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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

.....
Registration T.A. No. 1972 Of 1987

(Writ Petition No. 5187 of 1985)

Abdul Sattar ... Petitioner
versus

Union of India and others ... Respondents

Hon' Justice K. Nath, V.C.

Hon' M.M. Singh, A.M.

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

The writ petition described above is before us under section 29 of the Administrative Tribunals' Act, 1985, for correction of the petitioner's date of birth with regard to his employment and for benefit of x fixation of pay and all other admissible allowances on that basis.

2. On 18-9-1947 the petitioner was recruited as cleaner in the Eastern Railway for which a Service Book was prepared on 27-3-1949, the copy of the Service Book is Annexure-2. The recorded date of birth therein is 27-3-1923. There is an error of year in the statement of date of birth in words and in as much as for the year 1923, the year 1949 is written, that is in fact, the year in which the service record was prepared and perhaps is only a scribing error at the time of preparing the record. The applicant continued in the employment and on 10-1-1978, he made representation Annexure-3 for correction of his date of birth, so as to read as 19-1-1925. The basis of this claim was the applicant's prior service in the Army. Annexure-I is a copy of

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the discharge certificate from the Army service which mentions that on 23-4-1946, the petitioner was discharged from the service, while at the time of his enrolment on 19-1-1984, his age was recorded as 19 years. If that be correct, then the applicants date of birth could be taken as 19-1-1925.

3. The Railway Authorities wrote a letter Annexure-5 dated 30-7-80 to the Army Authorities requesting for a verification of the petitioners' military service. It appears that Military Authorities did not reply to the Railways, but, they did send a letter to the petitioner in reply to the letter dated 6-9-82, in which they mentioned that according to the records of the Army, the applicant's age was 19 years at the time of enrolment. This letter is Annexure-10.

4. The Railway Authorities, however, took a view that the petitioner had himself signed and affixed his thumb mark to the service record as indicated by Annexure-2 and since his date of birth recorded therein was 27-3-1923 and there was no other documents on the record, it was not possible to interfere with the recorded date. This position appears to have been taken some time later on. xxxxx In the mean time the applicant/petitioner who should have retired on 1-4-1981, if the entry in Annexure-2 was correct, was given an extension of service by Annexure-6 dated 7-11-81 from 1-4-81 to 30-9-81 with promotion from the post of Driver Grade 'C' (Rs 330 - 560) to Driver Grade 'B' (Rs. 425 - 640) with effect from 2-8-81. Since the petitioner's claim did not find favour with the Railway Authorities, he was ceased from

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work after 30-9-1981. The petitioner's case is that he should have been allowed to work till 31-1-1983 as Driver Grade 'B'.

5. The stand of the respondents is that the petitioner himself had given out his date of birth as 27-3-1923 and had signed and affixed his thumb mark on the service records, his claim of date of birth as 19-1-1925 cannot be accepted. We have heard Shri V.K. Srivastava counsel for the petitioner and Shri G.D. Mukherjee counsel for the respondents and have gone through the records. According to the petitioner a copy of the discharge certificate from the Army service had been furnished along with the application for employment in the Railways which should have indicated the applicant's date of birth 19-1-1925, so that the recorded date 27-3-1923 is erroneous. According to the respondents, no such certificate was filed.

6. What appears to us at once is that the petitioner had nothing to gain by giving out his date of birth 27-3-1923 at the time of recruitment in the Railways, if his date of birth as contained in the Army discharge certificate i.e. 19-1-1925, was correct. It cannot be said that if his correct date of birth ^{was} 19-1-1923, he would have been ineligible for employment in the Railways, it is also not said that, if his date of birth as 27-3-1923, he would have been ineligible for employment in the Army. The probabilities are that there is an error in noting down date of birth in the certificate Annexure-2. Indeed the date of birth as written in the words against the date written in figure is erroneous.

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in so far as the year of birth is concerned. It mentions 1949 instead of 1923. The up-shot is that there is an error in the record xx of the railway service book, Annexure-2. On the totality of the facts and circumstances, therefore, we are satisfied that the date of birth as recorded in Annexure-2 should not be the basis of superannuation of the petitioner. The only other alternative date of birth is that contained in the Army discharge certificate as 19-1-1925. It may be that the date of birth 19-1-1925 is only worked out from the statement of his age as 19 years when the petitioner was recruited to the Army on 19-1-1944, but, that is not very material for the purpose of this case, because this Tribunal must make a choice between the two alternatives and the only appropriate alternative seems ^{to be} 19-1-1925.

7. Holding, therefore, that the correct date of birth of the petitioner for the purposes of his service in the Railways is 19-1-1925, we direct that the petitioner shall be deemed to have continued in the service of the Railways till 31-1-1983 as Driver Grade 'B' in the scale of Rs.425-640. The respondents are directed to accord such financial benefits both in-service and post retirement ^{period} _{as} he may be found to be entitled in accordance with the applicable rules. The respondents shall carry out these directions within a period of 4 months from the receipt of a copy of this judgment.

M M J
MEMBER (A)

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VICE CHAIRMAN

(sns)

November 29, 1990

Allahabad.