

GAHC010015592022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/687/2022

NORTH EAST FRONTIER RAILWAY,
(NFR), REP. BY ITS GENERAL MANAGER, ,
MALOGAON, GUWAHATI-781011.

2: DIVISIONAL RAILWAY MANAGER (P),
N.F. RAILWAY, LUMDING DIVISION
P.O. LUMDING, DIST.- NAGAON
ASSAM, PIN- 782447.

3: THE DIVISIONAL ACCOUNTS OFFICER,
N.F. RAILWAY, LUMDING DIVISION,
P.O. LUMDING, DIST. LUMDING,
NAGAON, ASSAM, PIN- 782447.

VERSUS

BARIKMIYA CHOUDHURY
S/O- LATE SIFAT ALI CHOUDHURY,
R/O- VILL.- KALINAGAR, PART-V,
P.O. KALINAGAR, DIST.- HAILAKANDI,
ASSAM, PIN- 786192.

For the Petitioners : Mr. B.K. Das, Advocate.

Mr. H.P. Guala, Advocate.

For the Respondent : Mr. M.H. Laskar, Advocate.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

29.05.2023

(Sandeep Mehta, CJ)

The instant writ petition has been preferred by the petitioner Northeast Frontier Railways and another questioning the legality and validity of the order dated 28.09.2021 passed by the Central Administrative Tribunal, Guwahati Bench, whereby O.A. No.23/2020, filed by the respondent Sri Barik Miya Choudhury seeking a direction to change his date of birth in the service record of his late father, Sifat Ali Choudhury, an employee of Technician Grade-III (Mason) in the Lumding Division of Northeast Frontier Railway was accepted and the petitioners were directed to alter the date of birth of the respondent as recorded in the service record of Sifat Ali Choudhury from 15.04.1992 to 15.04.1996 and to grant him consequential benefit of family pension till attaining majority.

2. Brief facts relevant for disposal of the writ petition are narrated hereinbelow.

The late railway employee, Sifat Ali Choudhury died in harness on 28.09.2001 while he was serving as a Technician Grade-III (Mason) in the Lumding Division of Northeast Frontier Railway. After his death, the family pension and other service benefits were disbursed in favour of the wife of the deceased Railway servant, namely, Smt. Kulsuma Bibi. During his lifetime, Sifat Ali Choudhury submitted a declaration form of his family members on

26.02.1994 wherein at Serial No.5, the name of his son Barik Miya Chowdhury, respondent herein was mentioned and his date of birth was given as 15.04.1992.

3. The wife of the deceased Railway employee, Smt. Kulsuma Bibi passed away on 31.01.2008 and, thereafter, Md. Altaf Hussain Chowdhury, i.e. the elder brother of the respondent herein applied for being appointed a guardian of his younger brother, Barik Miya Choudhury, by filing an application to the District Judge, Hailakandi. By order dated 06.11.2008, Md. Altaf Hussain Chowdhury was appointed as a guardian of his minor brother Barik Miya Choudhury. The date of birth of Barik Miya Chowdhury, i.e. the respondent herein, was recorded as 15.04.1992 in the guardianship certificate, which was submitted to the Railways and on the basis thereof pension was disbursed in favour of the respondent vide Pension Payment Order, P.P.O No.0406021727, dated 08.12.2009, with effect from 01.02.2008.

4. The date of birth of the respondent, as available on record, i.e. the family declaration as well as guardianship certificates, was 15.04.1992 and thus no sooner he attained majority on 14.04.2017, the family pension being paid to him was stopped in accordance with Rule 75(6)(ii) of the Railway Services (Pension) Rules, 1993. One and half years later, the respondent Sri Barik Miya Choudhury submitted a representation dated 11.10.2018 to the Divisional Manager (P), N.F. Railway, Lumding praying for rectification in his date of birth as 15.04.1996 instead of 15.04.1992. The said prayer was not accepted, whereupon the respondent initially filed a writ petition, being WP(C) No.8038/19 in this Court.

Finding that the writ petition was not maintainable, the respondent was

relegated to seek remedy before the Central Administrative Tribunal for redressal of his grievances.

5. Accordingly, Sri Barik Miya Choudhury, i.e. the respondent herein, filed Original Application No.23/2020 before the Central Administrative Tribunal, Guwahati claiming that his mother was an illiterate person and thus, she wrongly disclosed his date of birth as 15.04.1992 instead of 15.04.1996 at the time of submitting the pension papers. The application was considered by Division Bench of the Central Administrative Tribunal. The Member Judicial accepted the prayer of the respondent for change in the date of birth in the family declaration form with consequential benefits. However, the Member, Administration denied such relief to the applicant, whereupon the matter was referred to the third Member, who accepted the claim/original application of the respondent vide order dated 28.09.2021 and directed that the date of birth of Barik Miya Choudhury shall be altered from 15.04.92 to 15.04.96 in the service record.

