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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Date of Decision: 24.2.1989

Regn. No. OA 597/87

Shri Makhan Singh

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Applicant

Vs.

Union of India & Others

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Respondents.

For the applicant:

Shri K.L. Bhatia, counsel.

For the respondents:

Shri O.N. Moolri, counsel.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

JUDGMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Makhan Singh, Black-smith, Track Supply Depot, Northern Railway, Ghaziabad, against the impugned order passed by the Assistant Engineer, T.D., Northern Railway, Ghaziabad, regarding his retirement.

2. The case of the applicant is that he was appointed as a Khalasi in the Railways on 23.9.1948 and after one year two months of the appointment, when the applicant was 20 years of age, the respondents issued the medical memo in which the age of the applicant was mentioned as 20 years and, therefore, the applicant should have been retired on 30.11.1987 on attaining the age of 58 years as mentioned in the medical memo. But the authorities retired him illegally on 23.9.1986, i.e. about one year before the actual date of his retirement. The applicant made several representations but did not get any satisfactory reply from the respondents. He cited the case of his colleague, Shri Darshan Singh, who retired according to the age mentioned in his medical memo. The applicant claims to be illiterate and states that the certificate of his date of birth (Janampatri) was destroyed at the time of riots when he left Pakistan.

3. The respondents in their reply have stated that the application is time-barred. The applicant was served notice of retirement in July, 1986 whereby he was informed that he was due to retire

on 30.9.1986. But the first representation against the date of retirement was made by the applicant on 29.11.1986, i.e. two months after retirement, without giving any reasons at any time before retirement that his date of birth was different than the one recorded in the service book under the signature of the applicant himself. The applicant was appointed at first by the Bridge Inspector, Chheru (near Faridkot in Punjab) and the date of birth in the service book of the applicant as 23.9.1928 was recorded on the basis of the statement given by the applicant and signed by him. He also affixed his Left Thumb impression in token of the correctness thereof. He has, therefore, been correctly retired on 30.9.1986.

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4. The case of the applicant is that since he had no record of his date of birth, the same had to be ascertained according to the Railway rules through a medical examination and his date of birth was recorded as 20 years at the time of his appointment in 1948. The applicant was never asked to sign his service book nor did he put any signature thereon. He only put his L.T.I. once on the service record. The learned counsel for the applicant stated that the applicant had received the retirement memo just two months before retirement in July, 1986 whereas, according to Railway rules, such a notice should have been given a year earlier. The applicant protested only about the retirement memo citing the case of his colleague, Shri Darshan Singh, who had been retired on the basis of the age recorded on the medical memo. His formal representation of 29.11.1986 was turned down without any enquiry or giving any reasons. The learned counsel for the applicant cited a number of cases in favour of the applicant. In these cases it has been held that an enquiry should have been made into the date of birth and retirement done on the basis of orders without enquiry is not valid and the applicant had a right to continue in service till superannuation and can contest his age as recorded in the service record. The cases cited were:

1.1(1988) ATLT CAT 41 - Roshan Lal Vs. Union of India .

2. A.T.R. 1987(1) C.A.T. 414 - Hira Lal Vs. Union of India.

3. 1976(1) SLR 403 - Manak Chand Vaidya Vs. STATE of Himachal Pradesh & Others.

4. 1986(1) A.T.R. 435 - Udai Ram Vs. Northern Railway

5. JT 1988(1) S.C. 265 - National Insurance Co. Ltd. Vs. Shrir Jugal Kishore & Others.

5. The learned counsel for the respondents, Shri O.N. Moolri, said that the application was time-barred as the applicant should have come to the court within a year of the rejection of his representation and that there was an estoppel against the applicant as he had made a representation after he had actually retired from service. He was due to retire in September, 1986, but his first representation to the Department was made only in November 1986 i.e. two months after his retirement. The application was filed on 9.4.1987. Shri Moolri stated that the records in his case were clear and it is a well established principle that the old records must be accepted. The service book of the applicant was produced by him which shows that the date of birth of the applicant is 23.9.1928. He said that the service record has been signed by the applicant who has also put his L.T.I. The record has been witnessed by the Head Clerk and has been accepted <sup>by</sup> the Assistant Store Keeper, Track Depot, Northern Railway, Ghaziabad, on 20.8.1969. Even if it is accepted that the service record was prepared in 1969, it is still the oldest record concerning the date of birth of the applicant and cannot be challenged. Shri Moolri said that there is no medical memo in the record of the applicant nor has the applicant produced a copy of any such memo. The entry in the service record was not made on the basis of any medical examination, but on the basis of a statement given by the applicant. Another document was produced giving the seniority list published in 1981 where the date of birth of the applicant is shown as 23.9.1928. The applicant had filed a suit No. 438/80 decided by the Additional Munsif, Ghaziabad, in which the seniority list was filed in the court mentioning the date of birth. Shri Moolri also cited two cases:

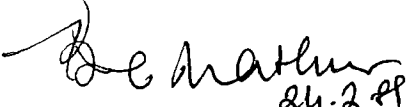
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1. Shri Dharam Pal Vs. U.O.I. - OA 1020/87 - decided by the Principal Bench of the CAT on 31.8.87 and

2. Shri Baldev Raj Vs. U.O.I. - OA 396/87 - decided by the Principal Bench of the CAT on 4.5.88.

In these cases it has been held that the date of birth in the service record which has not been challenged cannot be altered at the fag end of one's career unless there is an overwhelming evidence in support of the correct date of birth.

6. While there is no direct evidence that the applicant made a statement regarding his date of birth, there is also no evidence regarding the medical examination giving the age of the applicant as 20 years. The applicant denies his signature on the service record, but it is also true that these are old records and at the fag end of the service, reliance must be placed on these records as there is no allegation of any fraud or forgery of these documents. The applicant has retired after serving for nearly 38 years and as such, there appears no justification for allowing him further service. In the circumstances, the application is rejected. There will be no orders as to cost.

  
(B.C. Mathur)  
Vice-Chairman  
24.2.89