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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 178 of 1987 (O.Suit No. 376 of 81)

Ganga Ram ... Applicant

Vs.

Union of India ... Respondent.

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 Civil Judge Agra under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant Ganga Ram (hereinafter referred to as the plaintiff) had joined the erstwhile East India Railway as class IV employee (Khalasi) at Tundla in 1948 and was promoted as Signal Maintainer in 1979. According to him, his date of birth is 17.5.1930 but in the seniority list issued by the respondent (hereinafter referred to as the defendant) in 1966, his date of birth was wrongly recorded as 23.9.1923 which the plaintiff could not know before the circulation of the seniority list. The plaintiff made successive representations for correcting his date of birth and also furnished the documents in support of his contention but when no heed was paid, he filed the suit for a declaration that his date of birth is 17.5.1930 and he is not liable to retire on 30.9.1981. During the pendency of the suit, he sought amendment in the plaint to the effect that the alleged order of retiring him from service w.e.f. 30.9.1981 is illegal and void and he continues to be in service.

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3. The suit has been contested on behalf of the defendant and in the written statement filed by the Addl.Divisional Railway Manager Allahabad, it was stated therein that at the time of the appointment of the plaintiff he had given out his date of birth as 23.9.23 and not as 17.5.1930 and as such, in his service book his date of birth was correctly recorded as 23.9.1923 and his contention to the contrary is not correct. The plaintiff rightly retired from service on reaching the age of superannuation on 30.9.1981 and he is no more in service. The date of birth of the plaintiff is not 17.5.1930, his suit is barred by time and he is not entitled to any relief.

4. After the transfer of the suit, the defendant filed supplementary written statement stating that the plaintiff had moved application on 23.7.1964 for correction of his date of birth and had submitted a birth certificate along with it. This was disposed of by the D.P.O on 11.12.1964 by passing a detailed order. The plaintiff had not submitted any School Certificate or Birth Certificate at the time of his appointment and had alleged himself to be ^{an} absolutely illiterate. The stand taken by him later on about his getting education and passing class IV is an afterthought and untrustworthy. In the application relating to Provident Fund, the plaintiff had himself noted 23.9.1923 as his date of birth. The plaintiff retired from service on 30.9.1981 according to his recorded date of birth and he is not entitled to any relief. The plaintiff filed reply to this supplementary written statement and stated therein that the documents filed by the defendant are forged and he ~~was~~ not retired from service but he continues to be in service according to his correct date of birth i.e. 17.5.1930.

5. The main question for determination in this case is as to what is the correct date of birth of the plaintiff? In the normal course, the age of a railway employee as recorded in his service record has to be accepted unless the employee proves that it is incorrect and his correct date of birth is different than the recorded ~~entry~~^{one}. The defendant has produced the service record and of the plaintiff before examining any other evidence on record, we will like to peruse the entries made about his date of birth in his service record. The first page of the record of his service shows that the age of the plaintiff both in words and figures has been recorded to be 23.9.1923. In the column of his signatures, the word 'illiterate' has been noted and the entries of this page merely bear his thumb impression duly attested by competent officers. Besides recording 23.9.1923, ^{as his date of birth} the record of the service of the plaintiff shows that he was totally illiterate, even unable to sign his name at the time of appointment in service on 30.9.1948. The form of oath of allegiance submitted by the plaintiff bears the date 24.7.1953 and ~~also bears~~ his thumb impression alone. The similar is the position of the form of declaration submitted by the plaintiff on 23.12.1949 about his electing to the New Leave Rules. These two documents do not bear the signatures of the plaintiff and support the entry in the first page of his service record about his being an illiterate person. Another option form regarding pension submitted by the plaintiff on 24.2.58 is available in the record produced before us on behalf of the defendant and it ^{too} bears the thumb impression of the plaintiff without his signatures. There is yet another option form submitted by the plaintiff on 17.10.1960 about his electing the authorised scale of pay w.e.f. 1.7.1959 which too bears only the thumb

impression of the plaintiff without any signatures. These documents convincingly go to show that right from the date of his appointment in 1948 till 1960, the plaintiff was unable to make ^{even} his signatures ~~even~~ and he was thus, totally an illiterate person.

