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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

CPC/350/00008/2019
In O.A. No. 350/01902/2018.

Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble -Dr.(Ms) Nandita Chatterjee, Administrative Member

Shri Bijoy Tanti
Son of Late Baky Lal Tanti
Aged about 60 years
Residing at 184/E, Guard Colony,
Maharani Swarnamoyee Road, Kolkata-700009.

.....Petitioner

By advocate : Mr A.K. Gayen

- Versus -

1. Shri Prabhas Dhansana
Divisional Railway Manager,
SDAH/E.Rly. Sealdah Division, DRM
Building, Kolkata-700014.
2. Sanjay Kumar
Senior Divisional Personnel Officer/
SDAH/E.Rly. Sealdah Division,
DRM Building, Kolkata-700014.
3. Santanu Saha,
Senior Divisional Engineer (Co-ordination)
Sealdah Division, E. Rly.
At DRM Building/SDAH, Kolkata
700 014.
4. Kartick Singh,
Senior Divisional Engineer-II/
SDAH/E.Rly. at DRM Building,
SDAH, Kolkata - 700014.
5. Kamal Ghosh
Senior Section Engineer (works)
/Sonarpur, Sealdah Division/E.Rly.,
Near Platform No.1, Sonarpur Station,

Kolkata-700150.

.....Contemnors/Respondents

By Advocate : Mr B.P.Manna

Date of Hearing : 08.11.2019

Date of Order : 21.11.19

ORDER

MRS BIDISHA BANERJEE, MEMBER(J)

In his penchant to get the recorded date of birth corrected almost on the verge of retirement, the applicant has preferred the O.A.1902/2018 for the following reliefs :

"a) Issue direction upon the respondents, their agents, sub-ordinates servants, associates to forthwith make correction rectification and/or amending service record of the applicant on the basis of the recommendations and/or guidelines made by the assistant Engineer (South)/E.Rly. Sealdah Division dated 19.03.2018 being annexure 'A-11' to the instant application without giving any effect and/or further effect and/or quashing and/or setting aside of the decision dated 11.12.2018 passed by this authorities being annexure 'A-15' herewith.

b) Issue direction upon the respondents, their agents, sub-ordinates servants, associates to take appropriate steps on the basis of the representations of the applicant dated 27.02.2018, 21.03.2018 following the office Memorandum dated 23.10.2013, 30.09.2015 and 12.01.2018 with regard to the rectification of irregularities as pointed out by the concerned respondents dated 13.10.2017 and also the correction of date of birth and as such by not giving any effect and/or further effect of the notice of retirement dated 29.11.2018 till the disposal of this application.

c) Direction be made upon the concerned respondents to take appropriate steps with regard to the leave status and also the rectification of service record of the applicant including correction of date of birth or the applicant on the basis of the prevalent Rules and Regulations and also the office memorandums of the Railway Board as well as Central Govt. forthwith.

d) Such further order or orders, direction or directions be made as Your Lordships may deem fit and proper."

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He obtained an interim order on 21.12.2018 from this Tribunal.

2. The CPC 8/2019 arising out of O.A.1902/2018 has been filed for alleged violation of an interim order dated 21.12.2018 passed by this Tribunal in O.A.1902/2018. The interim order reads as under :

Ad-interim order by directing the concerned Railway Authorities more particularly the authority of Sealdah Division to withdraw the notice of retirement issued in favour of the applicant dated 29.11.2018 and allow the applicant to continue in his service till the disposal of the application or till superannuation on the basis of his date of birth as 01.01.1961 supplied by the School authority and/or stay of such notice dated 29.11.2018 till disposal of the application.

Therefore, I make it clear that status quo so far as the continuance of the applicant is concerned in his present place of posting will be maintained until further orders.

Ld. counsel for Official Respondents vehemently opposed to grant of interim order. However, Respondents is granted liberty to file petition for modification or alteration of the interim order.

Applicant is granted liberty to bring this order to the notice of the respondents.

