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In the Central Administrative Tribunal, Allahabad.
Registration No.10 of 1985 (T)
Union of India and others Appellant
Vs.
Mohd. Haneef Respondent.

Hon. D.S.Misra, Member (A)
Hon. G.S.Sharma, Member (J)

(By Hon. G.S.Sharma, Member (J))

This Civil Appeal (No.693 of 1983) against the judgment and decree dated 1.8.1983 passed by the Addl.Civil Judge, Allahabad has been received by transfer from the Court of I Addl.District Judge, Allahabad under section 29 of the Administrative Tribunals Act XIII of 1985.

2. Briefly stated, suit no.213 of 1982 giving rise to this appeal, was filed by the plaintiff-respondent against the Union of India, General Manager, Northern Railway, Baroda House, New Delhi and the Divisional Railway Manager, Northern Railway, Allahabad for permanent injunction to restrain the defendant-appellants from retiring the plaintiff-respondent from service before 14.3.1988 and for a declaration that the actual date of birth of ^{the} plaintiff is 14.3.1930 and the age recorded in his service record is incorrect, void and ineffective with the allegation that he had joined the Railway Department at the age of 12 years

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as a boy Cleaner on daily wages on account of his father, who was already serving the Railway Department as a Driver at that time. After attaining the age of majority, the plaintiff was appointed as a Cleaner on regular basis. On the partition of the country, he opted Indian citizenship in the year 1948 and has been regularly serving the Northern Railway since then. The plaintiff got his early education from 1937 to 1940 in N.R. Inter College, Tundla, where 14.3.1930 was recorded as his date of birth. The age of superannuation of the plaintiff is, therefore, 14.3.1988 and under the rules, he has to retire from service on 31.3.1988. On knowing from the Loco Foreman, Tundla that he was going to be retired with effect from 31.7.1982, the plaintiff made a representation to the Railway authorities for correcting his date of birth but when no heed was paid, he served the defendant-appellants with a notice under section 80 Civil Procedure Code and thereafter filed the suit for the reliefs stated above on 31.7.1982.

3. The suit was contested on behalf of the defendant-appellants and they pleaded in their written statement that the plaintiff was appointed as a temporary cleaner under Loco Foreman, Tundla with effect from 17.7.1942 and his date of birth at the time of his entry in service was recorded as 9.7.1924, which was based on the own declaration of the plaintiff and the allegations made by the plaintiff to the contrary are incorrect. On the partition of the country, the plaintiff first opted to go to Pakistan and he was accordingly spared from the then Eastern Railway on 29.9.1947 but later on he

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changed his option and desired to live in India finally. He was accordingly reinstated in service with effect from 30.10.1950. The original record of the service of plaintiff was sent to Pakistan on relieving him on his first option but the same has not been received back after his reinstatement and his fresh service record was reopened and prepared. According to the service record of the plaintiff, he had to retire on 31.7.1982. The date of birth of the plaintiff recorded in the Railway record is correct and the plaintiff never challenged the same till he was in service. The receipt of the representation as well as the notice under section 80 Civil Procedure Code alleged to have been given by the plaintiff were also denied by the defendants and it was further pleaded that the date of birth of the plaintiff cannot be corrected under the statutory rules after such a long delay and the plaintiff having been retired from service on 31.7.1982, the suit for injunction has become infructuous and is liable to be dismissed.

4. The trial Judge framed 6 issues in the case and held that the actual date of birth of the plaintiff is 14.3.1930 and the date of birth as recorded in the service record, is incorrect. The plaintiff could not be retired from service before the disposal of his representation dated 20.3.1982 and he is entitled to continue to remain in service till 14.3.1988. With these findings, he partly decreed the suit with costs for a declaration to the effect that actually the date of birth of the plaintiff is 14.3.1930 and his age recorded in the service record is void, incorrect and ineffective.

Aggrieved with the findings of the learned Addl. Civil

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Judge, the defendants preferred this appeal, which was transferred to the Tribunal on the enforcement of Administrative Tribunals Act XIII of 1985.

5. Despite the service of the notice of this case, the plaintiff-respondent chose to remain absent on the date fixed for hearing of this case. Prior to that date, he had put in appearance before the Tribunal but the case was adjourned on that date.

