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Court No. 1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No. 1995 of 1987
(W.P. No. 8233 of 1978 of the High Court of)
(Judicature at Allahabad, Allahabad.)

Gorakh Nath Applicant

Versus

Union of India & Others Opposite Parties.

Hon. Justice Kamleshwar 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 not to retire the petitioner from service with effect from 30.9.1978.

2. It appears that the petitioner was appointed in Railway Service in 1947 and after being transferred to Gorakhpur as Shunter he was ultimately working as Asstt. Yard Master when a question of his superannuation arose.
3. Periodical Medical examinations of Railway employees are held to determine suitability for particular posts and consequently one of the references to the Medical Officer appears to have been made in 1975 in which petitioner's date of birth was indicated to be 5.9.20. If that was correct, the petitioner was to retire on 5.9.78 rounded off to 30.9.78 as the last day of the month.
4. The petitioner's case is that his correct date of birth was 15.2.23 and therefore he was entitled to continue in service till the end of February, 1981.

He made a representation against indication of his date of birth by the opposite parties. The representation appears to have been rejected some time later but in the meantime the Writ Petition was filed on 21.9.78.

An interim order was passed directing that the petitioner could not be retired from service on the ground that he had reached the age of superannuation; that order was made absolute on 6.10.78. The petitioner had in the meantime continued to remain in service and retired at the end of February, 1981.

5. I have heard the learned counsel for the parties and have gone through the records. The petitioner has relied upon a couple of memos issued by the Department itself prior to the disputed medical memo. Annexure-I is the memo containing the Medical Certificate dated 9.4.73 of the Asstt. Medical Officer, N.E.R. Gorakhpur in which the date of birth was described as 15.2.23. Annexure-2 is a memo dated 4.6.74 from the Dy. C.M.E. to the Medical Supdt. describing the petitioner's date of birth to be 15.2.23. It is plain enough that according to these two memos the Department itself had acknowledged the petitioner's date of birth to be 15.2.23.

6. In opposition of the disputed memo of 1975 the petitioner made a representation, Annexure-3 dated 5.11.76 in which he said that his date of birth had been changed to 5.9.20 although in the previous record it was shown as 15.2.23. In particular he mentioned that his date of birth as 15.2.23 had been recorded in Service

record including 'A' & 'B' Cards from which the date of birth can be verified. A statement in respect of this record is contained in para 7 of the Writ Petition. The Counter by which para 7 of the Writ Petition has been replied. Counsel for the opposite parties however points out that in para 9 of the Counter Affidavit it has been stated that the entry in 'A' Card is dated 5.9.20 and it was on that basis that in the Medical Memo dated 26.11.85 the date of birth was shown as 5.9.20. The copy of the said 'A' Card had neither been filed nor produced.

7. The petitioner has also filed copy of School Leaving Certificate, Annexure-9 issued on 1.10.41 which indicates that the petitioner has been admitted to school on 2.2.29, was discharged from the School on 3.12.37 and that his recorded date of birth was 15.2.23. Apart from the fact that there is no tangible reason to disbelieve the genuineness of Annexure-9, it does not appear that by describing his date of birth as 15.2.23 the petitioner has obtained any undue advantage in getting into service. It is admitted, as also plain enough from Annexure-2, that the petitioner was employed on 27.12.47. If his date of birth was 5.9.20 he would have been 27 years of age on the date of recruitment. It is not shown that at that age he could have been appointed as Pointsman, his initial posting.

8. On a consideration of all the materials on record the petitioner's correct date of birth seems to be 15.2.24. The petition therefore should succeed.

9. The petition is allowed and the applicant shall

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be deemed to have retired on superannuation.
on the appropriate date i.e. at the end of E
Parties shall bear their costs.

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Vice Chairman

Dated the 15th Feb., 1990.

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