

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3013 OF 2019

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Rajkumar Narayan Sathurwar
Mailman (Retired) from R.M.S.,
B Division, Pune, Railway Mail Service,
Pune, r/at 1804, 25, Bhimpura Lane,
Near Babajan Chowk, Pune – 400 001

..... Petitioner

Versus

- 1 Union of India,
Through the Secretary, Dept of Posts
Ministry of Communication,
Dak Bhawan, New Delhi – 110 001
- 2 The Director of Postal Services
Office of the Post Master General,
Pune Region, Pune – 3
- 3 The Director of Accounts (Postal)
Maharashtra Circul, Nagpur – 440 001
- 4 The Head Record Officer,
R.M.S. B Division, Pune

..... Respondents

Mr. A. S. Rao for the Petitioner
Mr. Ashok D. Shetty a/w. Ms. Anamika Malhotra for the
Respondents – Union of India.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : FEBRUARY 2, 2024

ORAL JUDGMENT (PER : CHIEF JUSTICE)

1. Heard learned counsel representing the respective parties
and perused the record available before us on this petition.

2. This petition challenges the judgment and order passed by the Mumbai Bench of the Central Administrative Tribunal (hereinafter referred to as the "**Tribunal**") passed in Original Application No.424 of 2016 whereby though the Original Application was allowed in respect of certain prayers made by the Petitioner, however, the claim of wages to the Petitioner for the period from 1st May 2010 to 25th September 2014 has been denied and in lieu whereof it has been directed by the Tribunal that for the said period the Petitioner shall be paid wages as a freshly recruited employee.

3. The Petitioner was initially appointed on the post of Extra Departmental Mailman with the Railway Mail Service at Pune. His services were regularized on the post of Mailman on 19th February 1997. At the time of entering in employment of the Respondents, his date of birth was recorded as 14th June 1968, which in fact, is not his date of birth but the date of leaving school as per his school leaving certificate. His actual date of birth is 8th April 1950 and based on his date of birth, the Petitioner would have retired on 30th April 2010 on his attaining the age of superannuation of 60 years. Instead of being retired on superannuation on 30th April 2010, the Petitioner was allowed

to work on his post till 25th September 2014 when his employment was terminated.

4. A show cause notice was issued to the Petitioner on 27th July 2015 stating therein that he had disclosed false date of birth in the service records which enabled him to continue beyond the age of superannuation and accordingly, an explanation was called for from him to show cause as to why his pension, pay and allowances and other financial benefits such as medical reimbursement from 1st May 2010 till 25th September 2014 may not be recovered from his pension and pensionary benefits.

5. The Petitioner submitted his reply to the show cause notice on 3rd August 2015 with a supplementary reply on 7th August 2015 whereby the Petitioner categorically denied that he was in any manner responsible for the incorrect entry in the Service Book. He also stated that the responsibility for entry of wrong date of birth cannot be attributed to him and that the responsibility, in fact, lied on the departmental authorities for wrongly recording his date of birth. In substance, the Petitioner submitted that since the discrepancy of recording incorrect date of birth as 14th June 1968 in the service record in place of 8th

April 1950 cannot be attributed to the Petitioner and that the Petitioner had submitted his school leaving certificate at the time of entering in service which disclosed the date of birth to be 8th April 1950 and not 14th June 1968, as such he may not be held responsible for his alleged illegal continuance in service even after 30th April 2010.

6. The Department, however, was not convinced with the reply / explanation submitted by the Petitioner to the show cause notice and accordingly, passed an order on 25th September 2014 whereby his services were terminated. On the basis of his date of retirement as 30th April 2010, provisional pension was sanctioned to the Petitioner in addition to leave admissible to him for the period 1st March 2010 to 30th October 2010. An amount of Rs.60,000/- was also sanctioned towards (Death Cum Retirement Gratuity) DCRG, however, this amount was not disbursed, hence, the Petitioner instituted the Original Application before the Tribunal.

7. The Tribunal, by passing the impugned judgment and order returned a finding that so far as the claim of the medical reimbursement is concerned the Department has already

reimbursed the amount and further that the Petitioner had made monthly contribution to Central Government Health Scheme (**CGHS**) which would have constituted deduction on monthly basis even after his actual date of retirement till his services were terminated. The Tribunal further observed in the impugned judgment and order that the amount paid would also have been regulated as per the CGHS Rules and thus, in the circumstances, the recovery of amount of medical reimbursement could not be made.

8. As far as the claim of the Petitioner for pension and gratuity etc., the Tribunal in its judgment and order has observed that the Petitioner shall be entitled to pension, gratuity, leave encashment etc. upto the date of his actual retirement till 30th April 2010 and further that any leave earned or encashed after 30th April 2010 cannot be the responsibility of the Respondents and as such the amount will have to be recovered. The Tribunal has concluded that the amount of pension, gratuity and leave encashment will have to be calculated based on the correct date of retirement i.e. 30th April 2010.

9. For the wages earned by the Petitioner for the period from

30th April 2010 till 25th September 2014 it has been observed by the Tribunal that for such period, the wages will have to be paid to the Petitioner treating him to be a new recruit. It is against this part of the directions issued by the Tribunal that the Petitioner is aggrieved and has instituted the instant Writ Petition.

