

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 605 OF 2005[Patna, this 21st July, the 20th Day of August, 2009]C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [J]

HON'BLE MR. AMIT KUSHARI, MEMBER [A]

Baijnath, son of Late Mahavir, resident of Goraul, P.S.: Goraul, District-
Vaishali. APPLICANT.

By Advocate :- Shri Sudama Pandey.

Vs.

1. The Union of India through General Manager, E.C.Railway, Hajipur.
2. The Chief Personnel Officer, E.C.Railway, Hajipur.
3. The D.R.M., E.C.Railway, Sonapur.
4. The Chief Engineer, E.C.Railway, Hajipur.
5. The Divisional Engineer, E.C.Railway, Hajipur.
6. Assistant Divisional Engineer, E.C.Railway, Hajipur.
7. The Section Engineer [Traffic], E.C.Railway, Hajipur.
8. The Permanent Way Inspector, E.C.Railway, Dighwara, Sonapur.

..... RESPONDENTS.By Advocate :- Shri Mukund Jee, SC.O R D E R

Justice Anwar Ahmad, M[J] :- This is an Original Application filed by Baijnath for quashing Annexure-A/3 by which he was retired w.e.f. 19.05.2004 and also for a direction to reinstate him in service. Further prayer is for payment of arrears of salary from the date he was forcibly retired from service till the date of his reinstatement, togetherwith interest at the rate of 18%.

2. As per the case mentioned in the application the applicant was

appointed as a casual labour in the Engineering Department, erstwhile N.E.Railway, Sonpur, in the year 1966. Subsequently, he was regularised as unskilled Khalasi on 07.03.1977. On 17.03.1977 he was medically examined by the Railway Doctors and found fit in the medical category of A-III. The Medical Officer assessed his age 30 years 23 days which corresponds to the date 14.02.1947. As per normal rules of retirement he was to superannuate on 14.02.2007 after attaining the age of 60 years but he was informed by the respondent vide Annexure-A/3 that he should deem himself retired from 19.05.2004 and was retired from that date. Hence, this OA.

3. Learned counsel for the applicant submits that the applicant is an illiterate person and has got no documentary proof of age. He submits that as per the rules of Railway he made a declaration of his age at the time of entry into service and 'A' card was prepared. He submits that this 'A' card remains in custody of the employer and this is the best document to show the age of the applicant. He submits that this document was not produced by the respondents. He further submits that a fabricated service book has been produced by the respondents containing cuttings and over-writing in the date of birth. He submits that the date of birth in the service book is entered as inserted in 'A' card. He further submits that this service book did not correspond to the service book prescribed under the rules. He submits that this service book as a matter of fact has been fabricated after the retirement of the applicant and hence, no reliance be placed thereupon.

4. Learned counsel for the applicant further submits that the applicant on his appointment was medically examined and as per the medical



report [Annexure-A/1] his date of birth has been shown 30 years 23 days which corresponds to 14.02.1947. He submits that this is the initial document and hence, genuine and authentic. He further refers to the medical certificate of fitness dated 18.01.2002 [Annexure-A/9], medical certificate of fitness dated 25.10.1999 and medical certificate of fitness dated 25.02.2004 [Annexure-A/12] and submits that these certificates show the date of birth of the applicant as on 14.02.1947. He further refers to muster sheets [Annexure-A/12 series] and submits that these muster sheets show that the date of birth is 14.02.1947. He submits that these documents amply prove the date of birth of the applicant as on 14.02.1947. He, therefore, submits that the date of birth of the applicant be declared as on 14.02.1947 and the relief claimed for be granted.

5. Learned Standing Counsel appearing on behalf of the respondents submits that the service book of the applicant shows the date of birth as on 01.11.1943 and at the behest of the applicant there is interpolation in the date of birth. He submits that this led to inquiry in which it was found that interpolation in the date of birth has been made and it was also found that the date of birth stands entered as on 01.11.1943 in the service book. Learned counsel further refers to a petition dated 15.09.2003 filed by the applicant disclosing that his date of birth is 01.11.1943 and prayed to retire him from the date of 31.10.2003. He submits that this is the petition of the applicant himself and, hence this is an admission on the part of the applicant that his date of birth is 01.11.1943. He further refers to the seniority list prepared as on 01.04.1990 and submits that this seniority list shows the date of birth of the

Admission

applicant as on 01.11.1943. He also refers to the application of the applicant for final withdrawal from his provident fund in which he has shown his date of birth as on 01.11.1943 and thereafter it was encircled and the date 01.11.1948 was written. He submits that these documents conclusively prove that the date of birth of the applicant is 01.11.1943 and not 14.02.1947. He further submits that so far as the medical certificates of fitness and muster sheets showing the date of birth of the applicant as on 14.02.1947 are concerned, the same are not a substantive piece of evidence and on this basis alone the date of birth of the applicant cannot be said to be 14.02.1947. He, therefore, submits that the OA is fit to be rejected.

6. Learned counsel for the applicant, in reply, submits that he has already made submission that the service book is fabricated and not genuine. He further submits that the alleged petition of the applicant accepting his date of birth as on 01.11.1943 is not free and volunteered. He submits that the petition, of course, contains the signature of the applicant but his signature was fraudulently obtained and, hence this petition be not taken into consideration. He further submits that other documents referred to by the learned Standing Counsel are also not genuine and, hence no relevance can be placed thereupon. He, therefore, submits that the OA be allowed.

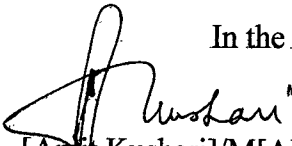
7. Learned counsel for the applicant in support of his contention further submits that as per Rule 76 of Railway Services [Pension] Manual, 1993 every head of the department or head of office, as the case may be shall have a list prepared every six month, that is, on the 1st January and the 1st July each year of all railway servants who are due to retire within the next twenty-


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found to thirty months of that date. He submits that in the case of the applicant no such list was prepared and the applicant was not informed that he was due to retire on such and such date. He, therefore, submits there is non-compliance of the aforesaid rules and hence, on this ground alone the OA is fit to be allowed. Of course, the aforesaid rule provides such a procedure but in my opinion this is not mandatory and on this ground alone, the applicant is not entitled to the relief claimed for.

8. Considering the rival submissions made and documents referred to by both the sides, we are of the considered view that the date of birth of the applicant is 01.11.1943 and not 14.02.1947. We are, therefore, of the view that there is no merit in the case and, hence the OA is fit to be dismissed.

In the result, this OA is dismissed with no order as to costs.


[Anis Kushari]/M[A]


[Anwar Ahmad]/M[J]

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