

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH  
JAIPUR.

O.A.No.1119/92

Dt. of order: 15.9.93

Raghu Nath Meena

: Applicant

Vs.

Union of India & Ors. : Respondents

Mr.M.K.Shah : Counsel for the applicant

Mr.Manish Bhandari : Counsel for respondents

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Hon'ble Mr.Justice D.L.Mehta, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member (Adm.).

PER HON'BLE MR.O.P.SHARMA, MEMBER (ADM.).

The applicant has filed this O.A. praying that the orders Annx.A-1, Annx.A-2 and Annx.A-3 may be set aside and the respondents be directed to release the amount of gratuity as determined after amounting to Rs.13,898 with interest ~~and~~ considering the date of retirement of the applicant as 30.9.92.

2. The applicant's date of birth as recorded in the Service Record was 14.9.1932. According to the applicant, no notice was ever given to him while changing the date of birth of the applicant in the service record. The date of birth was changed by the respondents to 14.9.1930 unilaterally. On this assumption the applicant was treated to have completed 58 years of age on 14.9.1988. The applicant however, continued in service upto 30.9.1990 on the assumption that his correct date of birth was 14.9.1932. Thus the respondents by allowing the applicant to continue in service till 14.9.90, held that the correct date of birth of the applicant was ~~was~~ 14.9.1932. But the applicant's grievance is that the respondents are proposing to recover the salary paid to him for the period beyond 30.9.1988

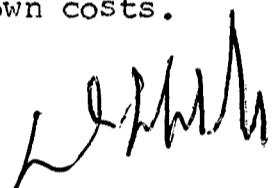
on the ground that he was wrongly continued in service beyond that date, although as per his correct date of birth, subsequently changed in the records as 14.9.1930, he should have been retired from service on 30.9.1988. The applicant is also aggrieved that the gratuity has been withheld with a view to recover the alleged excess amount of salary paid to him.

3. The learned counsel for the respondents has stated that the Railway Board had issued instruction that in cases where an employee has been allowed to continue in service beyond the normal date of retirement, as per the date of birth recorded in the service records, he should be paid only the basic salary for the period beyond the normal date of superannuation. When the applicant was allowed to continue in service by the respondents themselves beyond the date of superannuation, even assuming that his correct date of birth was 14.9.1930, they cannot turn around and say that he would be entitled to pay and allowances lower than what he was drawing on the date which would have been his normal date of superannuation. This is not a case where the applicant retired on the date of superannuation and thereafter there was re-employment. The applicant continued in service without any interruption till 30.9.1990 and it was the respondents who allowed him to continue as such. In the <sup>why</sup> circumstances we do not find any reason he should not be paid full pay and allowances for the period beyond 30.9.1988 till 30.9.1990. If any recovery is proposed to be effected out of the salary paid to him for the aforesaid period of 2 years, such recovery would be improper. No recovery of any kind shall be made

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from the applicant. The orders Annx.A-1 dated 16.4.92 and Annx.A-2 dated 10.4.91 are quashed. The applicant does not press the ground that he shall be allowed to continue in service upto 30.9.1992. The amount of gratuity payable to the applicant shall be paid within a period of one month from the date of receipt of a copy of this order. Interest at the rate of 12% should be paid to the applicant on the amount of gratuity for the period for which the amount was withheld beyond a period of 3 months from the date on which it became initially due. The O.A. is disposed of accordingly. Parties to bear their own costs.

  
(O.P.Sharma)  
Member(A).

  
(D.L.Mehta)  
Vice Chairman.