre income, beg to appeal to your honour to intervene in this case personally and may correct the date of birth as per my educational certificate in the Service Record so that I may not be thrown out from service, without ~~any~~ my fault, but only due to a clerical error done three decades ago.

(7) I shall be highly obliged if you kindly correct the date of retirement accordingly i.e. 31.12.1988 and may save me and my family from devatation and calamities.

Thanking you,

D.A. Photo State Certificate attached herewith.

Advance copy to G.M.(P) for favourable & sympathetic consideration.

Yours faithfully.,
Sd. Mohni Mohan Nigam.

Under-sick
s/o Late Asharfilal Nigam
Designation: Senior Clerk.
Dt. of appointment 18.5.49.
Working under Chief Telecom
Inspector N. B. J. J. J.

M. Nigam

माननीय उच्च न्यायालय इलाहाबाद लखनऊ बेंच लखनऊ

वादी
प्रतिवादी

का वकालतनामा



Mohini Mohan Nigam

वादी

बनाम

Union of India and Others

प्रतिवादी

ऊपर लिखे मुकदमे में अपनी ओर से श्री सतीश चन्द्र मिश्र एडवोकेट

१२, मकबरा कम्पाउण्ड, हजरतगंज, लखनऊ एवम्

एडवोकेट महोदय

को अपना एडवोकेट नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिख देता हूं इस मुकदमे में एडवोकेट महोदय स्वयं अथवा अन्य एडवोकेट द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिग्री जारी करावे और रुपया वसूल करे या सुलहनामा या इकबाल दावा, तथा अपील, निगरानी व रिट याचिका हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-मुक्त (दस्तखती) रसीद से लेवे या पच नियुक्त करें - एडवोकेट महोदय द्वारा की गई कार्यवाही हमको सर्वथा स्वीकार है और होगी इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

ACCEPTED
ADVOCATE

हस्ताक्षर

साक्षी

दिनांक

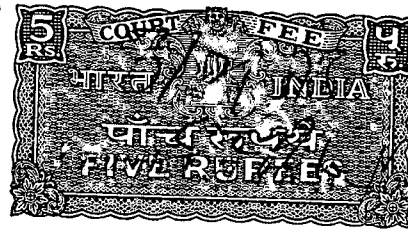
20/11/84

(14) (A68)
C. Misc. Appn No. 2006(w)-85-
In the Hon'ble High Court of Judicature at

ALLAHABAD

Lucknow Bench, Lucknow

Writ Petition No. 5679 of 1984.



2405
Mohini Mohan Miram -- Petitioner

Versus

Union of India

and others. --- Opposite Parties.

Application for Interim Relief

The applicant above named ~~is~~ hereby most respectfully begs to submit as under.

1. That the applicant has filed the above said writ petition on 28.11.1984 in the Hon'ble High Court of Judicature at Allahabad Lucknow Bench, Lucknow after giving due notice to the opposite parties and on that date this Hon'ble court was

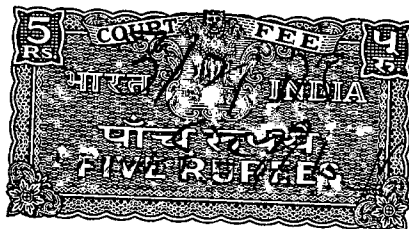
(14) (A68)
C. misc. Appn No 2006(w)-85-

In the Hon'ble High Court of Judicature at

ALL A H A B A D

Lucknow Bench, Lucknow.

Writ Petition No. 5679 of 1984.



2405

Mohini Mohan Misra -- Petitioner

Versus

Union of India

and others. --- Opposite Parties.

Application for Interim Relief

The applicant above named ~~is hereby~~ most respectfully begs to submit as under.

1. That the applicant has filed the above said writ petition on 28.11.1984 in the Hon'ble High Court of Judicature at Allahabad Lucknow Bench, Lucknow after giving due notice to the opposite parties and on that date this Hon'ble court was

20/2/85

(6)

A 69

-2-

6/12

pleased to direct the opposite parties to dispose of the representations of the petitioner.

2. That thereafter the case was ~~xxxxxxxxxx~~ listed several times but they have filed their Counter Affidavit on 28.1.1985 and the representations made by the petitioner are yet to be disposed and the opposite parties have not decided the same inspite of the directions issued by the Hon'ble court.
3. That according to the facts stated ~~the~~ by the petitioner in the aforesaid Writ Petition his correct date of birth being 30.12.1930, as such he has not yet reached at the age of superannuation ~~but~~ he has been retired prematurely without assigning any reason or affording any opportunity, which means punishment.
4. That the petitioner is suffering great monetary loss due to a foresaid illegal order of his premature retirement.
5. That the petitioner has not been paid even the retirement benefits till date as such he has no money to pull on his family.

[Handwritten signature]

WHEREFORE it is prayed that
this Hon'ble court may kindly be pleased
to stay the order of prematurely retiring
the petitioner and pass such further orders
as it may deem fit and proper in the nature
and circumstance of the case and an ad-
interim order in the same terms be also
passed.



