

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18694 of 2012

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Raj Kishore Pd., son of Shri Raghunath Prasad, resident of Durgapur Goshala Chowk, P.O. Katihar Mills, District-Katihar

.... Petitioner/s

Versus

- 1.The Union of India through the Chairman, Railway Board, Ministry of Railways, New Delhi.
- 2.The General Manager, N.F. Railway, Maligaon, Guwahati.
- 3.The Additional Divisional Railway Manager, N.F. Railway, Lumding, District-Nagaon, Assam.
- 4.The Senior Divisional Commercial Manager, N.F. Railway, Katihar.
- 5.The Senior Divisional Commercial Manager, N.F. Railway Lumding, District-Nagaon, Assam.
- 6.Shri Ajit Kumar Sen, the then Enquiry Officer, HQ Maligaon at present posted as Divisional Personnel Officer, N.F. Railway, Lumding, District Nagaon, Assam.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad,Adv. and Mr.Amar Nath Jha,Adv.

For the Respondent/s : Mr.Anil Singh,Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 18-04-2016

Heard the parties. The present writ petition is directed against the order dated 18-7-2012 passed by the Central Administrative Tribunal, Patna Bench, Patna, in O.A.No. 164 of 2009, whereby the Tribunal has refused to interfere in the matter of disciplinary proceeding as against the petitioner.

2. The petitioner was recruited in the Railway Service as Ticket Collector on 5-7-1982 after due process. In course of 26 years of his satisfactory service he got promotions. The Railway(Vigilance)



came to know in June 2004 that he had secured employment in the Railways on the basis of forged date of birth, as is appearing in the original record, based on the matriculation certificate, showing his date of birth as 10-5-1955. In the vigilance report it was reported that in fact his date of birth was 10-5-1951. He was asked to furnish duplicate matriculation certificate. He obtained and produced the same, which also showed his date of birth to be 10-5-1955. However, the Vigilance obtained the letter from the Officer on Special Duty(OSD) and Joint Secretary of the Bihar School Examination Board, which stated that as per the original records available in the Bihar School Examination Board, the date of birth of the petitioner was, in fact, 10-5-1951. A departmental proceeding having been initiated, the petitioner made several protests and several requests, including the request for production of original records from the Bihar School Examination Board and the school records. These requests were not acceded to. The disciplinary authority came to a finding that if the petitioner had disclosed his true age, assuming 10-5-1951 to be correct, he would be overage for employment in 1982. If his correct age was 10-5-1955, then he would be only 11 years when he first sat for the matriculation examination. On these findings the disciplinary authority held that the petitioner had, in fact, manipulated his date of birth to get employment in the Railways. There was unsuccessful

appeal, representation and before the Tribunal the petitioner remained unsuccessful.

3. Learned counsel for the petitioner submits that admittedly and undisputedly the petitioner qualified at the written examination and was duly selected on merit way back in 1982. He had unblemished career of over 26 years of service in the Railways. He was consistently granted promotions in appreciation of his good service record. Now, after 26 years of unblemished service this extreme punishment would be totally disproportionate. He further submits that the only evidence against the petitioner was the letter from the OSD and Joint Secretary of the Bihar School Examination Board as against the duplicate certificate issued after the enquiry was started by the Bihar School Examination Board itself, certifying the date of birth to be 10-5-1955. In view of these facts, the petitioner demanded that the Secretary of the Board be summoned along with the original records, as there was serious controversy on facts. The Railways took no steps in the matter. Thus, there was denial of a reasonable opportunity to the petitioner to defend himself.

4. Having considered the matter, in our view, there appears to be substance on both the grounds. The fact that the petitioner was only 11 years when he sat for matriculation examination ,itself seems to be rather unusual. He even failed in the first attempt. It is only in



the second attempt that he passed. This would bonafidely raise suspicion about the correctness of the date, but suspicion cannot take the place of truth. Even in a departmental proceeding fairness of procedure is postulated. When the certificate was obtained from the Secretary of the Bihar School Examination Board contrary to the certificate issued by the Board itself, there was a dispute. That was required to be resolved on the basis of cogent materials. The petitioner did request for the Secretary to appear along with the original document, but the Railway did not act on the same. It was a procedural impropriety.

5. Considering the fact that the petitioner has had 26 years of unblemished service and assuming that he got the initial appointment by using a document which was interpolated, at this late stage it would be highly disproportionate to give this extreme punishment. Normally, we would have remanded the matter for considering this part, but considering the age of the petitioner, who, even if we take it to be his date of birth as 10-5-1955, he would have crossed the age of superannuation. We would not further harass him in these regards.

6. We, accordingly, hold that instead of dismissal, the petitioner would be deemed to be compulsorily retired from the service from 30-9-2008. The Railways would implement the order

with consequential benefits expeditiously, not later then two months from today.

7. This writ petition is, accordingly, allowed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

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