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(Reserved) (Bench No.1)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

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Registration No. 165 of 1986 (T)

J.B. Tullanvs. Union of India and others.

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Hon'ble S. Zaheer Hasan, Vice Chairman.

Hon'ble Ajay Johri, Member (A).

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

Regular Suit No. 419 of 1984 J.B. Tullan vs. Union
of India and others, pending in the court of Munsif, Meerut,
has been transferred to this Tribunal under Section 29 of the
Administrative Tribunals Act (No. 13 of 1985).

On 1.4.1949 plaintiff J.B. Tullan joined as Sweeper.
In his service record his date of birth was recorded as 5.9.1926.
He remained in the service up to 1954. On 23.8.1958 the
plaintiff moved an application for employment as Peon etc.
with the allegations that he was out of employment and
previously he was in the service. On 17.11.1958 he was appointed
as peon. On this occasion 14.8.1932 was recorded as his date
of birth. When the discrepancy was discovered, the plaintiff
was confronted with the same and on 12.7.1960, '14.8.1932' was
scored out and instead thereof 5.9.1926 was recorded as his
date of birth. On 26.12.1983 he was given a notice that he was
due to retire on 30.9.1984 and ultimately after a second notice
he was retired on 30.9.1984. After giving the necessary notice
the plaintiff filed a suit on 24.5.1984 with the allegations

that he had a quarrel with a clerk named Jawahar and the latter in conspiracy with others got the necessary manipulations done regarding the plaintiff's date of birth. His real date of birth was 2.8.1935. He prayed for a declaration that the impugned order of retirement was illegal and his date of birth should be corrected and consequential relief be granted to him.

The defence is that the plaintiff was appointed as a Road Sweeper(Conservancy) on 1.4.1949 and at that time his date of birth was recorded as 5.9.1926 which bears his thumb impression as well as signature of the Executive Officer. On 31.3.1954 the plaintiff resigned. He again moved an application on 23.8.1958 for his employment as a Peon etc. with the allegations that he had a working knowledge of Hindi, Urdu and English and he had also worked previously in the Department. On 17.11.1958 he was appointed as a peon and at that time he dictated his date of birth as 14.8.1932. He was confronted with the entry made regarding his date of birth made in his service record, and ultimately the date of birth 14.8.1932 as written in the second service record was scored out, and 5.9.1926 was entered as his date of birth which was entered in his first service book. This correction was made on 12.7.1960 and it was signed by the plaintiff as well as by the Executive Officer. It was denied that there was any exchange of hot words with Jawahar or there was any conspiracy as alleged. According to the defendants the plaintiff was retired on due date on the basis of his date of birth as entered in his first service record.

The main point to be decided is as to whether ~~as~~ the plaintiff was born on ^{2.8.35}~~14.8.1932~~ as alleged by him.

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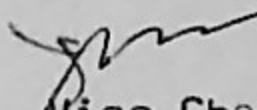
2, 8, 35

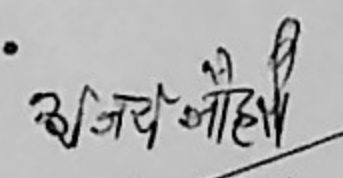
The allegation that the plaintiff was born on ~~14.8.1932~~ ^{2, 8, 35} is nothing but the sweet say of the plaintiff which is not supported by any documentary evidence. In his application dated 23.8.1958 the plaintiff has admitted that he had working knowledge in Hindi, Urdu and English. He also stated in this application that he had worked in the Department earlier and at that time he was unemployed. In this application he did not mention his date of birth. Ultimately on 17.11.1958 he was appointed as a Peon (second appointment) and at that time he gave his date of birth as 14.8.1932 which was contrary to his date of birth (5.9.1926) recorded in the first service record when he was appointed in the year 1949. The first service record bears the ^{thumb} impression of the plaintiff as well as the signature of the Executive Officer. As already admitted by him, the plaintiff had working knowledge in English and Hindi also. When the correction was made on 12.7.1960, the plaintiff ~~also~~ signed the same and it was also signed by the Executive Officer. Lt. Col. S.K.Suda, in his report dated 24.4.1984 has stated that he tended to agree with the age recorded in the service record (5.9.1926). Of course, he could not give the age with the arithmetical ^{exactitude} ~~calculations~~. He has given his rough estimate and his statement is a piece of circumstance lending support to the defence version. According to the record, the plaintiff's wife was born on 1.7.1929. The plaintiff claims himself to have been born on ~~14.8.1932~~ ^{2, 8, 35}. Of course, one can marry a woman elder than him, but this circumstance along with other evidence and attending circumstances clearly established ^u that the correct date of birth ^(5.9.1926) was given at the time of plaintiff's first entry in the service, and when the discrepancy was discovered after the second service, the wrong

entry made in the record of the second service was rightly corrected. The plaintiff has failed to prove that he was born on ^{2.8.35}~~14.8.1932~~. On the other hand, the defence version that the plaintiff himself gave his date of birth as 5.9.1926 which was his correct date of birth appears to be correct.

In the result, this application (O.S.No. 419 of 1984) is dismissed with costs on parties.

Sept. 29th, 1986.
R.Pr.


Vice Chairman.


Member (A).