(S. C. Misra)

Lucknow

Advocate

Dt. 7-2-1985

Counsel for Petitioner

Applicant.

IN THE HONORABLE HIGH COURT OF JUSTICE AT ALABAMA

SITTING AT LUCKY

WILE FORTION 10. OF 19

12/13

Robert Fort

... Petitioner

vs.

Union of Ind. and others

... Copied-to-parties

WILE FORTION 10.

...

The above noted petition was respectfully submitted

as under:-

That in view of the facts and circumstances stated in the accompanying affidavit and writ petition, it is most respectfully prayed that opposite-party be restrained from setting the petition No. 80.

31.12.1964 and be further directed to pay it and to

continue and discharge the duties as usual after 31.12.64 upto 31.12.1968 and to continue to pay his bill salary

costs and all other

Lucknow District

Counsel for the

November 1964

Petitioner

13.12.1926 by the applicant concerned without asking
 the date of birth being myself appointed
 in Class IV.

A46

(4) My actual date of birth as per my educational
 certificate i.e. Transfer Certificate is 31.12.1930
 (copy enclosed) for ready reference. This documentary
 will very clearly justify my claim that I should
 be retired on 31.12.1988 and not on 31.12.1984 as

no the
 I am very sorry in being late and I
 am very sorry that I will be late
 In the line of my family and whatever arrangement
 in being late for the marriage of my three
 daughters will be taken care of.

(5) I being a poor railway employee, having very
 meagre income, beg to appeal to your honour to inter-
 vene in this case personally and to correct the
 date of birth as per my educational certificate
 in the service record so that I may not be thrown out
 from service, without my fault, but only due to
 a clerical error done three decades ago.

(7) I shall be highly obliged if you kindly correct
 the date of retirement accordingly i.e. 31.12.1988
 and may save me and my family from devastation and
 calamities.

Thanking you,

Yours faithfully.,

Sd. Mohd. Iqbal Nigam.

Under-Secretary

S/o Late Ashraf Ali Nigam

Designation: Senior Clerk.

Dt. of appointment 18.5.49.

Working under Chief Telecom

State Certificate

of Birth.

to S.I. (A)

by sympathetic

A48

In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

K/35

2

Counter Affidavit
In

Writ Petition No.5679 of 1984

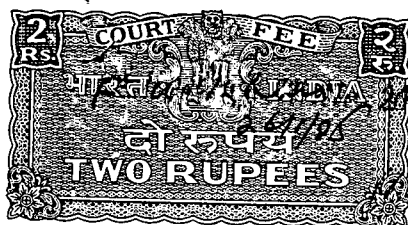
Mohini Mohan ..

Petitioner

Versus

Union of India & others ..

Opp. parties.



Counter affidavit on behalf
of opposite parties.

I, M.U.Khan, aged about 40 years, son of
Sri F.U.Khan, working as Assistant Personnel Officer,
Northern Railway, Hazratganj, Lucknow do hereby
solemnly affirm and state on oath as under:-

2. That the deponent is working as Assistant
Personnel Officer in the Office of Divisional Railway
Manager, Northern Railway, Hazratganj, Lucknow as
such is fully conversant with the facts of the case.

3. That the deponent has read the writ petition
and has understood its contents and has been author-
ised by the opposite parties to file this counter
affidavit.

Aug

✓

8/26

PRELIMINARY OBJECTIONS.

4. That the petitioner has retired on reaching the age of superannuation on 31.12.1984. As such this petition has become infructuous.

5. That according to relevant provisions of Railway Rules the date of birth once declared by an employee at the time of entering to the Railway service cannot ordinarily be changed. The petitioner was literate at the time of appointment and was sent for medical fitness examination to the Railway doctor. The Railway doctor assessed his age as 20 years on 11.9.1946 which was recorded by the Railway doctor and the petitioner's thumb impression was taken in token of accepting his age as 20 years. He subsequently declared his date of birth as 18.12.1926 in attestation form which was duly witnessed and attested by a responsible railway official. This attestation form bears his signatures in English and thumb impression also. The entries of date of birth are legible, clear and in petitioners signatures

6. That the petitioner having attested himself the entries of date of birth in his own hand writing they are binding. Besides making an ~~attestation~~ attestation of date of birth is not obligatory on the part of railway authorities, if the entries are clear and given by an employee and verified and attested as per rules, they are binding on all concerned.

7. That the action of the petitioner is most belated and suffers from delay and laches in



W. Khan

(A50)
3

approaching the railway administration for correction of date of birth after 36 years and to this Hon'ble Court after 38 years, few months before retirement.

8. That the right claimed by the petitioner not being justiciable no injunction relief can be given either temporary or permanent.

9. That the balance of convenience is on the side of opposite parties.

10. That injunction/stay orders are not warranted in such a case in terms of provisions of Specific Relief Act.

11. That the petition is not maintainable as the instructions were issued by the General Manager, Northern Railway vide letter No.93-E/O-III(Eiv) dated 20.12.1980 providing that literate staff could represent if they have any grievance about their recorded date of birth upto 31.7.1973 and no 2nd opportunity will be allowed after specific date viz. 31.7.1973, vide Annexure A-1 to this counter affidavit.

