

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/00019/2017

Bilaspur, this Thursday, the 19th day of April, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER

Chandram Singh, S/o late Jagat Ram, aged about 62 years, resident of near Sourabh Photo Studio Amleshwar Tahsil and District Durg (C.G.) 420021 -Applicant

(By Advocate – Shri Naveen Yadav, proxy counsel of Shri Kamal Kishore Patel)

V e r s u s

1. Union of India through the General Manager, South East Central Railway, Bilaspur (C.G.) 495004.
2. The Divisional Railway Manager, South East Central Railway, Bilaspur (C.G.) 495004.
3. The Divisional Personnel Officer, South East Central Railway, Bilaspur (C.G.) 495004.
4. The Assistant Personnel Officer, South East Central Railway, Bilaspur (C.G.) 495004 -Respondents

(By Advocate – Shri R.N. Pusty)

(Date of reserving order : 17.04.2018)

O R D E R

The applicant is aggrieved by retiring him earlier than his claimed date of birth and recovery made for the salary paid to him beyond the date of superannuation. Hence this O.A.

2. The applicant has sought for the following reliefs:

“8.1 This Hon’ble Tribunal may kindly be pleased to quash the impugned memo dated 29/03/2016 and kindly direct for refunding back salary and other payments for the working period from 1/2/13 to 29/10/2014 which has been recovered to the applicant.

8.2 This Hon’ble Tribunal may kindly be pleased to allow the original application and the respondent be kindly directed to treat the 30.10.1954 as actual date of birth in the interest of justice.

8.3 Any other relief or relief as the Hon’ble Tribunal may kindly deem fit and proper.”

3. Learned counsel for the applicant submits that the applicant is not pressing upon his date of birth and as such, the relief prayed in Para 8.2 is withdrawn.

4. Accordingly, this case is being decided for the relief sought for in Para 8.1 and 8.3 of the O.A.

5. The applicant submits that he was appointed on 07.11.1973 on the post of Porter. At the time of his appointment, the applicant had submitted mark-sheet of class 5th and 8th, wherein his date of birth is recorded as 30.10.1954. It has been submitted that some unknown employee has

changed his date of birth as 05.01.1953 from the service record of the applicant about which the applicant was not aware. The applicant worked in the respondent department till 29.10.2014 when he was retired and the salary paid from 01.02.2013 to 29.10.2014 has been recovered from the retiral dues of the applicant.

6. The respondents submit that, while opening the service record of the applicant, the date of birth was written as 05.01.1953 (Annexure R-1). The date of birth of the applicant was altered in the year 1981 (after a lapse of around 8 years) on the basis of duplicate transfer certificate. The proposal for alteration of date of birth from 05.01.1953 to 30.10.1954, could not be acceded to in view of the provision of Para 225 (4) (iii) of Indian Railway Establishment Code (IREC) (Vol – I), which reads as under:

“225 (4) (iii) where a satisfactory explanation (which should not be entertained after completion of the probation period, or three years service, whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the record amended.”

6.1 Because of the unauthorized correction made in the service record, the applicant continued in service for 21 months beyond date of superannuation. Therefore, vide order dated 29.10.2014 (Annexure R-3), it has been decided that the date of birth of the applicant has to be considered as 05.01.1953, as originally declared and recorded by him as per the school certificate at the time of opening of service sheet and his service has been terminated immediately (29.10.2014), as his retention beyond 31.01.2013 was irregular. The over payment drawn during the said period has been recovered in terms of Para 1801 (d) of IREC Vol-II.

7. This is the second round of litigation. Earlier, the applicant had filed OA No.203/01114/2015, in which this Tribunal had directed for deciding the representation of the applicant. The respondent department, vide its order dated 29.03.2016 (Annexure A-1) have rejected the request of the applicant for refund of the amount recovered.

8. Heard both sides.

9. Learned counsel for the applicant submitted that it is a right of the applicant to get the salary for the period he has worked. The applicant has not done anything wrong. The service record remains in the custody of the respondent department and no fraud has been committed by the applicant.

9.1 The applicant has placed reliance upon the judgment passed by the Hon'ble High Court of Chhattisgarh at Bilaspur in WP (S) No.4416 of 2012 (**Ambikeshwar Yadav vs. State of Chhattisgarh & others**) decided on 07.10.2013, wherein a Head Constable was allowed to continue in service even after the due retirement date of 31.12.2010 till 18.07.2012. The Hon'ble High Court has held as under:

“4. In the matter of State of Bihar Vs. Narasimha Sundram {1994 Supp. (3) Supreme Court Cases 705}, the concerned employee before the Hon'ble Supreme Court was allowed to continue in service beyond the age of retirement, however, the salary for the said extended period was not paid to him by alleging that the employee committed fraud in respect of his age. The High Court directed the State Government to make payment of salary for the said extended period during which the employee remained in service after the age of superannuation because he had worked during the said period and the said order of the High Court has been maintained by the Hon'ble Supreme Court.

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6. Considering the entire fact situation of the case and relying on the law laid down by the Hon'ble Supreme Court in the matter of State of Bihar Vs. Narasimha Sundram (Supra), this Court is of the considered opinion that the said part of the order whereby direction for recovery of the amount in accordance with Rule 65 of the Rules, 1976 has been directed against the petitioner is illegal and the same deserves to be quashed. The said part is accordingly quashed.”

10. On the other hand, learned counsel for the respondents submits that Rule 1801 (d) of IREC (Vol-II), clearly mentions the following:

“1801 (d) In the absence of specific orders to the contrary, every Railway servant shall demit service on the due date of superannuation. In case, for whatever reason other than specific orders to that effect, a Railway servant continues in service, beyond such due date, the period of over-stay shall be treated as irregular and the Pay/allowance etc. drawn during the said period shall be recovered.”

11. I have gone through the pleadings available on record and I find that this case is adequately covered by the judgment of Hon'ble High Court of Chhattisgarh at Bilaspur in the case of **Ambikeshwar Yadav** (supra). Therefore, salary for the period when the applicant had worked, needs to be paid. In this case, there is no fraud committed by the applicant in remaining in service. Hence, the recovery, which has been made by the respondent department, is illegal.

12. Accordingly, the OA is allowed. The impugned order dated 29.03.2016 is quashed. The respondents are directed to pay the salary to the applicant for the period from 01.02.2013 (the day after superannuation) to 29.10.2014 (the date up to which the applicant worked), within a period of 60 days from the date of receipt of certified copy of this order. In case the payment is not made within 60 days, interest @ 10% per annum, shall be paid to the applicant from 61st days onwards, till the date of payment. No order as to costs.

(Navin Tandon)
Administrative Member

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