

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21722 of 2014

1. The Union of India through General Manger E.C. Railway, Hajipur, Vaishali
2. The Divisional Railway Manager, E.C. Railway, Samastipur.
3. The D.R.M.(P), E.C. Railway, Samastipur.
4. The D.R.M.(Engg.),E.C. Railway, Samastipur.
5. The A.D.E.N., E.C. Railway, Narkatiaganj,District-West Champaran.
6. The Chief Medical Superintendent, E.C. Railway, Samastipur

... .. Petitioner/s

Versus

Tilak Son of Late Dharichhan Pandit, Ex-Mason under S.E.(Works), E.C. Railway, Sugauli, resident of village- Bharatmahi, P.O. Sheopur Haraiya, District- East Champaran, Motihari (Bihar)

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Bijoy Kumar Sinha, Adv.
For the Respondent/s : Mr.

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 13-08-2020

This writ petition has been filed on behalf of Railways for setting aside the order dated 31.12.2013 passed in O.A. No. 151/2008 by the learned Central Administrative Tribunal, Patna Bench, Patna by which the tribunal has partly allowed the O.A. filed by respondent to treat respondent notionally retired on 06.03.2012 and re-fix his pension treating his date of birth as 06.03.1952 and not 16.06.1946, however without any



backwages.

Petitioners have stated that as per records available in the office i.e. service book of respondent his date of birth is 16.06.1946. The date of birth recorded in the medical memo and the fitness certificate are not correct date of birth and not proof of date of birth. At the fag end of service date of birth as recorded in service book cannot be altered. Respondent was initially appointed as casual labour on 16.06.1976 in the Engineering Department and was granted temporary status on 29.02.1984 and was absorbed in the regular establishment as regular employee on 04.04.1991 as per the scheme framed by the Railways. According to service book prepared in 1987 (3 years after grant of temporary status) date of birth of respondent was recorded as 16.06.1946.

Respondent retired from service on 30.06.2006 on the basis of his date of birth recorded in service book as 16.06.1946 however he submitted representation that he was forcibly prematurely retired and his date of birth is 06.03.1952 as such he ought to have retired on 06.03.2012 however same was rejected by the Railways authorities by order dated 08.01.2007 and aggrieved by which he filed O.A. No. 151 of 2008 before the Central Administrative Tribunal Patna Bench, Patna to



declare his date of birth as 06.03.1952 and not 16.06.1946 and after hearing both the parties and considering the documents produced by the parties the Tribunal partially allowed the application of respondent directing to notionally retire respondent on 06.03.2012 and re-fix his pension as if he had continued in service till 06.03.2012 considering his date of birth as 06.03.1952 but he will not be paid any salary for intervening period. Aggrieved by the judgement and order of the Tribunal railways have preferred this writ petition.

The learned Tribunal has found that no document has been produced by the railways either declaratory or documentary on basis of which the date of birth of respondent was recorded as 16.06.1946. The tribunal has further found that if date of birth of respondent would be 16.06.1946 he would have been overage on the date of his initial appointment as such he could not have been appointed on said date of birth.

At the time of regularization of service of respondent in the year 1991 the respondent authorities had demanded proof of his date of birth and he submitted a School Leaving Certificate in the office of D.R.M. (P), Samastipur, granted in the year 1979 and same was accepted and medical memo dated 08.03.1991 was issued in which date of birth of respondent was



recorded as 06.03.1952 which also contains signature of the respondent. The respondent thereafter appeared before the Chief Medical Superintendent for medical examination and was declared fit and medical fitness certificate was issued in which his date of birth was recorded as 06.03.1952.

The school leaving certificate was issued on 05.01.1979 and it was certified to be true by the Principal of the school during enquiry held by Railways. The service book of the respondent was opened on 22.03.1987, three years after granting time scale in which date of birth is recorded as 16.06.1946 however, at the time of regularization respondent produced school leaving certificate in support of his date of birth as 06.03.1952 and same was recorded in the medical memo and medical fitness certificate however, the entry made in the service book was not corrected. The tribunal has found that there is nothing to show that the service book was ever shown to the applicant.

The tribunal has also considered Rule 76 of Railway Service (Pension) Manual, 1993 by which publication of list of retiring employees is to be made within one year in advance and same was not done in case of petitioner. Rule 225 of the Indian Railway Establishment Code Vol.1, mandates production of



document with respect to date of birth at the time of appointment however, railways could not place on record any such document on basis of which date of birth was recorded as 16.06.1946. Date of Birth in service book is to be recorded on basis of Card "A" which was not found in service book. As per rule the date of birth is to be recorded as per date indicated in Card "A". After going through the records the tribunal found that after enquiry office also recommended to treat date of Birth of respondent as 14.06.1952 in the administrative interest.

It is true that any change in date of Birth can be entertained at the initial stage of service and no alteration in date of birth can be permitted at the fag end of service but in present case two date of birth has been found recorded first in the year 1987, three years after grant of temporary status to respondent but there is no document on record to indicate on what basis it was recorded and second date of birth at the time of regularisation of his service in the year 1991 on the basis of school leaving certificate issued in the year 1979 which is part of record and said date of birth also finds recorded in Medical Memo as well as Medical Fitness certificate as such respondent had every reason to believe that date of birth recorded at the time of his regularization is his date of birth in service record.



Respondent is a Class IV employee which is to be kept in mind while considering his case.

After hearing the parties and perusing the order passed by the tribunal, this court does not find any error or infirmity in the order as impugned as such is not inclined to interfere in the order passed by the tribunal and accordingly the writ petition filed on behalf of railways is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/-

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