Annexure A-1

12. That in reply to the averments made in para 1 of the writ petition it is stated that the petitioner has already retired on 31.12.1984 on attaining age of superannuation i.e. 58 years, the date of birth given by the petitioner at the time of entering into railway service being 18.12.1926, the order of retirement is in order.



M. K. Singh

u (ASY) A 28

13. That the averments made in paras 2 and 3 of the writ petition are admitted.

14. That in reply to the averments made in para 4 of the writ petition it is stated that the para under reply has no relevancy with the matter at issue hence no reply is called for.

15. That the contents of para 5 of the writ petition are admitted to this extent that circular was issued in Nov., 1983, filing of writ petition after one year of this date is belated. During his service career many seniority lists were issued giving his date of birth and other details but he never protested.

16. That in reply to the contents of para 6 of the writ petition it is stated that the date of birth of the petitioner, recorded in service record as 18.12.1926 as declared by the petitioner himself. Rest is denied.

17. That in reply to the contents of para 7 of the writ petition it is stated that the petitioner submitted his representation only in June, 1984. The employee concerned was supposed to submit representation for change of date of birth upto 31.7.1973 in terms of para 3 of Hd. Rs. Office letter No.93-E/O-III(Eiv) dated 20.12.1980 which is reproduced below:-



Madan

" Para 3 - In the case of literated staff

6 (A53)
A/40

of the writ petition are denied. There was no question of issue of show cause notice as the petitioner was being retired on reaching age of superannuation on the basis of date of birth given by him in his own hand-writing at the time of entering railway service.

23. That in reply to the averments made in para 18 of the writ petition it is stated that in view of Railway Board's letter as detailed in para 14 of this counter affidavit, the representation of the petitioner submitted in June, 1984 was not in order.

24. That in reply to the averments made in para 19 of the writ petition it is stated that the petition is belated and not maintainable in view of detailed averments made in preceding paras.

25. That in reply to the averments made in para 20 of the writ petition it is stated that the petitioner is not entitled to relief claimed.

Lucknow:

Vishnu
Deponent

Dated: Jan. 26 1985

Verification

I, the above named deponent do hereby verify that the contents of paras 1 to 3 of this affidavit are true to my personal knowledge, those of paras 12 to 25 are based on records hence are believed by me to be true and those of paras 4 to 11 are based on legal advice. No part of it



A 54
A
41

is false and nothing material has been concealed
in it so help me God.

Lucknow:

N. U. Khan
Deponent

Dated: Jan. 26, 1985

I declare that I am satisfied
by the perusal of the records,
and details of the case narra-
ted to me by the person alleg-
ing himself to be Sri N.U.Khan
is that person.

C. A. Basir
Advocate

Solemnly affirmed before me on 26/1/85
at 7 a.m./p.m. by the deponent
who is identified by Sri C.A.Basir,
Advocate, High Court, Lucknow Bench,
Lucknow.

I have satisfied myself by examining
the deponent that he understands the
contents of this affidavit which have
been read out and explained to him by
me.

Ravi S. Sengupta
OATH COMMISSIONER
High Court, Allahbad.
(Lucknow Bench)

No. 100/101
Date 26/1/85

Y (ASS)

In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

Writ Petition No.5679 of 1984

Mohni Mohan .. Petitioner

Versus

Union of India & others.. Opp.parties.

Annexure A-1

NORTHERN RAILWAY.

Headquarters Office
Baroda House, New Delhi.

No.93-E/O-III(Eiv) Dated:20.12.1980

The DRs, ALD/BKN, DLI, FZR, JU, LKO, ME
and all others.

Sub:- Cases of staff for change in the recorded
date of birth.

*****.

1. It has been noticed that cases of staff for change in the recorded date of birth are being referred to this office by certain Divisions without having regard to the rules and various instructions issue on the subject from time to time.

2. In this connection, attention is invited to the instructions contained in para 145-RI and Railway Board's instructions contained in their letter No. E(NG)-II-70/BR dated 4.8.1972 and 25.10.1978, 1972 ✓
circulated under Printed Serial No.5719 and 7235,



Mohan

ASG
9
A
UB

according to which such requests can be considered where competent authorities are satisfied that-

a) a clerical error has occurred; or

b) where satisfactory explanation (which should not be entertained after completion of the probation period or 3 years service whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned together with the statement of any previous attempt made to have the records amended.

3. In the case of literate staff opportunity was afforded to them to represent against their recorded date of birth upto 31.7.1973 and it was clarified vide Board's order circulated under Printed Serial No. 5719 that no second opportunity would be allowed after the specified date viz. 31.7.1973.

4. As regard illiterate staff, representations for alteration of date of birth can be entertained without any time limit provided there are grounds to justify that wrong date of birth has been recorded in their cases.

5. It may please be ensured and all requests from staff for change in date of birth are personally examined by Sr.DPO/DPO and such cases are referred to this office with their specific recommendations



ASZ
10
A
44

to enable these cases being disposed of expeditiously.

Hindi version will follow.

