

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2465 of 2016

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1. The Union of India through General Manager, East Central Railway, Hajipur.
 2. The General Manager (Personnel), East Central Railway, Hajipur.
 3. The FA & CAO, East Central Railway, Hajipur.
 4. The Chief Administrative Officer (Con), East Central Railway, Mahendrughat, Patna.
 5. The Dy. Chief Engineer (Con), East Central Railway, Rajgir.
 6. The Divisional Railway Manager, East Central Railway, Dhanbad.
 7. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad.
 8. The Senior Divisional Financial Manager, East Central Railway, Dhanbad.

.... Petitioners

Versus

Sahdeo, son of Late Liber, Ex Khalasi under Deputy Chief Engineer/Con, East Central Railway, Rajgir, resident of Village Ahirpurawa, PO/PO-- Barwadih, District- Latehar.

.... Respondent

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Appearance :

For the Petitioners	:	Mr. Anil Kumar Sinha, Advocate Mr. Abhimanyu Deo, Advocate
For the Respondent	:	Mr. M.P. Dixit, Advocate Mr. Sanjay Kr. Choubey, Advocate Mr. Shailendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 30-01-2017

The Railway Establishments are the aggrieved party, who have decided to move the High Court against the order dated 01.05.2015 passed by Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 818/ 2014.

By virtue of the impugned order, the Tribunal quashed the order dated 10.09.2014, which was Annexure-A/3 in the



OA, but is Annexure-6 in the present writ application.

In the order dated 10.09.2014, which was subject matter of challenge before the Tribunal in the OA, the concerned authority passed an order fixing his date of birth as 30th of April, 1948 and his date of retirement as 30th of April, 2008. However, on a wrongful entry, the date of birth in the so called service book, is said to be 19th of January, 1954. This date of birth corresponds with the date of birth shown in the so called School Leaving Certificate, which has been issued in favour of private respondent by some Primary School, Khura supposed to be in the State of Jharkhand, District Palamu. This School Leaving Certificate shows that the private respondent had left the school in 3rd standard and the date of issuance of school leaving certificate is 26.02.1985.

One thing is evident that the so called service book of the private respondent, which formed part of the OA proceeding and has also been produced before this Court in original, was opened on 19.08.1996. This is evident from the signature and the date of the authority.

These entries and documentations are of a much much later date than the time when the private respondent entered service as a casual labour that was on 30th of April, 1973. The contemporaneous document at the time of entry into the service,



which is a casual labour card, indicates that the private respondent was 25 years of age, meaning thereby that the date of birth of the private respondent will correspond to the year 1948. The Court has seen the original casual labour card. All the entries are in one handwriting and ink, except for the date of birth, there is an overwriting and obvious interpolation by recording 1958. The Court considered the said entry minutely and finds that 48 has been modified to 58 with a different pen and ink. The entry 19 has been left untouched.

There is another document which relates to 28.08.1984 when a certificate of physical fitness of the candidate was prepared. Here the estimated age has been shown to be 36 years, which again corresponds to the original entry of 1948.

Interpolation was made at one time or the other in the year of birth in the labour card and then based on a subsequently obtained school leaving certificate showing 19.01.1954 in a casual manner. The date of birth of the private respondent was recorded in the so called service book where in a very neat handwriting the year 1954 has been entered but here also in the figures scotch tape has been pasted so that the interpolation cannot be examined scientifically.

There are diverse kind of evidence, but if those



evidences are analyzed then logically it leads to the fact that if the private respondent's date of birth is taken as 1958 then he would have a minor of about 15 years and the Railway Establishment would never engage a person who was a minor as a casual labour within its establishment. Therefore, the age of the private respondent at the time of entry as a casual labour recorded in the labour card with the year of birth as 1948 corroborates with the actual state-of-affairs and the subsequent entries are manipulations, which are visible from naked eye when examined from the original record produced before this Court.

If that be so, then the Tribunal by laboured decision, came to a conclusion that it should be 1958, which should be treated as date of birth of the private respondent, and, accordingly, his date of retirement should be treated as 31.01.2014, which should not be.

The private respondent may have been allowed to work beyond the age of his actual superannuation but that period of work cannot be counted for the purposes of calculation of the retirement benefits. The date of retirement of the private respondent, who was applicant before the Tribunal, has to be treated as 30th of April, 2008 and not 31.01.2014. The impugned order of the Tribunal dated 01.05.2015, passed in O.A. No. 818/2014 is quashed. The writ application is allowed.



The original file is returned back to the counsel for the Railways for safe keeping.

The apprehension of the counsel for the private respondent that there will be efforts on to recover from him the payments made for the period of work after 1st of May, 2008 till 31st January, 2014 will be subject to the judicial review if such a step is taken by the petitioners keeping in mind that work was taken from the private respondent and he was allowed to work till 31.01.2014.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	02.02.2017
Transmission Date	

