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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 215 of 1987

Bhim Sen Mehta

....

Applicant.

Versus

Union of India & others

....

Respondents.

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

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985, by Bhim Sen Mehta, a Railway Shunter, seeking to change his date of birth recorded in the Railway Service Records from 31.3.1929 to 29.11.1932. The case of the applicant, an immigrant from Pakistan, briefly stated, is that the father of the applicant had sworn an affidavit on 18.9.1950, after the applicant had joined service, that the date of birth of the applicant was 29.11.1932. The applicant claims that the wrong entry of the date of birth in the records was not to the knowledge of the applicant, till he came to know about it in September, 1986 when the Loco Foreman, Northern Railway informed him that the applicant was to retire on 31.3.1987. Thereafter the applicant states that he made a representation to the Railway authorities for correcting the date of birth, with no result. The applicant had also requested this Tribunal for an interim order staying the proposed retirement on 31.3.1987. This request, however, was not granted while admitting the application.

2. In the written statement, the respondents have averred that the applicant declared his date of birth as 31.3.1929, and this was recorded in his service card at the time of the applicant's entry into service. The entry was duly authenticated by the applicant, who never submitted any representation (regarding his date of birth) during his entire service of 39 years. It is denied that the date of

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birth was wrongly entered in his service records. The respondents state that the applicant joined the Department on 10.2.1948 as Cleaner and declared his date of birth as 31.3.1929 and also duly authenticated the entry, by way of his signatuare. It is stated that the representation dated 12.9.1986 submitted by the applicant was neither tenable nor was there any occasion for such representation as the date of birth recorded at the time of his appointment is final and cannot be changed now under the extant rules. It is further submitted that in case the date of birth of the applicant is accepted as 29.11.1932, the applicant would be dis-entitled for appointment on 10.2.1948, being under age. It is further contended that the applicant cannot take advantage of his own deceit, if his version is accepted to be correct. No rejoinder affidavit has been filed by the applicant.

3. During the earlier hearings, the applicant was represented by Sri Ashok Mehta. In his application dated 13.9.1988, Sri Ashok Mehta, learned counsel for the applicant, has submitted that he has been trying to contact the applicant since 13.7.1987, but there has been no response. He has not received any instructions from the applicant for filing a rejoinder affidavit. The learned counsel, therefore requested that the notice of the date of the hearing of the case might be served on the applicant directly.

4. On 14.9.1988, the applicant was not present, nor was he represented. It was ordered that a fresh notice be sent to the applicant at his address advising him that the case is listed for final hearing on 27.10.1988. The applicant failed to attend the hearing, nor was he represented by any counsel on 27.10.1988. On 16.1.1989 as well as on 21.3.1989, only the respondents were represented. The applicant has neither attended the last few hearings nor was he represented by any counsel. In the circumstances it is obvious that the applicant is not interested in prosecuting his case further. The case is accordingly being considered on the basis of the records, as far as the applicant is concerned.

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5. As regards the respondents, Sri A.K. Gaur, learned counsel, appeared and stated that ~~at~~ the case be decided in the light of the written submissions already made. He also cited the following cases in this connection :

1986 (2) ATR 142,

1986 ATR 177, &

1986 ATR 139.

6. The only basis on which the applicant has sought relief is the affidavits stated to have been sworn in 1950 by the applicant's father and the applicant himself. The case of the Railways is that when the applicant joined service in 1948, he himself had declared his date of birth as 31.3.1929 and also duly authenticated the entry of this date in the records by way of his signature. It is further stated that during his entire service of 39 years, the applicant never submitted any representation against the date of birth entered in the records. The applicant's averment, that he came to know of the entry of his date of birth as 31.3.1929 in the records only in 1986, when the Loco Foreman informed him of his impending retirement, is not acceptable, in the light of the submission by the respondents that the applicant had declared his date of birth as 31.3.1929 on his appointment on 10.2.1948, and had even authenticated such entry by his signature. The representation of 1986 is obviously a very very belated one and the applicant has not sufficiently established by any reliable evidence, his case for change in the date of birth after such a long lapse of time. It is further noted that if the change sought for is allowed, it would mean that the applicant, while joining the service, was under age and was, in fact, not eligible for the appointment. On this ground also, the change in the date of birth cannot be allowed at this stage.

7. In the above circumstances, the application is dismissed. There will be no order as to costs.

h. r. carney

MEMBER (A).