Please acknowledge receipt.



Sd/- H.L.Bhatia,
20.12.80

(H.L.Bhatia)
for General Manager(P)

Copy to all SPOs and APOs, HQ for
information and necessary action.

In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

Counter Affidavit
in

Writ Petition No. 5679 of 1984

Shri Mohan ..

Petitioner

Verous

Union of India & others ..

Opp. parties.

Counter Affidavit on behalf
of opposite parties.

1. Shri Mohan, aged about 40 years, son of
Shri P. U. Mohan, working as Assistant Personnel Officer,
Northern Railway, Meerutganj, Lucknow do hereby
solemnly affirm and state on oath as under:-

2. That the deponent is working as Assistant
Personnel Officer in the Office of Divisional Railway
Manager, Northern Railway, Meerutganj, Lucknow and
such is fully conversant with the facts of the case.

3. That the deponent has read the writ petition
and has understood its contents and has been author-
ized by the opposite parties to file this counter
affidavit.

59

REPLY TO THE PETITIONER.

4. That the petitioner has retired on reaching the age of superannuation on 31.12.1954. As such this petition has become infructuous.

5. That according to relevant provisions of Railway Rules the date of birth once declared by an employee at the time of entering to the Railway service cannot ordinarily be changed. The petitioner was literate at the time of appointment and was sent for medical fitness examination to the Railway doctor. The Railway doctor recorded his age as 20 years on 11.2.1946 which was recorded by the Railway doctor and the petitioner's thumb impression was taken in token of accepting his age as 20 years. He subsequently declared his date of birth as 18.12.1925 in attestation form which was duly witnessed and attested by a responsible railway official. This attestation form bears his signatures in English and thumb impression also. The entries of date of birth are legible, clear and in petitioner's signature.

6. That the petitioner having attested himself the entries of date of birth in his own hand writing they are binding. Besides, making an attestation of date of birth is not obligatory on the part of railway authorities if the entries are clear and given by an employee and verified and attested as per rules, they are binding on all concerned.

7. That the notice of the petitioner is most belated and suffers from delay and laches in

ALG
1/16

approaching the railway administration for correction of date of birth after 35 years and to this Hon'ble Court after 30 years, for making before retirement.

8. That the right claimed by the petitioner not being justiciable no injunction relief can be given either temporary or permanent.

9. That the balance of convenience is on the side of opposite parties.

10. That injunction/stop orders are not warranted in such a case in terms of provisions of specific relief Act.

11. That the petition is not maintainable as the instructions were issued by the General Manager, Northern Railway vide letter No.93-2/3-III(Liv) dated 20.12.1983 providing that date staff could represent if they have any grievance about their recorded date of birth upto 31.7.1973 and no and opportunity will be allowed after specified date viz. 31.7.1983, vide Annexure 1-2 to this counter affidavit.

12. That in reply to the statements made in para 1 of the aforesaid petition it is stated that the petitioner has already retired on 31.12.1974 on attaining age of superannuation i.e. 55 years. The date of birth given by the petitioner at the time of entering into railway service being 13.12.1920, the order of retirement is in order.

ACI
X/W

13. That the statements made in paras 2 and 3 of the writ petition are admitted.

14. That in reply to the statements made in para 4 of the writ petition it is stated that the para under reply has no relevancy with the matter at issue hence no reply is called for.

15. That the contents of para 5 of the writ petition are admitted to this extent that circular was issued in Nov., 1983, fixing of writ petition after one year of this date is barred. During his service career many seniority lists were issued giving his date of birth and other details but he never protested.

16. That in reply to the contents of para 6 of the writ petition it is stated that the date of birth of the petitioner recorded in service record as 10.12.1925 as declared by the petitioner himself. That is denied.

17. That in reply to the contents of para 7 of the writ petition it is stated that the petitioner submitted his representation only in June, 1983. The employee concerned was supposed to submit representation for change of date of birth upto 31.7.1973 in terms of para 3 of M. P. Office letter No.93-E/C-III(14) dated 20.12.1980 which is reproduced below:-

" Para 3- In the case of literate staff

P 62
A
WB

opportunity was afforded the then to represent
against their recorded date of birth upto
31.7.73 and it was classified vide Board's
order circulated under printed serial No. 5719
that no second opportunity should be allowed
after the specified date viz. 31.7.1973-
(Amended)

18. That the averments made in para 12 of
the writ petition as stated are denied. It is further
submitted that the petitioner has retired on 31.12.1970
on reaching the age of superannuation as per rules.
The petitioner never gave any information/declaration
about his connection at the time of entering into
military service as a cadet.

19. That in reply to the averments made in para
13 of the writ petition it is stated that there was
no lapse in the representation of the petitioner to
military service as stated in the declaration given by the
petitioner at the time of entering military service.

20. That the averments made in para 14 of the
writ petition are denied.

21. That in reply to the averments made in para
15 of the writ petition it is stated that the petitioner
has not submitted any proof to military administration
regarding date of birth & on that account the
same is denied.

