

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1173 of 1986(Original Suit No.2379 of 1985)

Quamar Alam ... Applicant.

Vs.

Union of India ... Respondent.

Hon.G.S.Sharma, JM

This transferred application is an original suit for correction of date of birth and has been received by transfer from the Court of Munsif Gorakhpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant (hereinafter referred to as the plaintiff) has alleged in the plaint that he joined the service of N.E.Railway as Hospital Attendant w.e.f. 23.5.1957 and was promoted as Lab Assistant in 1967. According to him, 3.12.1933 is his correct date of birth and at the time of his entry in service, the maximum age limit for class IV service was 25 years. The railway administration however wrongly recorded 18.4.1929 as his date of birth in the official record. Without relaxation, he could not be appointed in service after attaining the age of 25 years according to this age. The plaintiff had studied upto class VII in Mian Sahab's Islamia Inter College, Gorakhpur and at the time of his entry in service he had declared 3.12.1933 as his date of birth. On knowing that his date of birth was wrongly recorded in his service book he made representations on 13.6.1985, 18.7.1985 and 5.8.1985 for correction of his date of birth. When no heed was paid, he filed the present suit after giving statutory notice for a declaration that his correct date of birth is 3.12.1933 and he is entitled to continue in service till 31.12.1991 and also claimed an injunction to direct the respondent(hereinafter referred to as the

defendant) to correct his date of birth in the service record and to allow him to remain in service upto 31.12.1991. During the pendency of the suit, the plaintiff retired on attaining the age of superannuation according to his service record and as such, by way of an amendment, he further claimed a declaration that his retirement from service w.e.f. 30.4.1987 is illegal and ineffective.

3. The suit has been contested on behalf of the defendant and in the written statement filed on its behalf by the Assistant Divisional Medical Officer N.E.Railway Gorakhpur, it has been stated that the maximum age limit for appointment in class IV service was 28 years and the allegation of the plaintiff to the contrary is not correct. The plaintiff had resigned from service and later on he was reappointed as Lab Assistant w.e.f. 7.1.1982. At the time of his reappointment, the plaintiff was medically examined and according to the medical certificate bearing the signatures of the plaintiff, his date of birth is 28.4.1929. The plaintiff at no stage of his service had submitted the School Leaving Certificate and for the first time, on 13.6.1985, he had applied for change of date of birth. The plaintiff deliberately concealed the fact of his resignation from service earlier and the fact of his reappointment subsequently. The plaintiff is literate and English knowing person and he had signed his service card 'A' containing the entry regarding his date of birth with full knowledge and his allegation that his signatures were obtained on blank service card is incorrect. The original service card of the plaintiff has been lost and his record is available only from the date of his reappointment. An enquiry regarding the loss of his earlier service record is still in progress. The date of birth of the plaintiff as recorded in his service record is correct and he is not entitled to get it changed.

4. The plaintiff filed a replication reiterating his plaint allegations and admitted that he was reappointed as Lab Assistant on 7.1.1982. It was further alleged that the date of birth 18.4.1929 written by the doctor is not binding on him and at the time of his initial appointment, he had declared 3.12.1933 as his date of birth and the said declaration is based on the School Leaving Certificate which was submitted by him at the time of his entry in service in 1957.

5. It is apparent from the record and the pleadings of the parties that the plaintiff had initially joined the service of N.E.Railway in 1957 but later on he resigned from service and was reappointed w.e.f. 7.1.1982. For the reasons best known to the plaintiff he concealed the fact of his resigning from earlier service and accepting the reappointment w.e.f. 7.1.1982. The contention of the defendant is that the date of birth at the time of reappointment of the plaintiff was noted on the basis of the old record, which is now not available and the same date was mentioned in the medical certificate which bears the signatures of the plaintiff. Thus, the best possible evidence to ascertain as to what and how (on what basis) the date of birth was recorded in the service book of the plaintiff at the time of his initial appointment is now not available on record. The plaintiff did not file any document except the copy of notice in the trial Court and he has filed a photocopy, annexure 1 of his _____ School Transfer Certificate with his rejoinder. There is no other document on the record from his side. On the other hand, the defendant has filed 8 documents. Annexure 1 is the copy of a medical certificate prepared by the Railway Medical Officer at the time of the reappointment of the plaintiff in service. It is dated 5.1.1982 and bears both the signatures in English and thumb impression of the plaintiff. In this certificate, there is a mention that the date of birth of the candidate (plaintiff) is 28.4.1929.

