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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 589 of 1987.

Mangal Deo Prasad alias Mangru Ram ... Applicant.

Versus

General Manager, N.E.Railway, Gorakhpur & others ... Respondents.

Hon'ble A. Johri, A.M.

This is an application filed under Section 19 of the Administrative Tribunals Act XIII of 1985.

2. By this application the applicant, Mangal Deo Prasad alias Mangru Ram, who was working as a Hindi Assistant in the office DIG, RPF, N.E.Railway, Gorakhpur, has challenged the order dated 28.5.1987 retiring him from service with effect from 31.7.1987. The applicant's case is that his date of birth had been wrongly entered in the service record as 15.7.1929. According to him he was born on 5.12.1932 but his date of birth as entered in the Matriculation certificate was wrong. In support of this he submitted the certified copies of entries of his date of birth in the records of the Police Station Khandrapur, and the copies of the correspondence etc. between the U.P. Board of High School & Intermediate Education, the Principal, Wesly Higher Secondary School, Azamgarh, the Joint Director Education U.P. amongst themselves and himself. According to him on a query made by the Director of Education to the Basic Shiksha Adhikari, Azamgarh regarding his date of birth the Basic Shiksha Adhikari (BSA) informed the Director of Education (DE) on 29.7.1978 <sup>✓ that</sup> ~~regarding~~ the applicant's date of birth was 5.12.1932. It was due to some mistake that in the High School certificate the age of the applicant came to be written as 15.7.1929 when no final action was taken by the

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DE to correct his date of birth, he filed a writ petition which is still pending. He has challenged his retirement on the grounds that the order has been issued by a person who is not his appointing authority and the records of the School and District Court show his date of birth as 5.12.1932.

3. According to the respondents, the applicant was recruited on 28.4.1959. He had made an application for the said recruitment and had mentioned his date of birth as 15.7.1929 and in support of the same he had submitted his High School certificate in which also his age was shown as 15.7.1929. At the time of initial recruitment he was also medically examined and the medical memo also showed his date of birth at 15.7.1929. This memo was also countersigned by the applicant. Besides in the 'A' card the petitioner has declared his date of birth as 15.7.1929 and filled the entry in his own hand and countersigned it. Also he was not prematurely retired as alleged by him but the order was an order of retirement on attaining the age of superannuation. The respondents have further relied on para 225 of the Indian Railway Establishment Code, Volume I which deals with the date of birth of employees. So according to them the records show that his date of birth is 15.7.1929 and not 5.12.1932 as alleged. It has also been said that the applicant has never applied for the correction of his date of birth.

3. In his rejoinder affidavit the applicant has said that the date of birth entered in his High School certificate was wrong and he had already moved the authorities for its correction. In 1978 BSA had already advised that his correct date of birth was 5.12.1932. The mistake in the date of birth also crept in the 'A' card which he had filled and the respondents were in the knowledge of the changed date of birth as there was correspondence between them and the DE. He has reiterated that the Commandant is not his appointing

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authority hence the impugned order is bad.

4. I have heard the learned counsel for the parties. Sri G.C. Bhattacharya, learned counsel for the applicant, made a spirited exposition of the contentions in favour of the change of date of birth from 15.7.1929 to 5.12.1932. His lengthy arguments dwelt on the *w documents & voice* following three ~~factors~~ :-

- i) The report of BSA made in 1978.
- ii) The extracts of records of police station.
- iii) Order of retirement not given by competent authority.

These were vehemently opposed by Sri A.V. Srivastava, learned counsel for the respondents, on the grounds that the applicant is a literate person and he had himself declared his date of birth and entered it in the 'A' Card in 1962. He had also not made any representation at any stage not even after retirement. According to the learned counsel the Matriculation certificate is the most important document and the date of birth in the certificate is 15.7.1929. The learned counsel for the applicant also contended that since the U.P. Board has not replied to the notice sent to them adverse inference be drawn and the application could not be rejected on the ground that no representation has been made.

