

13
Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 735 of 1986(O.Suit No.691 of 1980)

Subrati Applicant

Vs.

Union of India and another... Respondents.

Hon. Ajay Johri, AM
Hon. G.S.Sharma, JM

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

This transferred application is an original suit and has been received from the Court of III Addl.Munsif Jhansi under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant Subrati (hereinafter referred to as the plaintiff) was appointed as industrial labour under the Officer Commanding in XXXVIII Cg. at Jhansi on 23.1.1949. According to him, at the time of his appointment, his age was recorded to be 21 years in his service record and in the normal course he would have continued in service upto 1988. About a couple of years before the filing of the suit the plaintiff is shown to have seen his service book and then found additions and alterations therein in respect of the entry of the date of birth and age. The said additions and alterations made in the service book without the knowledge of the plaintiff were unauthorised and were made with malafide intention. As a result of the alterations in the service book, the plaintiff was retired from service 8 years before vide letter dated 16.5.1980 which was contrary to the law and the provisions of Art.311 of the Constitution. The suit was accordingly filed by the plaintiff on 2.12.1980 for a declaration that the order dated 29.7.1980 of the discharge of the plaintiff from service issued by the defendant is illegal and unconstitutional and the plaintiff continues to be in service till the age of superannuation i.e.1988.

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12

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3. The suit has been contested on behalf of the defendants and in the written statement filed on their behalf by Maj. Raghbir Singh, O.C XXXVIII C, Jhansi, it was stated that the plaintiff was appointed as labour on 13.1.1949 and his date of birth was recorded to be 1.7.1920. The plaintiff accordingly attained the age of superannuation (60 years) on 30.6.1980. The conduct of the plaintiff seeking his service book creates suspicion in respect of interpolation, and erasures made therein. The plaintiff should have been retired on 30.6.1980 but as his case was pending before the higher authority for necessary orders due to interpolation, erasures caused in his service book, he was continued in service and was retired w.e.f. 29.7.1980 under the orders of the Army Headquarters. In the normal practice, certificates are issued to the individuals retiring from service but the plaintiff never made any protest when such certificate was issued to him. The plaintiff was retired from service in accordance with ^{the} record of his date of birth and there has been no illegality. The interpolation, erasures and mutilations made in the date of birth of the plaintiff's service book came to the light of the then OC Maj. Parmar who after going through the other records found the plaintiff's date of birth as 1.7.1920 and made the necessary note in the service book under his signatures and the plaintiff has no cause of action to file the suit.

4. The service book of the plaintiff was summoned at his instance and has been produced before us on behalf of the defendants. Two service books have been filed before us. First page of the original service book contains certain erasures and overwritings. It is note-

worthy that the plaintiff who claims himself to be an educated person did not allege his any specific date of birth in the plaint and simply stated that at the time of his appointment in 1949, his age was recorded to be 21 years in his service book. This contention appears to be incorrect and his age has been recorded to be 27 years in the service book. His date of birth has also been recorded to be 1.7.1920. The entries in the other service book have been made on the basis of the first service book. There are erasures, interpolations and overwritings regarding the date of birth even in this service book.

Along with the record summoned by the plaintiff, a medical certificate dated 27.10.1978 has also been received in which the age of the plaintiff, according to his own statement and appearance, was recorded to be 48 years. This bears the signatures of the plaintiff. As a matter of fact, this certificate has no evidentiary value as the opinion of the medical officer regarding the age of the plaintiff is not based on any scientific test but has been recorded merely on the statement of the plaintiff and on the basis of his appearance. In our opinion, instead of supporting the plaintiff, this certificate goes against him. According to this certificate, the plaintiff should have been born in 1930 and on the date of his appointment in service, he should have been of 19 years only. The plaintiff has not been able to explain about this inconsistency in his stand about his own age. We further find a School Leaving Certificate dated 15.5.1941 of I.P. Railway Employees School Nagra in which 20.1.1927 has been recorded as the date of birth of the plaintiff. This certificate too does not inspire confidence and the possibility cannot be ruled out that this was ^{manufactured} ~~examined~~ at the instance of the plaintiff for the purpose

A2
21

of this dispute. In case, the plaintiff would have got his education in this School and his date of birth was recorded to be 20.1.1927, he should have furnished this certificate at the time of appointment and this date of birth should have also been recorded in his service book. We are further of the view that according to this certificate, the plaintiff should have been of 22 years on the date of his appointment while on his own showing he alleges himself to be of 21 years at that time. Thus, according to own case of the plaintiff, his date of birth recorded in this School Leaving certificate is not correct and dependable.

5. The defendants have produced the Permanent Pass Register containing the entries of a number of officials of XXXVIII Cg. Jhansi with their photographs and signatures. According to this register, pass was issued to the plaintiff on 23.11.1971 and on 1.7.1971 his age was 51 years. ~~Thus~~, These entries bear the signatures of the plaintiff and his photograph. According to these entries the plaintiff must have been born in 1920 as mentioned in his service books. The plaintiff has not been able to explain as to how his age was recorded to be 51 years in 1971 if he was born in 1928 or 1930. We are of the view that the plaintiff or the persons interested in him could not have the access to this Permanent Pass Register and its entries could not be altered or interpolated. In view of the entries in this register, the interpolations made in the service books of the plaintiff regarding his date of birth appear to have been made at his instance and he cannot be allowed to take advantage of his own misconduct. In any case, the age of the plaintiff recorded on the medical certi-

43

ificate and the School Leaving Certificate, as discussed above, does not support the plaintiff and the entries made regarding the age of the plaintiff in the Permanent Pass Register bearing the signatures and photograph of the plaintiff are more reliable and the authorities of the defendants were fully justified in coming to the conclusion after verification that the date of birth of the plaintiff was 1.7.1920. We may mention that according to the seniority roll dated 9.3.1963 filed by the defendants with their record, ^{by some slip} 1.7.1930 was recorded to be the date of birth of the plaintiff and this seems to be the reason for the plaintiff to say that he was of 21 years at the time of his appointment in service in 1949 but he could not establish his case by any evidence or strong circumstance, as discussed above. In this record we further find the order of confirmation dated 8.3.1970 in which the date of birth of the plaintiff has been clearly recorded to be 1.7.1920. The plaintiff has therefore, no case and he has also not come to the Court with clean hands.

6. The transferred suit is accordingly dismissed with costs, which are ~~fortified~~ ^{quantified} to be Rs.500 (Rupees Five Hundred).

अन्य नोट

MEMBER (A)

Dated: 30th May 1988
I.K.B.

द्वारा

MEMBER (J)