22. That the averments made in para 16 and 17

A63
A/49

of the writ petition are denied. There was no question of issue of show cause notice as the petitioner was being retired on reaching age of superannuation on the basis of date of birth given by him in his own hand-writing at the time of entering military services.

23. That in reply to the averments made in para 13 of the writ petition it is stated that in view of following facts, latter as detailed in para 14 of this counter affidavit, the representation of the petitioner submitted in June, 1968 was not in order.

24. That in reply to the averments made in para 15 of the writ petition it is stated that the petition is barred and not maintainable in view of detailed averments made in preceding pages.

25. That in reply to the averments made in para 20 of the writ petition it is stated that the petitioner is not entitled to relief claimed.

Witness:

Deponent

Dated: Jan. 1969

Declaration

I, the above named deponent do hereby verify that the contents of paras 1 to 5 of this affidavit are true to my personal knowledge, those of paras 12 to 25 are based on records before me believed by me to be true and those of paras 6 to 11 are based on legal advice. No part of it

A 64 ¹⁵/₁₀

is false and nothing material has been concealed
in it so help me God.

Lucknow:

Deponent

Dated 6th Jan. 1985

I declare that I am satisfied
by the perusal of the records,
and details of the case narro-
ted to me by the person alleg-
ing himself to be Mr. H. V. Khan
is that person.

Solemnly affirmed before me on
at a.m./p.m. by the deponent
who is identified by Mr. C. J. Dutt,
Advocate, High Court, Lucknow Bench,
Lucknow.

I have satisfied myself by examining
the deponent that he understands the
contents of this affidavit which have
been read out and explained to him by
me.

(A6)

At the High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

A/
51

Writ Petition No.5679 of 1984

Prashant Kumar

..

Petitioner

VERSUS

Union of India & others..

Respondents.

EXHIBIT 1-1

NORTHERN RAILWAY.

Headquarters Office
Lodges House, New Delhi.

No.93-1/8-III(LV)

Dated 20.12.1980

The Secy, HRD/HR, DRI, FRI, JU, LHO, etc
and all others.

Sub:- Cases of staff for change in the recorded
date of birth.

oooooooooooo

1. It has been noticed that cases of staff for change in the recorded date of birth are being referred to this office by certain Divisions without having regard to the rules and various instructions issued on the subject from time to time.

2. In this connection, attention is invited to the instructions contained in para 15-III and Railway Board's instructions contained in their letter No. I(RO)-II-70/LR dated 4.7.1982 and 25.10.1970, circulated under printed Circular No.5719 and 7235,

7

1



4

A67
A/S

to check these cases being disposed of expeditiously.

Kind version will 20210.

Please acknowledge receipt.

20/- H.L. Martin,

20.12.83

(H.L. Martin)

for Criminal Charges (P)

Copy to all JSCs and JFCs, L. 20.
Information and necessary action.

cc: JSC 20

A7X 6/w

In the Hon'ble High Court of Judicature at

ALLAHABAD

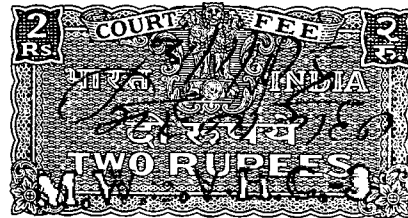
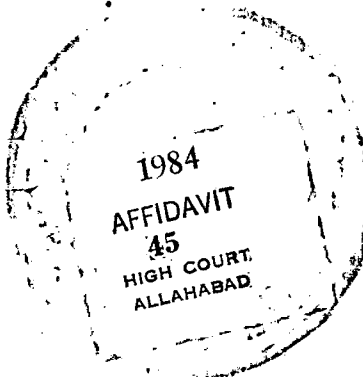
Lucknow Bench, Lucknow.

K/34

Rejoinder Affidavit

In Re.

Writ Petition No. 5679 of 1984.



Mohini Mohan Nigam --- Petitioner

Versus

Union of India and others -- Opposite Parties

REJOINDER AFFIDAVIT

I, Mohini Mohan Nigam aged about 54 years son of Sri Asharfi Lal Nigam, resident of 256/8 Khasiha Lucknow do hereby solemnly affirm and state on oath as under -

Mohini Nigam

1. That the deponent is petitioner in the above noted Writ Petition and is

such he is fully conversant with the facts of the case.

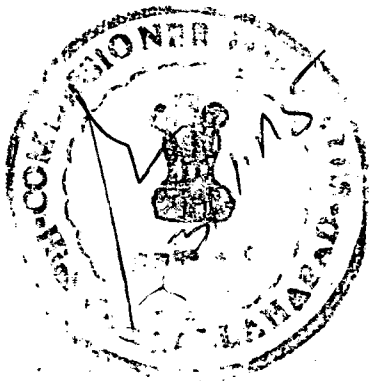
2. That the contents of the Counter Affidavit have been read over to him and was explained to him and he understands the same.
3. That the contents of paragraphs 2,3, of the Counter Affidavit do not call for any reply.
4. That in reply to paragraph 4 of the Counter Affidavit it is submitted that the date birth of the petitioner is 31.12.1930, but he has wrongly been prematurely retired on 31.12.1984. In this view of the matter, the contents of the para are denied.
5. That the contents of paragraph 5 of the Counter Affidavit as stated are denied. The petitioner has not given his date birth as 18.12.1926. As a matter of fact his correct date of birth was 30.12.1930 and in turn thereof he has also submitted the certificates which have been annexed with the Writ Petition as Annexure No.1 and 2 and 3. In this view of the matter the opposite parties have incorrectly entered the date of birth as 18.12.1926. It is further



