

(RESERVED ON 14.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the **25TH** day of **MAY 2018**.

ORIGINAL APPLICATION NO. 186 OF 2008

HON'BLE DR. MURTAZA ALI, MEMBER (J).

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

1. Kamta Prasad, Trackman, Aged about 55 years, S/o Late Ram Kishore, R/o Village : Basila, Post : Ghoredeah, District: Allahabad.
.....Applicant.

VERSUS

1. Union of India through The General Manager, North Central Railway, Headquarters Office, Allahabad.
2. The General Manager, North Central Railway, Headquarters Office, Allahabad.
3. The Divisional Railway Manager, North Central Railway, D.R.M. Office, Allahabad.
4. The Senior Divisional Engineer-I, North Central Railway, D.R.M., Office, Allahabad.
5. The Divisional Engineer (Line), North Central Railway, D.R.M. Office, Allahabad.
6. The Senior Section Engineer (P. Way), North Central Railway, Allahabad

.....Respondents

Advocate for the Applicant : Shri S S Sharma

Advocate for the Respondents : Shri K P Singh

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The present Original Application (in short OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

- "(a) That the Hon'ble Tribunal may graciously be pleased to set aside/quash the impugned order dated 14.12.2006 issued by the Senior Section Engineer (P. Way), North Central Railway, Allahabad, Respondent No. 6, retiring the Applicant from Railway Service w.e.f., 31.12.2006 despite the fact on record that date of birth of the applicant as recorded in the Service Record is 10.12.1952 and accordingly, the date of retirement of the applicant is 31.12.2012.

- (b) *That the Hon'ble Tribunal may graciously be pleased to direct the Respondents to take back the Applicant on duty and allow the Applicants without any interference to service the Railway on the post of Gangman upto 31.12.2012 on the basis of his authentic date of birth i.e., 10.12.1952.*
- (c) *That the Hon'ble Tribunal may graciously be pleased to direct Respondent No. 2 to take strict action against the officer concerned who issue such illegal order dated 14.12.2006, deciding to retire the Applicant on the basis of date of birth given in the Panel List without complying with the principles of natural justice and provisions of rules and authority in this respect.*
- (d) *That the Hon'ble Tribunal may graciously be pleased to allow all the consequential benefits i.e., payment of salary from 01.01.2007 to the date the Applicant is reinstated in service without any interruption in his service till his retirement."*

2. The brief facts as stated in the O.A. are that the applicant was appointed as Gangman on daily wages in the year 1975 and he was granted temporary status on the post of Gangman w.e.f., 06.05.1981. In 1989, a screening was conducted by Divisional Railway Manager, North Railway, Allahabad to regularize the services of Group 'D' staff in Engineering Department of Allahabad Division. The applicant being one of the senior Gangman was also included in the screening. The panel of screening was declared vide letter dated 17.08.1989 in which the applicant was declared fit for appointment as Gangman. Accordingly, the service of the applicant was regularized on the permanent sanctioned post of Gangman w.e.f., 17.08.1989. After regularization of services of the applicant on the post of Gangman as per the panel dated 17.08.1989 the date of birth of the applicant was also maintained as 10.12.1952 in the service record of the applicant duly verified and confirmed by the Inspector Incharge. As the recorded date of birth of the applicant was 10.12.1952, the applicant was to retire on 31.12.2012, the date on which the applicant would complete 60 years of age. However, suddenly vide order dated 14.12.2006, the applicant was informed that he is to retire on 31.12.2006. The applicant being aggrieved by the order dated 4.12.2006, furnished the

representations dated 06.07.2007, 08.10.2007 and 01.08.2007 to the respondents, however, no action was taken against on the same.

3. It is stated in the OA that as per para 255 of the Indian Railway Establishment Code, (I.R.E.M.) Volume-I, in the case of illiterate staff, the declared date of birth shall be recorded by senior Railway Servant and another railway servant shall stand witness to the same. It has also been stated that the applicant has been retired from service vide impugned order dated 14.12.2006 w.e.f., 31.12.2006 without any sanction from the competent authority i.e., the General Manager and without giving any reason for treating the date of birth as 10.12.1946 instead of 10.12.1952. It is further stated that the panel list dated 17.08.1989 is not the authentic record for maintaining date of birth an employee.

