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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11069/2016 & C.M No.43217/2016(for stay)**

UNION OF INDIA AND ORS Petitioner

Through Mr. Ashok Singh, Advocate for
UoI.

versus

BHAGWAT LAL Respondent

Through Mr. T.D. Yadav, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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05.12.2017

1. The present petition assails an order dated 04.10.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.788/2015, allowing the O.A. filed by the respondent and directing the petitioners herein to correct the respondent's date of birth in his service book, as being 01.07.1959. The respondent had preferred the aforesaid O.A being aggrieved by the entry of his date of birth by the petitioners/Northern Railways as 01.12.1956 in his service book and by their subsequent refusal to correct his date of birth in the same, despite repeated representations.

2. The brief facts as emerge from the record are that the respondent, a Technical Grade– II/ Carriage & Wagon, was engaged by the petitioners/Northern Railways as a Casual Labourer w.e.f. 15.07.1977 to 14.11.1977 and was thereafter, posted as a Khallasi and given a temporary status on 25.09.1990. The respondent was subsequently promoted to Technical Grade III and thereafter, to Technical Grade II, which post he was holding at the time of filing of the O.A.

3. On 24.07.2009, the respondent submitted a representation to the petitioners/Northern Railways requesting for correction of his date of birth in his service book on the premise that upon perusal thereof, he had learnt that his date of birth had been wrongly recorded as 01.12.1956, instead of his actual date of birth, which was 01.07.1959. Alongwith his representation, the respondent also enclosed his transfer certificate and character certificate dated 16.07.1979 issued by the Education Department, Government of Rajasthan in which his date of birth was shown as 01.07.1959.

4. On not receiving any reply to his aforesaid representation, the petitioner submitted an application under the RTI Act on 20.04.2011, seeking the status of consideration of his representation. As he received no reply even through the RTI route, the respondent made further representations dated 13.01.2014 and 07.06.2014. It was only then that the petitioners/ Northern Railways passed an order dated 21.07.2014, rejecting the request of the respondent whereafter he made another representation dated 01.09.2014, which met the same fate. In these circumstances the respondent approached the Tribunal

in February 2015 by filing the aforesaid O.A., seeking quashing of the rejection letters and for a direction to the petitioners/ Northern Railways to correct his date of birth in his service book.

5. The petitioners opposed the O.A. before the Tribunal by merely stating that the respondent had not submitted this education certificate at the time of his initial appointment on 15.07.1977 and there was no entry regarding this certificate in his service book.

6. After considering the submissions of both the parties and on perusing the service book, the Tribunal found that the petitioners/ Northern Railways were unable to disclose the basis on which the entry in respect of the respondent's date of birth had been made in his service book and on the other hand, the Tribunal found merit in the documents submitted by the respondent which pertain to the years 1977 and 1979.

7. The Tribunal thus came to the conclusion that the claim of the respondent could not be treated as a case of alteration or a case of change of date of birth, but it related to a wrong entry of his date of birth in the service book and therefore allowed the O.A by quashing the rejection orders passed by the petitioners/ Northern Railways and directing them to correct the respondent's date of birth in his service book, as being 01.07.1959.

8. Aggrieved by the impugned judgment of the Tribunal, the petitioners/Northern Railways preferred the present petition. Arguing for the petitioner, Mr. Ashok Singh, Advocate contends that though the respondent was appointed in the year 1990, he had not made any request for a change in his date of birth as late as till 2014, which

according to him, was at the fag end of his service career, for the reason that as per his date of birth recorded in the service book, he was due to superannuate in December 2016. He thus contends that in view of the several decisions of the Supreme Court, such a request made by the respondent for alteration of date of birth could not have been allowed at the time of his superannuation.

9. Per contra, Mr. T.D. Yadav, learned counsel for the respondent while supporting the impugned judgment, argues that the respondent had made the request for correction of his date of birth in July, 2009 which was well before his date of superannuation. He draws our attention to the application submitted by the respondent on 24.07.2009, which bears a receiving stamp of the petitioner no.1 & 2, of 24.07.2009.

10. Learned counsel for the respondent has further drawn our attention to the recommendations made by the petitioner no.4 i.e. the Senior Section Officer (C & W) Northern Railway, Tughlakabad, New Delhi for making the requisite correction in his service book. He has also drawn our attention to the Casual Card issued to the respondent when he was a casual worker in the year 1977. Even the said card records the respondent's date of birth as 01.07.1959. Learned counsel, therefore, canvasses that the petitioners/Northern Railways have wrongly urged that the respondent had made a request for correction of his date of birth at the fag end of his career. He submits that the admitted documents on record clearly demonstrate that the Tribunal was fully justified in holding that the present case

was one of incorrect recording of date of birth and not that of alteration of the date of birth.

11. Learned counsel for the respondent has also drawn our attention to the fact that, since this Court had while issuing notice in the present petition on 25.11.2016, stayed the operation of the impugned order of the Tribunal, the petitioners/Northern Railways had retired him on 31.12.2016, by treating his date of birth as 01.12.1956, which according to him, was incorrect. He therefore prays that the writ petition be dismissed and the petitioners/Northern Railways be directed to reinstate him with all consequential benefits so that he can serve till the date of his superannuation, based on his correct date of birth of 01.07.1959, which would mean that the respondent would be entitled to serve till 31.07.2019.

12. Having considered the submissions made by the counsels for the parties and on perusing the impugned judgment as well as the records, we are of the view that there is no infirmity in the order of the Tribunal. The admitted documents on record clearly show that the respondent had submitted a representation for correction of his date of birth more than 7 years prior to his superannuation and he had produced relevant documents in support of his claim which have not been disputed by the petitioners. The petitioners/Northern Railways have also not given justification as to why the recommendation made by the petitioner no.4 in July 2009 itself for correcting the respondent's date of birth in the service book to 01.07.1959, was not processed. The petitioners have neither before the Tribunal, nor before this Court denied the genuineness of the certificates produced by

the respondent in support of his claim that his date of birth was 01.07.1959.

13. On a perusal of the records we also find that not only the certificate issued by the Education Department, Government of Rajasthan in the year 1979, but even the Casual Card issued by the petitioners to the respondent in the year 1977, clearly demonstrate that his date of birth was 01.07.1959 and not 01.12.1956.

14. The petitioners have neither in their reply filed before the Tribunal nor in the averment made in the present petition, given any basis on which the date 01.12.1956, was entered as the respondent's date of birth in his service book. We are therefore of the view that the Tribunal was fully justified in relying upon the documents filed by the respondent in support of his plea and holding that he was entitled to get his date of birth correctly entered in his service book as 01.07.1959 and not 01.12.1956.

15. Thus, there is no infirmity in the impugned order of the Tribunal. The writ petition is wholly meritless and is accordingly dismissed. However in view of the fact that the respondent was forced to superannuate on 31.12.2016, by wrongly treating his date of birth as 01.12.1956, we direct that the respondent be reinstated within 6 weeks from today and he be allowed to continue in service till he reaches the date of superannuation, in accordance with his correct date of birth, i.e. 01.07.1959. The respondent will also be entitled to all consequential benefits.

16. The writ petition is accordingly dismissed as devoid of merits alongwith the pending application with costs quantified at Rs.20,000/- payable to the respondent within six weeks.

REKHA PALLI, J

HIMA KOHLI, J

DECEMBER 05, 2017

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