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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI.

O.A.NO. 2580 OF 1989.

DATE OF DECISION: 20-9-1991.

Sadhu Ram.

.. Applicant.

Vs.

Department of Telecommunications
New Delhi and another.

.. Respondents.

Shri R.K.Singh, Counsel for the applicant.

Shri A.K.Sikri, Counsel for the respondents.

CORAM:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr. D.K.Chakravorty, .. Member(A).

JUDGMENT

Hon'ble Sri G.Sreedharan Nair, Vice-Chairman:

The applicant who was working as SG Sircar under the respondents was placed on the retired list with immediate effect by the order dated 9-11-1989 on the ground that he had already attained the age of superannuation on 31-5-1988. According to the applicant, his date of birth is 15-5-1930 and hence he is entitled to continue in service upto the end of May, 1990. It is stated that when he joined service he had correctly given his date of birth as 15-5-1930, but treating his date of birth as 15-5-1928 the retirement has been made. The applicant has prayed for quashing the order dated 9-11-1989 and for reinstatement in service with consequential benefits. It is urged that the order is passed in gross violation of the principles of natural justice. There is also the plea that the respondents have unilaterally altered the entry relating to the date of birth in the service record from 15-5-1930 to 15-5-1928. It is alleged that after having proceeded for 33 years on the basis that the date of birth of the applicant is 15-5-1930, it was unfair and unreasonable on the part of the respondents to change the same.

2. In the reply filed on behalf of the respondents, it is stated that the correct date of birth of the applicant is 10-5-1928 as recorded initially at the time of his appointment in token of the correctness of which, the applicant has put his signature in the record. It is contended that the applicant was rightly retired with effect from 31-5-1983 on completion of 60 years of age. With respect to the alteration regarding the date in the service book from 10-5-1928 to 27-10-1930, it is stated by the respondents that the said change was without any authority and was done in an improper manner and hence the applicant was asked to produce certificate regarding his date of birth by the letter dated 12-4-1989 which he failed to comply.

3. The point that arises for determination is whether the retirement of the applicant from service on the premise that his date of birth is 10-5-1928 is sustainable?

4. The respondents have produced a photo copy of the first page of the service roll relating to the applicant as Annexure-R1. Since it is not quite legible we directed the counsel of respondents to produce the original service roll and accordingly it was made available. It can be gathered from the same that originally the date of birth was recorded as 10-5-1928, but subsequently it has been corrected as 27-10-1930. The correction has been made in red ink after striking off the original entry relating to the date of birth. It is seen to have been done under the initials of some authority and it bears the date 5-3-1954. It is also seen that contemporaneously similar corrections have been made in the entry relating to the date of birth in page two of the service roll. Besides, from the year 1972, a new service book, evidently in continuation of the earlier book, was opened wherein the date of birth is

clearly entered as 27-10-1930 both in figures as well as in words.

5. Though an attempt has been made in the reply filed by the respondents to create an impression that the correction with respect to the entry relating to the date of birth in the service roll is unauthorised, on the materials on record we are ^{not} inclined to accept the contention. As has been stated earlier, it is not a mere correction on page one of the service roll, but the correction has been carried over in page two of the original service roll apparently under the initials of the competent authority and it is the correct date of birth that is entered in the continuation service book. It is significant that on the date of issue of the impugned order namely 9-11-1989 the corrected date of birth of the applicant in the service book was 27-10-1930 and even as on date the same continues. As the retirement age is admittedly 60 years, in the face of the aforesaid entry in the service records, with respect to the date of birth of the applicant, the retirement of the applicant with immediate effect from 9-11-1989 cannot be supported.

6. In this context reference may also be made to the letter dated 17-11-1988(Annexure-B) wherein the respondents themselves have referred to the date of birth of the applicant as 15-5-1930 and the date on which he is to retire on superannuation as 31-5-1990.

7. Counsel of the respondents placed reliance on a letter dated 12-4-1989 (Annexure-R2) issued to the applicant calling upon him to produce the certificate with respect to his date of birth. It was submitted by him that the said letter was sent with a view to ascertain the correct date of birth of the applicant for the purpose of his retire-

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ment. However, it was stated by counsel of the applicant that since the applicant was called upon to produce the certificate within 3 days he could not do anything better than to assert that his real date of birth is 15-5-1930, as has been done in the endorsement in Annexure-R2 itself. At any rate, there is nothing on record to establish that before issuing the impugned order retiring the applicant the respondents have ~~not~~ held an enquiry to find out the correct date of birth of the applicant. If such an enquiry was held, the respondents should have produced ^{the} proceedings relating to the same. The non-production of any such record, taken along with the continued existence ^{of} the date 27-10-1930, as the recorded date of birth in the service record go a long way in establishing the case of the applicant. In this context reference may also be made to Annexure-C, certificate produced by the applicant from the school authorities to the effect that his date of birth according to the school records is 27-10-1930.

8. In view of the above, the order dated 9-11-1989 declaring that the applicant has attained the age of super-annuation on 31-5-1988 and placing him on the retired list with immediate effect is hereby quashed. As the date of birth of the applicant is 27-10-1930 ^{as per the entry in the Service Book} he was entitled to continue in service upto the end of October, 1990. Hence, the applicant shall be deemed as having been retired on super-annuation only with effect from 31-10-1990. He shall be allowed the pay and allowances on that account, less the pension, if any, paid to him during that period. In case revision of pensionary benefits is required in view of the above direction the respondents shall do so.

9. The application is disposed of as above. The respondents are directed to comply with the order within a period of two months* from the date of receipt of the copy of this judgment.

D. K. Chakravorty
(D. K. CHAKRAVORTY)
MEMBER (A) 20/9/49/

G. Sreedharan Nair
(G. SREEDHARAN NAIR)
VICE-CHAIRMAN