6. Under the circumstances, we could hear only the arguments advanced on behalf of the appellants and on being deprived of the assistance to be received from the learned counsel for the respondent, we had to go through the record of this case very minutely to have our satisfaction as to whether there is any force in the contention raised on behalf of the defendant-appellants before us. The main point arising for determination in this case is as to what is the correct date of birth of the plaintiff-respondent. None of the parties to this case adduced any oral evidence. The decision of this case, thus, depends only on the interpretation and reliability of the documents produced by the parties on record. The legal presumption is that the official acts are performed regularly. The Railway administration is a statutory body and there will be a presumption that the records maintained by the Railway administration either in respect of the service matters of its employees or otherwise are prepared regularly. It was, therefore, for the plaintiff to prove that the date of birth recorded in his service book by the Railway administration is incorrect. To discharge

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this burden, he produced 14 documents before the trial Court. The sheet anchor of the plaintiff- respondent is Ex.12 purporting to be the copy of the transfer certificate of the plaintiff issued by the N.R. Inter College, Tundla. Ex.3 is its photostat copy. Much reliance has been placed by the learned trial Court on this document and ^{as} ~~he~~ ^{was} of the view that this institution is run by the Railway administration itself, there ~~could~~ ^{be} be no reason for keeping a wrong record regarding the date of birth of the plaintiff in that School and as the copy of his transfer certificate was sent by the plaintiff to the Divisional Railway Manager on 20.3.1982 vide representation Ex.1, it was the duty of the Railway authorities to summon the original record of the institution for verification and that having been not done, there was no good reason to ignore the entries in the College record regarding the date of birth of the plaintiff. The learned Judge also placed his reliance on a decision of the Hon'ble Supreme Court in the case of Umesh Chandra Vs. State of Rajasthan (1982 S.C.Cases-202) in which it was ^{observed} ~~held~~ that the entries in School Register and admission form regarding the date of birth constituted a good proof of age.

7. We have very carefully scrutinized the entries in Ex.12 and its photostat copy Ex.3. Their mere perusal leaves no room for doubt that Ex.12 has been manufactured merely for the purpose of this case and much reliance cannot be placed on it. The reasons for our coming to this conclusion are :-

- (i) The date of leaving the institution has not been noted in column no.4 ,
- (ii) no reason of leaving the institution has been

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mentioned in column no.5 ,

- (iii) according to the allegations made in paragraphs 2(B) of the plaint, the plaintiff should have studied in this institution from 1937 to 1940 but the copy of register Ex.12 shows that he had studied in this institution from 8.7.1937 to 8.7.1942 and
- (iv) Ex.12 is neither the original admission register nor School Leaving Certification nor the true copy of such register. It is common knowledge that transfer certificate is issued in the form of true copy of the relevant entry from the scholar's register of any School or College and unless the copy is certified to be true, no authenticity can be attached to it. Ex.12 purports to be an original document, but it is not so. It is apparent from the entries made at the bottom of this document. Towards its left side the words 'true copy' have been written without anybody's signatures and date below it. On the right hand bottom corner, the words "Sd/- V.K.Shas----- Principal, N.R.-----" have been written. This is, thus, clearly a copy of some other document. As the formal ^{proof} of this document was dispensed with by the Railway counsel in the trial Court, even if it is presumed that this document bears the signature of the Principal of N.R.Inter College, Tundla, who was in office on the date 17.3.1982 of its issue, the Principal was wise enough not to certify this document as the true copy of the School register or any other document. In this way this document is of no

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evidentiary value and it was wrongly relied upon by the learned Addl. Civil Judge.

8. We further feel that according to this document the plaintiff had sought his admission in Class III in this institution on 8.7.1937. No transfer certificate or other record of his getting education prior to 8.7.1937 has been placed on the record. In the case of Umesh Chandra Vs. State of Rajasthan (Supra) considered by the Hon'ble Supreme Court, two records of different public Schools showing the same age of the student^s were filed and the said entries were made on the basis of the applications for admission given and signed by the father of the student and after considering the cumulative effect of all these things, the Hon'ble Court was of the view that if the record is maintained regularly, the documents become admissible in evidence under section 35 of the Indian Evidence Act. We are of the view that in this case, the plaintiff utterly failed to ^{or corroborate} connect these documents Ex.3 and 12 with any other evidence to show that the entries in his School register were made on the basis of the age recorded in his application for admission by his father or other guardian and these are the correct copies of the record regularly maintained by the N.R. Inter College, Tundla. It is further noteworthy that no name of the guardian has been mentioned in the prescribed column of the document Ex.12 and the name of the institution has also not been written on the top and only a rubber stamp of the office of the institution N.R. Inter College, Tundla has been affixed. This document, therefore, is not a genuine

