

Certified Copy of order dated 31.7.92 passed in TA No. 1982/SC Rewar Vs U.O.C. & ORS.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

T.A. No. 1982/86  
(C.S. 48/76)

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. Mohajan, Administrative Law

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 10 years and the poor man is awaiting our orders. Litigants are looking towards the judiciary for giving them proper justice 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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20-7-1992 JAIPUR.

Attested  
S. K. Jain

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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On behalf of the applicant, the case of R. Jhunath Nonanthy 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:

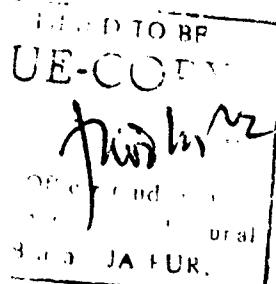


to believe the original and to believe the subsequent affidavit. Authorities have acted on the affidavit submitted earlier and the petitioner cannot get the advantage of second affidavit for the continuation in service. Petitioner has attained the age of superannuation in 1991. So the question of giving 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.M.). The petitioner is also entitled to all 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 gainfully 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 if it will otherwise become necessary to file a second application under S.C's 33-C(2) and to get a decision on such application, particularly when this case was decided after 11 years.



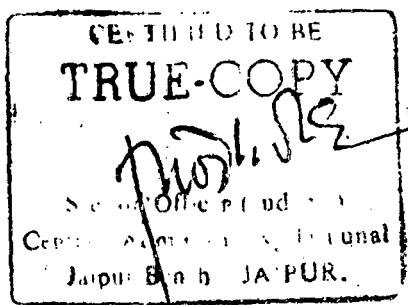
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S.Y. In the result, we accept the T.A., set aside the termination order and direct that 50% of the wages from the date of termination to the date of superannuation i.e. 11-11-74 to 14-11-91 (A.N) be paid within 4 months of this order. The applicant will also be entitled to get the benefit of revision of pay-scales. The applicant should be treated as regular employee after attaining the age of superannuation on 14-11-1991 (A.N). The O.A. is disposed of accordingly. Parties to bear their own costs.



S.Y/-  
(B.D. MAHAJAN)  
Admin. Member.

sd/-  
(D.L. NEHTA)  
Vice Chairman



(a)	Serial No.	28/92
(b)	Rate	Rs. 10/-
(c)	Amount	6/8/92
(d)	Time	Five
(e)	Signature	6/8/92
(f)	Signature	6/8/92
(g)	Signature	6/8/92
(h)	Signature	6/8/92
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Attached  
On  
Gajra