

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT SITTING AT RANCHI
OA/051/00195/17**

Reserved on: 08.04.2019
Pronounced on: 12.04.2019

C O R A M

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

Bhikhari Prasad Mahto, son of Late Sanu Mahto, Resident of Village-Khesmi, PO- Gomoh, PS- Topchanchi, District- Dhanbad, Jharkhand, age 65 years-828401.

.... Applicant.

By Advocate: - Mr. Rajendra Prasad

-Versus-

1. Deleted.
2. General Manager, East Central Railway, Hazipur, PO- Hazipur, PS- Hazipur, District- Hazipur, Bihar- 844101.
3. Divisional Railway Manager, Dhanbad, PO- Dhanbad, PS- Dhanbad, District- Dhanbad- 826001.
4. Senior Section Engineer (C&W), I/C N.S.C.B. Gomoh Junction, PO- Gomoh, PS- Topchanchi, District- Dhanbad- 828401.

.... Respondents.

By Advocate: - Mr. P.D. Singh

O R D E R

Per Dinesh Sharma, A.M:- The case of the applicant is that he retired from service 31.05.2012 from the office of Senior Section Engineer (C&W) I/C, NSCB, Gomoh Junction. He was appointed as Casual Waterman in the office of CRW, Senior Section Engineer, Dugdha in the year 1973 and at the time of his appointment his date of birth was recorded as 10.05.1952. There has been no dispute about the date of birth till the date of his retirement.

In all service records including the Booklet of Pension Forms his date of retirement has been shown as 31.05.2012 and the date of birth 10.05.1952. However, after his retirement the Department is claiming that his date of birth was 31.05.2010 and thus he has been denied payment of retirement benefits. The applicant has prayed for payment of gratuity together with compound interest, pay for leave encashment of 300 days, interest for the delayed payment of Provident Fund and to fix his pension on the basis of last ten month's salary before his retirement on 31.05.2012.

2. The respondents have denied the claim of the applicant. They have alleged that during the course of verification at the time of the applicant's retirement from service w.e.f. 31.05.2012, it was found that his date of birth was wrongly written as 10.05.1952 instead of 10.05.1950. Subsequently, the concerned school was contacted and the school (Azad Hind High School, Gomoh) confirmed that his date of birth was 10.05.1950. The matter was referred to the Headquarters East Central Railway, Hajipur and the GM(P), EC Railway, Hajipur conveyed the approval of competent authority for taking action against the applicant in terms of RBE No. 288/1987 and 139/1999. The respondents have also stated that in terms of the decision of Apex Court in **Radha Kishun Vs. UOI & Ors.** in SLP (C) No. 3721 of 1997 (arising out of OA 652/1995 dated 26.11.1996 of CAT, Patna) the Hon'ble Supreme Court has ruled that a person continuing in service beyond the age of superannuation has no right to claim pay and allowances. The Hon'ble Supreme Court has held that the employee is equally responsible for his overstay in office beyond the age of superannuation. The

Department has stated that they have made deductions accordingly and sanctioned basic pension along with relief w.e.f. 01.06.2010 (assuming his retirement from 31.05.2010).

3. The respondents have also filed an additional written statement on 08.04.2019 in which they have enclosed a copy of the transfer certificate showing signs of overwriting in the date of birth and also a copy of the letter from Azad Hind Uchha Vidyalaya, Gomoh confirming the date of birth of the applicant as 10.05.1950.

4. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties. The applicant's argument is that he has served the Railway Department for close to 40 years and during all this period his date of birth has been shown as 10.05.1952. Changing this date of birth after his retirement on the basis of any suspicion of overwriting is absolutely unjust. The applicant claims to be unaware of what was mentioned in the original transfer certificate as it was in possession of the respondent authorities. The learned counsel for the applicant also cited cases of (i) **Ram Kishun Mahto Vs. J.S.E.B.**; SCR 2003(2) page 400, (ii) **Arjun Prasad Yadav Vs. State of Yadav**; SCR 2003(4), (ii) **Ram Prasun Singh Vs. State of Jharkhand**; JCR 2005(4) and (iv) JCR 2006(4) page 147 in support of his claim about the illegality involved in not paying him salary for the period for which he is alleged to have remained in service after the date of his superannuation. The learned counsel for the respondents argued in favour of such deduction (for the period of alleged overstay) on the basis of the decision in Radha Kishun (supra) and the Railway Board's instructions

contained in 288/1987 and 139/1999 (Annexure R/2). We have gone through these rules and also the decisions cited by both the parties. It is true that the Hon'ble Apex Court has found justification in deducting a person's salary when it was not in dispute that the person was aware (or should have been aware) of his date of birth and thus was a party to the wrongful continuance in office against the rules of service. In the present case, there is no conclusive evidence of the applicant's collusion in the wrongful act. The applicant was appointed almost four decades earlier to a low unskilled job. The Department has discovered, two years after his retirement, about his date of birth not being what was mentioned in the service records. In this situation, there cannot be a definite conclusion about applicant's complicity, in hiding or mis-stating, his actual date of birth, and he deserved to be given the benefit of doubt. The deduction of pay for the period for which the Department actually used his services will, therefore, be wrong. Since the Department has now clearly found that his date of birth was 10.05.1950 (and not 10.05.1952) and since the applicant has not been able to produce anything to controvert it, it will also not be correct to give him the advantage of retirement benefits that would accrue to him if there was no mistake in recording his date of birth. We feel that interest of justice will be served if a via media is adopted. We direct the respondents to fix his pension deeming him retired on 31.05.2010 while not deducting anything for whatever was paid to him by way of salary and other benefits during the period of his alleged overstay till 31.05.2012. The revised orders to this effect should be issued and consequential benefits released to the applicant

within 3 months from the date of receipt of this order. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member