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document and the learned Court below erred in placing ^{its} ~~his~~ reliance on it. There is merely an allegation from the side of the plaintiff that a copy of this document was sent by him with his representation Ex.1 to the Divisional Railway Manager Allahabad but there is no positive evidence in support of this contention. The alleged representation Ex.1 appears to be ^{the} ~~one~~ ^{one} original which could not be in the possession of the plaintiff. Only its copy or carbon copy could be filed by the plaintiff. It is, therefore, again very difficult to believe that a copy of Ex.12 was really sent by the plaintiff to the Railway authorities to correct his date of birth. The Railway authorities could, therefore, hardly summon the original record for verification.

9. Ex. 2 filed by the plaintiff is the copy of order dated 27.5.1982 of the Divisional Railway Manager, Allahabad addressed to the plaintiff stating that he will retire with effect from 31.7.1982 and through this order, he was required to submit the necessary certificates and documents for preparing his pension papers etc. Ex.4 is the carbon copy of the representation Ex.1 dated 20.3.1982 of the plaintiff. Ex.5 and 6 are the copies of the notice under section 80 Civil Procedure Code given by the plaintiff to the General Manager, Northern Railway. Ex.7 to 11 are postal receipts and acknowledgement dues for sending the representation/notice by the respondent to the appellants. Ex.13 is a certificate to the effect that the plaintiff-

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respondent was on leave from 26.7.1982 to 31.7.1982 and Ex.14 is again an original representation dated 7.3.1982 of the plaintiff addressed to the Divisional Railway Manager, Allahabad for correcting his date of birth. There is no ^{other} evidence on behalf of the plaintiff in support of ^{his} ~~the~~ case on the record.

10. On the other hand, the defendant-appellants have filed 3 documents. Ex.A-1 is the photostat copy of the declaration bearing the signatures of the plaintiff to the effect that his date of birth is 9th July 1924. Ex.A-2 appears to be the photostat copy of the first page of the service book of the plaintiff bearing his thumb mark. Ex.A-3 is again the photostat copy of the relevant sheet of the service book of the plaintiff containing particulars of his service bearing his thumb mark. In this record, 9.7.1924 has been recorded to be his date of birth.

11. In order to support the view taken by the learned Civil Judge in this case, he has made inconsistent approach at several places in his judgment. At page 13, the learned Addl. Civil Judge accepting the contention of the defendants that as the plaintiff had declared his age at the time of entering in his service, there was no use of getting him medically checked for determination of his age, opined further that the age declared by the plaintiff is in conflict with the entries of School Leaving Certificate Ex.12 and it shows the ignorance of the plaintiff about his age. At one

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stage, he has observed that " had it been shown to the plaintiff that actually his date of birth in his service record was mentioned 9.7.24, definitely it would have been binding on him." ^{According to him &} But he was never communicated his date of birth recorded in the service book. He has further observed that the date of birth recorded in his School Leaving Certificate is correct. It was further observed that the Railway authorities did not resort to verify the original School record regarding the age of the plaintiff, it would be , therefore, difficult to disprove the date of birth as shown in the school certificate. It was also observed that original service record of the plaintiff is not available and there is no document to show that the plaintiff had given any declaration regarding his age at the time of his joining service in 1942. Interestingly, he further accepted the mere allegation in the plaint to be correct and held that the plaintiff was recruited as boy Cleaner at the age of 12 years and there is nothing to disprove this fact. This allegation of the plaintiff was clearly denied by the defendants in the written statement and it was, therefore, for the plaintiff to prove that he had joined the Railway Department as a boy Cleaner at the age of 12 years. There are further observations in the judgment of the Court below that the date of birth as shown in the service record was never communicated to the plaintiff nor the plaintiff ever ^k knew about it earlier and the plaintiff has come with the contention that he is an illeducated man and he could make signature and other figures and writing were completed by Clerk (see page 21 of the judgment). He has further observed that if

any wrong declaration was made by the plaintiff without knowing his actual age he will not be ^{de-}barred from giving his correct date of birth.

12. We have carefully considered the reasonings adopted by the learned Addl. Civil Judge in coming to the conclusion arrived at by him in this case but we find ourselves unable to agree with most of them. Under Section 35 of the Indian Evidence Act ~~under which~~ an entry in any public or other official book or register, if made regularly, is only a relevant fact but is not conclusive or binding evidence of the same. In this case, the original school record of the plaintiff has not come before us and its alleged copy Ex.12 has not been certified to be true and is not otherwise a genuine document, as considered above. Assuming it to be a genuine document and the correct copy of the original for the sake of argument, we feel that the scholar's register is not regularly maintained in N.R. Inter College, Tundla as so many columns of the register have been left blank as discussed above. This register has, therefore, not been maintained regularly as required by S.35 of the Indian Evidence Act and as such, much weight cannot be attached to this document.

