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1

Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1327 of 1987
(Writ Petition No.7087 of 1984 of the)
(High Court of Judicature at Allahabad)

Kamla Prasad Applicant

Versus

Union of India & Others Opposite Parties.

Hon.Mr.Justice Kamleshwar Nath, V.C.

Hon. K.J. Raman, Member (A)

(By Hon.Justice K.Nath, V.C.)

The Writ Petition described above is before this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 for a direction to the opposite parties to rectify the recorded date of birth of the applicant in his service record and not to retire him from service on the basis of date of birth of 1.7.1926.

2. The applicant was appointed as a Boiler Maker Khalasi on 27.6.46. A service card was prepared in which his date of birth was recorded as 1.7.26. The card bears the applicant's signature in Hindi as well as thumb impression. The applicant's case is that the entries were made in English by the Time Keeper and he was not aware of the contents thereof.

3. In 1972 the Railway Board issued a circular inviting employees to apply for correction of errors in their recorded date of birth. The applicant's case is that he made an application, Annexure-2 dated 18.9.72 alongwith the certificate of having passed class IV from the Upper Primary School, Faizabad in

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A2
2

- 2 -

1938 in which his date of birth was mentioned as 1.1.28. According to the opposite parties, the applicant never made such representation.

4. However, by a notice, Annexure-3 dated 13.12.83 the applicant was informed that in view of the date of birth as 1.7.26 he would retire from service on 30.6.84. He made a representation on affidavit, Annexure-4A enclosing a copy of the entry in the School Admission Register, Annexure-4 indicating his recorded date of birth to be 1.1.28. His representation did not find favour with the concerned authorities and the impugned order, Annexure-6 dated 17.2.84 was passed mentioning that the applicant might be informed that in his 'A' Card the date of birth was mentioned as 1.7.26 and hence there was no question of its correction.

5. The applicant made further representation, Annexure-7 dated 21.2.84 in which he stated that he had filed the certificate alongwith his earlier representation in 1972 and that he again filed a true copy of this certificate(Annexure-4) and yet consideration was not given to those documents and the entry made in the service card was insisted upon. By Annexure-8 dated 22.5.84 on Annexure-7 dt. 21.2.84, the applicant was required to file the original.

6. On the Writ Petition being filed in the Hon'ble High Court, an interim order was passed which was finally clarified by order dated 5.9.84 in the following words :

" Heard counsel for the parties. By our interim order dt. 16.7.84, we intended that the petitioner will not be superannuated on the basis of his

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A2
3

- 3 -

date of birth as July 1, 1926. It appears that the respondents have wrongly interpreted our order and superannuated the petitioner. In the circumstances, we direct the respondents to treat the petitioner in service and not to treat him retired on the basis of the date of birth as July 1, 1926 till further orders."

7. It is admitted that the interim order remained in force and the applicant retired on 31.12.85.

8. The point raised by the learned counsel for the applicant is that in the impugned order, Annexure-6 dated 17.2.84 the evidence furnished by the applicant has not at all been considered and therefore the order is arbitrary and a result of non application of mind. The learned counsel for the opposite parties says that the service card of the applicant had been signed by the applicant in Hindi on which he has also fixed thumb impression and that the applicant could not be heard to say anything against that record.

9. On the question whether or not the applicant made a representation dated 18.9.72, Annexure-2 alongwith the certificate of the School containing his date of birth as 1.1.28 there is only oath against oath. What is of importance is that after the point had been raised by the applicant by his representation dated 15.12.83, Annexure-4A accompanied by a copy of the School Admission Register entry, Annexure-4 it was the duty of the opposite parties, while deciding Annexure-6, to record reasons why they placed no reliance upon Annexure-4. Indeed, as Annexure-6 stands, they have totally ignored the document ; they have not even

8

A2
4

- 4 -

cared to refer to it. It is significant that with the subsequent representation dated 21.2.84, Annexure-7, the applicant pointed out that he had filed the original certificate when demanded shortly after his entry into service, and again filed a true copy of the certificate; the opposite parties by order dated 22.5.84, Annexure-8 only called upon to produce the certificate in original. That was only begging the question. If the original had already been filed, as stated by the applicant, he could not be expected to file it again. There is worth therefore in the contention of the learned counsel for the applicant that the impugned order, Annexure-6 is a result of ~~the~~^{the} non application of mind and the failure to consider Annexure-4 vitiates the order.

10. The learned counsel for the opposite parties suggested that the matter may be reopened to enable the Department to reconsider the case and pass a fresh order in accordance with law. We do not consider it necessary to have the case reopened. Admittedly, the applicant continued to work under the interim orders of the Hon'ble High Court. His last working day on the basis of the date of birth as claimed by him i.e. 1.1.28 should have been 31.12.85. Plainly, he has crossed that date while still on duty. Despite the recorded date of birth of 1.7.26 on the basis of which he was required by notice, Annexure-3 dated 13.12.83 to retire on 30.6.84, the applicant has continued to

22

A2
5

- 5 -

remain in service. The matter being in a liquid state, it will not serve any useful purpose now to have the correct date of birth redetermined.

11. In view of what we have said above, the impugned orders dated 17.2.84 contained in Annexure-6 and the superannuation notice dated 13.12.83 contained in Annexure-3 are quashed. Parties shall bear their costs.

(Signature)

~~Member (A)~~

(Signature)

Vice Chairman

Dated the 18th April, 1990.

RKM