

Certified copy of order dated 31.7.92 passed in TA No. 1982/86 Rewar vs U.O.L. & C.R.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

T.A. No. 1982/86
(C.S. 43/76)

Date of Decision: 31.7.1992

REWAR : Applicant

Mr. S.K. Jain : Counsel for the Applicant.

VERSUS

UNION OF INDIA & ORS : Respondents

Mr. R.N. Mathur : Counsel for the Respondents.

CORAM:

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

Hon'ble Mr. B.B. Mahajan, Administrative Member

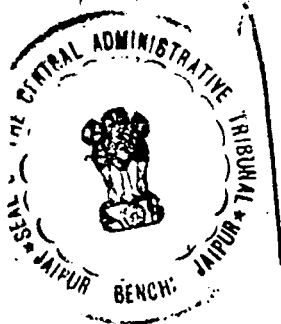
HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN

Applicant who happened to be the Chairman filed a suit on 29.6.76 in the Court of Munsif, Bandikui against the termination of his services.

2. This case came up for hearing after 16 years and the poor man is awaiting our orders. Litigants are looking towards the judiciary for giving them proper relief in time and the Constitutional functionaries are allowing them to celebrate with mental agony, depression and nervousness, the Silver Jubilee, the Golden Jubilee and the Diamond Jubilee.

3. Petitioner in this case joined initially as Casual Labour on 11-8-62 and was getting appointment whenever the vacancy occurred. It is an admitted position that from 21-3-69 to 24-4-73 applicant worked with Railway Path Marikshak, Bandikui and thereafter, from 25.4.73 to 20-11-74 with Railway Inspectors, Bandikui. Plaintiff/Applicant prayed that his termination order should be set aside and he should be considered on duty.

Respondents have come with a case that initially, at the time of recruitment, applicant submitted an affidavit in which he has stated his date of birth as 15-11-1933. However, at the time of the screening after 5 to 7 years,



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Jaipur

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he submitted the other affidavit in which he stated his date of birth as 15-11-1944. It was also submitted that petitioner's services were terminated without giving any notice to him on the sole ground that at the time of his initial appointment he was over age.

4. After the pleadings of the parties, the following issues were framed. Learned Munsif recorded the evidence. After coming into force of the Central Administrative Tribunals Act, 1985, this case was transferred to this Bench on 18-10-85. Since then, the case is pending for hearing before this Bench.

5. It is an admitted position that the applicant was the employee of the Western Railways at the time of termination of his services. On behalf of the Railways it was submitted that the petitioner submitted the affidavit earlier and in the said affidavit his date of birth was recorded as 15-11-1933 and because of inadvertence of Railway Officers he was given employment as casual labour though he was over age. At the time of the screening for regularisation it came to the notice of the authorities that initial appointment given was not according to law as he was over age. At this stage, the petitioner filed the second affidavit mentioning his date of birth as 15-11-1944. On behalf of the applicant it was submitted that the authorities have no authority to terminate the services of an employee on the ground that the initial appointment was irregular on the ground of over age. It was also submitted that in fact his date of birth should be considered as 15-11-1944 and not 15-11-1933.



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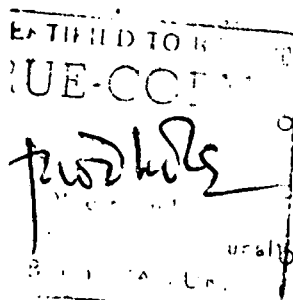
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OFFICE CHIEF
BENCH JAIPUR

5. On behalf of the applicant, the case of Raghunath Nohanthi Vs. Registrar General and Others reported in 1987 (3) All India SLJ 102 has been cited. Their Lordships in para 4 of the said Judgment held that:

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"after having appointed the petitioner to one such post, in these hard days when a man is striving for sustaining his life and that of his family, we feel inclined to take a compassionate view in the matter especially when the cases of several other candidates including that of one G.C. Deb, Assistant Complier being over age by 8 years 25 days was condoned and the age bar was relaxed. Therefore, we feel persuaded to say that the competent authority should also take a compassionate view in this matter and deal with the case of petitioner sympathetically, namely, after condoning the age bar of the present petitioner he should be absorbed in one such post of L.D. Clerk."