6. It has not been disputed on behalf of the defendant that in 1966, in the seniority list issued by the defendant the date of birth 23.9.1923 as recorded in his service book was recorded as the date of birth of the plaintiff. The contention of the plaintiff is that before the issue of this seniority list, he never knew ^{his date of birth} that has been incorrectly recorded in his service book. His this contention, however, does not appear to be correct as it appears from his service record that he had already initiated the action in 1964 for correcting his date of birth. Anyhow, the application dated 14.1.1966 submitted by the plaintiff to the D.P.O. Northern Railway Allahabad through proper channel states in the very beginning that the plaintiff is totally an illiterate person. His birth had taken place in a village and the record of his date of birth in the Municipal Board cannot be available. The further relevant fact stated in this application is that at the time of his recruitment in service, he had stated 17.5.1930 as his date of birth but it is not known how his date of birth was incorrectly written. This suggests that at the time of his appointment, he had not produced any document and had orally stated his date of birth. Along with this application he also filed an affidavit reiterating in that affidavit too that he is totally an illiterate person and though he had stated 17.5.1930 as his date of birth at the time of his appointment but it is not known how it was recorded to be 23.9.23. The affidavit and the application both bear his thumb marks.

without any signatures which are ample proof of his being an illiterate person at the time of his joining railway service in 1948. His subsequent stand that he had got education in Primary School and his date of birth was recorded as 17.5.1930 therein is an afterthought and cannot be believed. We further find certificate of medical fitness dated 30.9.1948 of the plaintiff which bears only thumb impression and on the date of this certificate, his age was recorded as 25 years. This age was not assessed on the basis of any medical examination but has been recorded on the basis of the particulars furnished by the plaintiff about himself and suggests that the plaintiff had stated his age to be 25 years at that time and according to this he could be born in 1923 only and not in 1930. In the loan application dated 22.3.1972 given by the plaintiff he had recorded his date of birth as 23.9.1923 and date of retirement 23.9.1981.

7. On the other hand, the plaintiff had furnished the extract of the birth register of his village to show that a son was born to his father on 17.5.1930. There is the original application dated 4.1.1967 given by the plaintiff for correction of his date of birth stating therein that at the time of his medical examination on the basis of his declaration that he was of 25 years, his date of birth was worked out to be 23.9.1923. The application is not very intelligible and only reasonable inference which can be drawn ^{from} ~~by~~ this application is that at the time of his medical examination, his age was stated to be 25 years and on its basis, his date of birth was worked out to be 23.9.1923. This being the position, the plaintiff did not know his exact date of birth at that time and had he studied ⁱⁿ any School and ~~would~~ ³ have known his recorded date of birth in the School, instead of telling his age, he should

have given out his date of birth at the time of his appointment and medical examination or he should have stated his age to be 18 years at the time of medical examination.

8. The plaintiff has produced original Primary School Examination Certificate about his having passed the primary examination in IInd Divn. in May 1942 and 17.5.1930 has been recorded ~~to be~~ as his date of birth in this certificate. The plaintiff has further filed School Leaving Certificate dated 1.9.1973 in which his date of birth has been recorded to be 17.5.1930. According to this certificate, the plaintiff left the School without passing class IV on 1.8.1941. It is not known how and from where he passed class IV(primary examination) in 1942. The plaintiff had also produced oral evidence before the Civil Judge in support of his case but before the case was transferred to this Tribunal, his further cross examination ordered on the application of the defendant could not be made and 25.11.1985 was fixed for the evidence of the defendant which could not be recorded and as such, in the absence of equal opportunity to the defendant, the oral evidence produced by the plaintiff before the Trial Court cannot be read in evidence. Anyhow, for our satisfaction we have perused the oral evidence adduced by the plaintiff but the same does not inspire confidence. The plaintiff by his conduct appears to be a totally unreliable person. He concocted the oral and documentary evidence only for the purpose of this case and in view of the ~~in~~ inconsistent and convincing documentary evidence of his service record, we are of the view that the plaintiff did not get any education in any School till he entered into the railway service and the documents filed by him about his education and

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date of birth are liable to be ignored^{and} for the same reasons, the oral evidence produced by the plaintiff cannot be believed. In this way, he has not been able to establish that he was born on 17.5.1930 and ^{his} date of birth as recorded in the service record is not correct. He has, therefore, no case and he was liable to be retired from service on 30.9.1981 on his attaining the age of superannuation according to his service record and was rightly treated as retired by the defendant.

9. The transferred suit is accordingly dismissed with costs which are assessed to be Rs.500 (Rupees Five Hundred)only.

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MEMBER (A)

Sharma

MEMBER(J)

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Dated 30th May 1988
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