

(10)

Tr.No.283/87

M.R.Sharma

... Applicant

V/s

1. DRM, Nagpur.

2. GM, CR, Bombay VT.

... Respondents

Appearances:

Mr.S.V.Naik for applicant

Mr. S.K.Sanyal for respondents

ORAL JUDGEMENT:

Dated : 10.7.1991

(Per. U.C.Srivastava, V/C)

This application has come to the Tribunal by way of transfer under Section 29 of the Administrative Tribunals Act, 1985. Initially the applicant filed a writ petition before the Nagpur Bench of the Bombay High Court for setting aside and quashing the notification dated 1.1.1983 regarding the retirement of the applicant and prayed that a direction be issued that he may be continued in service upto the age of 58 years i.e. upto 24.2.1986. By operation of law the case has been transferred to the Tribunal.


2. We have heard the learned counsel of the parties. The applicant entered the service of Central Railway as a Fitter Khalasi on 13.10.1947. He gradually got promotion and in 1974-75 he was promoted as Skilled Fitter-B Grade. In the month of January 1983 a notification was published as an advance intimation notifying therein the list of staff working on Central Railway who are due to retire from services on completion of their superannuation dates in the month July and onwards in 1983. According to the applicant this was the first time he learnt that his date of birth is entered as 13.10.1925. As a matter of fact from the school register it is 22.2.1928 which he claims has


declared at the time of his appointment. The applicant made a representation along with a certificate by the Headmaster, Janpad Primary School, Chan<sup>d</sup>eri dated 14.1.83 in which it was stated that he was admitted in the school on 1.7.1932 and stayed there upto 5.1.38 and was ~~xxxx~~ leaving the school on 1.1.1938 and his date of birth entered in the school register was 24.2.1928. The representation was considered by the Railway administration and they rejected the same obviously after an enquiry from the Headmaster of the school, stating that since he was literate having studied upto Matric and also he was in Class-III since 1960 ~~xxxxxx~~ his request for alteration in the recorded date of birth cannot be accepted as the same was time barred. Before rejecting the representation an enquiry was made. After receipt of the school certificate the respondents deputed an officer of the rank of Inspector to meet the Headmaster of the school with the letter from the Divisional Railway Manager, Central Railway to verify the authenticity of the school certificate. The Headmaster in his reply and on enquiry stated that the old records of the school had been destroyed by white ants and were in a very dislocated condition. He also stated that the name and date of birth was not clear. The date of birth contained in a certificate issued earlier was wrong. After going through the records neither the name nor the date of birth was clearly discernable. He further stated that as per written declaration of Shri Radhelal father of the petitioner, the date of birth was found to be 24.2.1926. This clearly indicates that the certificate which was filed by the applicant was not a correct one and was <sup>not</sup> given on the basis of the / date of birth declaration given by the father, record of which was available in the institution. Learned counsel for the applicant contended that para 145 has not been

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faithfully observed. We have gone through para 145 of the Railway Establishment <sup>Code</sup>~~Manual~~ Volume-I and we do not find that any deviation from the same has been made. We find that the recorded date of birth now sought to be changed by the applicant, it may be that he has not signed it, was recorded as per rules. Learned counsel contended that in the enquiry that was made from the institution he should have been associated with it. There is no question of any opportunity being given when such an enquiry was made and it is significantly to be noted that he has nowhere denied that no such declaration was given by father. The applicant has got an interim order with the result that he has enjoyed the full term which he wanted. He has been benefitted by his own wrong.

3. In view of what has been stated above there is no substance in the application which is dismissed. There is no order as to costs. Obviously the applicant will not be required to refund the salary which he earned during this period nor he is entitled to draw pension during this period.

  
( P.S. Chaudhuri )  
Member (A)

  
( U.C. Srivastava )  
Vice-Chairman