In the case of R.K. Goswami Vs. K.M. Raval & Others, 1936 (1) SLJ 231 Gujarat High Court held that the 'Doctrine of Estoppel' should be applied. Their Lordships further held that once the appointment is given the petitioner is justified in believing that the age limit was relaxed in his favour and he was appointed on the post. Thus, the question of over age may not be the sole ground on which the services of the person employed, under a belief that he has been rightly appointed within the framework of rules. Apart from that, in this case, admittedly, the petitioner has worked continuously without any break for more than 240 days in a calendar year. Railway is an industrial establishment and the applicant was the Gangman. The question of over age has not an over-riding effect over the provisions of Section 25F of the I.D. Act. In the cases of retrenchment on any ground, Section 25F of I.D. Act would be invoked and notice and the compensation as provided under Section 25F of the I.D. Act has to be given. In the instant case, admittedly, no notice was given, no compensation has been paid and the services of the applicant has been terminated with immediate effect. Thus, there is a violation of Section 25F and the order of termination is bad in law and the petitioner should be considered in employment and the termination order should be set aside. We have also gone through the record and the applicant's Original affidavit in which he has stated his date of birth as 15-11-1933. There is no reason not



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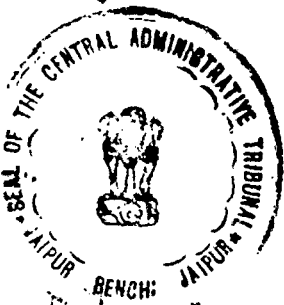
to believe the original and to believe the subsequent affidavit. Authorities have acted on the affidavit submitted earlier and the petitioner cannot get the advantage of second affidavit for the continuation in service. Petitioner has attained the age of superannuation in 1991. So the question of giving him reinstatement does not arise. He is entitled for a salary of the post on which he was working on the termination to the date of superannuation i.e. 14-11-1991 (A). The petitioner is also entitled to get the benefit of revision of salary from time to time.

7. The question before us is to consider the provisions of Section 33-C Clause (2) of the Industrial Disputes Act. Petitioner has not stated anywhere in the plaint or subsequently, that he was nowhere in employment. Respondents have also not taken any such plea in their written statements. Petitioner wanted to submit the affidavit before the Tribunal at the time of hearing but it was declined on the ground that such affidavits cannot be accepted particularly when the arguments have practically been concluded.

8. It will not be out of place to mention that it is very difficult to prove that the person who was under retrenchment was having gainful employment elsewhere. The case is that he was not in Government employment and particularly the experience shows that generally in most of the cases it is very difficult to prove the gainful employment. We were thinking of passing an order under Section 33-C(2) of the Industrial Disputes Act. However, after hearing the learned counsel for the parties we are satisfied that it will meet the end of justice if instead of full back wages, the applicant is given the 50% of the back wages. This equitable relief is necessary as it will otherwise become necessary to file a second application under 33-C(2) and to get a decision on such application, particularly when this case was pending for 11 years.

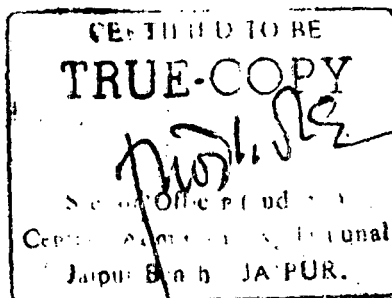
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8. In the result, we accept the T.A., set aside the termination order and direct that 50% of the wages from the date of termination to the date of superannuation i.e. 1-11-74 to 14-11-81 (AN) be paid within 4 months of this order. The applicant will also be entitled to get the benefit of revision of pay-scales. The applicant should be treated as retired employee after attaining the age of superannuation on 14-11-1991 (AN). The O.A. is disposed of accordingly. Parties to bear their own costs.



sd/-
(B.D. MAHAJAN)
Admin. Member.

sd/-
(D.J. NETA)
Vice-Chairman



*Attested
Signature*

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