

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5658 of 2016

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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 Divisional Railway Manager, East Central Railway, Samastipur (Bihar).
 4. The Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar).
 5. The Senior Divisional Engineer (Co-Ordination), East Central Railway, Samastipur (Bihar).
 6. The Senior Divisional Financial Manager, East Central Railway, Samastipur (Bihar).
 7. The Assistant Divisional Engineer, East Central Railway, Narkatiyaganj.

.... Petitioners.

Versus

Narayan Thakur, Son of Late Shrawan Thakur, Trolleyman under Assistant Divisional Engineer, East Central Railway, Narkatiaganj, Resident of Village/Post- Betwa, P.S.- Sathi, District- West Champaran, Bettiah.

.... Respondent.

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Appearance :

For the Petitioners : Mr. Ashok Kumar Keshari, Senior Railway Advocate and Sanjay Kumar Singh, Advocate.
For the Respondent : M/s. Raghunandan Kumar Singh, Narendra Kumar & Updhyay Saurabh Kumar, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 10-11-2016

Heard learned counsel for the petitioner-Railway and
learned counsel for the sole respondent.

2. The writ petition has been filed challenging the order dated 01.10.2015 passed in OA/050/00450 of 2014 by the Central Administrative Tribunal, Patna Bench, Patna, by which the order



dated 23.05.2014 passed by the Railway Authorities determining the date of birth of the respondent as 22.02.1944 and retiring him with effect from 23.05.2014 has been quashed and the further direction issued to reinstate the respondent in service beyond 23.05.2014 and to refund the amount which has already been recovered from the respondent.

3. As per the case of the petitioners, the respondent was appointed in the Railway on 30.03.1965 as a Casual Labourer and as per his declaration his date of birth was entered in the service records as 20.02.1944. By Office Order dated 27.12.1989 the petitioner alongwith six other Casual Labourers were granted temporary status from 27.07.1989 in the scale of pay of Rs. 750-940/-. The said Office Order mentions the date of birth of the respondent as 20.02.1944 and the date of his initial appointment as 30.03.1965. The said Office Order has been brought on the record. Subsequently, the respondent was regularized against permanent post on 31.12.1997 and at that stage, the respondent produced the certificate of Mukhiya in support of the stand that his date of birth is 29.10.1959 and the said date was also entered in the Medical Memo. Later on, the service record of the respondent was scrutinized for certain purposes and then it was found that his date of birth has been altered from 20.02.1944 to 29.10.1959 but without any signature on the cutting of the dates. It was,



therefore, found that the respondent ought to have already retired on 29.02.2004 and vide Office Order dated 23.05.2014, he was made to retire from service with effect from 23.05.2014 itself and direction was issued for settlement of his dues as per the regulation of the Railways.

4. Against the aforesaid Office Order, the respondent approached the Tribunal by filing O.A. Before the Tribunal, the stand of the respondent was that he was initially appointed as Casual Labourer on 29.12.1977 and not on 30.03.1965. Since he was working continuously, he acquired temporary status. Further stand was that he was screened for regularization and was regularized on 31.12.1997 and in the certificate of medical fitness, the Chief Medical Superintendent, North East Railway, Samastipur, while declaring him fit, entered his date of birth as 29.10.1959. The respondent also produced the certificate of date of birth issued by the Mukhiya.

5. By the impugned order dated 01.10.2015, the Tribunal has allowed the O.A. quashing the orders dated 23.05.2014 and directed the petitioner-Railway to reinstate the respondent in service beyond 23.05.2014. The petitioners were further directed to refund the amount, if recovered on account of over stay in service beyond 29.02.2004 with statutory interest.

On coming to the said conclusion, the Tribunal has relied



upon the service-book of the respondent and the Medical Certificate dated 02.02.1995 and came to the conclusion that the date birth of the respondent has been shown as 29.10.1959 and further held that against the column of date of birth only 29.10.1959 has been recorded but no other date. If the contention of the petitioners was to be accepted, then after discovery of such cuttings made in the service-book, the competent authorities of the Railway should have corrected the same in the service-book after counter-signing the same by the competent authority but since no such correction has been made and only the date as 29.10.1959 is existing in the service-book, which is also tallying with the entry made under the health examination by the Medical Board. Thus, it was constrained to accept the contention of the respondent which was more authentic than any other document referred by both the parties.

6. Learned counsel for the Railway has sought to rely upon paragraph-225 of the Indian Railways Establishment Code Volume-I relating to General Conditions of Service, which is quoted as under:

“225. Date of Birth- (1) Every person, on entering railway service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before



entering railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the railway servant's own handwriting. In the case of the illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant.

(2) A person who is not able to declare his age should not be appointed to railway service.

(3) (a) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attention, e.g. if a person enters service on 1st January, 1980 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1962.

(b) When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month, respectively, should be treated as the date of birth.

(4) The date of birth as recorded in accordance with these 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 a Group A & B railway servant, and a General Manager in the case of a Group C & D railway servant 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 in admissible, 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.”



