

(Reserved) (Bench No.1)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

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Registration No. T.A. 176 of 1986
Mahesh Chandra . . . vs. . . . Union of India & others.

Hon'ble Justice Shri S.Zaheer Hasan, Vice Chairman.

Hon'ble Shri Ajay Johri, Member (A).

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

On 11.8.1982 Mahesh Chandra, to be described as the plaintiff, filed Suit No. 293 of 1982, in the Court of Munsif Hawali, Bareilly, for declaration that his date of birth was 24.9.1927 and he was wrongly retired on 30.9.1982, and therefore, his salary etc. between 30.9.1982 and 23.9.1985 be also ordered to be paid. The suit was dismissed. The plaintiff filed Civil Appeal No. 152 of 1984 in the court of District Judge, Bareilly, which was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act (No. 13 of 1985).

Plaintiff's case is that he was employed as Engine Cleaner in North-Eastern Railway in the year 1949. In the Card 'B', seniority list and service record plaintiff's date of birth was wrongly

recorded as 6.9.1924. According to School Leaving Certificate he was born on 24.9.1927. In the year 1975 he came to know about the incorrectness of his date of birth in his service record, and therefore, he moved an application on 5.8.1975 for correcting the same. He again sent reminders on 27.6.1977, 8.9.1981 and 26.3.1982. On 24.2.1982 the Divisional Railway Manager wrote a letter to the plaintiff asking him to furnish proof of his age which he did accordingly; but inspite of that the defendants ~~are~~ were threatening ~~him~~ to retire him: hence the suit which was filed on 11.8.1982. The plaintiff retired in due course on 30.9.1982. According to the defence, on 6.9.1949 the plaintiff was appointed and ~~was~~ on that date he gave his age as 25 years; therefore, the date of birth was recorded as 6.9.1924 which was also assessed by the Railway Doctor. In 1980 a fire broke out and the entire record relating to the plaintiff and others was destroyed. In the service record, seniority list and other papers plaintiff's date of birth was recorded as 6.9.1924 which was never disputed by him. According to the Railway Board, the official concerned could get his date of birth corrected by 31.7.1973 and according to plaintiff's own showing, he moved an application regarding correction of his date of birth for the first time in the year 1975. Card 'B' is still available in the Department in which the date of birth is recorded as 6.9.1924. Other records have been destroyed by fire.

The only argument advanced before us was that the plaintiff has proved by cogent evidence that he was born on 24.9.1927. So, the simple point to be seen is whether the plaintiff has been able to prove by cogent evidence that he was born on 24.9.1927. He was recruited on 6.9.1949 and ~~the~~ it appeared that on that date he gave his age as 25 years. So, on that basis his date of birth was recorded as 6.9.1924. It is asserted that the medical evidence corroborated this assertion of the plaintiff at the time of his entry in the service. In Card 'B' and the seniority list the same date of birth was recorded. The plaintiff could have challenged it before 1973, but he claims to have challenged it for the first time in 1975. We wonder how the original application dated 5.8.1975 is coming from the possession of the plaintiff. It is significant to note that there was a fire in 1980; the true copy of the School Leaving Certificate was issued in 1981; the suit was filed on 11.8.1982; and the plaintiff was to retire in due course on 30.9.1982. The main evidence on which the plaintiff relies is the copy of the 'Scholar's Register & Transfer Certificate Form' issued by Daya Shankar E.M. Inter College, Bareilly in the year 1981. In this form, there is a column for writing the date of birth in words. There is no entry in this column. In the column meant for the 'date of birth' of the Scholar' the only entry made is 'September 1927'. No date of ~~the~~ month is entered

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therein. In the plaint it is not mentioned as to how the plaintiff came to know in the year 1975 that his date of birth was incorrectly recorded. As already mentioned, the copy of the Scholar's register and Transfer Certificate Form was issued in 1981; the fire broke out in the Railway Office in the year 1980; the suit was filed on 11.8.1982; and the plaintiff was to retire on 30.9.1982. The application for correction of age dated 5.8.1975 in original is highly suspicious. So, in the attending circumstances, referred to above, it is not safe to rely upon the copy of 'Scholar's Register & Transfer Certificate Form, in which plaintiff's date of birth is written as 'September 1927'. Thus, the plaintiff has failed to prove by any cogent evidence that he was born on 24.9.1927 ~~and~~ ⁱⁿ the seniority list it is mentioned at serial no. 77 that the plaintiff was born on 6.9.1924 and he was employed on 6.9.1949. The plaintiff claims ~~to~~ himself to be literate. It does not stand to reason that he could not know about his date of birth before 1975. It was contended that the fire broke out in 1980 and probably on that basis all this maneuvering was done. It may or may not be so, but it is quite clear that the plaintiff has failed to prove by any reliable evidence that he was born on 24.9.1927. In the circumstances, the authorities rightly refused to correct plaintiff's date of birth and he was rightly retired in due

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course on 30.9.1982.

This application (Civil Appeal No. 152 of 1984) is dismissed with costs on parties throughout.

November 28th ¹⁹⁸⁶ Vice Chairman.
R. Pr.

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Member (A).