4. In the counter affidavit filed by the respondents, it is stated that the applicant is a mischievous man who has tampered with his service record and he has not annexed any document of the Railways to show that his date of birth is 10.12.1952 instead of 10.12.1946. It has also been stated that the applicant was granted temporary status on 06.06.1981 and before his regularization a panel list was compiled by the authorities in which the date of birth of the applicant was shown as 10.12.1946, the casual labour card has been tampered with and the date of birth 10.12.1946 has been over written to show 10.12.1952. Since, there was no record of the applicant's date of birth showing it as 10.12.1952, the date of panel was the most reliable date which was taken into account and consequently the applicant retired on 31.12.2006. It is further submitted that the service record of the applicant was made at the time of his engagement as casual labour and whatever date of birth was given by the applicant at that time was recorded but when the screening committee inquired into the matter

in depth, then it was found that the correct date of birth of the applicant was 10.12.1946. It has also been pointed out that the order of retirement has been issued by the competent authority.

5. The applicant filed the rejoinder affidavit basically reiterating the facts stating in the OA. It was also stated that the applicant had submitted an affidavit dated 12.05.1981 (Annexure RA-1 to the Rejoinder) at the time of granting temporary status to the applicant and this affidavit was accepted by the respondents.

6. Learned counsel for the applicant was heard. He submitted that the date of birth of the applicant as recorded in the service book after regularization of the applicant was 10.12.1952, copy of which has been annexed to the Counter affidavit by the respondents and also to the Rejoinder. The date of birth once has been recorded by the officers of Railways (PWI, N. Railway) duly witnessed and certified by the Assistant Engineer, while granting temporary status to the applicant with effect from 6.6.1981, which is recorded as the date of appointment in the service book (Annexure CR-4 to the Counter), which has the finger prints of the applicant. It was also submitted that the date of birth in the service book can be modified or changed only after issue of show cause notice to the applicant and with the approval of the General Manager as per the para 225 of the Indian Railway Establishment Code Volume-I (in short Code), copy of which is enclosed at Annexure A-2(a) of the OA. In this case, the date of birth as recorded in the applicant's service book has never been challenged by the respondents till the impugned letter dated 14.12.2006 (Annexure A-1) was issued, informing the applicant that his date of retirement is 31.12.2006, treating his date of birth to be

10.12.1946. It is stated by the respondents in the counter that the date of birth has been taken to be 10.12.1946 since that was the date recorded in the list prepared by the screening committee. It is submitted that the list prepared by the committee was not authenticated and it was not signed by him. If at all it was decided by the respondents to treat applicant's date of birth to be 10.12.1946, then they should have initiated action under para 225 of the Code to change the date of birth in the service record after giving an opportunity for hearing to the applicant. No such procedure was followed and there was no intimation to the applicant before issuing the impugned order.

7. Shri K.P. Singh, learned counsel for the respondents submitted that when the applicant was first engaged as a casual labourer, his date of birth as recorded in the casual labour card (Annexure CR-2 to the Counter) was 10.12.1946, which was struck off while writing 10.12.1952 without any authentication. He further submitted that the screening committee recorded the date of birth of the applicant to be 10.12.1946. On being asked if there was any document or affidavit furnished by the applicant anytime during his service period, declaring his date of birth to be 10.12.1946, the respondents' counsel replied in negative. About the reason for not taking action under para 225 of the Code, it was submitted by the learned counsel that the respondents have the record of the screening committee as an authentic record about the details of the applicant, it was considered not to be a case of change of date of birth.

