

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00632/15

Date of Order: 26.02.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Anjani Kumar Sinha, Son of Late Jagdish Prasad, Ex-Office Superintendent, Office of the Chief Commercial Manager, East Central Railway, Hajipur, District- Vaishali (Bihar, Resident of Mohallah- Karbigahiya, Opposite of Power House, PO- GPO, District- Patna- 800001 (Bihar).

... **Applicant.**

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The Chief Commercial Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
4. The Financial Advisor & Chief Accounts Officer, East Central Railway, Hajipur, District- Vaishali (Bihar).

... **Respondents.**

By Advocate: - Mr. S.K. Ravi

O R D E R
[ORAL]

Per Dinesh Sharma, A.M:- This OA is against the orders dated 01.09.2014 and 02.12.2014 passed by respondents no. 2 (General Manager, Personnel, East Central Railway) whereby the date of birth of the applicant was determined as 02.01.1955 (instead of 02.01.1956) and on the basis of which the applicant has been retired from service on 31.01.2015. The applicant alleges that he was asked by a letter dated 31.07.2014 to submit

documents in support of his date of birth. The applicant without verifying his documents submitted information on 14.08.2014 on the basis of pay slip issued by the respondents in which his date of birth has been shown as 02.01.1955. However, after making efforts to search his documents in support of his date of birth he ultimately found his matriculation certificate which indicates his date of birth as 02.01.1956 and not 02.01.1955. He made a representation on 22.09.2014 enclosing the certificate. However, the respondents have issued the impugned order and forcibly retired him on 31.01.2015. His various representations after his superannuation have not been responded to. He also got a copy of his service book by seeking information under RTI Act and the information provided to him on 29.04.2015 confirms that the service book of the applicant also carries the figure 02.01.1956 both in numbers and figures. Since all these documents clearly show his date of birth available in the service records of the employer to be 02.01.1956 the applicant has prayed for quashing the orders dated 01.09.2014 and 02.12.2014 and for granting arrears of salary and other consequential benefits.

2. The respondents have denied the claim of the applicant in their WS. Though they have not broadly disputed the sequence of facts quoted by the applicant they have justified retiring him on 31.01.2015 on the basis of his own declaration about his date of birth being 02.01.1955. They have also argued that the applicant being an Office Superintendent was so negligent in submitting the correct date of birth he does not deserve any sympathy of this Tribunal. They have also quoted the judgment of the

Hon'ble Patna High Court in case of Ragjawa Narayan Mishra which, according to them, does not allow anyone to remain in government service for more than 40 years of service.

3. We have gone through the pleadings and heard the learned counsels of both the parties. At the time of arguments, the learned counsel for the applicant agreed that since the applicant did retire one year earlier than the date he completed 60 years and has not worked for this period of one year his claim for payment of salary may not be granted at this stage. However, in the interest of justice, he should be given the benefit of higher pension that could have been rightfully his if he was retired at the correct time by granting him the benefit of a notional increment. Since the loss of pension is a continuing loss the Tribunal should consider at least this relief to him. The learned counsel for the respondents, on the other hand, argued vehemently against grant of any relief. The learned counsel again pointed out the decision of the Patna High Court (quoted in their WS) according to which a person cannot enter into any contract before attaining the age of majority (which would be the case if the earlier date of birth was accepted). Therefore, the applicant's claim for any benefit is also not admissible on that account.

4. The fact that the applicant's date of birth was recorded as 02.01.1956 is accepted by both the parties. It is also not disputed that his matriculation certificate also shows the same date. Since there is no serious dispute regarding these facts, the main issue that needs to be decided by us is whether the applicant can still be given any benefit by accepting his date

of birth as 02.01.1956. We have gone through the decision of Hon'ble Patna High Court quoted above. There the case was about completing 40 years of service or attaining the age of 58 years for getting superannuated under the Bihar Service Code, 1952. In that context, the Hon'ble Court came to the conclusion that a person cannot be continued beyond 40 years. While observing that no one can enter into an enforceable contract before attaining the age of majority the finding of the Hon'ble Court was that such person cannot take advantage of his or her own infirmity since "it is a settled and established proposition of law and principles of jurisprudence that a person who takes undue advantage by one or other reasons at the entry point in the service cannot be allowed to urge that he be given higher benefit". Thus, by that decision a government servant who had completed 40 years of service could be retired (even if they had not reached 58 years) meaning thereby that the service rendered as a minor was in fact counted towards the period of service. In the present case, we have not been informed about any rule relating to the services under Railways which fixes the maximum number of years as 40 (or any other number) as was there in the Bihar Service Code. Thus, the decision quoted by the respondents will not apply on the facts of this case.

5. It is very clear that the recorded age of the applicant as well as the one mentioned in the matriculation certificate is 02.01.1956 and the applicant was retired only because he erroneously mentioned a different date, which he later sought to be corrected but not allowed to do so by the respondents. In this situation, the applicant deserves the relief of at least

treating him notionally in employment till the date of his due retirement on completion of 60 years on 02.01.1956. The respondents are, therefore, directed to re-work the pension and other retiral benefits of the applicant treating him as if he retired on 31.01.2016. Though there will be no need to pay him any wages for this period, if any increment was due during that period that should be notionally given to him while calculating his pension. Necessary orders to implement the above direction shall be passed by the concerned authorities within two months of the receipt of this order. The OA is disposed of accordingly. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member