

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00211/2018

Reserved on: 08.02.2019
Pronounced on: 21.02.2019

C O R A M
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Shri Punit, son of Shri Late Baldeo, Ex-Sr. Trackman under S.S.S./P.W/BMKI Bapudham, Motihari, District- East Champaran, at present residing at Village- Ratnpur, PO- Pipra Kothi, District- East Champaran.

..... Applicant.

- By Advocate(s): - Mr. Abdul Hakim
Mr. Sadan Kumar Singh

-Versus-

1. The Union of India, through the General Manager, EC Railway, Hajipur, District- Vaishali (Bihar) Pin-844101.
2. The Divisional Railway Manager, Samastipur Division, EC Railway, Samastipur- 848101.
3. The Divisional Railway Manager (Personnel), Samastipur Division, EC Railway, Samastipur-848101.
4. The Divisional Railway Manager (Engineering), Samastipur Division, EC Railway, Samastipur-848101.
5. The Senior Section Engineer (Rail Path), EC Railway, Bapudhan, Motihari at and PO- Motihari, Dist.- East Champaran, Pin- 845401.

..... Respondents.

- By Advocate(s): - Mr. B.K. Choudhary.

O R D E R

Dinesh Sharma, A.M.:- The case of the applicant is that he was appointed as a Trackman/Gangman on 17.05.1997. His date of birth, as stated in the salary slips, is 21.12.1957 and the date of retirement 31.12.2017. However, after returning him from duty on 30.04.2017 he has been informed by a letter dated 21.07.2017 that he should have retired on 31.12.2013 since his date of birth is entered in his service record as

21.12.1953. He has also been informed that the payments made to him since 01.01.2014 would also be recovered from him. The applicant has alleged that he is an illiterate grade-IV employee and he had no knowledge of the date of birth and other particulars recorded in his service records. He has, therefore, requested for setting aside the notification dated 21.07.2017 and for directing the respondent authorities to treat the applicant in service till 31.12.2017.

2. The respondents have denied the claim of the applicant. They have produced a copy of the medical test and fitness certificate dated 28.02.1997 (Annexure R/1) in which his date of birth is mentioned as 21.12.1953 and it also carries the applicant's thumb impression. The respondents have also produced the office order dated 15.06.1997 by which the applicant was appointed as Gangman. This order also shows his date of birth as 21.12.1953. The respondents have claimed that the applicant should have retired according to the aforesaid date of birth since he was aware of his own date of birth. He cannot take advantage of the mistake in the office. The respondents have also quoted the decisions of Hon'ble Apex Court dated 28.02.1997 in the case of **Radha Kishun Vs. UOI & Ors.** [1997 SCC (L&S) 1185] to support recovery of the excess amount paid.

3. The applicant, in his rejoinder, has asserted that a medical officer cannot estimate age or the exact date of birth. Since the applicant was not aware of his date of birth and does not understand English, he cannot be expected to be aware of what was written in the medical fitness

certificate. He has also questioned the veracity of the relevant page of the service record and alleged that the decision of the Hon'ble Supreme Court in Radha Kishun's case is not applicable to him. He has also annexed the decision of the Railway Board dated 22.06.2016 (RBE No. 72/2016) which directs all Railway authorities to implement the decision of the Hon'ble Supreme Court dated 18.12.2014 in the case of **State of Punjab Vs. Rafiq Masih (White Washer).**

4. We have gone through the pleadings and heard learned counsels of both the parties. The applicant claims that he is not aware of his date of birth and his continuance in service beyond what is mentioned as his date of birth in his service records is entirely the fault of his employer. The respondents, however, consider him also to be an accomplice in the act of wrong continuation in service beyond his due date of retirement. Going through the evidence produced before us it is clear that while his date of birth and date of retirement were being constantly flashed in every salary slip as 21.12.1957 and 31.12.2017 respectively, his allegedly actual date of birth was in the records kept (invisible) with the Railway's department. Hence, it may be reasonable to presume that he might not have been aware of the date of birth mentioned in his service file kept with the Railways. The respondents have heavily relied upon this Tribunal's decision in OA 260/2013 which was based on the judgment of the Hon'ble Apex Court in Radha Kishun's case. In all these cases it was an admitted fact that the employee therein was aware of his date of birth while in this case there is a reasonable likelihood of his being not aware of it. The learned counsel for the applicant has also brought to our notice the decision of the Hon'ble Apex

Court in **State of Bihar Vs. Narasimha Sundaram** (AIR 1994 SC 599). In this case, an Executive Engineer was allowed to claim his salary beyond his true age to retire and this was done in spite of an alleged fraud by the officer of that rank. The learned counsel also brought to our notice the decision in **Mahanagar Railway Vendors' Union Vs. Union of India & Ors.** [1994 SCC (L&S) 735] which establishes that a three judges Bench decision overrides a two judges bench decision. The **Narasimha Sundaram's** decision is by a three judges Bench (including the Chief Justice of India) and therefore it should override the later two judges Bench decision in **Radha Kishun Vs. Union of India & Ors.** (where this earlier decision was not even mentioned). A similar decision of the CAT, Bombay Bench, decided on facts very similar to this case (overstaying in service from 01.11.1992 to 17.06.2003) was also brought to our notice, and it squarely supports decision in favour of the applicant.

5. In the light of the facts of this case and the judgments cited above, and also in the light of the judgment of the Hon'ble Supreme Court in the Rafiq Masih's case, any further action to punish the applicant or to recover the salary paid during the period of the alleged overstaying will be wrong. The applicant should, therefore, be retired from the date he was told not to come to work, and paid all dues including retirement benefits, if any, without any further delay. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member

Srk