8. We have considered the submissions and the pleadings by both the parties in the case and are unable to agree with the learned

counsel for the respondents that the record of the screening committee is to be taken as an authentic record as far as the date of birth of the applicant is concerned. The provisions of the para 225 of the Code are very clear in that respect. It states as under:-

“225. Date of Birth (1) Every person, on entering Railway Service, shall declare his date of birth, which shall not differ any declaration expressed or implied for any public purpose before entering in Railway Service. In case of literate staff, the date of birth shall be entered in the record of service in the Railway Servants own handwriting. In case of illiterate staff, the declared date of birth shall be recorded by senior Railway Servant and witnessed by another Railway Servant.

(2) A person who is not able to declare his age should not be appointed to Railway Service.

(3)(a) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g. if a person enters service on 1st January, 1980 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1980.

(b) When the year or tear and month of birth are known but not the exact date, the 1st July or 16 of that month, respectively, shall be treated as date of birth.

(4) The date of birth as recorded in accordance with these rules shall held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the president in case of Group A & B servant, and a General manager in case of Group C & D Railway Servant to cause the date of birth to be altered.

(i) Where in his opinion it had been falsely stated by the Railway Servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in Railway Servant being retain in Service longer than if the alteration had not been made, or

(ii) Where, in the case of illiterate staff, the General manager is satisfied that a clerical error has occurred, or

(iii) Where a satisfactory explanation (which should not be entertained after completion of probation period, or three years of service, whichever is earlier) of the circumstances in which the wrong date come to be entered is furnished by the Railway Servant concerned, together with the statement of previous attempt made to have the record amended.

Railway Ministry's Decision

(a) When a candidate declares the date of birth, he should produce documentary evidence such as a Matriculation certificate or a Municipal Birth Certificate. If he is not able to produce such

evidence he should be asked to produce any other authenticated documentary evidence to the satisfaction of the appointing authority. Such authenticated documentary evidence could be school leaving Certificate, a Baptismal Certificate in original or some other reliable document. Horoscope should not be accepted as evidence in support of declaration of age.

(b) If he could not produce any authority in accordance with (a) above, he should be asked to produce an affidavit in support of the declaration of age.

(c) In case of Group D employees care should also be taken to see that the date of birth as declared on entering regular Group D service is not different from any declaration express or implied, given earlier at the time of employment as a casual labourer or as a substitute."

9. In view of the above, everyone at the time of entering Railway service has to produce documentary proof about age, or declare his age through an affidavit. Sub-para 4 of the para 225 provides that the date of birth recorded in accordance with these rules shall be binding and no alteration is permitted unless approval of the GM is taken for a Group C and D staff. The applicant has furnished an affidavit (Annexure RA-1 to the Rejoinder) at the time of his entry into regular post where he has declared his age to be 10.12.1952. The entry of 10.12.1946 in the screening committee list was never communicated or confronted to the applicant and before treating the applicant's date of birth from 10.12.1952 as recorded in the service book as per para 225 of the Code, the procedure under para 225(4) of the Code should have been followed. It is not the case of the respondents that they have followed para 225(4) before deciding to treat the date of birth to be 10.12.1946. The contention of the respondents that the applicant's date of birth as recorded by the screening committee is the correct date of birth, which should have been recorded in his service book, is not acceptable as no rule or instructions of the Railway Board have been furnished by the

respondents in support of the contention that the date of birth as recorded by the screening committee would be treated as the correct date of birth of an employee.

10. Other contention of the learned counsel for the respondents that in the casual labour card for the applicant the date of birth originally written was 10.12.1946 which was cut-off to overwrite the date 10.12.1952. The applicant's counsel explained that the date was written by mistake to be 10.12.1954, which was corrected. This contention of the respondents has no force since even if it is accepted to be correct, it cannot be said by any stretch of imagination that the date of birth of the applicant is 10.12.1946, an entry not there in the casual labour card of the applicant (Annexure CR-2). If cutting off the entry relating to the date of birth without authentication was an issue, then the respondents had ample opportunity to rectify it within a reasonable time after appointment of the applicant as a casual labour in 1975 instead of waiting till 2006 for this purpose and the date of birth in the service book would not have been recorded as 10.12.1952.