Amrigan

(A13) 6 6

5. submitted that at the time of his entry in service the petitioner was ~~56~~ semi literate and his signatures had been obtained without showing him the contents of thereof and the petitioner in this view of the matter is not bound for any incorrect entry made in the Service Book. The Doctor has given the approximate date . As such the information of the doctor cannot be relied upon in this respect. The declaration was blank at the time of signing by the petitioner and the entries have been made subsequently, as used to happen in that period.



6. That in view of the facts stated in the preceding paragraph contents of paragraph 6 of the Counter Affidavit are denied.

7. That the contents of paragraph 7 of the Counter Affidavit are absolutely incorrect and without any basis. The petitioner has made his representation immediately after coming to know the incorrect entry in the Service Book regarding his date of birth, but his representations have not yet been disposed of inspite of the fact that the Hon'ble court has directed on 28.11.1984 to dispose of the representations.

Munigam

(A-74) 6
17

8. That the contents of paragraph 8 to 10 of the Counter Affidavit are incorrect and unfounded and as such are denied. ^{AS} The petitioner is being retired prematurely without assigning any reason and as a punishment basis and as such the petitioner is entitled to all the reliefs claimed in the petition.
9. That the contents of paragraph 11 of the Counter Affidavit as stated are denied. It is further submitted that the alleged circular Annexure No. A-1 has never been circulated and published so as the employees including the petitioner could know the contents thereof. In any view of the matter the petitioner is not bound by the aforesaid circular and he had represented for correction of the date of birth but the same has incorrectly been recorded.
10. That in reply to paragraph 12 of the Counter Affidavit the contents of Paragraph 1 of the Writ Petition are reiterated as correct and it is further submitted that the petitioner is still to attain the age of superannuation i.e. 58 years.
11. That in reply to paragraph 13 of the



S. S. Nigam

Counter affidavit the contents of paragraph 2 and 3 of the Writ Petition are reiterated as correct. (A-75)
6/4

12. That the contents of paragraph 14 of the Counter Affidavit are denied and those of paragraph 4 of the Writ Petition are reiterated as correct. The petitioner's work being above the average there was no reason for retiring him prematurely.

13. That in reply to paragraph 15 of the Writ Petition it is submitted that after the petitioner came to know of his date of birth from the circular issued in November 1983, he immediately thereafter filed a representation which has not yet been decided. It is further submitted that the alleged seniority list was never supplied to the petitioner nor the same was affixed on the Notice Board. As such there is no question of petitioner's knowing of his date of birth from the said seniority list. However, the allegations about the circulation of the seniority list is very vague and no year and date have been given.

14. That in reply to paragraph 16 of the



M. N. G. S.

(A76) 6/9

Counter Affidavit, the contents of paragraph 6 of the Writ Petition are reiterated as correct. It is further submitted that 18.12.1926 recorded as the date of birth of the petitioner is incorrect. ^{A/59}

15. That the contents of paragraph 17 of the Counter Affidavit are denied and the facts given in paragraph 7 of the Writ Petition are reiterated as correct. The petitioner has submitted his representation immediately after knowing the date of birth by the above said circular.

16. That the Board's orders filed as Annexure No.A-1 to the Counter Affidavit applies only on those persons who had the knowledge of recording of their birth on that date but in the case of the petitioner there was no source for him to know his date of birth recorded in the Service Book and there was also no reason for him to make such an enquiry.

17. That in reply to paragraph 18 of the Counter Affidavit, the contents of paragraph 8 to 12 of the Writ Petition are reiterated as correct. The petitioner has wrongly been retired on 31.12.1984 even though he has not reached the age of superintuation. As stated in the Writ



Amrigan

(A77)

6/16

Petitioner himself the petitioner had given the information and declaration about his age at the time of his entry in the service which has wrongly been entered in the Service Record.

A/60

18. That in reply to paragraph ~~the contents~~ of 19 of the Counter Affidavit, the contents of paragraph 13 of the Writ petition are reiterated as correct. The representation made by the petitioner have not yet been disposed of even though this Hon'ble court has directed them to do so.

19. That in reply to paragraph 20 of the Counter Affidavit, the contents of paragraph 14 of the Writ Petition are reiterated as correct.

20. That in reply to paragraph 21 of the Counter Affidavit, the contents of paragraph 15 of the Writ Petition are reiterated as correct. and it is further submitted that the representation itself show that the petitioner has also submitted the proof in regard to his correct date of birth.

