

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

ORIGINAL APPLICATION NO.060/00288/2014

**Order Reserved on 07.01.2015
Pronounced on 9.1.2015**

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)**

Tarsem Lal S/o Sh. Kishan Chand, R/o Village Kalesar Post Office Sujanpur, Tehsil and District Gurdaspur (Punjab).

... Applicant

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Firozpur Division, Northern Railway, Firozpur.
3. Senior Section Engineer (Permanent Way), Northern Railway, (Narrow Gauge), Pathankot.
4. Assistant Divisional Engineer (AND), Northern Railway, Railway Station, Palampur.

... Respondents

Present: Sh. Jagdeep Jaswal, counsel for the applicant.
Sh. Lakhinder Bir Singh, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

"8 (i) Impugned order dated 7.9.2013 (A-1) be quashed and set-aside being wholly illegal and arbitrary and

As _____

B

consequently the applicant be reinstated back in service with all consequential benefits of pay and allowances.
(ii) Or in the alternative if applicant has been retired from service under the LARSGESS Scheme, his ward be appointed in his place with all consequential benefits after 7.9.2013."

2. Averment has been made in the OA that the applicant was initially selected for appointment to the post of Gangman and his date of birth was recorded as 02.10.1952. Subsequently, the applicant was asked by the respondents to produce School Leaving Certificate and accordingly before his appointment, the applicant obtained the School Leaving Certificate dated 10.8.1974 (Annexure A-2) according to which, the date of birth of the applicant was mentioned as 21.6.1955. Since the original copy of School Leaving Certificate was misplaced by the applicant, he obtained another copy of this Certificate (Annexure A-6), which was also issued to him by the Head Master, Primary School, Pinjore, Pathankot, again mentioning the date of birth of the applicant as 21.6.1955. This certificate had been got verified by the applicant recently and it had been informed that the record of 50 years had been damaged but the stamp appearing on the transfer certificate pertains to the same school. With this certificate being brought on record by the applicant, the date of birth of the applicant was mentioned as 21.6.1955 in the service record and hence he was due to retire on 30.6.2015. The respondents incorporated the date of birth of the applicant in their

A —

records as 21.6.1955 and this was also evident from the list of Gatekeepers dated 05.2.2003, copy of leave account, medical certificate issued by Senior DMA, Ludhiana dated 12.5.2010, Aadhar Card of the applicant (Annexure A-7 to A-10 collectively).

3. It is further stated that in 2010, the Railways issued Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) Scheme which was a premature retirement Scheme for employees of the safety categories according to which an employee could retire on voluntary basis and his ward would be offered appointment on a suitable post. The applicant furnished details of his son Sh. Dimple Kumar, who was selected under LARSGESS but was not offered appointment. Also, as per DRM, Firozpur letter No.807-E/Vividh/1/P-6 dated 14.10.2011, the applicant's name was included in the list of employees who were due to retire between 01.1.2012 to 31.12.2012 and the Senior Section Engineer (Permanent Way), Northern Railway, Pathankot through his letter dated 16.12.2012 conveyed that the date of birth of the applicant was 21.6.1955 hence his date of retirement would be 30.6.2015 (Annexure A-11). The applicant was consequently not retired in 2012. However, all of a sudden, he was retired w.e.f. 7.9.2013 as per letter dated 5.9.2013, which refers to LARSGESS, 2012. Since LARSGESS Scheme was quashed by C.A.T.

As —

Jaipur Bench vide order dated 24.9.2013 (Annexure A-12), the applicant could not have been retired from service when his ward Sh. Dimple Kumar had also not been appointed under this Scheme. The applicant submitted a detailed legal notice dated 19.9.2013 apprising the respondents that he could not be retired mid way, his date of birth being 21.6.1955, and even under LARSGESS Scheme his son has not been appointed in his place.

4. In the grounds for relief it has been stated that once the respondents have entered the date of birth of the applicant as 21.6.1955 on the basis of School Leaving Certificate, they cannot discard the same to retire him from service on the basis of date of birth recorded in the medical examination. The School Leaving Certificate had again been got verified by the applicant recently and it has been informed that though record of 50 years had been damaged but the stamp appearing on the school leaving/transfer Certificate pertained to the same School. For all intents and purposes, the respondents incorporated the date of birth of the applicant in their records as 21.6.1955 and this fact is also evident from the list of Gatekeepers dated 05.2.2003, copy of leave account, medical certificate issued by Senior DMA, Ludhiana dated 12.5.2010, Aadhar Card of the applicant issued by Govt. of India (Annexure A-7 to A-10 respectively). AS