11. Learned counsel for the applicant had submitted a copy of the order dated 13.04.2010 of this Bench of this Tribunal in OA No. 1049/2007 in the case of **Ram Satya vs. Union of India and others**, alongwith his written submissions on 08.07.2016. In the order dated 13.04.2010 of this Tribunal in the case of Ram Satya, the facts of the case are stated as under:-

"The applicant is aggrieved by the impugned order dated 09.10.2007 issued by Section Engineer (P. Way) North Central Railway, Naini retiring him from Railway Service w.e.f., 09.10.2007 on the basis of date of birth given in the Panel List dated 17.08.1989 as 05.09.1940. The grievance of the applicant is

that the respondents have ignored the authentic date of birth of the Applicant as recorded in his Service Record by the Competent Authority as 05.09.1949 and according to which the applicant should have been retired on 30.09.2009."

In the OA No. 1049/2007, the date of birth of the applicant was also wrongly recorded by the screening committee while finalizing the panel list dated 17.08.1989. The screening committee had recorded that there was cutting and overwriting in Date of Birth as per casual labour card, exactly the same stand as taken by the respondents in the present OA. Vide order dated 13.04.2010, the findings of this Tribunal in OA No. 1049/2007 were stated as under:-

"14. We have given our thought consideration to the pleas advanced by the parties counsel, we are of the considered opinion that the action of the respondents in treating the date of birth of the applicant as 05.09.1940, is arbitrary, illegal and without jurisdiction. The action of the respondents is in violation of the Principal of natural justice and fair play and no opportunity has been granted to the applicant before changing his date of birth from 05.09.1949 to 05.09.1940 and retiring him from Railway Service w.e.f., 09.10.2007.

15. In view of the above, we accordingly, quash and set aside the order dated 09.10.2007 (Annexure A-1) issued by the competent Authority and the applicant shall be deemed to be on duty up to 30.09.2009 on the basis of his date of birth recorded as 05.09.1949 with all consequential benefits. This exercise shall be completed within a period of four months from the date of receipt of certified copy of this order. No costs."

12. Against the order dated 13.4.2010 in OA No. 1049/2007, the respondents filed the Writ-A No.- 42882 Of 2010 in the case of **Union of India and others vs. Ram Satya**. In this case, Hon'ble Allahabad High Court in judgment dated 26.7.2010 (copy of which is also enclosed by the applicant's counsel in his written submissions) has held as under:-

"The petitioners have not offered any reasonable explanation to continue to allow the applicant-respondent to serve upto the year 2007. If the Railways did not have any material to verify about his date of birth, they should have insisted on production of such material prior to the year 2000. After having recording his date of birth in the service record as 5.9.1949, and allowing him to continue beyond the year 2000, the date of birth to be recorded in the service record has to be treated as conclusive. Further, the finding, that he had submitted an affidavit on 24.03.1981, and which was accepted and kept on service record, is a finding of fact. We do not find any error in the judgment of the Tribunal."

13. As the facts are similar, the present OA is squarely covered by the OA No. 1049/2007 in which the order dated 13.04.2010 has been upheld by Hon'ble Allahabad High Court as discussed in para 11 and 12 of this order. Hence, the applicant in this OA is also entitled to similar relief as in OA No. 1049/2007.

14. In view of above, following the order dated 13.4.2010 of this Tribunal, we set aside and quash the order dated 14.12.2006 of the respondents (Annexure A-1) issued by the respondents. The applicant shall be deemed to be on duty up to 31.12.2012 on the basis of the date of birth recorded as 10.12.1952 in the service book of the applicant and he shall be entitled to the benefit of the salary for the period from 31.12.2006 till 31.12.2012 and pension and all retiral dues as per the rules, based on the salary as on 31.12.2012. These shall be sanctioned and disbursed to the applicant/his legal heirs within four months from the date of receipt of a copy of this order. In case the respondents fail to release full payment within the time specified above, the respondents shall be liable to pay an interest at the rate of 9% per annum from the due date till the date of actual payment.

15. The OA is allowed as above. No costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

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