5. It is not under dispute that the Matriculation certificate of the applicant shows the date of birth as 15.7.1929. It is also not under challenge that the applicant had not declared the same as 15.7.29 in his application when he sought appointment and later when he entered it in the 'A' Card. The plea taken is that since the change had not been made by DE inspite of the efforts initiated by the applicant in the year 1958 the applicant had no alternative but declare the date of birth as recorded in the Matriculation certificate while he kept on waiting for the change which he was pursuing. So the date of birth got wrongly reflected in the records.

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6. The Hon'ble Supreme Court in the case of B.N.Chatterjee v. State of Bihar (1977 SCC (L&S) 427) has observed that the date of birth as recorded in official records having been admitted by the employee, he could not claim a different date of birth subsequently.

7. Similarly in the case of State of Assam v. D.P.Deka (1971 Lab.I.C. 27) the Hon'ble Supreme Court has observed that the date of retirement must be determined on the basis of service record and representation made by the petitioner in that case within three years of his date of retirement for correcting his date of birth was rightly rejected.

8. In the case of N.S.Chendel v. Union of India (ATR 1986 CAT 345) the Principal Bench of this Tribunal had held that where the service record showed a date of birth duly recorded and witnessed then it cannot be said to be contrary to Rule 145 of the Indian Railway Establishment Code, Volume I. The said rule provides that any satisfactory explanation for change of date of birth should be given within reasonable time and not after 33 years of joining service.

9. In the applicant's case the contentions raised at the Bar were that the change should be made, notwithstanding the fact that the applicant never represented, on the basis of the report of BSA and the correspondence between DE and the respondents. I reject this contention on grounds that the entries in Service Record were made in full knowledge of the applicant and by himself on the 'A' card and the applicant never even bothered to bring to the notice of the respondents that he was making an effort to have his date of birth changed in the records of DE. Indirectly the applicant had acquiesced to the entries and the doctrine of estoppel by negligence is attracted. Moreover, a Matriculation certificate is considered to be a very reliable document if the examination has been passed before

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joining service. The records of the police station, i.e. the Birth Extract is only an evidence of factum of birth and not of date of birth.

10. On reaching the age of superannuation a person retires. It is immaterial as to who notifies the fact as long as it is done by a responsible officer. There can be no requirement that the retirement order can be issued only by appointing authority. It is not a case which attracts Article 311 of the Constitution. The commandant, who issued the retirement order on the basis of the Service Record entries of date of birth was fully competent to issue the order and the same cannot be assailed on the ground that he was not the appointing authority.

11. It is a long time since the applicant has been pursuing his change of date of birth with DE. The last correspondence he has filed pertains to 1985. There also the querries made by the Directorate are in regard to the position as existing in the records of the respondents. This correspondence does not lead one to think that DE has placed any reliance on the report of BSA and police records. He is wanting to know the dates etc. as entered by the applicant with the Railways.

12. There is no counter version from respondent no.3, the Director of Education. A direction was given by the Tribunal on 1.1.88 to respondent no.3 to submit a report in respect of action taken by his office in connection with the application made by the applicant in 1978. No reply has been filed by DE in this regard. While serious note has to be taken of the apathy shown, the fact remains that the entries in the Service Record have been made on the basis of declarations given by the applicant, <sup>by himself</sup> and these entries have remained unchallenged throughout.

13. When the date of birth of a Railway servant is recorded

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in the Service Records on the basis of High School certificate the entry should be deemed to be conclusive. Where the employee subsequently obtains a decree in a civil suit against the Board of Education to correct the wrong date of birth in the school certificate the respondents may refuse to make any alterations. Rule 145 of the Establishment Code, Volume I being a permissive provision it is not obligatory for the respondents to alter the date of birth. So even if the applicant succeeds in his efforts with DE which he has not yet been able to, it will be open to the employer Railways to refuse to make any change in the records that have been made on the applicant's own declaration and in full knowledge of facts.

14. On the above considerations, I find no merit in this application. It is accordingly dismissed with costs on parties.

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MEMBER (A).

Dated: August 31<sup>st</sup>, 1988.

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