

Siraz Khan Vs Union Of India Through The General Manager North Central Railway Subedarganj Prayagraj. & Ors.

Court: Central Administrative Tribunal - Allahabad Bench, Allahabad

Date of Decision: Feb. 14, 2025

Acts Referred: Administrative Tribunals Act, 1985 " Section 19
 Industrial Disputes Act, 1947 " Section 25(f)

Hon'ble Judges: Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench: Division Bench

Advocate: Rajendra Prasad Tiwari, Manoj Kumar Sharma

Final Decision: Dismissed

Judgement

Mohan Pyare, Member (A)

1. Present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

“A. Issue an original application order of direction in the nature of certiorari for quashing the impugned order dated 08.05.22, 24.06.21

demanding the papers for screening to the applicant, pan card, marksheet of class-8th/certificate, earlier police verification form, character

certificate as well as bank passbook, caste certificate, casual labour/MRCL card and two newly passport size photographs, letter dated

11.10.21 & 13.01.22 by means of the impugned letter benefit of 2nd MACP on the basis of option dated 01.07.21 withdrawn and benefit

given without option and order to recovery of the arrears from the salary of the applicant due to non receiving the option letter within

stipulated period/due date & part of 1st appointment in regard date of birth 19.02.1965 in the place of 10.07.1970 and

representation/departmental appeal dated 20.09.22 sent by applicant to Divisional Railway Manager NCR Jhansi as Annexure A-1 with the

Compilation no.I of the original application.

B. Issue any other suitable original application order or direction with this Hon'ble Tribunal may deem fit and proper in the fact and

circumstances of the case.

C. To award heavy cost to the applicant against the respondent for not considering the grievance of the applicant.

2. The facts of this case are that the applicant was initially engaged as daily wager in the catering unit Jhansi Central Railway (renamed as North

Central Railway Jhansi) on 10.07.1988. The applicant acquired the temporary status and was appointed as monthly rated casual labour on 30.12.1989

and continued to work as such for about 5 years till his services were terminated vide order dated 30.09.1994 with a notice u/s 25(f) of the Industrial

Disputes Act. The applicant challenged this order before the Central Government Industrial Tribunal cum Labour Court, Lucknow, which passed an

order dated 09.07.2002 to reinstate the applicant with full back wages. The aforesaid order dated 09.07.2002 was challenged by the respondents vide

Writ Petition No.6597(SS) of 2002 before the Hon'ble High Court Lucknow but it was dismissed vide order dated 23.07.2014. A Special Leave

Petition (Civil) Diary No. 43845/2019 filed by the respondents was also dismissed by the Hon'ble Apex Court vide its order dated 17.01.2020. The

applicant had given a Representation dated 31.08.2014 to the respondents for taking him into service in compliance with the order of the Hon'ble

High Court. Thereafter, the applicant was reinstated into service with full back wages and other service benefits under the Railway Manager Gwalior

on 15.07.2020, was given the benefits of 6th pay commission (salary revised since 01.01.2006 in pay grade scale of Rs.5200-20200+ grade pay

Rs.1800) and 7th pay commission (since 01.01.2016 in pay scale of Rs.28000 and benefit of MACP granted in level-2 (GP-19) since 01.09.2009) and

2nd MACP level -3 grade pay Rs.2000 since 05.03.2016, pay fixation on the basis of option made. The Assistant Division Commercial Officer NCR,

Jhansi sent a letter dated 08.05.2020 to the applicant for screening to be held on 11.05.2020 for which the applicant appeared with the requisite

documents. The Assistant Establishment Officer NCR Jhansi sent a letter dated 24.06.2021 to the applicant stating therein that according to the

official record and service book in which the qualification of the applicant is 8th pass, date of birth is 15.02.1965 but in the Aadhar Card, the date of

birth is mentioned as 1968, therefore, he was asked to submit all the documents after required correction.

3. We have heard learned counsel for the parties.

4. Submission of learned counsel for the applicant is that at the time of his first appointment as casual labour, the applicant submitted the marksheet of

8th standard and all relevant documents on the basis of which his age was 18 years at that time i.e. on 10.07.1988 but in the column of date of birth,

19.02.1965 has been wrongly mentioned in place of 10.07.1970. He further states that the applicant had already submitted his option for the benefit of

MACP on 30.06.2021 against the letter dated 04.06.2021 before the due date but the Station Manager/GWL sent it on 09.09.2021 which is not his

fault and because of that he has not been given the benefit of MACP on the basis of his option and orders for recovery of paid salary has been issued

on the point that option letter was not received within the stipulated time which is illegal and unjust. He states that entire benefits and arrears were

paid to the applicant since 30.12.1989 but the arrears of city convenience allowance/ TPA on the basis of 5th pay commission has not been given to

the applicant for which he is entitled since he is treated to be in service continuously since 30.12.1989. He claims that the applicant is entitled for

promotion according to the rules as well as benefits of the MACP and after promotion in grade 1, the applicant will be entitled for grade pay of

Rs.4200 but till date no promotion has been given to the applicant.