21. That the contents of paragraph 22 of the counter affidavit as stated are

Munigam

A78

6/11

incorrect and as such the same are denied and those of paragraph 16 and 17 of the Writ Petition are reiterated as correct. It is further submitted that as the petitioner was being prematurely retired even though he has not reached the age of superintuation as a punishment, as such a show cause notice ought to have been issued which has not been issued in the case of petitioner. No opportunity has also been provided to the petitioner for proving his correct date of birth.

22. That in reply to paragraph 23 of the Counter Affidavit, the contents of paragraph 18 of the Writ Petition are reiterated as correct. A discrimination is being made between the petitioner and the other employees as he is being retired before reaching the age of 58 years.

23. That the contents of paragraph 24 and 25 of the Counter Affidavit are wrong and as such the same are denied and those of paragraph 19 and 20 of the Writ Petition are reiterated as correct. The petitioner is advised to state that he is entitled to all the reliefs claimed in the Writ Petition on the facts and



Minigam

reasons given therein.

Lucknow

Dt. 31.1.1985.

Amrigan
DEPONENT.

Verification

I, the deponent above named do hereby verify that the contents of paragraphs 1 to 23[✓] of this Rejoinder affidavit are true to my own knowledge and those of paragraphs to — are believed by me to be true on the basis of legal information furnished by my counsel and those of paragraphs — to — are based on record.

No part of it is false and nothing material x x has been concealed so help me God.

Lucknow

Dt. 31.1.1985.

31.1.85

Amrigan
DEPONENT.

I identify the deponent who has signed before me.

Amrigan
Clerk.

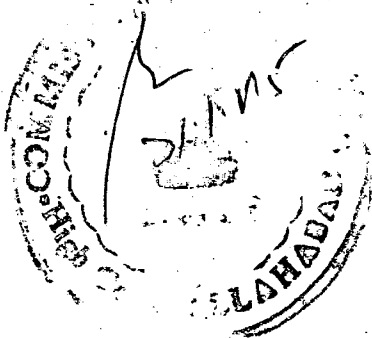


A 50
6-13

Solemnly affirmed before me on 31/1/85
at 9.10 a.m. / 12 p.m. by the deponent Sri
Mohini Mohan Nigam who is identified
by Sri Brij Nandan Srivastava clerk to
Sri S.C. Misra, Advocate High Court of
Judicature at Allahabad, Lucknow Bench
Lucknow.

4/63

I have satisfied myself by examining
the deponent that he understands the
contents of this affidavit which has
been read over and explained to him by
me.



G. G. Mulla

Oath Commissioner	
High Court, Allahabad	
Lucknow Bench	
No.	285/45
Date	31/1/85

M. Nigam

(181)

In the Hon'ble High Court of Judicature at

ALLAHABAD

At Lucknow Bench, Lucknow

with Petitioner No. 5672 of 1984.

X
64

Shri. L. K. Mishra -- Petitioner

Verdict

Union of India

and others. --- Opposite Parties.

Application for Interim Relief

The applicant above named do hereby most respectfully beg to submit as under.

1. That the applicant has filed the above said writ petition on 28.11.1984 in the Hon'ble High Court of Judicature at Allahabad Bench, Lucknow after giving due notice to the opposite parties and on that date this Hon'ble court was

282

also not direct the opposite parties
to dispose of the representations of
the petitioner.

15

8. In the case the case was suggested
11.11.1985 but they have filed
their reply on 28.1.1985
and the representations made by the pe-
titioner are yet to be disposed on. The
opposite parties have not decided the
merits of the directions issued
by the court.

9. That as per the facts stated that
by the petitioner in the above said writ
petition it is stated that birth date
22.11.1985 is not yet reached
and the petitioner has been born
within the jurisdiction and since any
further delay will be prejudicial to
the petitioner.

10. That the petitioner is suffering great
hardship and delay in the disposal of the
petition and is in great distress.

11. That the petitioner has not been able
to get any relief from the court and
is in great distress and is in
great need of relief.

such as is fully conversant with the
facts of the case.

(A85)

A
66

Devit

(A85)

-8-

WHEREFORE it is prayed that
this honorable court may kindly be pleased
to stay the order of prematurely retiring
the petitioner and pass such further orders
as it may deem fit and proper in the nature
and circumstances of the case and an ad-
interim order in the same terms be also
passed.

(S. C. Misra)

Advocate

Lucknow

Dt. 1.10.65

Counsel for Petitioner

Applicant.

1876

5. submitted that at the time of his entry in service the petitioner and his wife and his signatures had been obtained without checking him the contents of thereof and the petitioner in this view of the matter is not bound for any incorrect entry made in the service book. The doctor had given the approximate date. As such the information of the doctor cannot be relied upon in this respect. The declaration was blank at the time of signing by the petitioner and the entries have been made subsequently, as used to happen in that period.

6. That in view of the facts stated in the preceding paragraph contents of paragraph 3 of the counter affidavit are denied.

7. That the contents of paragraph 7 of the counter affidavit are absolutely incorrect and without any basis. The petitioner made his representation immediately after coming to know the incorrect entry in the Service Book regarding his date of birth, but his representations have not yet been disposed of inasmuch as the fact that the Hon'ble court has directed on 28.11.1954 to dispose of the representations.

