

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1571 of 1986.

Sri Ram

....

Plaintiff-Appellant-Applicant

Versus

Union of India & others

....

Defendant-Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This is an appeal received on transfer from the court of District Judge, Bareilly under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff-appellant has filed this appeal against the judgment and decree dated 27.2.1984 passed by the Addl. Munsif III, Bareilly in Suit No. 263 of 1981, Sri Ram v. Union of India, dismissing the suit with costs. The grounds of appeal are that the lower court had failed to appreciate the oral and documentary evidence and also did not care to see the documents in which the date of birth of the appellant was recorded as 20.3.1925 and had wrongly held that this was recorded on account of a clerical mistake and also no evidence was produced on behalf of the ~~respo~~ respondents to the effect how this clerical mistake took place. According to him the defendants had, on their own accord, mentioned his date of birth as 20.3.1925, but later on they changed it to 20.3.21. Defendant no.4 also did not appear as a witness nor ^{did he} file any written statement to deny the allegations. The trial court did not draw any adverse inference from this and also because the lower court had wrongly held that the school certificate filed was not genuine.

AB
2

-: 2 :-

2. In Suit No. 263 of 1981 on the issues whether the plaintiff's recorded date of birth can be ³⁰altered and what is the correct date of birth, and whether his retirement on the basis of the recorded date of birth was illegal, the trial court had examined in detail ³¹the pleas taken by the plaintiff in the suit. According to the plaint the statement of the plaintiff-appellant that he was appointed on 12.2.1948 was not supported by the entries made in the service card where his appointment has been shown as on 12.11.49. The trial court had also observed that the date of birth had been clearly indicated as 20.3.1921 and a remark was made against the entry that it was based on the Divisional Medical Officer's (DMO) letter No.H/219/1, dated 13.12.1958. The thumb impressions and signatures of the plaintiff-appellant are also available on the service record. The trial court had also commented on the seniority list which have been relied on by the plaintiff-appellant and had come to a conclusion that the date 20.3.1925 had been wrongly shown because actually the dates were interchanged between the plaintiff-appellant and another, i.e. defendant no.4, Ram Chander. In regard to school certificate the trial court had said that since there is a over-writing on the space where the age of the plaintiff has been entered and the plaintiff-appellant had not been able to prove what was his correct age when he was schooling, ³²and Moreover, the school certificate was issued in 1978 and the plaintiff-appellant failed to prove that it was a correct certificate, It ³³was, therefore, ³⁴concluded held that the date of birth recorded in the service record as 20.3.1921, which had no over-writing, was correct and, therefore, the plaintiff-appellant had no case.

3. This case was dismissed in default of the appellant on 1.12.1986. It was, however, restored on his application on 1.4.1987. Thereafter the plaintiff-appellant had never attended to the hearing

AS
3

:- 3 :-

whenever it was fixed. We, therefore, heard the arguments of the learned counsel for the defendant-respondents and have gone through the papers and relied on documents available in the suit file.

4. In regard to the appointment of the plaintiff on 12.11.49 as held by the learned trial court in its judgment against the claim made by the plaintiff of the date being 17.2.1948, ^{or from} a perusal of the record of service placed as paper no.31-B of the suit file, it is clear that the plaintiff was appointed on 5.11.1949 as a Fitter on Rs.55/- This is also supported by paper no.25-B, which shows the date of appointment of Sri Ram, Ticket no.113, as 5.11.1949 and the date of promotion also as 5.11.1949. The length of service shown against his name under column 7 is 13 years 4 months 26 days as on 1.4.63. Therefore, as far as his date of appointment is concerned, it has to be taken as 5.11.1949 and not as 17.2.1948 or as 12.11.1949, as held by the learned trial court. There are also entries on his service record that he opted for the new leave rules on 1.2.1949. This entry has not been scored out at one place while it has been scored out at another place. If he was appointed on 5.11.1949 he could not have opted on 1.2.1949 and evidently the scoring of the entries at one place only, leaving it at the other, appears to be an oversight and cannot be attached much importance. In any case the claim of the plaintiff that his date of appointment was 17.2.1948 has been rightly rejected by the trial court.

