

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.2703 OF 2018

ORDER: *(Per Hon'ble Sri Justice Sanjay Kumar)*

The petitioner is the widow of a Senior Technician in the service of the South Central Railway (hereinafter, 'the Railway'). She filed O.A.No.021/453/2016 before the Central Administrative Tribunal, Hyderabad Bench, assailing the action of the Railway in treating date of birth of her husband as 07.08.1952 instead of 10.07.1955 after his death. She sought consequential relief in the form of payment of her husband's death benefits treating his date of birth as 10.07.1955. By order dated 07.04.2017, the Tribunal partly allowed the O.A. directing the Railway to release the withheld amount to the petitioner but also directing the Railway to fix the pay, pension and other benefits of the deceased employee treating his date of birth as 28.06.1952. Aggrieved by the latter direction, the petitioner is before this Court.

The petitioner's husband was appointed as a temporary employee on 25.11.1975 and attained regular status as a Khalasi on 11.12.1984. Upon further promotions, he became a Senior Technician Grade – I in November, 2003. While working as such, he expired on 25.12.2013 due to illness. When the petitioner sought release of his death benefits, it appears that the Railway looked into his service record and detected that two separate dates were shown as the birth date of the deceased employee. The initial entry of his date of birth was 07.08.1952 but the same was rounded off and the date 10.07.1955 was written above it. According to the Railway,

efforts were made by deputing staff to confirm the date of birth of the deceased employee from the school authorities in the light of the Transfer Certificate produced by the petitioner showing his date of birth as 10.07.1955. However, the school authorities confessed that the old records were not available.

The Tribunal opined that as the deceased employee was not put on notice while he was alive, the Railway could not recover the amount of pay and allowances which were already paid to him for the period that he actually worked and directed release of the withheld amounts. Further, the Tribunal observed that there was no indication as to how the initial date of birth entered in the service record was changed; at whose instance; on what date; and basing on what document. However, having stated so, the Tribunal observed that the date of birth of the deceased employee could not be treated as 10.07.1955 and directed the Railway to fix the pay, pension and other benefits of the deceased employee by treating his date of birth as 28.06.1952.

In this regard it may be noted that the service record of the deceased employee initially showed the date of birth as 07.08.1952 and not 28.06.1952. This wrong date of birth seems to have been erroneously mentioned by the Tribunal basing on the case law which was cited before it involving the said date. Be that as it may.

Sri G. Pavana Murthy, learned counsel for the petitioner, would assert that the Transfer Certificate issued as long back as on 29.11.1973 demonstrated that the date of birth of the deceased employee was 10.07.1955. Learned counsel would further state that in the absence of any material to the contrary, the Railway was not

justified in trying to alter the date of birth of the deceased employee.

Per contra, Smt. Chintalapudi Laxmi Kumari, learned counsel for the Railway, would contend that the deceased employee remained in service only on the strength of the altered date of birth viz., 10.07.1955, and would have attained the age of superannuation and retired from service before his death, if his date of birth was treated as 07.08.1952. She would therefore assert that the Tribunal was right in directing fixation of the pay, pension and other benefits of the deceased employee by taking the said date into account. She however does not dispute the fact that the deceased employee remained in service till his death on 25.12.2013.

The aforestated facts demonstrate that the Railway never initiated any enquiry to ascertain the correct date of birth of the deceased employee during his lifetime. No steps were taken to enquire into the entry made in the service register altering the date of birth of the deceased employee from 07.08.1952 to 10.07.1955. As matters stand, the petitioner is in a position to demonstrate that there is some material to support the altered date of birth, 10.07.1955, as the Transfer Certificate confirms this. No material is available with the Railway to refute the same. Had the initial date of birth, 07.08.1952, been mentioned on the strength of any document produced by the deceased employee, the same would have been in the possession of the Railway. That is not the case.

Given these facts, it is too late in the day for the Railway to go witch-hunting as to what is the correct date of birth of the deceased employee. However, the bald direction of the Tribunal that it should

be treated as 07.08.1952 is without basis and cannot be sustained. All the more so, when the deceased employee remained in service up to the date of his death on 25.12.2013. There is no logic or rationale in denying the benefit due to the petitioner for the full service rendered by her husband at this stage by altering his date of birth and effecting his premature retirement from service a year before his death.

The writ petition is accordingly allowed. The respondent authorities of the South Central Railway shall reckon the date of birth of the deceased employee, late Asha Rajaiah, as 10.07.1955 and take into account the full length of service rendered by him up to his death on 25.12.2013 while fixing his pay, pension and other benefits and remit the same to the petitioner. This exercise shall be completed expeditiously and in any event, not later than six weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

Date: 20.08.2018

JUSTICE M.GANGA RAO

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