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Court No. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 877 of 1987
(Writ Petition No. 6262 of 1981)

Nand Lal

....

Petitioner.

Versus

Union of India & others

....

Respondents.

Hon'ble K.J. Raman, A.M.
Hon'ble J.P. Sharma, J.M.

(By Hon. K.J. Raman, A.M.)

This is a writ petition filed in the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in the year 1981 by the petitioner, Sri Nand Lal, seeking a mandamus from the Court not to retire him from service on 31.12.1981 and to allow him to continue in service with consequential benefits. The dispute in this case is about the date of birth of the petitioner. The petition has been transferred to this Tribunal in terms of Section 29 of the Administrative Tribunals Act, 1985.

2. Counter and rejoinder affidavits have been exchanged in this case. We have heard Sri M.K. Upadhyaya, learned counsel for the applicant, and Sri Amit Sthalekar, learned counsel for the respondents, and have carefully considered the records as well as arguments advanced during the hearing of the case.

3. The petitioner claims that he was appointed as a Khalasi in the North-Eastern Railway on 22.7.1953. According to him, he was about 24 years on the date of his joining the service in 1953. He quotes various Rules to say that his date of birth should have been taken as 5.1.1929. The records of the Department, however, shows his date of birth as 1.1.1924. This was apparently entered on 2.5.1961. According to the petitioner, this is due to some error. The petitioner claims that he came to know about the wrong entry of his date of birth in his Service Record in the year 1979 for

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the first time. He made a representation dated 1.8.1979. Admittedly, an enquiry was conducted by one Sri D.S.Kumar, Welfare Inspector, in pursuance of the representation of the petitioner. A copy of the report is filed as Annexure '4' to the writ petition. In this Annexure '4', however, there are three dates mentioned, viz. 1.1.1924, which is what is entered on record; the second is 5.1.1929, which is claimed by the petitioner in his representation; and the third date is 28.12.1932, which was given by the then Pradhan when the enquiry was being made. According to the petitioner, his correct date of birth was only 5.1.1929 and neither more or less.

4. In the counter affidavit the respondents have stated that according to the records, the date of birth of 1.1.1924 was given by the petitioner himself, who had also signed and put his thumb impression certifying the correctness of ^{the} ~~his~~ entry at the time of joining the Railways. The counter affidavit, however, is not very enlightening as to the basis of adopting 1.1.1924 as the date of birth, except that it was declared at the time of entry into the service.

5. We may state here that a stay order was issued by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench Lucknow, on 30.12.1981 directing that the petitioner shall be allowed to continue on his present post till 31.1.1982 unless the Division Bench dealing with writ petitions chooses to vacate the interim order earlier. A Division Bench of the Hon'ble High Court by an order dated 14.4.1983 admitted the writ petition and ordered that in the meantime the interim order passed earlier shall continue to remain in force. Prima facie, the two orders, referred to above, were to the effect that ~~above~~ merely been made because the petitioner could have continued in service only till 31.1.1982. Since the learned counsel for the petitioner was not able to say definitely when the petitioner actually retired, we perused the service records as also the records of another application filed by the same petitioner, being OA No. 491 of 1989.

In the latter application, Annexure '2' filed by the N.E. Railway shows the date of actual retirement of the petitioner as 31.1.1987.

In the circumstances, it may be presumed that the respondents had allowed the petitioner to continue in service as if his date of birth was 5.1.1929. Possibly this was due to their understanding of the import of the High Court's stay orders.

6. Be that as it may, when a controversy is raised on the correctness of a date of birth and the Department chooses to conduct an enquiry, it is not sufficient to say, at the end of the enquiry, that the original entry of the date of birth in the records of the Department is the correct figure. If that were to be accepted without question, there was no point in conducting any enquiry. Annexure '4' which is a report of the Welfare Inspector, is somewhat vague. It refers to some Pradhan regarding the date of birth of the petitioner being in 1932. About the date of birth of 5.1.1929, there is not much discussion in it. It appears to us that it is possible that some error crept in the entry of the date of birth in 1961. Actually the petitioner entered service in 1953. There is no contemporaneous record of that date showing the date of birth given by the petitioner at that time. After nine years, it is quite possible for the petitioner to state that he entered service when he was 24 years old. If he had entered service in 1953 and was only 24 years old then, the date of birth tallies with what he claims now. There is absolutely no independent basis at the back of the entry of 1.1.1924.

7. Considering all these factors and taking into account the fact that the petitioner continued in service till 1987, we do not feel inclined to dismiss the writ petition merely on the basis of the recorded date of birth. Sufficient doubt has been created in our mind by the enquiry as well as the stand taken by the respondents.

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8. In these circumstances, we allow the writ petition and we hold that the petitioner correctly retired on the basis of his date of birth as 5.1.1929, as claimed by him in this writ petition. There will be no order as to costs.

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MEMBER (J).

Arvind

MEMBER (A).

Dated: August 28, 1990.

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