5. Submission of learned counsel for the respondents is that in compliance with the Hon'ble Court's order, the applicant has been regularized

w.e.f. 10.07.2002 treating him MRCL from 30.12.1989 on the post of Partial Portal Level 1 in Commercial Department vide Office letter dated

15.07.2020. It is further submitted that, according to rule, he was granted benefit of 1st MACP Level-2 GP-1900/- from 01.09.2008 and by calculating

the period of MRCL from 05.04.2016 he has been regularized and granted 2nd MACP Level-3 G.P. 2000/- vide letter dated 04.06.2021. It is further

mentioned that in the letter dated 04.06.2021, it was clearly stated in Para 5 that in case an employee wanted pay fixation from the date of increment

under Rule-1313 (F.R.-22) then he should give an option within one month meaning thereby before 05.07.2021, he can produce his option in this regard

and the applicant was also informed about this on 30.06.2021. He states that the applicant has submitted his option for pay fixation from the date of

increment i.e. 01.07.2016 before Station Manager, Gwalior on 04.09.2021 which is beyond one month i.e. up to 05.07.2021. He further states that

from bare perusal of para 4A of the RBE No.80/2017 dated 03.08.2017 issued by Railway Board, it is crystal clear that the allowances will not be

applicable in those calendar months in which the entire month has been treated as vacation and as such as per aforesaid rule TPA is not payable to

the applicant and there is no provision for payment of Compensatory (City) Allowance (which has been abolished) as per RBE No.110/2008 dated

12.09.2008. He argues that the date of birth of the applicant recorded in casual labour card, on the basis of which the Tribunal had directed the

appointment of the applicant, is 19.02.1965 as per which it has been recorded as such in the service book which has been verified by the applicant

himself at the time of engagement. The date of appointment of the applicant is 10.07.1988 which means that the applicant was 22 years 4 months 21

days old at that time. Thus, he states that the O.A. does not have any merit and deserves to be dismissed.

6. The applicant has reiterated his arguments in the rejoinder.

7. We have considered the rival contentions of learned counsel for the parties and perused the entire documents on record.

8. The claim of the applicant for transport allowance is ruled out on the basis of RBE No.80/2017 dated 03.08.2017 as per which an employee is not

entitled for the same during suspension period even if the period is finally treated as duty. The circumstances of the applicant are also similar (as he

was terminated from service and then subsequently reinstated) and even after reinstatement, the applicant cannot claim TPA for the period he did not

attend the office. Compensatory (City) Allowance has been abolished vide RBE No.110/2008 dated 12.09.2008. Besides, there is no specific prayer in

the relief clause with regard to the grant of transport allowance and the Compensatory (City) Allowance.

9. With respect to the date of birth of the applicant, it has been mentioned as 19.02.1965 in the service record (page 35 of the OA) and the date of

first appointment has been mentioned as 10.07.1988 but the age at the time of appointment has been mentioned as 18 years which is a reflection of

calculation error (the correct calculation of the age would be 23 years and four months and 21 days). The applicant states that according to the age

reflected i.e. 18 years, his date of birth should have been 10.07.1970. The dispute can only be settled through verification of appropriate documents

that establish the actual date of birth of the applicant. Thus, the impugned order demanding the documents for screening cannot be interfered with as

the respondents are well within their rights to demand the requisite documents for extracting the correct details of an employee.

10. The applicant has claimed that he has submitted an application exercising his option for pay fixation for the 2nd MACP from the date of increment

on 30.06.2021 which is within the prescribed time but it has been forwarded to the concerned authority belatedly by the Division Railway Manager

Karmik NCR Jhansi on 04.09.2021. He has argued that there is no fault of the applicant in the delay but no proof/document has been produced by the

applicant to establish that he has exercised his option in time and in absence of any supporting documents it cannot be taken that the applicant has

submitted his option in time.

11. In a catena of judgments the Hon'ble Apex Court has held that a person cannot claim a right to change their date of birth in service records.

The court has also said that applications to change a date of birth can be rejected if they are made too late in a person's career. For instance, in the

case of The General Manager South Eastern Coalfields Ltd. and Ors. Vs. Avinash Kumar Tiwari reported in 2023 LiveLaw (SC) 12,4 the

Hon'ble Supreme Court has held as under:- "Employees cannot wake up from their slumber after a long time and seek alteration of date

of birth towards the far end of their career". In the case of Registrar General, High Court of Madras Vs. M. Manickam and others

reported in (2011) 9 Supreme Court Cases 245, the Hon'ble Apex Court has been pleased to observe that "Change of date of birth in

service records, there must be strong, cogent and reliable evidence in support of contention that date of birth entered in service records was

wrongly entered by mistake. The applicant in this case has already verified his service records in which the entry regarding his date of birth was

made in the year 1988 itself. At this belated stage the applicant cannot claim to change his date of birth. The applicant has also not produced any

strong, cogent and reliable evidence in support of contention that date of birth entered in service records was wrongly entered by mistake.

12. Thus, the Tribunal finds no merit in this case and accordingly, the O.A. stands dismissed. All associated M.A.s also stand disposed of. No

costs.