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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 309 of 1987.

S.P. Shukla

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Petitioner.

Versus.

General Manager, N.Railway, Baroda
House, New Delhi & another.

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Respondents.

Hon'ble Ajay Johri, A.M.

By this writ petition, received on transfer from the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, under Section 29 of the Administrative Tribunals Act XIII of 1985, the petitioner has prayed for quashing of the order of his retirement dated December, 1977 and to permit him to work till 1980. Briefly the facts are that after passing his High School examination in 1942 the petitioner joined the Army as Havildar Clerk on 15.8.1942. He was discharged on 10.12.1947 and then joined the respondents on 7.1.48 as trainee Assistant Station Master. His date of birth was entered on the basis of his discharge certificate where on 10.12.1947 his age was shown as 27 years 3 months and 17 days. It has been alleged by the petitioner that he had submitted a copy of his school leaving certificate to the respondents in 1948 where his date of birth is shown as 20.1.1922 but no corrections were made in the records. So he made a representation in 1976 and when no reply was received he followed it up by other representations but no decision was taken by respondents. However, in December, 1977 by the impugned circular issued by respondents it was intimated that the petitioner would retire on 31.8.1978, while on the basis of his Matriculation certificate he should have been retired in January, 1980.

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2. The facts of the case are not much in dispute. In their written statement the ~~respondents~~ have said that the petitioner filled the Service Record on 24.12.1949 and declared his date of birth as 15.8.1920. The first page bears his signature and thumb impression. His first representation was received in 1978 and his request for change was rejected in August, 1978. They have said that the petitioner could have stated his date of birth as 20.1.1922 in December, 1949 when he signed the Service Record as the said certificate was in his possession. Instead he remained silent upto 1978. Even in 1972 when opportunity was given to employees to seek rectification he took no action.

3. In the replication the petitioner has said that he got his Matriculation certificate in 1948. When he joined the Army the recruiting officers filled the age column by just looking at him and they noted the age as 22 years on 15.8.1942. When he joined the railways he was asked to fill the column on the basis of discharge certificate. Since this age was different to 15.8.1920 which worked out on the basis of age recorded at enrolment, he had submitted his school leaving certificate which showed the date of birth as 20.1.1922.

4. I have heard the learned counsel for the parties and also gone through the petition and the replies. The records corroborate the averments made that the petitioner had passed the Matriculation examination in 1942. The authenticity of the certificate is confirmed by the copy of the report of WLI, placed as Annexure '7' to the petition.

5. The date of birth of the petitioner was entered in the service records on the basis of his discharge certificate from the Army. It is petitioner's case that he did not have his Matriculation certificate at the time when he had joined the Army and the same became available to him only in 1948. Against the column for age

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a figure of 22 was entered by the recruiting authorities. The date of birth shown in the Matriculation certificate which has been proved to be genuine by the enquiries got made by the respondents, is shown as 20.1.1922. This will go to indicate that the recruiting authorities had incorrectly entered 1922 as 22 against the age column otherwise too since the petitioner had genuine and reliable records available with him in regard to his date of birth he could not have given a wrong date of birth to the recruiting authorities ^{or hidden the fact for seeking employment}. Hence it would appear that the entries made were made erroneously. Even if it was so, the petitioner should have taken immediate remedial action when he had joined the railways after discharge from the Army and should have insisted on his date of birth being 20.1.1922 and not 15.8.1920 or 23.8.1920 as the calculations based on the discharge certificate show. He failed to take adequate action in this regard and it was only towards the end of his service career with the railways that he agitated the matter. The respondents have rejected his request on the ground that he had himself made the entries in the service record. ^{and} To this extent the action of the respondents cannot be challenged ^{as no change was asked till} after a period of nearly 30 years of service with them, but the fact remains that the applicant for one reason or the other for his negligence or for fear of creating a controversial situation did not agitate the matter at the appropriate time though he was in possession of a genuine reliable document which showed his date of birth as 20.1.1922.

6. Matriculation certificates are normally relied upon and accepted as adequate proof of the date of birth in the case of Government ^{servants} ^{so} service. It is specially ~~shown~~ in this case because the Matriculation examination was passed by the petitioner in 1942, i.e. before the petitioner joined the Army and the Railways. Therefore, it could not be said that he has subsequently shown a different date of birth

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than what he had declared in some other records. It is, therefore, be a fit case for rectification of the date of birth on the basis of the Matriculation certificate. The petitioner stood retired on 31.8.1978 on the basis of the date of birth as recorded with the respondents which was 15.8.1978. On the considerations that his Matriculation certificate has to be relied upon the petition must succeed.

7. In the result, therefore, the petition is allowed. The date of birth of the petitioner has to be corrected in the records as 20.1.1922 and he should be deemed to have retired in January, 1980 on the basis of this date of birth. However, he will not be entitled to any wages for the period between the date on which he was retired and the date on which he should have been retired because not only he failed to agitate the matter in adequate time but also he had not worked for the period. He will, however, be entitled to any other consequential retirement benefits that may become due in this regard. I make no order as to costs.

31/8/88

MEMBER (A).

Dated: August 31/8, 1988.

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