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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (T.A.) No. 1623 of 1987

Union of India & another .... **Defendant-Appellants**

Versus

Ram Swarup .... **Plaintiff-Respondent.**

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Hon'ble Ajay Johri, A.M.

By this appeal received under Section 29 of the Administrative Tribunals Act XIII of 1985 from the court of District Judge, Kanpur the judgment and decree dated 28.9.84 passed by the II Additional Munsif, Kanpur in Suit No. 1069 of 1982, Ram Swarup v. Union of India & another, is sought to be set aside. The grounds of appeal are that the trial court had incorrectly arrived at the decision that the plaintiff- correct date of birth of the/respondent was not 29.7.1924 as entered in the service record and that the trial court did not consider at all the service record as well as the medical certificate and the police report which are admitted documents in the file and in which the date of birth as entered is 29.7.1924, that there was also error in not considering the Railway Board's circular issued under statutory powers for barring the correction of date of birth in the records after August, 1973, that it was incorrectly held that the recording of the date of birth has not been done in terms of clause (3) of Rule 145 of the Indian Railway Establishment Code, and that it had

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erred in holding that there was forgery in the service record and there is a change or amendment in the entries of the service record.

2. In Suit No. 1069 of 1982 the plaintiff-respondent (respondent) was a Peon working under the appellants at Kanpur. When he ~~ext~~ joined the service of the appellants, according to him, his date of birth was wrongly entered as 29.7.1924. His correct date of birth is 2.8.1925. He came to know of this error in September, 1975 when a seniority list was published and he applied for correction of his date of birth. Inspite of his efforts till 1979 his date of birth was not corrected and thus the respondent's was retired on 31.7.1982 on the basis of his recorded date of birth instead of 31.8.1983 on the basis of the date of birth, as claimed by him. According to the respondent there was some forgery in his service record as on the spot where the date of birth is entered somebody has dropped ink and then <sup>written</sup> ~~written~~ ~~connected~~ the date of birth as 1924.

3. The appellants in their reply had said that this suit was filed in December, 1982 at the time when the respondent was no more in service of the railways as he had retired on 31.7.1982. They had further said that the entry in the service record was on the basis of the declaration given by the respondent and the same was displayed at periodical intervals whenever seniority lists were published and the respondent had never represented against the same before 1979. According to the appellants, in the service record the respondent has <sup>✓ attested</sup> ~~adjusted~~ the same and, therefore, it is not possible to do forgery. It was also the appellants'

case that the respondent had not applied for the correction of date of birth till 1973 and, therefore, he had no right left to ask for the same subsequently.

4. On issues no. 1, 2, 4 and 5 which were framed in regard to whether the date of birth 29.7.1924 has been wrongly entered and whether the responsibility of changing the date of birth rested with the appellants and whether the respondent was liable to be in service till 31.8.1983, the learned trial court came to the conclusion that forgery was evident in the entry of the date of birth of the respondent and that instead of 1925 the figure '5' has been erased and with another ink figure '4' has been entered ~~in~~ <sup>3/</sup> ~~different~~ <sup>3/</sup> ink and from a perusal of the same it appeared that originally the date of birth as entered was 29.7.25 which for reasons not known had been changed after a drop of water was put over the writing. Due to the drop of water the ink has spread. According to the learned trial court if the drop of water had fallen accidentally the words would have not got rubbed off. How this happened is difficult to ~~comprehend~~ <sup>3/</sup> and since the drop of water is only on one place ~~he~~ <sup>3/</sup> placed the responsibility ~~on~~ <sup>3/</sup> for the overwriting appellants. The trial court had also examined the medical certificate which showed the age as 20 years. In the police verification the age has been shown as 20 years but in both these documents also the writing is in a different ink and in one of the documents there was over-writing. The trial court had further said that according to the Establishment Code, Volume I, pages 89 and 88 it has been said that in the service book there should be no over-

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writing and if any alteration is done it should be done clearly and it should be duly attested. It had also relied on the provisions that each railway servant had to write the date of birth in his own hand. There is also a provision ~~mark~~ <sup>as</sup> in case the employee was illiterate but since the respondent had studied upto class VI and he has signed in English he could have entered the date in his own hand. Therefore, the conclusion reached was that 29.7.24 was wrongly entered in place of 29.7.1925 and the responsibility for the same was fixed by the trial court on the appellants.

5. I have heard the learned counsel for the parties. On behalf of the appellants it was contended that on the space where the date of birth is entered, ~~there is~~ <sup>by Smudging and</sup> over-writing. There is a drop of ink or water and that it was difficult to say as to who would have done the same. It was also contended by the learned counsel for the appellants that the appellants had no interest in smudging the entry and, therefore, it might have been a collusion between the respondent and the appellants' staff and he might have got it done to gain advantage. The learned counsel also objected to the amendment that has been allowed in regard to the relief where instead of 1983, 1985 has now been entered. The learned counsel for the respondent submitted that the entries have not been made in accordance with para 145 of the Indian Railway Establishment Code, Volume I and that he had sought the amendment because at the relevant time when the applicant entered service the age of retirement was 60 years and not 58 years and, therefore, the original relief

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where it was claimed that the respondent be considered to be in service till 31.8.1983 was made on wrong assumption. Actually the respondent should have been retired on 31.8.1985 when he attained the age of 60 years.

6. A perusal of the judgment of the learned trial court indicates that the issues now raised as grounds for the appeal have been duly considered by the trial court and I find no reason to differ from the findings. ~~that~~ <sup>38</sup> If the service record was in possession of the appellants it was their responsibility to ensure its safe and proper custody. The contentions raised by the learned counsel that it is difficult to say as to how the over-writing and smudging took place because the appellants will have no interest in making the same does not cut much ~~ice~~ <sup>38</sup> ~~ice~~. They cannot absolve themselves from the responsibility of safe custody of these important records and the benefit of doubt, when it cannot be established as to who was responsible for causing the change and over-writings, should go to the person who is likely to suffer from such an alteration. The appellants have also not brought out any other documentary evidence to indicate that the year of birth should be 1924 and the medical report and the police report have already been considered by the learned trial court and a perusal of the same does not compel me to dis-agree with the findings given by the learned Munsif.

7. As far as the amendment which has been allowed is concerned, para 2046-B of the Indian Railways Establishment Code, Volume II, which is analogous to F.R. 56 applies to a Ministerial Railway Servant who entered

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Government service on or before 31.3.1938. The respondent from his own showing and from a perusal of the service record had joined service on 1.8.1944, and, therefore, the provision of para 2046-B could not seem to be applicable to the respondent. On the <sup>in</sup> ~~above~~ *I am of opinion that* considerations the decree and judgment of the learned trial court does not need any interference.

8. In conclusion, therefore, I dismiss the appeal and uphold the judgment and decree of the trial court in Suit No. 1069 of 1982. Parties will bear their own costs throughout.

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MEMBER (A).

Dated: September 26<sup>th</sup>, 1988.