

ORAL

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the **13th Day** of **September**, 2018)

Hon'ble Mr. Justice Bharat Bhushan, Member (Judicial)

Original Application No.330/1468/2013
(U/S 19, Administrative Tribunal Act, 1985)

Bankey S/o Nauni, R/o Village – Dhoranapur, Tahesile- Bisauli, Post Asafpur, District Budaun.

..... **Applicant**

By Advocate: Shri Randhir Singh

Versus

1. Union of India through its General Manager Northern Railway New Delhi.
2. Senior Section Engineer (PW) Northern Railway, Chandausy, District Sambhal (Moradabad).

..... **Respondents**

By Advocate: Shri Sanjay Kumar Ray

ORDER

The applicant, Bankey, has preferred this Original Application (in short 'OA') No.1468/2013 under Section 19 of the Administrative Tribunals Act, (in short 'A.T. Act') 1985 for following relief(s):-

- "i. Issue an order for quashing the order dated 03.10.2012 passed by Respondent No.2 (Annexure No.2) this application.*
- ii. Issue and order or direction commanding the respondents to permit the applicant to continue his services on the post of trackman from which he has been superannuated at*

an early date and further prayed also to pay salary month by month.

- iii. Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.*
- iv. Award cost of this application in favour of the applicant."*

2. The applicant was appointed on the post of Gangman in Northern Railway on 27.11.1979. The applicant claims that his date of birth is 10.04.1958. However, Department has treated his date of birth as 10.11.1952 because of which he was retired on 20.11.2012. The applicant claims that his retirement on the basis of wrong date of birth has adversely affected his right to continue in job for another 06 years. Failing to receive any redressal from the department, he has filed the present O.A.

3. The counter reply of the Department has disputed the claim of applicant saying that his date of birth recorded in the service book is 10.11.1952 which was entered at the time of appointment of the applicant who never challenged the same throughout his service period.

4. The applicant filed Rejoinder reiterating his claim.

5. Heard Shri Randhir Singh, counsel for the applicant and Shri Sanjay Kumar Ray, counsel for the respondents and perused the pleadings available on record.

6. The dispute is very simple. Entry in the service book of applicant discloses the date of birth as 10.11.1952. Photostat extract of relevant service book is available on record. The service book was perused on some dates by the Tribunal as well, wherein it was noted that date of birth entered in the service book is 10.11.1952. The order passed by this Tribunal on 30.09.2016 is reproduced as below:-

*" **30.09.2016**
.....
As directed on the last date, the learned counsel for the respondent has produced the original service book of the applicant which clearly indicates that Date of Birth of the applicant is 10.11.1952, both in digits and in alphabet. Learned counsel for the applicant prays for time to consult the applicant. He is granted two weeks time to consult his client.
It is made clear that if his submission is not clear by the next date, the case will be decided.
A photocopy of the relevant page of the Service Book be submitted by the respondents which will be kept on the file. If there is no inconvenience to the counsel for the respondents, the original Service Book be produced before the Court on the next date.
....."*

7. Thereafter, again the service book was perused in the Tribunal by another Member and an order was passed on 22.11.2017. The relevant portion of this order is reproduced as below:-

*"**22.11.2017**
.....
....."*

The Tribunal vide order dated 29.07.2016 had directed the respondents to produce the original service book of the applicant to verify his date of birth as recorded in the service book. Shri Anil Kumar counsel for the respondents presented the original service book of the applicant before me today.

I have perused the service book and have found that applicant's date of birth indeed has been recorded as 10.11.1952. The original service book after perusal has been returned to the counsel for the respondents.

In view of the fact that the date of birth of the applicant has been recorded as 10.11.1952 in the service book, the respondents' action to retire the applicant from service on 30.11.2012 cannot be faulted upon. The applicant has not produced any document in support of his claim except a letter of Northern Railway Primary Cooperative Bank Limited, Lucknow (page 18 of the O.A.) wherein his date of birth has been noted as 10.4.1958. The date of birth noted in the letter cannot be accepted as a conclusive proof as to his date of birth. It was, however, mentioned that many advocates were under impression that the ongoing strike of C.A.T Bar Association could be continuing today also and it is likely under that impression the counsel for the applicant might have chosen not to come to the Court. Hence, I consider it appropriate to adjourn the matter.

....."

8. It is settled position of law that entry enshrined in service book are treated final as far as record of employees are concerned. The date of birth reflected in service book has to be

treated as final till the competent authority legally orders it to change.

9. It is pertinent to point out that counter reply filed by the respondents also reiterate the same facts. Para-2 of the counter reply is reproduced as below:-

"2. That the contents of Para 1 of the O.A. is matter of record, impugned order has been correctly passed as per rules, after giving due opportunity to the applicant, applicants correct date of birth as recorded in his service record is 10.11.1952, which was entered at the time of appointment of the applicant, which was never challenged are requested by applicant at any point of time within stipulated period for its correction as per extent rules, however, after service of the impugned order, applicant has himself perused his service record and after that settlement form was filled and thumb impression etc, was affixed by him and accordingly his settlement dues were finalized by the respondents, thus after filing of present OA is not tenable under the eye of law. However, it is settled law that whatever date of birth entered in the service record of the employees and witnessed, cannot be altered and same are final for all his services purpose, thus if any other entry has been ever made in other documents by mistake or with collusion of the applicant at any other documents, applicant cannot get any benefit of the same at the feg end of his service.

10. The claim of applicant is based on some vague and unreliable papers. It appears that in some papers of cooperative bank available on record as Annexure A-3 (Northern Railway

Primary –co- Operative Bank Ltd. Lko.) contains the date of birth of applicant as 10.04.1958. Similarly, in some other papers his date of birth was indicated as 10.04.1958. All these papers are irrelevant for the purposes of employment of applicant with Railways. The respondents have rightly treated his date of birth as 10.11.1952. Strangely, there is nothing on record to demonstrate that this date of birth was ever disputed by applicant during the long period of his service. He did not even seek any declaration from any competent court.

11. Considering all facts and circumstances of the case, it is evident that this O.A. is not sustainable and is liable to be dismissed. Accordingly, **the O.A. is dismissed** with no order as to costs.

(Justice Bharat Bhushan)
Member (Judicial)

Sushil