

(2019) 01 CAT CK 0019
In the Central Administrative Tribunal
Case No : Original Application No. 311 of 2010

Pyare Nath Pandey

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 16-01-2019

Acts Referred:

Central Administrative Tribunal Act, 1985 — Section 19

Citation : (2019) 01 CAT CK 0019

Hon'ble Judges : Rakesh Sagar Jain, J

Bench : Single Bench

Advocate : B.N Singh, Amit Kumar Rai

Final Decision : Disposed Off

Judgement

1. The present Original Application has been filed under Section 19 of the Central Administrative Tribunal Act, 1985 by Pyare Nath Pandey seeking the following relief:-

"(a) to issue a suitable order or direction to set aside the order dated 22.1.2009 by which the applicant retired on 28.02.2009 (Annexure A-1).

(b) to issue a suitable order or direction to the respondents to pay the salary and other benefits during the period of 28.2.2009 to 18.12.2009 treated date of birth as 12.12.49 as per High School Certificate.

(c) to issue any other suitable order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

(d) To award the cost of the petition in favour of applicant from the respondents".

2. Case of applicant is that he was appointed on 18.08.1973 in the respondent-department. His date of birth in the High School Certificate (Annexure No. 2) is recorded as 18.12.1949 but in his service book (Annexure No. 3), the concerned clerk recorded the date of birth as 12.12.1954. The applicant was wrongly retired by the respondents from the service on 28.02.2009 instead of 31.12.2009 as per

his DOB 18.12.1949. During the pendency of the case, decision of General Manager (P), Hajipur was placed on file recording the date of birth of applicant to be 18.02.1949. Hence the present O.A.

3. In reply, respondents in their counter affidavit have averred that on complaint, during investigation by Vigilance department, it came out that applicant had given his wrong date of birth i.e. 12.12.1954 which was recorded in his service book under his signatures and that his transfer certificate showed the DOB to be 18.02.1949. In the counter affidavit, reference has been made to Transfer certificate and the High School Certificate which are placed on record as Annexure CA 2 and CA3.

4. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.

5. The limited question is regarding the date of birth of applicant, whether it is 18.02.1949 or 18.12.1949. The transfer certificate shows the DOB to be 18.02.1949 whereas High School Certificate shows the DOB to be 18.12.1949.

6. A reference may be made to letter dated 17.10.2007 filed by respondents, which reads as under:

"East Central Railway Office of the General Manager/P Hajipur.

No. ECR/HRD/DOB/71/Op.t.g The Divisional Railway Manager (P) East Central Railway, Mughalsarai.

Sub: Alteration of date of birth of Shri Pyare Nath Pandey, SM/Mughalsarai.

Ref:-Your letter No. CS/Optg/Vig/BBMGS 04 Mughalsarai dated 24.7.2007.

In reference to above, it is intimated that the competent authority (Chief Personnel Officer) has passed the following orders for alteration of date of birth in favour of Sri Pyare Nath Pandey, SM/Mughalsarai considering the fact as mentioned in your letter quoted under reference;-

"18.02.49 be treated as DOB of Sri P.N. Pandey, SM/MGS. However, only copies of 8th class pass and Inter pass certificates have been sent by MGS Division. The certificate of Matriculation (High School) should also be checked.

(Vijay Kumar) SPO/MGE For General Manager/P

7. So, as per the General Manager/P, the matter does attain finality but that the certificate of Matriculation (High School) should also be checked.

8. Looking to the facts of the case, the O.A. is disposed of with the direction to the respondents to check the High School Certificate of the applicant issued by the Board to see what is the correct date of birth. The copy of the High School Certificate of applicant is on record. Therefore, respondents shall enquire from the concerned Board as to the genuineness of the said certificate and pass orders accordingly on the basis of the reply furnished by the Board. The exercise shall

be carried out within a period of 3 months from the receipt of the copy of this order and disposed of by a reasoned and speaking order. If the correct date of applicant turns out to be 18.12.1949, he would retired on 31.12.2009, therefore, respondents would work out the increased monetary benefits, if any, he would be entitled to under rules and pass orders accordingly. This direction is given so as to avoid further litigation, if any. Applicant shall be informed accordingly by the respondents. No order as to costs.