5. As far as the date of birth is concerned, there is no doubt that the date of birth is ^{very} ^{very} ^{written} ~~clearly~~ mentioned as 20.3.1921 and the entry is based on some letter from DMO dated 13.12.1958. The plaintiff has signed this card but the dates are not clear. The main thrust of the plaintiff for seeking the change in the date of birth is the school leaving certificate which he obtained in 1978

AS

-: 4 :-

from the Kalibari School at Bareilly but since this certificate had a number of overwritings the trial court had rejected it and the plaintiff had failed to satisfy the trial court about the genuiness of the entries of his date of birth. We, therefore, do not feel that this question can be reapprised by us now.

6. The plaintiff had said in his plaint that in the year 1957 his personal file was lost and an assessment committee comprising of DMO was formed and his age was assessed as 33 years in the year 1958. DMO's letter, which has been referred to in the entries against the date of birth column dated 13.12.1958, however, has not been produced by the respondents because it was not traceable. We also cannot help ^{but} ~~but~~ remark that the column where his date of birth is entered has a ³ ~~smudging~~ and it does show that there was a different entry on the same earlier and the date 20.3.1921 is written over the ³ ~~smudging~~ made over the paper. In the seniority list as on 1.4.1959 of skilled fitters the plaintiff's name appears at Sl.No.46 and his date of birth is ³ ~~again~~ shown as 20.3.1925 and his date of appointment as 5.11.1949. If the ages were assessed by DMO in 1958 and the seniority lists were published in 1959 and 1963 and they showed the date of birth as 20.3.1925 these entries must have been made on the basis of some records and if the other two dates regarding his appointment and length of service have been correctly calculated it becomes difficult to believe that the date of birth which was entered was due to a clerical mistake.

7. We also find that in the case of Ram Chander, defendant no.4, verification of the date of birth has been done in 1980 as well, while there was no such verification done in the case of the plaintiff-appellant. In our opinion, therefore, the observations made by the learned trial court that the entry of 20.3.1921 has been

35

-: 5 :-

made very clearly is not based on the facts which are available on the record. There is a ~~marking~~^{smudging} and some different date appears to have been written earlier and based on the seniority list issued in 1959 and 1963. It could be concluded that it could be 20.3.1925. In their written statement in the suit the defendants had said that the plaintiff had not submitted any school leaving certificate but had given his date of birth as 20.3.1921 and the same date of birth was verified by DMO and has been accepted under clear signatures and thumb impressions. They have also denied that the personal file of the plaintiff was ever lost along with other 61 personal files but these averments are not supported by the facts as can be clearly seen from the entries made on the service record. The date 20.3.1921 shown on the service record has been entered only as per DMO's letter of 13.12.1958. There is a ~~marking~~^{smudging} in the service card. As the entry has been made on DMO's letter of 13.12.1958 which is also in the case of Ram Chander it would be difficult to believe that the averments made by the respondents that the service record was not lost can be correct because otherwise the entry had to be ~~written and should have been~~^{written} ~~clearly~~^{clearly} duly attested by DME who attested the original service card. But it is not so. In our opinion, therefore, the plaintiff's case has some force.

8. The respondents have also not been able to prove in a convincing manner that the entries in the service records are the original entries and that this service record has not been written after the originals were lost and also that the attestation made by the plaintiff in the service record by signing had been made on ~~particular~~³¹ of 20.3.21 particular dates after the entry had been made ~~over the~~^{over} ~~marking~~^{marking}. In a nut shell, therefore, we feel that the conclusions arrived at

AS/6
-: 6 :-

by the learned trial court that the date 20.3.1921 is entered very clearly and, therefore, is the genuine date, has to be set aside.

9. On the above considerations, we allow the application (Appeal No. 62 of 1984) and set aside the judgment and decree passed by the trial court in Suit No. 263 of 1981. We direct that the plaintiff's date of birth will be taken as 20.3.1925 and not as 20.3.21 as mentioned in the Record of Service placed at paper no. 31-B of the suit file. He will be entitled to consequential benefits as a result of this change. We make no order as to costs.

Sharma

MEMBER (J).

APR 07/88

MEMBER (A).

Dated: August 2, 1988.

PG.