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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration No (TA) 270 of 1987

Raghbir

Petitioner.

Versus

Union of India and others ..

Respondents.

Hon'ble D.S.Misra, A.M.

Hon'ble G.S.Sharma, JM.

(Delivered by Hon'ble D.S.Misra)

This is a writ petition (no. 4258 of 1978) which has come on transfer under Section 29 of the A.T. Act XIII of 1985. The petition is against the rejection of his claim for correction of his date of birth and retiring him from the service of the Government w.e.f. 31st May, 1978. The petitioner had obtained a stay order and continued in service upto 31.8. 1978, after the interim order was vacated on 21.8.78.

2. The brief facts of the case are that the petitioner was appointed as Chaukidar on 25th May, 1950 and was promoted as Peon in the year 1956. The petitioner was informed by the Executive Engineer Bridge Workshop, Northern Railway, Gorakhpur (respondent no. 2) that the petitioner would be completing 58 years of age and he is likely to be retired w.e.f. 31st May, 1978. The petitioner came to know that his date of birth was mentioned in the service record as 22nd May, 1920 instead of 7.1.1930. The petitioner moved an application to respondent no. 2 on 30.1.1978 for correction of his date of birth followed by a reminder

on 1st April, 1978. The case of the petitioner was recommended by respondent no.2 vide his letter dated 1.2.1978 (copy annexure 5) after the verification of the claim from the Head Master of the School and the perusal of the admission register of the school.

The petitioner received a letter dated 30.3.78 (copy annexure 7) informing him that he would be retired from service on the afternoon of 31.5.78. He also received a letter dated 6.4.78, in reply to his application for correction of date of birth that he had not applied for correction of his date of birth as prescribed in the Railway Board's letter dated 3.12.1971.

3. The grievance of the petitioner is that the impugned order of retirement of the petitioner w.e.f. without any order 31.5.78 was passed on his application for the correction of date of birth. It is also the contention of the petitioner that the General Manager, N.E. Railway (respondent no.1) should have corrected his date of birth in accordance with the provisions of Rule 145 of the Indian Railway Establishment Code Vol.I.

4. In the reply filed on behalf of the respondents, it is stated that the applicant challenged his date of birth for the first time in January, 1978 ~~and~~ making a claim that he had read in a school upto Class II; that when the service record of the petitioner was being prepared at the time of his appointment, the column of education was shown as null and the ^{record} petitioner has signed the service/ in his own handwriting in Hindi; that the competent authority to decide about the date of birth is the Chief Personne
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Officer and the recommendation of respondent no.2 was not binding on him; that the petitioner's representation had been considered by the competent authority and decided vide order dated 12th July, 1978 (copy annexure CA 1).

5. In the rejoinder affidavit, filed by the petitioner, it is alleged that he was made to sign the service record without knowing the entries made by the clerk concerned and the General Manager ~~Chixxx Personnel Office~~ is the competent authority to decide his representation regarding the correction of date of birth.

6. We have heard the arguments of the learned counsel for the parties. Learned counsel for the respondents filed extract of item no. 74 giving the delegation of power on establishment matter showing that the Chief Personnel Officer has full power on behalf of the General Manager regarding alteration of recorded date of birth of non-gazetted railway servants. Learned counsel for the applicant did not contest the above assertion, and therefore it is established that the Chief Personnel Officer being the competent authority had the power to consider and pass orders on the representation of the petitioner for correction of his date of birth. The only point left for consideration is whether the order passed by the Chief Personnel Officer, N.E. Railway in rejecting the application of the petitioner suffers from any illegality. The petitioner has placed reliance on the provisions of R.145 of the Railway Establishment Manual Vol. I which deals with the date of birth.

The petitioner further contends that in the above mentioned rule, there is no date fixed for moving the application for correction of the date of birth and the petitioner was entitled to the correction in his date of birth after he had produced documentary evidence in support of his contention that his date of birth was 7.1.1930. It is further contended that the Railway Board's Circular dated 3.12.1971 was not in his knowledge and the same was not circulated to him.

7. Learned counsel for the petitioner cited a decision of the Chandigarh Bench of this tribunal reported in MEHAR CHAND V. D.G. POST AND TELEGRAPH 1987(Vol.3) ATC, page 86 inwhich it was held that in the absence of matriculation certificate, reliance was placed on the certificate of the school ~~where~~ ^{where} the applicant studied upto matriculation. In our opinion this case law is not applicable to the present case as the petitioner did not disclose the fact of his having studiend in a school at the time of his first appointment, nor at any time before he received information about the date of his retirement. We have considered the matter and we find that the applicant does not challenge the procedure for the entry of date of birth in his service record and while acknowledging his signature pleads ignorance of the entry of date of birth in the service record. We are of the opinion that once he affixed his signature on the service book containing the entry of the date of birth, he can not take the plea of ignorance.

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8. The representation of the applicant alongwith the evidence produced by him regarding change in the date of his birth has been considered and decided by the competent authority. The order has been passed by the competent authority after going through the service record of the applicant and the evidence produced by him. No other information, which was not available to the competent authority, has been produced before us to take a different view in the matter. Accordingly, we are of the opinion that there is no merit in the case of the petitioner.

The application is rejected. Parties are directed to bear their own costs.

Khme
13-5-88

A.M.

Zarina

J.M.

JS/ 13.5.1988.