

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Registration No. 77 of 1986 (T)

(Civil Appeal No. 38 of 1982 of the court of District Judge, Bareilly)

APPLICANTS
(Defendants)

versus

Shanti Swaroop

3

RESPONDENT
(Plaintiff)

Hon. Justice S.Zaheer Hasan, Vice Chairman
Hon. Ajay Johri, Member (A)

(Delivered by Hon. S.Zaheer Hasan, V.C.)

Civil Appeal No. 38 of 1983 has been transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985, from the court of District Judge, Bareilly.

On 9.7.1980 Shanri Swarup son of Ram Swarup Upadhyaya filed suit no. 145 of 1980 in the court of Munsif Haveli, Bareilly, with the allegations that he was appointed on 16.8.1949 as Engine Cleaner and his date of birth was incorrectly recorded in the service record as 1.7.1924. In fact he was born on 8.1.1932. From time to time he made various representations for correction of his date of birth and ultimately his prayer was rejected without giving him any

any opportunity of being heard. This matter was agitated by him in 1955 when the D.M.E. accepted his contention, vide his order dated 24.6.1955. Ultimately on 30.3.1979 the D.S.P. North-Eastern Railway, Izatnagar, informed him that his date of birth would not be corrected. So he filed a suit for declaration that his date of birth was 8.1.1932 and not 1.7.1924 as recorded in the service record. The suit was decreed.

The defendants filed an appeal and got the operation of the order stayed. In the meantime the plaintiff was retired on 30.6.1982. The plaint was accordingly amended and the required relief was added.

The simple point to be seen is as to whether the plaintiff was born on 1.7.1924, as recorded in his service record, or on 8.1.1932.

According to the defendants there was a fire in the Department and the record relating to the applicant (plaintiff) was destroyed by fire. They could produce only a medical examination report dated 11.3.1979 in which his date of birth is recorded as 1.7.1924, and the seniority list of 1964, in which the same date of birth is written. Since the date of birth was originally written as 1.7.1924, so it is not surprising that the same was repeated in the medical papers as well as in the seniority list. The plaintiff is agitating this matter since 1952.

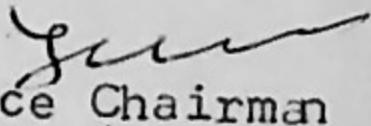
On 24.12.1976 the plaintiff was asked to submit a copy of his school leaving certificate. He was again asked on 19.2.1979 to appear in

person. The defendants' case that the plaintiff was cooking up this story and he was taking advantage of the fact that some records were damaged by fire. This fire damaged the records on 15/16.2.1980. The plaintiff is agitating this matter from much before 1980. According to the written statement, the date of birth as recorded is 1.7.1924, because the correct date of birth was not given by the plaintiff. When correct date is not given normally 1st of July is mentioned as the date of birth. So it may be that on the basis of a rough estimate the date of birth was recorded as 1.7.1924, and when the true position came to the notice of the applicant, he started making representations without any success. In support of his version the applicant filed his school certificate in which the date of birth is entered as 8.1.1932. If it was correct, then he was about 18 years old when he joined as engine cleaner on 16.8.1949. According to the Principal's certificate dated 5.6.1952 he was born on 8.1.1932 and he has studied upto 9th class and thereafter he appeared in the High School examination as a private candidate and his roll number was 12279.

According to the D.M.E.'s letter dated 24.6.1955 the applicant along with some others had submitted correct school certificates which were accepted and filed in the service files. Service
The ~~marking~~ file of the plaintiff has been destroyed by fire. Papers nos. Ga-68 and Ga-69 were filed by the plaintiff. There is his

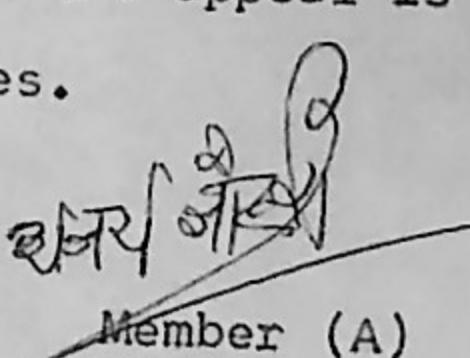
statement on oath in support of his version regarding these papers. From the other side it is said that the recorded were destroyed in fire. So there appears to be no sense in manufacturing such a big document in which a good number of persons are mentioned whose school certificates were accepted and those filed by some others were not accepted. The ~~applicant~~ was plaintiff was also issued identity card in which his date of birth is mentioned as 8.1.1932. So in view of all the documents, the statement of the plaintiff and the attending circumstances the finding of the learned Munsif that the date of birth is 8.1.1932 cannot be condemned as perverse, illegal etc. We do not find any good ground to interfere with the findings of the learned Munsif. The plaintiff was born on 8.1.1932. So his date of birth be corrected accordingly, and he should be given the necessary benefits permissible under the law.

With these observations the appeal is dismissed with costs on parties.


Vice Chairman

D/- April 22nd, 1987.

AAK


Member (A)