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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this 29th... day of October. 1994.

Original Application no. 1014 of 1992

Bhagwati Prasad Misra S/o Sri Manohar Lal Misra
R/o 165, Heerapura, Nagra,
Jhansi.

.....Applicant

By Advocate M.P. Gupta

Versus

Union of India and others

.....Respondents

By Advocate A.K. Gour

Hon. Mr. S. Das Gupta, A.M.

ORDER

In this application under section-19 of the Administrative Tribunal Act 1985, it has been prayed that the decision of the respondents to retire the applicant on 31.08.1991 be declared as void and he ~~should~~ be allowed to work upto 31.07.1995 with all consequential benefits.

2. The applicant states that when he was initially appointed in the Central Railways at Bina on 09.07.1957, he had declared his date of birth 09.07.1937 which was his correct date of birth and this was recorded as his date of birth in the service record. He should, therefore, have attained the age of super annuation on 31.07.1995. However, the respondents retired him on 31.08.1991 before attaining the age of 58 years when he was working as a Head Clerk in the office of the respondents no.2 at Jhansi.

3. The applicant claims that his service record was prepared on 05.11.1958 when his signature and thumb impression were obtained and the date of birth was recorded as 09.07.1937. He alleges that the entry regarding date of birth was later

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changed from 09.07.1937 to 15.08.1933 by someone who had not initialised alteration. This alteration, he claims, was made behind his back without giving him an opportunity of being heard.

4. The applicant asserts that no change in the date of birth which was originally recorded in the service record could have been legally made to his disadvantage without giving him opportunity to show cause or of being heard. Since, no such opportunity was given to him, the alteration made in the date of birth is neither legal, nor proper and as such, he could not have been legally retired on the basis of the changed date of birth. The decision to retire the applicant on 31.08.1991 instead of 31.07.1990 is therefore according to the applicant, illegal, null and void, arbitrary and malefida being violative of the principles of natural justice.

In these circumstances the applicant has prayed for the reliefs aforesaid.

5. In the written statement submitted by the respondents the claims by the petitioner have been resisted. It has been stated therein that the applicant who was initially appointed in class-IV service had himself stated in his application dt. 15.01.1957 requesting for employment that his date of birth was 15.08.1933 as mentioned in High School leaving certificate. The date of birth of the petitioner was correctly shown 15.08.1933 and thus his retirement on 31.08.1991 was just and proper. They have denied that anyone else had changed his date of birth which was originally recorded and on the contrary they have alleged that it could have been only petitioner himself who may have altered the recorded date of birth since it was only he who would be deriving advantage from the same.

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6. I have heard the counsel of both the parties and perused the rival pleadings. I have also gone through the personal file and the original service record of the applicant which were made available to me for inspection by the respondents.

7. I have seen from the original service record that in the Column for date of birth the entry is "20 yrs on appointment". Above this entry there is another entry in a slightly different ink. This entry reads "9-7-37 (Nineth July Nineteen Thirty seven only)" a little below this there is another entry which is overwritten and smudged. This reads "9-7-1937 (Nineth July thirty seven)". There is another entry which has been scored out but a part of which can still be deciphered. This reads "Fifteenth August Nineteen thirty". On the left side of the Service Card the following entry has been made in red ink under the signature of Assistant Personnel Officer, Central Railway, Jhansi. "The correct date of birth is 15-8-1933 (Fifteenth August Nineteen thirty three) As per SSC Certificate (attested copy at page no.2 of PF). This is as per orders of DPO(T) JHS at page 546 of PF of the employee".

8. It would be clear of the above that it is difficult to ascertain as to what was the date of birth recorded when the service record was initially prepared. The only entry which appears to be genuine is that his age was 20 years on the date of his appointment. This would have put his date of birth as 09.07.1937, as claimed by the applicant. But, in that case there would be no reason for so much of over writing and scoring out of entries and making different entries in different ink. It is difficult to accept the petitioner's contention that someone else has changed date of birth to his disadvantage since none else is likely to benefit from such alterations in the date of birth.

Certainly the respondents would have no interest in making any

alteration of his date of birth to the disadvantage of the applicant.

If any inference is to be drawn from the over writing and alterations

it can only be an adverse presumption against the applicant that he tried to alter the original recorded date of birth to his advantage.

This inference gets fortified by the fact that the applicant himself had indicated in this application for the employment that his date of birth is 15.08.1933. A copy of this application dt.15.01.1957 is at Annexure-C(iii) to the written statement. In this application apart from indicating that his date of birth is 15.08.1933 it has also been stated that the applicant is matriculate. A copy of the matriculation certificate which has also been annexed to the written statement indicates that his date of birth is 15th August 1933.

No doubt the applicant has denied in his Rejoinder Affidavit that he had submitted any such application dt.15.01.1957, but we see no reason to believe that the respondents have annexed a forged document merely to defend the application filed by the petitioner.

After going through all the documents I feel that at some point of time the date of birth of the applicant was recorded as 15.08.1933 in the service book and later the same was changed to 09.07.1937 and such an alteration could have been made only by someone who had interest of the applicant in mind.

9. In the Rejoinder Affidavit the applicant has annexed copies of the Seniority Lists in which the date of birth of the applicant have been indicated as 09.07.1937 and he has sought to rely on these documents to prove that his date of birth was 09.07.1937. I am not impressed by this argument. These entries in the Seniority List must have been made on the basis of the altered date of birth in the Service record and therefore these cannot lend any authenticity to the claim of the applicant that his date of birth was 09.07.1937. I have noted that the correction of the date of birth

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from 09.07.1937 to 15.08.1933 was made at the fag end of the applicant's service career. The discrepancy in the date of birth should have been detected by the respondents much earlier. Applicant could have been given an opportunity of being heard. The omission to do so however does not detract from the basic fact that the applicant's date of birth was 15.08.1933 as he himself had declared in his application for the employment and as recorded in his matriculation certificate. Therefore there has been no injustice to the applicant by retiring him on 31.08.1991. The applicant was not illiterate person. He was a matriculate and in the absence of any other authentic document to the contrary, the date of birth recorded in the matriculation certificate is to be taken as correct date of birth. Since the applicant was in possession of the matriculation certificate at the time of entry in the service, it was his duty to see that his date of birth was correctly recorded. In the service record prepared he had seen the entries since he had put his signature on the service record. At that time the only authentic document in respect of date of birth was his matriculation certificate. He should have, therefore, pointed out any mistake in recording his date of birth and get it recorded in accordance with the date of birth recorded in matriculation certificate. It is not the case of applicant that any other authentic document indicating different date of birth was available with him either at that time or later. It cannot therefore be gainsaid that his date of birth was not 15.08.1933 but 09.07.1937.

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10. In view of the foregoing I find no merit in this application and the same is dismissed. Leaving the parties to bear their own costs.


Member-A