3. The applicant has alleged that despite a status quo order passed in regard to his continuance with service, the respondents have deliberately and consciously violated the order by not allowing the applicant to continue in terms of the interim order dated 21.12.2018. They have issued orders for superannuation with effect from 31.12.2018.

4. The learned counsels for the parties were heard and the materials placed on record were perused. It was submitted that the applicant was a substitute in 1983. His services were regularized in 1985. He was medically decategorised on 14.10.2011 and posted as Mason in Engineering Department under SSE/Sonarpur. Since the

applicant has alleged that the date of birth recorded in the Service Book is erroneous, we had called for the Service Book only to decipher that the date of birth recorded therein was 01.01.1959 and under clear signature of the applicant.

5. Learned counsel for the applicant strenuously argued that applicant was an illiterate person and therefore had no knowledge about what was being recorded in his service book, as such he was entitled to seek correction in date of birth long after his entry into service. In this regard Railway Circular RBE.182/1986 was cited, the extract whereof would runs thus :

"II. Procedure in regard to alteration of date of birth: -

1. The date of birth as recorded in accordance with the rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case of Group 'A' & 'B' railway servants and a General Manager in the case of Group 'C' & 'D' railway servants to cause the date of birth to be altered.

(i) Where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in service longer than if the alteration had not been made, or

(ii) Where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or

(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. (Rule 255-RI).

2. As a one time exception to the time limits laid down in para II.1 above, the Railway employees in service on 03.12.1971 were allowed to represent their cases for alteration in the recorded date of birth latest by 31.07.1973.

After 31.07.1973, no request for alteration in the recorded date of birth can be entertained if it has not been submitted before completion of the probation period or three years service whichever is earlier. (E (NG) 11/70/BR/1 dated 04.08.1972)

3. It is clarified that the above time limits will not apply in the case of illiterate Group 'D' staff. (E (NG) 11/78/BR/12 dated 25.10.1978) & (E (NG) 1/86/BR/7 dated 19.10.1986)"

6. We discern from the educational qualification certificate that applicant had cleared Standard VI and had taken admission in Standard VII in Janata Shishu Sadan, which issued a transfer certificate long after he left the School, on 02.07.2017, recording his date of birth as 01.01.1961. It was this certificate on the basis of which the applicant sought for correction of his date of birth in the service book and continuation for two more years on the basis of such correction.

7. Having discerned that the applicant read at least upto Standard VI, we fail to concur with the view of the applicant that he is an illiterate person and is therefore entitled to seek rectification/alteration of the recorded date of birth in terms of school certificate as the basis of RBE 182/1986.

8. We further discern that this is the second journey of the applicant to this Tribunal. The earlier O.A, being 548/2018, was disposed of with a direction upon the respondents to issue a reasoned and speaking order on the applicant's representation for correction of the recorded date of birth, and the Sr. DEN/Cordn. having duly considered his representation in accordance with the relevant provisions found the plea as not tenable and rejected his

prayer with a speaking order dated 11.12.2018, which is under challenge in the present O.A..

9. Since we find no infirmity in the action of the respondents, we dismiss the O.A., ^{as well as the MA, B.} as the prayer seeking change of date of birth at this distant time and long after his entry was not tenable. We are fortified by the following judgments :

Coal India Ltd. vs. Ardhendu Bikash Bhattacharjee & Ors. (04.04.2005) & State of Maharashtra & Anr. Vs. Gorakhnath Sitaram Kamble (16.11.2010) etc.

10. However, before we part, we would hasten to add that we have already found the deliberate violation of the interim order passed by this Tribunal in regard to continuance of status quo. Therefore, we issue notice upon the respondents why exemplary costs would not be imposed upon the respondents, particularly in view of the fact that the respondents have not preferred any application to seek vacation/alteration/variation of the interim order prior to superannuating the applicant.

11. CPC is accordingly posted on 10.01.2020.

12. Issue notice to the respondents.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)