

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

TR.No. 526/87

v/s.

Union of India & others

Respondents

CORAM : Hon'ble Member (J) Shri M.B.Mujumdar

Tribunal's Order

Dated: 8.4.1988

Heard Mr. Subhash Jha, for Mr. S. S. Lanke, learned advocate for the applicant and Mr. B. T. Bhalerao, Head Clerk, DRM's office, Central Railway, Bombay.

2. The applicant has filed Misc. Petition No. 210/88 for some interim relief. The first interim relief claimed by him is for declaring the notice dated 20.1.1988 as null and void. By that notice the applicant is called upon to vacate the Railway Quarter in his possession as his occupation of the same has become unauthorised after his retirement.

3. The following facts will clarify the position: The applicant joined service with the Railways on 1.12.1953. The birth date recorded in his service record was 1.12.1927. As he was about to complete 58 years on 30.11.1985, the respondents sent a letter to him informing that he was to retire on 30.11.1985. It was the case of the applicant that his real date of birth was 20.11.1931 and the birth date recorded in service record was not correct. Hence, he filed writ Petition No. 2366/85 in the High Court of Judicature at Bombay. The High Court admitted the application. At first the High Court had rejected the Interim Relief prayed for by the applicant. However,

by subsequent order dated 9.12.1985 the Single Bench of the High Court granted the interim relief in prayer (d) until 21.11.1989. This interim relief was granted on the basis of the allegation of the applicant supported by horoscope that his real date of birth is 20.11.1931. Being agreed by above interim order, the respondents preferred an appeal 419/86 before a Divisional Bench of High Court. That appeal was admitted and decided by the Divisional Bench consisting of Shah & Khatri J.J. on 23.6.1986. The order of the Divisional Bench reads as follows :

"Appeal admitted.

The respondent through his Counsel waives service of the notice of appeal.

By consent preparation of paper-book dispensed with. By consent appeal placed on board and called out for hearing forthwith.

It appears from the order that the learned Single Judge had initially rejected the prayer for interim order. However, in view of some further statement made on behalf of the Appellants to the effect that such payment will be made subject to any other amount earned, the learned Single Judge granted interim relief in terms of prayer (d) until 21.11.1989.

In ~~our~~ view, in view of the dispute between the parties, as regards the correct date of birth of the Respondent and there being no clear evidence on the point the initial order passed by the learned Single Judge rejecting the interim relief is correct.

It is, however, clarified that in the event of his success in the petition, the Respondent will be paid all his dues as if in service without taking into account any other wages or salary that he may earn during the pendency of the petition. In view of the above, appeal is allowed. The order granting interim relief in terms of prayer (d) until 21st November 1989 is set aside and the initial order passed by the learned Single Judge rejecting interim relief is retained, subject to the clarification that the Respondent will be paid all his dues as if in service if he succeeds in the petition irrespective of the fact as to whether he has earned any amount during the pendency of the petition.

Appeal disposed of with no order as to costs.

The Appellants waive service of the Rule Nisi. Affidavit in reply within 8 weeks. Liberty to the Respondent-petitioner to apply for fixing a date of hearing after 8 weeks."

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4. The above order shows that the interim relief granted by the Single Bench was vacated. The Division Bench has, however, clarified that if the applicant finally wins in his Writ Petition then he will be entitled to all the dues as if he was in service.

5. The above order is obviously based on the basis that the birth date recorded in the service record of the applicant, namely, 1.12.1927, was correct. On that basis he has, in fact, retired on 31.11.1985.

6. Hence, the applicant will not now be entitled to any interim relief at this stage. He will also not be entitled to retain the quarter which was allotted to him while he was in service. It is possible that a Railway employee who is still in service may be more in need of the quarter. Hence, the applicant is not entitled to the Interim Relief prayed for by him in Misc. Petition No. 210/88. That petition is, therefore, rejected and disposed of accordingly.

7. Respondents shall file reply on or before 29.4.1988 with a copy to the applicant. Keep the case on 29.4.1988 before the Registrar for reply and for directions.

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(M.B.Mujumdar)

Member (J)