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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration T.A.No. 1159 of 1986 (Civil Appeal No.147 of 1983).

Ayodhya	....	Plaintiff-Appellant
	Vs.	
Union of India	...	Defendant- Respondent

Hon. D.S.Misra, AM  
Hon. G.S.Sharma, JM

( By Hon. G.S.Sharma, JM)

This appeal against the judgment and decree dated 22.3.1983 passed by Munsif I Gorakhpur dismissing suit no.76 of 1973 filed by the plaintiff has been received by transfer under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The material facts of this case are that the plaintiff had joined the service of the erstwhile O.T.Railway on 30.3.1945 as a Coolie and was later on promoted as E.S.M. According to his service record, his date of birth was 16.4.1915 and when he received the letter dated 20.10.1972 of the defendant to retire him w.e.f. 15.4.1973 on completing the age of 58 years, he filed the suit giving rise to this appeal for a declaration that the letter dated 20.10.1972 of his retirement is illegal and without jurisdiction and he continues to serve the defendant upto 6.2.1980 as his correct date of birth is 6.2.1922. He also prayed for a permanent injunction to restrain the defendant from retiring him on 15.4.1973 with the allegation that he is an illiterate



person and at the time of his appointment he had given out his age as 23 years and on the basis of this calculation, his date of birth should be 6.2.1922 and the <sup>wrong</sup> date of birth recorded in his service record was not corrected by the officers of the defendant despite representations.

3. The suit was contested by the defendant and it was pleaded therein that the plaintiff is not an illiterate person but is an educated man. The date of birth 16.4.1915 was recorded in the service record and card 'A' maintained by the defendant on the basis of the information given by the plaintiff. The date of birth and other entries made in the service card were accepted by the plaintiff by putting his thumb impression and signatures and the stand to the contrary taken by the plaintiff after receiving the notice of retirement is an after-thought and baseless. His representations were duly considered by the competent authority but the same were rejected on merits and the plaintiff was rightly retired from service on reaching the age of superannuation according to his service record and his suit merits dismissal.

4. The learned Munsif had framed the necessary issues in the case and after considering the evidence of both the parties held that the plaintiff was born on 16.4.1915 and not on the date alleged by him. The order dated 20.10.1972 retiring him w.e.f. 15.4.1973 was validly passed. The suit was accordingly dismissed. Aggrieved by the findings against him, the plaintiff preferred this appeal which has come before us for disposal according to the changed law.



5. At the time of argument, before us the learned counsel for the appellant laid emphasis on two documents filed by the plaintiff before the trial Court and rule 145 of the Indian Railway Establishment Code in support of his case. It was contended that the plaintiff is an illiterate person and according to rule 145 of the Railway Establishment Code ( for short Code) declaration of his age should have been recorded by a senior railway servant and witnessed by another railway servant and as the same was not done, no reliance should be placed on the service record and Card 'A' filed by the defendant. On a careful examination of the service record and card 'A', it appears that the service record was prepared by Signal Engineer, O.T. Railway by whom the plaintiff was appointed and the entries were attested by 3 other officials. It bears only thumb impression of the plaintiff and not his signatures. On the other hand, card 'A' bears both the thumb mark and signature of the plaintiff as well as attestation of 2 witnesses. Thus in our opinion the entries were made in accordance with the requirement of rule 145 of the Code and the contention raised on behalf of the plaintiff in this connection is not correct.

6. The plaintiff made his own statement before the trial Court in support of his case as P.W.1 and denied his thumb marks on the aforesaid service record and card 'A'. He further filed the extract of his Mutumb register dated 4.7.1969 Exb.2 and extract of Police record Exb.3 regarding his date of birth. According to the kutumb register extract, the plaintiff was born on 6.2.1922 while according to the



Police record, a son was born to his father Chhabil Nath on 29.5.1922. The plaintiff has placed his reliance on a Single Bench decision of the Allahabad High Court in Smt. Aina Devi Vs. Bachan Singh (AIR 1980 Allahabad-174) in which it was held that certified extracts of family register of a village is a public document and the entries made therein are presumptive evidence of what they recorded until disproved by satisfactory evidence to the contrary. The burden is on the other party to prove that the entries were incorrect.