10. So far as the payment of medical reimbursement etc. is concerned, the Tribunal has already provided in the impugned judgment and order that the recovery of the said amount cannot be made from the Petitioner and since the judgment rendered by the Tribunal is not challenged by the Respondents, this Court need not adjudicate on the said issue and accordingly, we hold that no recovery of the amount of medical reimbursement shall be made from the Petitioner.

11. As regards the payment of amount of pension, gratuity and leave encashment, we may only observe that the Tribunal has rightly found that such amount shall be payable to the Petitioner till the date of his actual retirement i.e. 30th April 2010. We do not find any reason to interfere with such findings recorded and the directions given by the Tribunal in respect of the amount of

pension, gratuity and leave encashment for the reason that even the Petitioner does not dispute that his actual date of birth is 8th April 1950 and not 14th September 1968 and hence he would have actually retired on 30th April 2010.

12. In these circumstances, the question of payment of pension, gratuity and leave encashment to the Petitioner for the period from 30th April 2010 till 25th September 2014 does not arise and we accordingly, affirm the said finding recorded and the directions given by the Tribunal in the impugned judgment and order.

13. The only question which remains to be considered is regarding the claim of the Petitioner for payment of wages for the period from 30th April 2010 till 25th September 2014. As to whether the Petitioner shall be paid his wages treating him to be a new recruit for this period or he is otherwise entitled to the wages treating him to be a regular employee who continued to work till 25th September 2014, shall depend on the issue as to whether the Petitioner can be held responsible for wrong entry of date of birth in his service records or such responsibility lies on the Respondents.

14. At the time of entering in service with the Respondents, the Petitioner relied upon the school leaving certificate which depicted the date of school leaving as 14th June 1968. The said school leaving certificate also recorded the actual date of birth of the Petitioner i.e. 8th April 1950. In this school leaving certificate, on the basis of which the Petitioner sought entries in his Service Book, the date of birth mentioned is 8th April 1950 and not 14th June 1968. Thus, it cannot be said that the Petitioner was guilty of any misrepresentation or submission of any false or fabricated document i.e. the school leaving certificate. Once the Petitioner submitted the said school leaving certificate, it was the responsibility of the departmental officers to have correctly recorded his date of birth based on the school leaving certificate which depicted the date of birth to be 8th April 1950 and not 14th June 1968.

15. It is also on record that in the Attestation Form tendered by the Petitioner he has recorded his actual date of birth i.e. 8th April 1950 and not 14th June 1968.

16. The provisions relating to maintenance of Service Books pertaining to Government servants are governed by

Supplementary Rule 202 (S.R. 202) according to which it is the duty of every Head of Office to show the Service Books to the Government servants under his administrative control every year and to obtain their signature in token of their having inspected the Service Books. S.R. 202 is extracted hereinbelow:

"S.R. 202. *It shall be the duty of every Head of Office to initiate action to show the Service Books to the Government servants under his administrative control every year and to obtain their signature therein in token of their having inspected the Service Books. A certificate to the effect that he has done so in respect to the preceding financial year should be submitted by him to his next superior officer by the end of every September. The Government servants shall inter alia ensure before affixing their signature that their services have been duly verified and certified as such. In the case of a Government servant on foreign service, his signature shall be obtained in his Service Book after the Audit Officer has made therein necessary entries connected with his foreign service."*

17. The afore-quoted S.R. 202 not only casts a duty on the Head of Office to show the Service Book to the Government servant concerned who is under his administrative control every year and to obtain his signature but it is also that a certificate to the effect that he has done so, should be submitted by him to his next superior officer. Such provision in S.R. 202 has been made so as to check the discrepancies creeping in service records however, in the instant case, there is nothing on record to show that Head of Office, under whom the Petitioner had been

discharging his duties on his post ever showed the Service Book to the Petitioner to obtain his signature as a token of his having inspected the Service Book. It is, thus, the responsibility of the Head of Office to ensure that Service Book contains correct entries and since such duty was not discharged by the Head of Office in respect of the Service Book of the Petitioner, wrong entry in the Service Book cannot be attributed to the Petitioner. As already observed above, the Petitioner did not misrepresent his date of birth. He claimed that in the school leaving certificate tendered by him the date of birth of the Petitioner recorded is 8th April 1950 and not 14th June 1968. There is nothing on record to establish that the wrong date of birth of the Petitioner had crept in the Service Book on account of any malicious act on the part of the Petitioner and, thus, holding him responsible for his continuance in employment even after 30th April 2010 cannot be said to be tenable.

18. For the aforesaid reasons, we do not find ourselves in agreement with the judgment and order passed by the Tribunal which is under challenge before us to the extent the judgment directs that the Petitioner shall be paid his wages from 1st May 2010 till 25th September 2014 treating him to be a new recruit.

19. Accordingly, the Writ Petition is allowed, in part.

20. It is also directed that no recovery of the amount of medical reimbursement shall be made from the Petitioner, however, he shall be entitled to the amount of pension, gratuity and leave encashment etc. treating 30th April 2010 as his date of retirement and in case any excess amount has been paid against the claim of the pension, gratuity, leave encashment etc., the Petitioner shall be liable to repay the same.

21. As far as the payment of wages to the Petitioner from 1st January 2005 to 25th September 2014, we direct that he shall be paid wages treating him to have continued on regular post during this period as well and not treating him as a new recruit.

22. The compliance of this order shall be made by the Respondents within three months from the date a certified copy of this order is produced before the competent authority.

23. There will be no order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)