5. In the written statement filed on behalf of the respondents it has been stated that the applicant worked as Temporary Khalasi in the Railways from 14.7.1971 to 14.7.1975. He was medically examined by the Divisional Medical Officer, Northern Railway, Amritsar vide Fitness Certificate No.502 dated 22.3.1977 (Annexure R-1) and found fit in medical category B-1. His age was recorded as 24 years 5 months, 19 days. Thus, his date of birth come to be 02.10.1952. The applicant submitted his application Form Annexure R-3 for being screened on 11.5.1977 mentioning date of birth as 2.10.1952, which has been scored out and re-entered as 21.6.1955. However, there is no authentic documentary proof of the date of birth in applicant's service record. After the applicant was screened and regularized, his service book was prepared, opening page (Annexure A-3), which mentions his date of birth as 21.6.1955. It is further stated that during his service, the applicant was medically examined on different occasions from 7.4.2004 to 20.7.2009. His date of birth was recorded in 5 of the Medical Fitness Certificates (Annexure R-2 Collectively) as 2.10.1952 that tallies with the age recorded in the 1st medical fitness Certificate Annexure R-1 dated 22.3.1977. The last certificate dated 21.6.2012 only records the applicant's age as 57 years. The 1st four sheets of the applicant's leave record Annexure R-4 to R-7 record his date of birth as

As —

2.10.1952. The last sheet of the applicant's leave record Annexure R-8 records his date of birth as 21.6.1955. The alleged School Leaving Certificate of Tarsem Lal issued by the Head Master Primary School, Pinjour, Pathankot (Annexure A-2) is not part of the applicant's service record as it was never submitted by him. A photocopy of the same was produced for the first time with his representation dated 6.12.2013. Moreover, the alleged School Leaving Certificate indicating that the applicant is literate contradicts his application form Annexure R-3 and service book Annexure A-3 which bears his thumb impressions, not signatures.

6. It is also stated that on 2.10.2013, the applicant applied for voluntary retirement and employment of his son Dimpal Kumar in his place. The application was duly processed and the son was placed on the provisional panel on 30.10.2012 after medical examination. Before giving final appointment, it was brought to the notice of competent authority that there is serious discrepancy in the applicant's recorded date of birth as found in various Medical Fitness Certificates, Leave Record and his Service Book. After examining all the aspects, he concluded that the applicant's date of birth is 2.10.1952 and the applicant was ordered to be retired with immediate effect vide Annexure

As —

R-10 dated 5.9.2013. It is denied that the applicant got the legal notice Annexure A-4 dated 19.9.2013 served upon the respondents.

7. In the rejoinder filed on behalf of the applicant it has been stated that medical examination cannot supersede the date of birth of an employee which is mentioned in the School Records/School Leaving Certificates. The authentic data has to be given more weightage than the medical examination by the Medical Officer. After the applicant was screened and regularized his service book was prepared mentioning his date of birth as 21.6.1955. Hence the same is to be given credence for all purposes and there could not be a different date of birth for some of the service conditions while relying upon the date of birth recorded on the basis of the medical examination erroneously for other purposes.

8. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicant reiterated the facts and grounds taken in the O.A. On his attention being drawn to plural relief sought by him as per Para 8(i) and 8(ii), learned counsel stated that he would only press for relief as per Para 8(i). Learned counsel stated that the Service Book record had been prepared in 1977 at the time of regularization of the applicant and in the same his date of birth was shown as 21.6.1955. There was no basis for the respondents to subsequently take his date of birth as 2.10.1952 on the basis of the

As —

reports of the medical authorities. Learned counsel also referred to the copy of the School Leaving Certificate which showed date of birth as 21.6.1955. He stated that the applicant had wrongly been retired on 7.9.2013 and in fact he was entitled to continue in service till 30.6.2015.

9. Learned counsel for the respondents referred to the content of written statement and drew attention to the application form of the applicant for Class IV post at Ferozpur (Annexure R-3). He stated that in this document date of birth of the applicant was shown as 2.10.1952 and it appears to have been changed to 21.6.1955 without authentication of the entry. In the reports of the medical examinations that had taken place from time to time, date of birth of the applicant was shown as 2.10.1952. When the applicant applied under LARSGESS, his record was scrutinized and it was concluded that date of birth of the applicant was 2.10.1952. Although the applicant had continued in service beyond his date of retirement of October 2012, he was retired from service w.e.f. 7.9.2013. Learned counsel stated that there was no merit in the claim of the applicant regarding his date of birth being 21.6.1955.

10. We have carefully considered the matter. The authentic record as far as an employee is concerned is the Service Book in which entries are made from time to time. As per the Service Book of the

Ms —

applicant prepared at the time of his appointment in 1977, the applicant's date of birth was shown as 21.6.1955. Though little reliance can be placed on copy of School Transfer Certificate (Annexure A-2) annexed with the O.A. but the date recorded at the time of the appointment of the applicant must be accepted as there is no good ground with the respondents to have taken the stand that date of birth of the applicant was 2.10.1952. Moreover, there is no allegation against the applicant that the records were tampered with to change his date of birth from 2.10.1952 to 21.6.1955. Hence the O.A. is allowed and the impugned order dated 07.9.2013 is quashed. The respondents are directed to treat the applicant's date of birth as 21.6.1955. Hence he may be reinstated in service and allowed all consequential benefits. Action in this regard may be completed within two months of a certified copy of this order being served upon the respondents.

11. With the above directions, the O.A. is disposed of. No costs.

B. A. Agarwal
(DR. BRAHM A. AGRAWAL)
MEMBER (J)

Rs
(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.

Dated: 9.1.2015

KR*