

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 12th **Day** of April 2019)

Present:

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.330/00502/2014
(U/S 19, Administrative Tribunal Act, 1985)

Firangi S/o Kharpattoo R/o Village & P.O. Padri, District Mau.

.....Applicant

By Advocate: Shri A.D. Singh

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Varanasi.
3. Chief Personnel Officer, North Eastern Railway, Gorakhpur.
4. Assistant Divisional Engineer (West) North Eastern Railway, Mau.
5. Sri Jaiswal, Clerk to Assistant Divisional Engineer (West) North Eastern Railway, Mau.

..... Respondents

By Advocate: Shri Atul Kumar Shahi

ORDER

1. The present O.A. has been filed by applicant Firangi under section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:-

“i) To call the service record of the applicant and to direct the respondents to allow the applicant to join his duty as per correct date of birth dated 1.5.1958 instated of 01.05.1953 and pay him regular salary with arrears of pay and allowances

w.e.f. 30.4.2013 onwards till the date of reinstatement with all consequential along with 18% interest per annum.

- (ii) to take the suitable action against the respondent No. 5 and the other officer who has illegally manipulated the date of birth of the applicant in the service record.
- (iii) Grant such other reliefs, as the applicant might be found entitled to, in the facts and circumstances of the case.
- (iv) Allow the original application with cost".

2. The dispute in the present case is limited to the question as to what is the date of birth of applicant for purposes of his retirement from Government service since he is employed in the Railway. It is the case of applicant that his date of birth is 1.5.1958 but that the respondents unilaterally changed his date of birth to 1.5.1953 and retired him in the year 2015 whereas he was to retire on superannuation in the year 2018 since he was born in 1958 and not 1953 as decided by the respondents. To substantiate his date of birth as 01.05.1958, applicant has relied on a number of documents which he avers were issued by Railways and show his date of birth to be in the year 1958 and hence, the present O.A.

3. In the counter affidavit, respondents have taken the plea that as per the service book, the Date of birth of applicant is 1.5.1953 and applicant has been rightly retired on 30.4.2013 on attaining the age of superannuation. It is the further stand of respondents that different date of birth of applicant as per the stand of applicant as well as the date of birth recorded in the service book was presented before Chief Personnel Officer Gorakhpur who rightly took the decision that date of birth of applicant is 1.5.1953 and not 1.5.1958 as per letter

dated 12.12.2013 (Annexure SA-2). Hence, the O.A. being meritless deserves to be dismissed.

4. I have heard and considered the arguments of learned counsels for the parties and gone through the pleadings and the documents placed on record by both the parties as well as record produced by the learned counsel for the respondents.
5. Before proceeding further, reference may be made to letter dated 12.12.2013 whereby decision was taken by competent authority that the date of birth of applicant is 1.5.1953 and he is to retire on 30.4.2013. The letter reads as under:-

“**inlRrj jyos**

**dk; kŷ;
eMy jy i zU/kd@bat h0
okjk.kl h
fnukd 12-12-2013**

**I ſ; k Mŷy@1&1@LVkQ@ifjokn@M&6
mi egki zU/kd@l keld;
xkj [ki gA**

**fo”k; %le; I s iŷ nfyr mRiHMu dh fu;r I s fnukd 30-4-2013
dks I ōkfuorRr fd;s tkus ds I cŷk ea Jh fQjxh Hŷ iŷD Vŷdeŷ
dks vkonu i=**

**I nHk% ejji@okjk.kl h dks I Eckŷ/kr vki dk v- ‘k- i= I ŷ
iŷ@562@1@10@Mhi hth@93@2013 fnukd 11-11-2013-**

**I nHkR i= ds ifjiſ; ea lŷpr fd;k tkrk gſ fd fo”k; kŷdr
deŷkj h ds feŷl y@QŷMj ea tŷefrffk dŷ’k%01-051953] 01-01-
1958 rffk 01-05-1958 ik;k x;kj fu.kŷ grqfeŷl y I gk;d eMy
bat hfu;j@if’pe@em }kj k fu;ekuŷ kj tŷefrffk fu/kŷ.k grq
dŷ eŷ; dkfeŷl vf/kdkjh@xkj [ki g egkn; ds ikl Hŷtk x;kA
ftl eamŷgkus 01-05-1953 ij viuh I gefr inku fd;k gŷ ftl dh
Nk;k ifr I ŷXu gŷ ml h ds vuŷkyu ea Jh fQjxh dks fnukd
30-04-2013 I s I ōkfuorRr fd;k x;k gŷ**

I knj I ŷukFkz iŷ”kr

**eMy bat hfu;j@l keld;
okjk.kl h**

ifrfyfi

ejji@okjk.kl h egkn; ds I knj I ŷukFkz iŷ”kr

**eMy bat hfu;j@l keld;
okjk.kl h”**

6. From the document on record as well as the letter dated 12.12.2013 it is apparent that the records show different date of birth of the applicant. In some documents, it is recorded as 1.5.1953, 1.1.1958 or 1.5.1958. In fact reference may be made to the Service Book produced by learned counsel for respondents, which reflects the age of applicant on the date of employment on 18.6.1978 to be 18 years. If this is correct, a fourth date of birth of the applicant comes into existence.
7. The official document produced by both the sides reflects different date of birth. Even so the service book of the applicant shows his date of birth to be 1.1.1958. With regard to date of birth in the service book, learned counsel for the respondents submitted that applicant had tampered with the service book insofar as his date of birth is concerned. This argument has been countered by learned counsel for applicant by submitting that the service book remains in the custody of the respondents and there would be no occasion for the service book to come into the custody of the applicant, as such, question of the applicant tampering with the date of birth in his service book does not arise.
8. Looking to the documents produced by both the sides, it comes out that date of birth as per the applicant is recorded to be in the year 1958 whereas according to the respondents, the date of birth of applicant is in the year 1953 and which dates are again contradicted by the date given in the service book of the applicant. In any case, respondents could not have unilaterally held out the date of birth of applicant to be in the year 1953 without giving an opportunity of being heard to the applicant. In this manner,

respondents have violated principle of natural justice and changed the date of birth of applicant unilaterally.

9. In view of the facts and circumstances of the case, the O.A. is disposed of with the direction to the respondents to hold the enquiry into the correct date of birth of the applicant after issuing notice to the applicant to file his reply along with relevant documents in support of his contention that his date of birth is in the year 1958 and thereafter take a decision based on the reply of the applicant and the record available with the respondents within a period of four months from the date of receipt of a copy of this order and dispose of the order by way of reasoned and speaking order with information to the applicant. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

Manish/-