13. The observations of the Hon'ble Supreme Court quoted by the learned Addl. Civil Judge in his judgement are out of context. The said observations were made by the Hon'ble Supreme Court in another case (Mohd. Iqram Hussain Vs. State of U.P. -A.I.R. 1964 S.C.-1625), which was an appeal against an order passed in a writ petition of habeas corpus. In that appeal, the Hon'ble Court had made the following

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observations :-

"..... There were two certified copies from school registers which showed that on June 20, 1960 she was under 17 years of age. There were also the affidavit of the father stating the date of her birth and the statement of Kaniz Fatima to the police with regard to her own age. These amounted to evidence under the Indian Evidence Act and the entries in the school registers were made ante litem motam."

14. These observations were quoted by the Hon'ble Supreme Court in the case of Umesh Chandra Vs. State of Rajasthan (Supra). In that case there were two school leaving certificates of different institutions, original admission applications containing the signature of the father of the student and these documents were corroborated by oral evidence to show that the scholar's registers were regularly maintained and the record of the admission applications was also regularly maintained and on the basis of the corroborative evidence in both the cases, the Hon'ble Supreme Court had held that the school leaving certificates could be read ^{as} ~~with~~ an evidence.

15. Further this alone, in view of the official record of his service and his own declaration, could not be sufficient to belie the official record and prove his ^{different} ~~date~~ of birth at the far end of his service career.

16. It is not correct to say that the plaintiff never knew about his actual date of birth recorded in his service record. No date is legible on the declaration Ex.A-1 but it

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seems to have been given by the plaintiff on 11.9.1950 when he was reinstated in service on once being relieved for his migration to Pakistan. It is nowhere alleged in the plaint that the plaintiff is illiterate or semi literate and he ^{can} ~~does~~ not even read and write the figures and date of birth. It is also not alleged that at the time of his signing the declaration regarding 9.7.1924 as his date of birth, he was not aware of its contents and he ^{had} signed it on good faith.

17. The plaintiff has purposely not mentioned the date of his joining the Railway service. His mere allegation is that he had joined the service at the age of 12 years as a boy Cleaner on daily wages. This fact was clearly denied by the defendants in their written statement and it was pleaded by them in paragraphs 18 and 20 of their written statement that the plaintiff had joined the service on 17.7.1942 as temporary Cleaner in the grade of Rs.12-1-17 and not at the age of 12 years. The prescribed age for appointment as Cleaner at that time was 18 to 25 years. In view of this denial it was for the plaintiff to prove that he had joined the Railway at the age of 12 years on daily wages. He neither had the courage to enter the witness box nor he summoned any record to prove his contention. There can be no presumption that he could join the Railway service as a regular employee at the age of 12 years. On this ground also, the age recorded in his service book has to be accepted to be correct. According to the recorded age, he had joined the service just at the age of 18 years and by 31.7.1982 he had already served the Department for a long period of 40 years. The plaintiff thus miserably failed to

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prove that he had joined the service as boy Cleaner on daily wages and his date of birth as recorded in his service record is not correct. The findings given to the contrary by the Court below are thus not correct and cannot be sustained in law.

18. The appellants have also placed their reliance on a circular letter dated 5.1.1972 of the Railway Department amending Rule 145 of the Railway Establishment Code to show that the plaintiff should have applied for the correction of his age much before his retirement and that having not been done his representation made after retirement cannot be considered and his age cannot be corrected even by the Court. In view of the conclusion arrived at as above, it is unnecessary to go into the interpretation of this rule and we are of the opinion that there is no force in any of the allegations with which the plaintiff had filed his suit and he has miserably failed to prove that his correct date of birth is 14.3.1930 and as such, the appeal should succeed.

19. The appeal is accordingly allowed and the judgment and decree passed by the Addl. Civil Judge, Allahabad are hereby set aside. The suit of the plaintiff-respondent shall now stand dismissed with costs throughout. We assess Rs.250/- (Two Hundred and Fifty only) as the costs of appeal and of the case before the Tribunal.

Member (A)

Member (J)

Dated 28.8.1986
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