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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

DA No.2110/92

Date of decision: 5-3-93

Shri Gulshan Rai

.. Applicant

Vs.

U.O.I. & Ors.

.. Respondents

CORAM:

The Hon'ble Mr. C.J. Roy, Member (J)

For the applicant

.. Mr. Umesh Mehra, Counsel

For the Respondents

.. Mr. R.L. Dhawan, 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 Mr. C.J. Roy, Member(J)]

This application is filed under Section 19 of CAT Act of 13/85 by the applicant claiming a relief to direct the respondents to allow him to work upto 31.12.93 or give him wages and other benefits till 31.12.1993.

2. The brief facts of the case are as follows.

The applicant claims that he was born on 9.12.35 and was appointed with the respondents on 9.12.53.

It is averred that when he was initially appointed his date of birth was entered as 9.12.35 in his service book and that at that time he was matriculate and the original certificate was produced to the respondents.

3. After his initial appointment as Loco Cleaner, he was given promotion and he would not have been given promotion without submitting the matriculation certificate. He states that he had matriculated in 1952 from Punjab University. When the applicant learnt that he will be retired on 31.12.91, he made a representation on 12.11.91 and he referred to the records of the Railway that in the leave account his date of birth was recorded as 9.12.35 and it was subsequently changed to 9.12.34 and thereafter it was changed by the respondents as 9.12.33.
4. The applicant categorically asserts that from 9.12.35 it was changed to 9.12.34 without giving him an opportunity and the respondents again changed it to 9.12.33 and retired him and hence this application.
5. The respondents have filed a counter taking preliminary objection that the applicant has not forwarded any material alongwith his representation to show that his date of birth is 9.12.35 but deny that 9.12.35 was ever entered in the service book. They further aver that the date of birth was corrected to 9.12.33 on 6.1.54 and that it was duly signed by the competent authority on the right side of the first page of the applicant's service record.
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6. As per the list of persons retiring between 1.1.91 and 31.12.93, the applicant's name appears at Sl.No.1516 with his date of birth as 9.12.33 and that he will be retiring on 31.12.91. The respondents aver that the applicant has no cause of action as he gave his representation just before his retirement, i.e. on 12.11.91 without any corroborated evidence and therefore he has not come with clean hands. Besides they allege that the correction in date of birth was done by the competent authority as long back as 6.1.54 and he should have represented earlier than this. So, there are no merits in the case. Besides he is already superannuated on 31.12.91 taking into account his date of birth as 9.12.33 and therefore the petition may be dismissed.

7. The applicant has filed a rejoinder more or less asserting the same points.

8. The respondents have filed Annexure R-1 showing photocopy of the service record. I have seen the service book and other records produced by the learned counsel for the respondents and also the zerox copies of the leave account produced by the applicant.

9. Heard the learned counsel for the applicant Shri Umesh Mehra and the learned counsel for the respondents Shri R.L.Dhawan and perused the records.


10. The short point for consideration is whether the applicant is entitled to the relief claimed by him for change in date of birth.

11. The respondents in their counter categorically admit that the file pertaining to the correction of the date of birth from 11.11.34 to 9.12.33 and signed by the competent authority is missing as it pertains to a long period and they are not in a position to explain how this change has occurred.

12. The respondents have also filed a list in which the applicant's name is shown at Sl.No.1516 and that he will be retired on 31.12.91.


13. The applicant did not produce a copy of the matriculation certificate as he could not obtain the duplicate copy from the Punjab University. Now to decide this case, we are placed in a situation where the documents are not made available before the Tribunal.

14. The applicant made his representation on 12.11.91 when he was informed about his date of retirement on 31.12.91 vide the list dated 19.10.90, which is obviously just one month earlier and that he has no knowledge of the list which can not be accepted.



15. The applicant says that his date of birth is 9.12.35 but in the service book it is altered as 9.12.33 which is duly signed by the competent authority on 6.1.54. The applicant has filed zerox copies of the leave account; On the first page of which his date of birth is mentioned as 9.12.34, no entry on 2nd page, 3rd and 4th pages as 9.12.34, 5th page as 9.12.35, 6th page smudged and mutilated at the place of date of birth column, 7th page corrected from 9.12.35 to 9.12.34 (the letter 5 is altered as 4 or 4 is altered as 5), 8th page is not clear, 9th page as 9.12.35. I do not know how the applicant came into possession of zerox copies of the leave account, when he is not supposed to possess these documents. These could not be proof as these contain both 9.12.34 and 9.12.35, alterations, mutilations and omissions and as such these documents *would* ~~will~~not help the applicant.


16. Coming to the case, the applicant has cited the case of Binapani Dei of AIR 1967 SC 1269 wherein it has been observed that "Order of compulsory retirement based on a certain disputed date of birth-petitioner not given the report of the Enquiry Officer who conducted the enquiry into the correct date of birth - order violates principles of natural justice". I think this observation will not help the applicant because the alteration is made in 1954 and the



applicant can not plead ignorance of it after $32\frac{1}{2}$ years even after circulation of gradation list dated 19.11.90. It can be presumed that all official acts must have been done in the usual course of business.

17. The applicant has not chosen to make any representation in time but just before one month of his retirement he makes the representation and filed this application. Besides the burden of proof lies with the applicant to prove his date of birth by placing before the Tribunal the primary evidence. If the primary evidence is missing, he should have produced secondary evidence. He did not produce anything. He is also retired on 31.12.91 and the application is filed in 1992. Besides the burden of proof lies with the person who asserts his date of birth as a particular one and if he fails to prove, his case fails. Here the applicant is not sure whether his date of birth is 9.12.35 or 9.12.34 but the service book shows as 9.12.33.

18. The applicant's claim that he acquired knowledge of his retirement only before one month can not be accepted as the pension papers are generally prepared six months before retirement.



In view of the above, I find that the applicant has not made out a proper case for a change in his date of birth and has not placed any material to support his case. Hence the case is dismissed with no orders as to costs.

W. J. Roy
(C. J. Roy)
Member (J)