AS 1

8. That the contents of paragraph 8 to 9 of the Counter Affidavit are incorrect and unfounded and as such are denied. The petitioner is being confined presently without receiving any reason and as a punishment basis and as such the petitioner is entitled to all the reliefs claimed in the petition.

9. That the contents of paragraph 11 of the Counter Affidavit as stated are denied. It is further submitted that the alleged circular Memo No. A-1 has never been circulated and published to all the employees including the petitioner could not know the contents thereof. In any view of the matter the petitioner is not bound by the aforesaid circular and he had represented for correction of the date of birth but the same has incorrectly been recorded.

10. That in reply to paragraph 12 of the Counter Affidavit the contents of paragraph 1 of the writ Petition are reiterated as correct and it is further submitted that the petitioner is still to attain the age of superannuation i.e. 58 years.

11. That in reply to paragraph 13 of the

(A 83)

-89-

And it is prayed that
this honorable court may kindly be pleased
to give an order of prematurely retiring
the petition and pass such further orders
as may be just and proper in the nature
of the premises of the case and an order
in this matter in the same terms be also
made.

(S. E. Hearn)

Advocate

Advocate

Att. 1. 1. 1. 1.

Counsel for Petitioner

Applicant.

In the Hon'ble High Court of Judicature at

ALLAHABAD

District Court, Lucknow.

A
66

Defendant / Plaintiff

In No.

of 1937 of 1936.

Mohini Mohan Misra --- Petitioner

Versus

Union of India and others -- Opposite Parties

STATEMENT OF PETITIONER

I, Mohini Mohan Misra aged about 51 years son of Sri Mohan Lal Misra, residing at 256/8, Khatola, Lucknow do hereby solemnly affirm and state as under -

1. That the deponent is petitioner in the above stated suit and is the

(A85)

such as is fully convergent with the facts of the case.

A
67

2. That the contents of the Counter Affidavit have been read over to him and was explained to him and he understands the same.
3. That the contents of paragraphs 2, 3, of the Counter Affidavit do not call for any reply.
4. That in reply to paragraph 4 of the Counter Affidavit it is submitted that the date birth of the petitioner is 31.12.1930, but he has wrongly been prematurely retired on 31.12.1984. In this view of the matter, the contents of the para are denied.
5. That the contents of paragraph 5 of the Counter Affidavit as stated are denied. The petitioner has not given his date birth as 18.12.1926. In a matter of fact his correct date of birth was 30.12.1930 and in turn thereof he has also submitted the certificates which have been checked with the Brit Petition as Annexure No. 1 and 2 and 3. In this view of the matter the opposite parties have incorrectly entered the date of birth as 18.12.1926. It is further

Counter affidavit the contents of paragraphs 2 and 3 of the Petition are reiterated as correct.

12. That the contents of paragraph 2 of the Counter Affidavit are denied and those of paragraph 3 of the Petition are reiterated as correct. The petitioner's work being above the average there was no reason for retiring him prematurely.
13. That in reply to paragraph 15 of the Petition it is submitted that after the petitioner came to know of his date of birth from the circular issued in November 1953, he immediately thereafter filed a representation which has not yet been decided. It is further submitted that the alleged seniority list was never supplied to the petitioner nor the same was affixed on the Notice Board. As such there is no question of petitioner's knowing of his date of birth from the said seniority list. However, the allegations about the dissemination of the seniority list is very weak and no year and date have been given.

14. That in reply to paragraph 16 of the

1986

5. submitted that at the time of his entry in service the petitioner was born 11/11/1904 and his signatures had been obtained without showing him the contents of the record and the petitioner in this view of the matter is not bound for any incorrect entry made in the service book. The doctor has given the appropriate data. As such the information of the doctor cannot be relied upon in this respect. The declaration was made at the time of signing by the petitioner and the entries have been made subsequently, he used to happen in that period.
6. As in view of the facts stated in the preceding paragraph contents of paragraph 5 of the counter affidavit are denied.
7. As the contents of paragraph 7 of the counter affidavit are absolutely incorrect and without any basis. The petitioner made his representation immediately after coming to know the incorrect entry in the Service book regarding his date of birth, but his representations have not yet been disposed of and also in the fact that the Hon'ble court has directed on 28.11.1964 to dispose of the representations.

8. That the contents of paragraph 6 to 10 of the Counter Affidavit are incorrect and unfounded and as such are denied. The petitioner is being retired prematurely without assigning any reason and as a punishment basis and as such the petitioner is entitled to all the reliefs claimed in the petition.

9. That the contents of paragraph 11 of the Counter Affidavit as stated are denied. It is further submitted that the aforesaid circular Annexure No. A-1 has never been circulated and published to or the employer including the petitioner could not know the contents thereof. In any view of the matter the petitioner is not bound by the aforesaid circular and he had represented for correction of the date of birth but the same has incorrectly been recorded.

10. That in reply to paragraph 12 of the Counter Affidavit the contents of paragraph 1 of the writ Petition are reiterated as correct and it is further submitted that the petitioner is still to attain the age of superannuation i.e. 58 years.

11. That in reply to paragraph 13 of the