The order dated 28.09.2021 is challenged in this writ petition.

6. Mr. B.K. Das, learned counsel representing the petitioners vehemently and fervently urged that the Tribunal had no jurisdiction to entertain a prayer for change in the date of birth of the relative of an employee because such a dispute would not be covered under the definition of "service dispute" as provided under Section 3(q) of the Administrative Tribunals Act. He further submitted that the claim of the respondent seeking change of date of birth was patently fraudulent on the face of the record because his father, the deceased employee, Late Sifat Ali Choudhury submitted the family details application to

the employer under the Railway Pension Scheme on 26.02.1994 and in this application, the name of the respondent Barik Miya Choudhury is shown and his date of birth is mentioned as 15.04.1992.

Mr. Das urged that if the date of birth, as claimed by the respondent, i.e. 15.04.1996, is accepted then, apparently, he was not even born when the family details were provided by his father to the employer on 26.02.1994. He urged that the Tribunal committed gross illegality and acted without jurisdiction in accepting the prayer for change of date of birth of the respondent by the impugned order dated 28.09.2021 and thus, the same deserves to be quashed.

7. Mr. M.H. Laskar, learned counsel for the respondent submits that as a matter of fact the respondent was compelled to approach the Tribunal because the learned Single Judge of this Court gave him the liberty to do so vide order dated 06.12.2019 passed in WP(C) No.8038/2019. He, however, prays that in case this Court is of the view that the Tribunal was not seized of jurisdiction to entertain the application then the respondent may be permitted to file a civil suit for seeking appropriate remedy.

8. We have given our thoughtful consideration to the submissions advanced at Bar and have also gone through the impugned orders and the material placed on record.

9. At the outset, we may note that the relief which the respondent sought through the application before the Central Administrative Tribunal was to change his own date of birth in the service record of his father, the late railway employee. Apparently, thus, the prayer was not in relation to the service

dispute/service condition of the employee and thus, the Central Administrative Tribunal was not having the jurisdiction to entertain the Original Application as provided under Section 14 of the Central Administrative Tribunals Act, 1985. The passing observation made by the learned Single Judge while rejecting the writ petition, WP(C) No. 8038/2019 vide order dated 06.12.2019 that the subject matter of the case falls within the jurisdiction, power and authority of the Central Administrative Tribunal by itself would not confer jurisdiction upon the Tribunal to entertain a dispute which is not covered by Section 14 of the Administrative Tribunals Act, 1985.

In addition, we are compelled to note that the declaration made by the late employee Sifat Ali Choudhury to his employer on 26.02.1994 under the Railway Pension Scheme clearly refers to the name of the respondent and his date of birth is mentioned therein as 15.04.1992. Thus, a serious question mark arises on the claim of the respondent that his actual date of birth is 15.04.1996. The deceased employee could not have mentioned the name of the child yet to be born in the details of his family members while making the declaration.

10. The Member Judicial of the Central Administrative Tribunal did not even consider this manifest anomaly in the claim of the respondent and casually brushed aside this vital aspect by observing that the father of the applicant (respondent herein) was an illiterate man and, thus, there was an inadvertent error on account whereof the wrong date of birth of the applicant (respondent herein) was entered in the service record of his father. We feel that the Tribunal failed to advert to this fundamental aspect of the case, because even if it is assumed that the respondent's father Sifat Ali Choudhury, i.e. the late employee was an illiterate person, how would he mention the name and date of birth of

his son (Barik Miya Choudhury) in the Pension Declaration Form in the year 1994 even though the son was yet to be born (as the respondent has claimed that his date of birth to be 15.04.1996)? It may be stated here that the petitioner (respondent herein) never disputed the fact that the declaration form was furnished by his father Late Sri Sifat Ali Choudhury on 26.02.1994. Furthermore, even in the guardianship certificate procured by Md. Altaf Hussain Choudhury, i.e. brother of the respondent herein, the date of birth of the respondent appears as 15.04.1992.

11. In the light of the above discussion, we are of the firm view that the order passed by the Tribunal is not only without jurisdiction but also suffers from total non-application of mind to material facts leading to a situation of absurdity. Thus, the order dated 28.09.2021, which is under challenge, is hereby reversed and quashed. The respondent is, however, at liberty to take recourse to appropriate remedy for ventilating his grievances by approaching appropriate forum, if so advised.

12. The writ petition is allowed in the above terms.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant