

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00676/2016

Jabalpur, this Monday, the 23rd day of July, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Govardhan Prasad Ahirwar,
S/o Late Shri Jwala Prasad Ahirwar,
Aged about 62 years, R/o Shiv Ward Bina,
District Sagar (MP)

-Applicant

(By Advocate –**Shri S.K.Mishra**)

V e r s u s

1. General Manager, West Central Railway,
Near Indira Market Jabalpur, Madhya Pradesh 482001

2. Divisional Railway Manager,
West Central Railway, Bhopal (M.P.)-262001

-Respondents

(By Advocate –**Shri Ashok Kumar Mishra**)

O R D E R (ORAL)

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against Annexure A-2 whereby the respondent department has passed the order for recovery of over stay period.

2. The applicant has sought for the following reliefs in this Original Application:-

“8. Relief(s) sought:-

8(i) The Hon'ble Tribunal may kindly be pleased to call for the relevant records from the respondents.

8(ii) The order dated 16.10.2015 (Annexure A-2) may kindly be quashed.

8(iii) The respondents may kindly be directed to pay retrial benefits to the applicant within time frame period.

8(iv) Any other suitable order/direction which this Hon'ble Tribunal deems fit and proper, including the costs of litigation may also be granted to the applicant.

3. The case of the applicant is that the applicant was working on the post of Technician Grade I (Fitter) with the respondent department. At the time of entry in the Railway Service the applicant disclosed his date of birth as 10.10.1953 but his date of birth was erroneously recorded by the respondent department as 10.10.1954. In the year 1988 the applicant came to know that his date of birth was wrongly recorded in service record and the applicant submitted an affidavit dated 30.05.1988 in the Office of Foreman Loco Shed Bina, District Sagar stating that his correct date of birth is 10.10.1953 and the said mistake be rectified. A copy of the affidavit dated 30.05.1988 is annexed as Annexure A-1.

4. Now vide Annexure A-2 dated 16.10.2015 the respondent department has directed to stop his service with immediate effect and as per his correct date of birth 10.10.1953 he should have been superannuated on 31.10.2013. It has been further directed that recovery of salary and allowances for the overstay

period will be made as per rules. A copy of which is annexed as Annexure A-2 which is a letter dated 16.10.2015. The applicant submitted a representation dated 18.10.2015 before the respondent No.2 requesting to cancel the order of recovery of salary and allowances of the over stay period and release his terminal benefits. A copy of which is annexed as Annexure A-3.

5. The respondent department did not pay any heed on this representation and resultantly legal notice was served by the respondent department on 07.12.2015 but no reply has been received by the applicant. A copy of notice dated 07.12.2015 is annexed as Annexure A-4.

6. The main ground of the applicant is that there is no mistake on the part of the applicant and he never submitted wrong date of birth to the department and despite the request from the applicant, the respondent department did not correct the date of birth.

7. The respondents have filed their reply. The replying respondents have submitted that the applicant was appointed on 01.01.1983 and his date of birth is 10.10.1955 and during the course of maintaining the service record of staff who are attaining the age of retirement in preventive check, the date of birth of the applicant was verified from the Principal

Government Excellence Higher Secondary School Serial No. 1 Bina, District Sagar (M.P.) and it was found that the correct date of birth of the applicant is 10.10.1953. Hence, the applicant was stopped from working in the respondent department and the applicant has also been retired on 31.10.2013 on account of his correct date of birth 10.10.1953. It has been specifically submitted by the replying respondents that benefits of over stay or irregular retention in service beyond the age of superannuation period i.e. from 01.11.2013 to 16.10.2015 amount of Rs. 703793/- calculated and amount of Rs. 61529/- has also been deducted from the account of the applicant under the Railway Board Circular under RBE No. 25/2000 (Annexure A-5) and amount of Rs. 42264/- yet to be recovered from the applicant. A copy of the letter dated 28.10.2016 is annexed as (Annexure R/1).

8. We have heard the learned counsel for both the parties and also perused the documents attached with the pleadings.

9. In this O.A. the main dispute between the parties is regarding the recovery of over stay in the department. The applicant has relied upon the judgment passed by this Tribunal in Original Application No. 523/2010 decided on 10.11.2014. The main issue has been dealt with by this Tribunal and this

Tribunal has held that recovery is not sustainable in view of the judgment of the Hon'ble High Court of M.P. passed in Writ Petition No. 25845/2003 on 02.11.2004 in the matters of **P. Narayan vs. State of M.P. and Another**. The said order passed by this Tribunal in O.A. No. 523/2010 has been upheld by the Hon'ble High Court of Madhya Pradesh, Principal Seat at Jabalpur in Writ Petition No. 2610/2015 dated 13.03.2015. The applicant has also relied upon the judgment passed by this Bench in O.A. No. 200/00826/2017 whereby a similar issue has been dealt with by this Tribunal and has held that if there is no allegation of misrepresentation or fraud which could be attributed to the applicant and considering this fact the recovery of excess amount paid to the applicant is not proper as the employee has worked and was paid salary from his work done during the excess period. The Tribunal has also relied upon the judgment of the Hon'ble Apex Court in the matters of **State of Bihar and others vs. Pandey Jagdishwar Prasad**, 2009 (3) SCC 117.

10. On the other hand, the respondent department has relied upon Annexure R-1 which is passed on the basis of RBE No. 25/2000. It is pertinent to mention that the applicant was employed by the respondent department and the service record

was prepared by the respondent department on the basis of documents furnished by the applicant.

11. Despite an affidavit Annexure A-1 filed by the applicant regarding the correction of date of birth of the applicant as 10.10.1953 instead of 10.10.1954/55 which is dated 30.05.1988 no correction has been done by the replying respondents. This fact has also been disputed by the replying respondents in their pleadings.

12. The only case of the replying respondents is that before the retirement of the applicant, on verification from the Principal Government Excellence Higher Secondary School Serial No. 1 Bina, District Sagar, the correct date of birth of the applicant came to be known as 10.10.1953 and on that basis the applicant should have been retired on 31.10.2013. There is no whisper of any act of fraudulent or misrepresentation in the impugned order Annexure A-2 on the part of the applicant, which led for over stay of the applicant. So there is no fault of the applicant in any manner which leads misrepresentation to the replying respondents. Therefore, relying on the judgment passed in O.A. No. 200/00826/2017 and also in O.A. No. 523/2010, the applicant deserved for relief claimed by him.

13. Resultantly, the Original Application is allowed and the impugned order dated 16.10.2015 (Annexure A-2) is quashed and set aside to the extent of recovery of excess payment due to overstay in service. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member