

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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DA 1032/91

23.03.1992

SHRI INDER PAL SINGH

...APPLICANT

VS.

UNION OF INDIA.

...RESPONDENTS

CORAM :

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

...SH. A. KALIA
PROXY COUNSEL FOR
SH. R. L. SETHI

FOR THE RESPONDENTS

...SH. N. K. AGGARWAL

1. Whether Reporters of local papers may
be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant since retired on 28.2.1991 filed this application under Section 19 of the Administrative Tribunals Act, 1985 on 28.4.1991 assailing the order dt. 7.2.1991 passed by DRM, Northern Railway by which the applicant was informed that he has to retire from 28.2.1991 on attaining the age of superannuation.

The case of the applicant is that he joined as Loco Cleaner on 28.1.1957 and in support of the proof of his date of birth at that time, he filed school

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leaving certificate in which his date of birth was recorded as 28.2.1938. According to this date of birth, the applicant has to attain superannuation on 28.2.1998. So the order dt.7.2.1991 showing his attainment of superannuation on 28.2.1991 is wrong and, therefore, it is prayed that the said order dt.7.2.91 be quashed and withdrawn and the applicant be allowed to continue in service till 28.2.1998 on the basis of date of birth recorded in the school leaving certificate and should be allowed all consequential benefits with continuity from 1.3.1991.

The applicant in support of his contention has relied on a certified photostat copy of school leaving certificate dt.20.4.1991 issued by Principal, Barmer Nursing Buss, Amritsar Metro College (Annexure 12) and is dated 20.4.1991. He has also relied on a Memo dt.20.8.1982 issued by LjFF Office from Loco Foreman, Shaniabad to Station Master, Daurala, when the applicant was transferred to Daurala, in which in the contents of the letter of service particulars, date of birth is mentioned as 28.2.1938 (Annexure 13). The applicant also placed reliance on the seniority list of Goods Markers Grade 80-110 (Annexure 14) in which

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at Serial No.103, the name of the applicant is recorded and in column 4 of date of birth. 28.2.1938 is written and this seniority list is authenticated on behalf of the Divisional Superintendent. Dev. field with date under the signature as 17.4.1988.

On the basis of these documents, the applicant prayed that his date of birth be corrected to 28.2.1938 as it is wrong). mentioned in the service record as 28.2.1938.

The learned counsel for the respondents argued that the applicant himself has given the date of birth in the service record which was verified also by medical examination and in support of his case, has photostat copy of the original service sheet of the applicant showing his signature against the original date of birth (28.2.1938) has been filed with a copy to the learned counsel for the applicant during the course of the arguments on earlier sitting of the Bench. It is stated that the date of birth of the applicant is 28.2.1938 and it is incorrect to say that the date of birth is 28.2.1938. The genuineness of the school leaving certificate has also been disputed.

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The arguments were also heard on the earlier sitting when it was desired that the applicant may file certain more documents, but it transpires that the MP filed by the applicant with Filing No. 1733 remained under objection till today and so that MP could not come for listing and hearing, though the copy of the same was furnished to the learned counsel for the respondents.

Again, the arguments of the learned counsel for the parties have been heard. The documents which the applicant wants to rely and ^{ed} answer with the undated MP, have also been referred to and considered. The case of the applicant is that by some topographical mistake, the date of birth of the applicant in the service sheet has been entered wrongly, while the correct date of birth is 28.2.1939. If this contention of the learned counsel is accepted, then the document issued by Loco Foreman, Chazichad in 1960 (Annexure A3) and the seniority list (Annexure A1) goes against this averment in as much as these documents ^{as per contention of} ~~and~~ the respondents should reflect the

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position as existed in the service record. It is not the case of the applicant that there is some discrepancy with the date of birth in the service record. So the writing in the subsequent heads in the respondents either in the transfer order showing service particulars or in the column of date of birth in the seniority list do not at all support the averment. Further the contention of the learned counsel that he has at the time of entering to Railways in January, 1957 has filed the school leaving certificate, does not find mention in the service sheet. This is an old document maintained in due course of business by those, who are expected to maintain them and at a point of time when there was no controversy between the parties.

Under Section 34 of the Indian Evidence Act, the school leaving certificate has to be given due weight and also the adjournment was granted only to go deep in to the matter because the school leaving certificate's copy filed by the applicant states the entry recorded therein on the basis of the entries in the record of an earlier institution. The applicant

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has utterly failed to connect this entry with the entry of the earlier school leaving certificate. The intention of the learned counsel and with ~~the~~ force is that it is the same institution, i.e., the Metro College, Career Nursing Class, Amritsar which has been imparting earlier education to the applicant in the primary stage and in subsequent classes until the applicant reaching 8th class. This argument cannot be advanced as there is nothing on record to show that the applicant has attended this institution prior to 1964. This certificate shows, "The particulars are certified to be correct according to the register of this school and certificate produced from previous schools attended during the school year." The date of entry in the Metro Amritsar is 1.4.1964 and the date of leaving the institution when the applicant had failed in class 8th is 31.3.1965, i.e., the applicant has remained in this institution only for one year. This school leaving certificate, therefore, cannot be said to have any weight unless and until it is connected with the earlier main school leaving certificate, which the applicant must have filed while entering in this institution in class 8th. Thus the school leaving certificate loses much of its value.

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The learned counsel for the applicant has pressed that every five years, the respondents should have got the date of birth checked according to the circular of 1971, but it is the applicant who has to show that the date of birth is actually what he claims now and not that what has been recorded in the service record.

A document has to be interpreted on the basis of its contents and ^{no} ~~any~~ thing can be added in order to understand the contents of the document. The school leaving certificate filed by the applicant has been obtained after the retirement of the applicant and when the controversy regarding the date of birth of the applicant has arisen by the impugned order dt. 7.2.1991. Though it is a fact that such certificates are prepared from the old records maintained by the institution, but at the same time, the record must be authenticated and if there is any other evidence available which could authenticate the entry, then that record should come or there should have been an affidavit or deposition to the fact that such earlier record is not available so that the

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burden may shift on the other side. When no evidence is given by either side, then the assertion of the applicant cannot be accepted because the other side has not placed certain other document which according to the learned counsel for the applicant are within the knowledge and possession of the respondents.

Taking all these facts into account, the entry made in the service sheet cannot be said to be an entry which has been tampered with. Regarding topographical mistake, it appears to have been written mostly in the hand and there are signature against the column of date of birth of the applicant himself. In the lengthy part of the application, it is not stated that the applicant has not signed the service sheet at all. The signature in the service sheet elsewhere do tally the signature against the column of date of birth. The original service sheet, therefore, has not at all been tampered with. A topographical mistake may occur when a mechanical process is introduced to transcribe the matter. But when the whole matter is written in hand, then it

cannot be said that it is a topographical error. Taking all these facts into account, it is clear that the present application is devoid of merit and, therefore, is dismissed. The ^{original} service sheet filed, the fee for appeal for the respondents is returned. In the circumstances, the parties to bear their own costs.

Jomana

(C.P. CHAPRA)

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20.03.1999