

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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T.A. No. 721 of 1987 (T)
(W.P. No. 15057 of 1981)

Banshi Dhar Applicant.

Versus

Union of India and others,
(D.R.M., North Rly.) Respondents.

Hon'ble Mr. D.K. Agrawal, J.M.
Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. K. Obayya, A.M.)

This ~~transferred~~ petition received from the High Court of Judicature at Allahabad under Section '29' of the Administrative Tribunals Act, 1985 and registered as T.A. No. 721 of 1987 is before us for disposal. The prayer of the petitioner is for quashing the notification of his retirement from service on 31.12.1981 (Annexure-A1) and to allow him to continue in service till the date of superannuation on 31.12.1983.

2. The petitioner who was appointed as 'Clerk' in North Western Railway, Quetta in 1947, migrated to India after partition and on the basis of refugee status, secured appointment as 'Clerk' in the East Indian Railway, Moradabad in 1948. Later he appeared for selection to the post of 'Commercial Clerk' and after due selection, was appointed as commercial clerk at Moradabad on regular basis against war service reserved quota. He stood promoted to the post of 'Chief Parcel Clerk' in 1964, in which post he remained till retirement in 1981.

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3. The case of the petitioner is that he is a matriculate, and at the time of initial appointment at Quetta in 1947, and later at Moradabad in 1948, he declared his date of birth as 22.12.1925. This declaration was accepted by the authorities and entries made accordingly in the service registers; as such his retirement under rules was due on 31.12.1983. The order notifying his retirement on 31.12.1981 (Annexure- A 1), therefore, amounts to dismissal without opportunity and should be set aside being illegal and against the provisions of the constitution. It is alleged by the petitioner that respondent no. 2 has issued the retirement notification, to harass him, as he was not successful in securing removal of the petitioner in the disciplinary matters.

4. In the counter filed by the respondents, it is stated that the petitioner has declared his date of birth as 22.12.1923 at Quetta at the time of his initial appointment in 1947 and also later in 1948 at Moradabad. The same date of birth was recorded in the service register. It is also stated that the petitioner has not submitted any matriculation certificate either at Quetta or at Moradabad and that the records received from Quetta where the petitioner was previously employed, contained only the order of offer of appointment dt. 10.06.1947, Medical fitness certificate and statement of service and not the matriculation certificate. It is further stated that no representation was received by the petitioner at any time during his service for correction of the entry regarding his date of birth. The seniority list published from time to time indicated the date of birth of the petitioner as

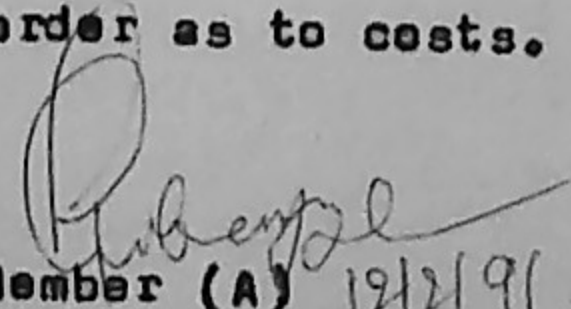
22.12.1923 and also in the provident fund withdrawal applications made during the year 1975 and 1976, the petitioner has furnished the same date of birth. The respondents deny allegations of harassment. According to them, the impugned notification was issued on the basis of correct date of birth of the petitioner. It is further stated that there was a disciplinary proceedings against the petitioner resulting in his removal from service but was reinstated on the orders of the Court.

5. We have heard the counsel of the parties and also perused the record. The record discloses that the petitioner was enrolled in War Service during the period ^{to 10.3.1947} 3.6.1941 prior to joining the Railways. In the war discharge certificate issued on 10.3.1947, his age is noted as 25 years 9 months. The central record in EME Secunderabad shows his age as 18 years, on enrollment on 3.6.1941. From this it could be inferred that the petitioner was born in 1923 or earlier but certainly not later. The service record maintained by the Railway Administration indicates the date of birth of the petitioner as 22.12.1923. The declaration in the pay fixation statement prepared as far back as 1948 shows the same date of birth. The seniority lists figuring the petitioner issued from time to time commencing from the year 1957, the latest one in 1981 indicates ^{the same} date. To top this all, there are two applications made by the petitioner in 1975 and 1976 seeking withdrawals from his provident fund. The entries are in the own hand of the petitioner, and he has mentioned his date of birth as 22.12.1923.

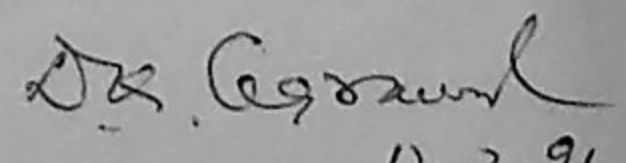
6. The learned counsel for the petitioner urged that the correct date of birth of the petitioner was 22.12.1925

as such he was due to be superannuated in 1983, and not earlier. His further submission was, that though, the petitioner has signed the declaration and seniority lists, he is not estopped from seeking correction. In support of this contention, he placed reliance on the decision of the Principle Bench of the Tribunal in Hiralal Vs. Union of India (A.T.R. 87 (1)414 , wherein it was held that mere signing on the entry of date of birth will not operate as estoppel to get an "erroneous entry" of date of birth corrected by a subsequent order. We are in agreement with this decision. But the question is ^{if there} was ~~there~~ any error in recording the date of birth of the petitioner as 22.12.1923? In the background of overwhelming recorded evidence, we are left with no alternative but to hold that there was no error in recording the date of birth of the petitioner and the overwriting in some entries showing the date of birth as 1925, by scoring the year 1923 is neither authenticated nor was it a correction under orders of competent authority and can not be relied upon.

7. Taking the facts and circumstances of the case, We hold that the contention that the petitioner was prematurely retired is wholly without any basis. He was retired after attaining the age of superannuation on the basis of date of birth entry in service record. The petition has no merit and accordingly it is dismissed with no order as to costs.


Member (A)

12/2/91 -


Member (J)

12.2.91.