

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

O.A.No.1038/88

Yogendra Nath Sharma : : : : : Applicant

Vs.

Union of India & Others : : : : : Respondents

Hon. Mr. Justice U.C.Srivastava, V.C.

Hon. Mr. K. Obayya, A.M.

(By Hon. Mr. Justice U.C.Srivastava, V.C.)

The dispute raised by the applicant in this application is regarding the date of birth. The fact as stated by the parties indicate that both the parties were under mistake of fact. According to the respondents they have also committed a mistake which is a minor one and the mistake committed by the applicant is a major one. In response to the advertisement for the post of signaller, the applicant has also sent application. The minimum age was 18 years. The applicant was selected and given appointment on 11-7-54. He was promoted to the post of A.S.M. in the year 1958. According to the applicant, in the list of A.S.M. published in the year 1975 he noticed variation in the date of birth written as 13-10-30 and that is why he moved application for correction of date of birth. In the mean-time he was promoted to the post of Station Master on 1-2-86. As per the applicant, since he lost his High School Certificate he could not produce the same. But after the receipt of the duplicate of the High School Certificate he made a representation on 20-7-88. He was served with a notice that he will be retired

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from service with effect from 31-8-88 on the basis of date of birth. That is why the applicant has approached this Tribunal praying that the respondents be directed to allow him to continue in service and the date of birth may be corrected.

2. The application has been opposed by the respondents who has pointed out that the applicant was asked to furnish the attested copies of his High School Certificate which he must have produced at the time of applying for the post of signaller, as there was no occasion for calling for original High School Certificate. The plea which has been taken by the Railway Administration is that in the seniority list published in the year 1975 the mistake committed in respect of the date of birth could not be corrected. When the applicant became aware of the change in date of birth he could have produced the attested copy of the original High School Certificate, but he did not do so and as such he cannot challenge it now. It was due to clerical error in the seniority list which was issued in the year 1978 the date of birth was again indicated as 13-10-30 instead of 13-8-30. The applicant never preferred any appeal for correction of date of birth. In the year 1965 he gave in writing that his date of birth is 13-8-35, but he did not file any attested copy of the original High School Certificate. Therefore, he was rightly given notice and correctly retired from service in the year 1988.

3. The matter came up before us for consideration and there were certain doubts regarding the duplicate copy of the High School Certificate. The learned Counsel for the applicant produced before us the Gazette

of the State of U.P. and from the Gazette we found that the date of birth of the applicant as per the High School Certificate is 3-3-1935. Therefore, it is presumed that the duplicate High School Certificate produced by the applicant is correct. The question now remains for consideration is whether the correct facts are given effect to or the facts which are not correct or which under a mistaken belief or lethargy — of the party, has not been agitated. We give preference and priority to the High School Certificate, according to which entry was given in Gazette. The correctness cannot be denied and the Gazette unmistakably proves that the date of birth of the applicant is 3-3-35. It is not a case that by giving a wrong date of birth the applicant was benefitted. In view of the fact that the minimum age limit for entering into service is 18 and when he entered the service he has already completed 18 years. In these circumstances the application of the applicant is allowed. Accordingly the retirement notice as mentioned above is quashed. The applicant is deemed to be continuing in service till he completes correct the age of 58 years taking the date of birth of the applicant as 3-3-1935. The respondents are, therefore, directed to take the applicant back in service and pay his emoluments and arrears to which he is entitled to, within a period of 3 months from the date of communication of this judgment. No order as to the cost.

Rufyee
Member (A)

W
Vice-Chairman.

Dated: 29th Sep., 1992, Allahabad.

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