7. It is submitted by the learned counsel for the petitioners that the first declaration of the date of birth is final in the matter unless it is permitted to be altered by the competent authority. Learned counsel for the Railway also refers to a large number of documents to show that the respondent, as a matter of fact, had been appointed as a Casual Labourer on 30.03.1965 and his date of birth has been shown as 20.02.1944 and apart from the Office Order dated 27.07.1989, granting temporary status to the respondent, which has been referred to above, in the Live Register of Casual Labour, the date of birth of the respondent has been shown as 20.02.1944 and his date of appointment has been shown as 30.03.1965. Learned counsel for the petitioners further refers to an application for Temporary/Final Withdrawal from the State Railway Provident Fund made by the Respondent on 08.10.1993 for Rs.6000/- against which sanction was accorded for Rs.3600/- in which the date of birth of the respondent has been mentioned as 20.02.1944. Reference has also been made with regard to the Leave Account in which also the date of birth of the respondent has been written as 20.02.1944. Apart from the above, learned counsel for the petitioners relies upon the service-book in which the date of birth of the respondent, stated earlier is 20.02.1944 which has been cut and by its side the date of birth has been written as 29.10.1959. From perusal of the said cutting, it is evident that the last



two figures are 44. It has further been pointed out that cutting has not been signed by any one.

8. Learned counsel for the respondent, on the other hand, seeks reliance upon the appointment list of Casual Labourers prepared on 28.12.1996, which was signed by the authorities of the Railway Department in which the name of the respondent appears at serial no.209 showing his date of birth as 29.10.1959 and his engagement as a Casual Labourer on 29.12.1977, further relying upon the Medical Certificate dated 02.02.1995.

9. We are conscious of the fact that the matter has been challenged before us in the writ jurisdiction under Article 226 of the Constitution of India, so normally the finding of fact recorded by the Tribunal would be final and this Court cannot interfere with such finding of the fact. However, if such findings of fact are perverse then it is open to the Writ Court to interfere in the matter.

10. From a perusal of the entire impugned order of the Tribunal, we do not find that even once any reference was made by the Tribunal to the fact that the respondent was initially engaged as a Casual Labourer on 30.03.1965 and not on 29.12.1977 as claimed by the Respondent. Even if all other documents could have been ignored by the Tribunal but the temporary status granted to the respondent on 27.07.1989 could not have been given a go-by as the status of the



respondent from the post of Casual Labourer to the temporary employee of the Railways depends on the said order. The said order has not been challenged by the respondent at any stage of the proceedings. That order read with the provision of paragraph-225 of the Indian Railways Establishment Code Volume-I (General Conditions of Service) would have been sufficient to hold that the respondent had entered into Railway Service on 30.03.1965 having declared his date of birth as 20.02.1944. The date of initial appointment of the respondent, as mentioned in the Office Order dated 27.12.1989, has never been questioned at any stage nor the date of birth, but it is evident that if the respondent was a Casual Labourer in the Railways from 30.03.1965, then his date of birth could not have been 29.10.1959 as stated by him later.

11. From paragraph-225 of Indian Railways Establishment Code Volume-I (General Conditions of Service), it is clear that the age of a person on entering in railway service would be deemed to be 18 years and if he is unable to give exact date of birth, in such case, the date of birth would be treated as 18 years before joining in the railway service.

12. The Tribunal by not giving any weight to the Office Order on the basis of which the respondent had acquired temporary status, which document could not have been overlooked while



arriving at the conclusion; the same amounts to perversity in arriving at the finding of fact.

The reliance placed solely on the service-book, where there was clear cutting on the date of birth without any initial/signature on cutting, could not also have been of any use in arriving at the conclusion that since no steps have been taken to rectify, the date of birth, it should be treated as 29.10.1959. As a matter of fact, when the documents have been produced by both the parties, the authenticity of which cannot be challenged, it was not open to the Tribunal to have come to a conclusion to the contrary on the basis of manipulation in the service-book.

No support could have been sought from the Medical Certificate of fitness simply recording the date of birth as stated by the respondent since it is not a document medically determining the date of birth and the date of birth mentioned therein is evidently on the basis of manipulation made by the respondent in collusion with the staff of the Railway from 1995 itself.

13. From perusal of paragraph-225 of the Indian Railways Establishment Code Volume-I (General Conditions of Service), it is evident that any correction in the date of birth has to be made only by the competent authority within a period of three years, and it cannot be entertained after completion of the probation period,



or three years service, whichever is earlier.

14. In view of the fact that the respondent had joined his service in the year 1965, he could not have said at any earlier stage of service that his date of birth was 29.10.1959 and after granting temporary status in the year 1989, he has sought to manipulate the matter so as to get the benefit of extension of service period.

15. For the aforesaid reasons, the writ application is allowed and the impugned order dated 01.10.2015 passed by the Central Administrative Tribunal, Patna Bench is quashed.

(Ramesh Kumar Datta, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-P.S.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.01.2017
Transmission Date	