It is true that this date of birth was not recorded by the Medical Officer on the basis of any examination but was mentioned on the basis of some existing record. Even otherwise, the Medical Officer could give only an estimate of the age of a person after medical examination and could not ascertain the correct date of birth. The only relevancy of Annexure 1 thus seems to be that at the time of the reappointment of the plaintiff in service, he was medically examined and on the basis of the medical examination, he was found fit and when a certificate to this effect was issued by the Medical Officer, the date 28.4.1929 was recorded as date of birth of the plaintiff. The fact that this certificate bears the signatures of the plaintiff and he is an English knowing person thus fastens the plaintiff with the knowledge of the date of birth recorded in the certificate at the time of his reappointment. It is not his case that he did not note the date of birth at that time in the certificate or he was otherwise unaware of this. His only allegation is that it is not binding on him.

6. Annexure 2 is the copy of the representation of the plaintiff made by him on 13.6.1985 for correction of his date of birth and it was mentioned in this representation that he had come to know that his date of birth in his personal file was wrongly recorded as 18.4.1929 instead of 3.12.1933 as per School Leaving Certificate enclosed. It appears from the wordings of this representation that for the first time the School Leaving Certificate was filed by the plaintiff in the office of the defendant with this representation and not at any earlier stage as wrongly alleged by him otherwise he would have made a mention that he had already filed the proof of his correct date of birth earlier and was filing another copy of his School Leaving Certificate. The photo-stat copy of the School Leaving Certificate filed by the plaintiff with his rejoinder was obtained by him from the Principal of Mian Sahab's Islamia Inter College, Gorakhpur on 12.5.1985 i.e. some time before his making the representation ^{copy of} annexure 2 filed by

the defendant. No representation prior to 13.6.1985 is alleged to have been made by the plaintiff. I have carefully examined the copy of the School Leaving Certificate filed by the plaintiff and am of the view that this cannot be accepted as a reliable evidence regarding the date of birth of the plaintiff unless it is proved by some positive evidence that the date of birth as mentioned in this certificate is correct. In any case, this certificate does not appear to be sufficient to rebut the entry made in the medical certificate issued by the railway doctor and bearing the signatures of the plaintiff. The plaintiff should have pointed out at the time of his appending the signatures and thumb impression that his correct date of birth has not been recorded in the certificate by the doctor. There is nothing on record to show that he took any step even later on to point out this mistake of the doctor. In the absence of any other evidence on record, I feel inclined to accept the contention of the defendant that the date of birth of the plaintiff in the medical certificate was written on the basis of his old service record, which is not available and as the plaintiff did not dispute the correctness of the said date at the time of obtaining the reappointment, he is now estopped from challenging its correctness on knowing that the previous record is not traceable. The other documents filed by the defendant are regarding his reappointment and do not throw any light on the point in controversy.

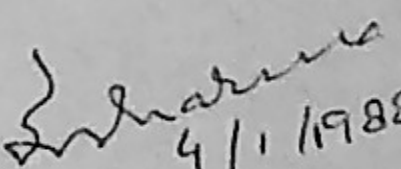
7. Reliance was placed on behalf of both the parties on some decisions of the Central Administrative Tribunal in support of their respective contentions. In T.Ramaswamy Vs. General Manager (A.T.R. 1986(2) CAT-332), it was held that the entry in the School Register is normally made on information furnished by the person accompanying the child to the School and unless the person who gave the information is available for examination, the mere entry in the School Register cannot be taken as conclusive evidence of the age of the person. In Jagannath Sharma Vs. Union of India

.6.

(A.T.R. 1986(2)CAT-568), it was held that every case has to be decided on its peculiar facts and circumstances and the non-consideration of the material produced by an employee in support of his claim for correction of his date of birth violates the principles of natural justice. In Narain Chandra Chaudhry Vs. Union of Indi(A.T.R.1986 CAT-139) it was held that where the date of birth of the applicant was recorded on the basis of medical examination report and was signed by the applicant himself at the time of entry in service and no objection was raised, the same deserved more weight in comparison to a recent document of School Certificate. In Faquir Chand Vs. Union of India (A.T.R. 1987(1) CAT-15), it was held that when a change is sought on the basis of duplicate School Transfer Certificate at a late stage, the weight has to be given to the entries existing in the service record.

8. In my opinion, the case of the plaintiff is not improved on the basis of any of the aforesaid decisions. He has failed to prove that in 1957 the upper age limit for entry in class IV service was more than 25 years and he could not be appointed without relaxation in age according to the date of birth recorded in the service record. The defendant has alleged that the upper age limit at that time was ²⁸ 29 years. The plaintiff has thus failed to make out any case for correct^{ion} in his date of birth.

9. The suit is accordingly dismissed without any order as to costs.


4/1/1988
(G.S.Sharma)
MEMBER (J)

Dated, January 4, 1988
kkb