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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.94 OF 1986.

Date of decision : November 26, 1986.

Abdul Rashid Khan ... Applicant

M/s. Jayanta Das, P.K. Rout,
A.C. Pradhan, B. Dash,
Advocates ... For Applicant.

Versus

Chief Engineer, S.E. Railway and
others ... Respondents.

Mr. Ashok Mohanty ... For Respondents.

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL).

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.

2. To be referred to the Reporters or not ? Yes.

3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 praying for a declaration that the petitioner was born on 25th November, 1932 but not on 25th September, 1928.

2. Succinctly stated, the case of the petitioner is that he joined as Choukidar under the South Eastern Railway on daily wage basis. In course of time the petitioner enjoyed his promotions to different posts after he was absorbed as a regular Government servant. Ultimately the petitioner retired as Inspector of Works, Grade III. The petitioner was made to retire in the year 1986 on the basis of the fact that the petitioner was born on 25th September, 1928 which has been very seriously disputed on behalf of the petitioner. Hence the petitioner wants a declaration of the above nature.

3. In their counter, the Respondents maintained that the petitioner having not sought for correction of his age, according to the provisions contained in Rule 145 of the Indian Railway Establishment Code Volume I read with relevant circular issued by the Board in their letter No.E(NG.1170BR/1 dated 3.12.1971, the petitioner is now estopped from urging that he was born on 25th November, 1932.

4. We have heard Mr. Jayanta Das, learned counsel for the petitioner and Mr. Ashok Mohanty, learned counsel appearing for the Railways. Rule 145 contemplates that a

particular person is to declare his age while entering into service and in case, there is any mistake in the recording of the date of birth of the person aggrieved, he is to then make a representation within three years from the date of such mistake having occurred and in case, the person aggrieved does not make any such representation, then his recording of the age in the Service Book would be deemed to be genuine. On the basis of this provision contained in Rule 145, it was urged by learned counsel for the Railways that the petitioner having come up so late, Rule 145 works against him and no relief should be granted to the petitioner. After hearing learned counsel for both sides, on this point we are of the view that the relevant Rule states that 'ordinarily' a Government employee shall not be permitted to make necessary correction regarding his date of birth. The word 'ordinarily' has a great significance. In our view, it gives discretion to the Court to give relief to a particular employee, if on questions of fact such relief is to be granted in his favour. That apart, in the present case, we would find that the age of the petitioner recorded in his Service Book is an unverified one. This fact is admitted in paragraph 14 of the counter affidavit filed on behalf of the Railways. Since it was ~~an~~ unverified and unattested, we are also of opinion that Rule 145(3)(ii) has no application to the facts of the present case. To add to this, one would find that the Departmental authorities had called upon the petitioner to submit authenticated and verified documents to testify his age.

Wm. This eventually indicates that the entries made in the

Service Book were unverified and unchecked and unattested. Nothing could be shown to us that the entry in the Service Book of the petitioner to the effect that he was born on 25th September, 1928 had been brought to the notice of the petitioner in any manner whatsoever. Had it been brought to the notice of the petitioner, we might have been slow to accept the case of the petitioner because equity helps the vigilant but not the indolent. Therefore, we find no merit in the contention of learned counsel for the Respondents and we hold that Rule 145 has no application to the facts of the present case.

Mr. Jayanta Das, learned counsel appearing for the petitioner has filed attested copies of the school leaving certificate granted by the Headmaster of Ravenshaw Collegiate School and Headmaster of Marwari High School, Cuttack wherein it has been stated that the date of birth of the petitioner is 25th November, 1932. The law is well settled in a plethora of judicial pronouncements given by the Hon'ble Supreme Court and several High Courts in India that the basis for determination of age of a particular Government employee is either the Matriculation certificate or the School leaving certificate or the Horoscope of the person aggrieved. In the present case, after perusing the school leaving certificate granted by the Headmasters of Ravenshaw Collegiate School and ^{that of} Marwari High School, we have least doubt in our mind about the genuineness of the documents stated above. Therefore, we are of opinion that the date of birth of the petitioner in

this case is 25th November, 1932 and accordingly we do hereby give a declaration in favour of the petitioner that his date of birth is 25th November, 1932 and it may be accordingly corrected and he should have been made to retire on attaining the age of superannuation in the year 1990. Hence we would direct that the Service Book of the petitioner be accordingly corrected and the petitioner be reinstated in service forthwith and the petitioner is deemed to have continued in service from 1st October, 1986 and it is further directed that all emoluments due to the petitioner from 1st October, 1986 be paid to the petitioner within three months from the date of receipt of a copy of this judgment.

5. In the result, this application stands allowed leaving the parties to bear their own costs.

Agreed
26-XI-86
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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree

Agreed
26-XI-86
.....
Vice-Chairman

Central Administrative Tribunal
Cuttack Bench : Cuttack.
November 26, 1986/S. Sarangi.