

70

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1832/89

DATE OF DECISION 6-12-91

SHRI HARI SINGH
VS
UNION OF INDIA

--APPLICANT

--RESPONDENTS

CORAM

HON'BLE SHRI D.K. AGGARWAL, MEMBER (J)

FOR THE APPLICANT
FOR THE RESPONDENTS

SHRI UMESH MISRA, COUNSEL
SHRI D.N. MOOLRI, COUNSEL

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI D.K. AGGARWAL, MEMBER (J))

The dispute in this case is about the recorded date of birth of the applicant in service records. According to applicant the same is 29.09.1934. The respondents allege that it was recorded as 29.09.1931. The documents on record can't resolve the controversy. The reason is that some of the documents support the applicant's case while the other documents are in favour of the department. The controversy came to light in pursuance of the letter of the department dt. 1.09.1989 (Ans R-1 to the reply) to A.P.O. New Delhi which reads as under:-

...2...

D.K. Aggarwal

...2...

"Subject: Regarding retirement of As. Hari Singh S/o Bheti S. Bala.

Reference: your office letter No. 730E/31105/P3 dt. 21.8.89.
In reference your office L. No. mentioned above the date of Birth of Sh. Hari Singh S/o Sh. Bheti S. Wala now S. Jdr. at New Delhi under C49. is 29.09.1931 as per office record available. This for your information please."

It is also not known in what context the above letter was written and whether the author of the letter ^{was} is Chief Health Inspector was competent to declare the date of birth of the applicant behind his back. Therefore at the hearing of the case the learned counsel for the department was called upon to produce the service record or the record on the basis of which the above letter (R-1) was prepared. However, Shri O.N. Moorli, Counsel for Railways has expressed his inability to produce the record. Consequently it cannot be verified as to what date of birth was declared by the applicant at the ^{time} ~~time~~ of entry into service. The allegation of the applicant that his date of birth was 29.9.1934 and recorded as such finds support from promotion order dt. 7.6.86. filed on the date of hearing i.e. 2.12.91 as also from the seniority list, annexure 'C' to the claim petition. The department's plea that the date of birth as reflected in the seniority list was the result of fraud has not been substantiated by any document in rebuttal. The department has also failed to satisfy the tribunal about the actual loss of service record. Consequently the inference is ² ~~in~~ ^{is} inevitable that the department has failed to produce the relevant record. As such adverse inference can be drawn by the tribunal i.e. the applicant's date of birth as recorded in service records is 29.9.1934 as alleged by him.

In the result the claim petition is allowed. It is hereby declared that the applicant will retire according to his Date of birth as 29.9.1934 and entitled to consequential benefits.

.....3

OK Agawal

...3...

12

~~The parties are left to bear their own cost.~~

D.K. Aggarwal

(D.K. Aggarwal)
MEMBER (J)
6/12/91