7. It is noteworthy to point out that according to the plaintiff's allegations made in paragraph 3, the plaintiff was not definite of his date of birth and the date 6.2.1922 comes according to calculation of his age, declared to be 23 years, on the date of his appointment. The date 6.2.1922 recorded in the Kutumb register <sup>was</sup> thus only according to calculation and is not the definite date of his birth. Further, the kutumb registers were introduced under the Panchayat Raj Act, 1947. There can be a presumption about the correctness of the date of birth regarding the persons born after 1947 but the same presumption can hardly be made in respect of the persons born before 1947 as the authorities made responsible for maintaining kutumb registers had to depend on certain other evidence for making such entries. In view of the difference in date of birth between Police record and the kutumb register mentioned above, the date of birth of the plaintiff does not seem to have been recorded on the basis of the entries in the Police record. Much weight, therefore, cannot be attached to the date of birth of the plaintiff recorded in his kutumb register. As the two dates shown by the kutumb register and the Police record are different, none of them could be accepted to be correct in the absence of any connecting



evidence.

8. According to the kutumb register extract, Exb.2 of the plaint, his mother is alive and she could be the best person to tell about the date of birth or age of the plaintiff. She was, however, not examined in this case. In his own statement as P.W.1, it was stated by the plaintiff Ayodhya that the kutumb register, paper no.13-C and the extract of Police record, paper no.14-C, relate to him. His statement may be accepted regarding the kutumb register as his name is given therein but in the extract of the Police record, his name has not been mentioned and unless it is established that no other son was born to his parents on 19.5.1922, the Police record cannot be connected with him. It is also not possible to believe that one son was born on 6.2.1922 and another son after an interval of 3 months only on 19.5.1922 to his parents. There is nothing else in his statement to show that the entries made in these two documents are correct or he has any personal knowledge about the same. We further find that the plaintiff is not a straightforward and trust-worthy witness. To suit his purpose he even denied his thumb marks on the service record and card 'A' produced by the defendants in this case and only by the evidence of the Government Hand Writing Expert this fact could be established that these two documents bear the thumb marks of the plaintiff. Regarding his signatures in English on card 'A', the plaintiff came forward with an explanation that these signatures were obtained about a week or month before his retirement.



There could be no occasion for anybody in the office of the defendant to obtain the signatures of the plaintiff at that time as his thumb mark already appeared in the service record and card 'A' from the very beginning. We are, therefore, not inclined to attach any weight to the oral testimony of the plaintiff in this case. Lastly, it was contended on behalf of the plaintiff that when the plaintiff made a representation for correcting his date of birth, the departmental authorities should have obtained a report <sup>about his age</sup> after his medical examination and only on that evidence, the date of birth of the plaintiff could be properly ascertained. Reliance was placed on behalf of the plaintiff on Jivan Kishore Vs. Delhi Transport Corporation (A.I.R. 1980 SC-1251). In that case, there was discrepancy in the two records regarding the date of birth of an employee of Delhi Transport Corporation and the department had obtained the report of the Medical Board about his age. In view of the conflicting evidence of date of birth, the Hon'ble Supreme Court preferred the assumption of age made by the Medical Board. It is not the case of the plaintiff that he ever applied for the medical examination in support of his contention and the defendant did not agree to such request. In view of the unconflicting evidence on the date of birth of the plaintiff in record, it was not necessary for the defendant to obtain any medical opinion about his age in the present case. The case law relied upon by the plaintiff has, therefore, no application to his case.



9. Under the law, there is a presumption that official records are regularly maintained. Further the service record and card 'A' maintained in the office of the defendant regarding the age and the other particulars of the plaintiff bear his thumb impression too in token of his accepting their correctness. The card 'A' also bears his signatures in English which belies the fact that he was an illiterate person at the time of his entering into the service in 1945. In these circumstances, it was for the plaintiff to prove that the entries made in the record of the defendant about his age are not correct and we are of the view that the evidence led by the plaintiff in this case falls much short to prove his contention and his suit was rightly dismissed by the learned Munsif. We see no reason to take a different view in this appeal and it deserves to be dismissed.

10. The appeal is accordingly dismissed without any order as to costs.

*Bhm* 20/7/87  
Member (A)

*Subramanya* 20/7/87  
Member (J)

Dated 20.7.1987  
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