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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH AT LUCKNOW

Registration T.A. No.1039 of 1987(L)
(W.P. No.1599 of 1982)

M.S. Paul Applicant

versus

Union of India & Another Opposite Parties

Hon .Justice Kamleshwar Nath, V.C.

Writ Petition No. 1599 of 1982 mentioned above was received by transfer under Section 29 of the Administrative Tribunals Act XIII of 1985 for disposal by this Tribunal. The petition was filed on 9.4.1982 for a writ of certiorari to quash the applicant's retirement on 31.5.82 on superannuation on the basis of his date of birth being recorded as 19.5.24 in the service record. The age of superannuation was 58 years.

2. On 19.5.48 the applicant entered in the service of the erstwhile East Indian Railways as a Cleaner in the Running Shed in the Lucknow Division. His date of birth was then recorded as 19.5.24. The applicant says that he did not know the correct date of birth ~~at that~~
~~time~~ and did not possess any documentary or other proof thereof at that time.

3. In the course of his service he took up High School examination. His case is that on the information received from his mother his date of birth was recorded in the examination form as well as in the High School Examination, 1973, certificate to be 20.12.25. He said that he had made representations to the Department in 1954, 1955 and 1960 to rectify the date of his birth but the Department did not take any action there on. He

further said that the Department, nevertheless, issued seniority lists on 28.3.60, 7.10.61 and 12.10.61 in which his date of birth was indicated to be 19.5.24; and when the Department again issued a seniority list on 31.7.75, he made a representation, Annexure-4 on 16.10.75. He urged that he represented again on 12.6.81 which representation was dismissed on 30.12.81 by Annexure-9 on the ground that the last date for making the representation was 31.7.73. In course of time, it was notified to him that he would retire on 31.5.82 and therefore he filed the writ petition which has given rise to this case.

4. The Opposite Parties' case is that the applicant had given his own date of birth which was initially recorded in the service record as 19.5.24, that no value is to be attached to the date of birth recorded in a High School Certificate which was procured after entry into service, that there was no representation in 1955 and that after consideration of the period of time during which an employee could make a representation regarding his date of birth, the Railway Board took a decision contained in Annexure-B2 that the employees who were in service before 31.12.71, when the first circular Annexure-B1 was issued on the subject, could make their representation by 31.7.73, which after ~~that~~ ^{which} no further representation could be entertained.

5. I have heard the learned counsel for the parties. It is the own case of the applicant that he did not know the correct date of his birth when he entered into service on 19.5.48 nor he had any proof

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5. I have heard the learned counsel for the parties. It is the own case of the applicant that he did not know the correct date of his birth when he entered into service on 19.5.48 nor he had any proof

documentary or otherwise thereof. The important point is ~~question~~ that if the applicant had no proof, ~~the~~ documentary or otherwise at the time of his entry into service on 19.5.48, how is it that he could receive information of the date of his birth from his mother at the time when he had subsequently submitted the form for admission to the High School Examination. The mother should have been alive even 19.5.48, on ~~15.4.48~~ and if she was a correct source of the date of applicant's birth, it should have been possible to indicate it at that time. The own admission of the applicant in the petition that he had no "documentary or proof otherwise" of his date of birth at the time of the entry into service, negatives the value of the so called information of the date of birth subsequently received from the mother. That is why the case of the Opposite Parties in para 4 of the Counter Affidavit that no value can be attached to the statement of the date of birth, ^{in the} ~~any~~ certificate obtained after entry into the service is not without force.

6. In the matter of making representations, the applicant has filed copy Annexure-1 of the year 1955 only; its receipt has been denied in para 4 of the Counter Affidavit. Copies of representations of 1955. and 1960 have not been filed; it is not possible to lay faith on a bare statement in that respect. It is significant that even if these representations were made, they do not appear to have been accepted by the Department and can well be considered to have been impliedly rejected when seniority lists were issued in 1960 and 1961 indicating the applicant's date of birth as 19.5.24. It does not appear that the applicant

made any representation after the issue of those seniority lists.

7. The next representation is dated 16.10.75, Annexure-7 which followed the seniority list of 31.7.75. Perhaps this was not considered by the Department. The last representation dated 30.12.81 was rejected by order Annexure-9 stating that the last date for making the representation was 31.7.73.

8. The Opposite Parties' case that the last date for submitting the representation was 31.7.73, is correct. It appears that the matter was considered initially by Railway Board's circular dated 3.12.1971, Annexure-B1 in which it was said that alteration in age after completion of period of probation or of three years of service whichever is earlier would not be permitted. Hardship was considered to have been caused by that circular to the cases of those employees who were already in service on 3.12.71 but could not avail of the opportunity afforded. That is why the Subsequent circular dated 4.8.72, Annexure-B2 was issued with a direction for wide publicity, and it was said that those persons who were in employment on 3.12.71 could make their representation by 31.7.73 but not thereafter and if they did make such representation, it would be considered according to Rules. The Department took a decision to treat 31.7.73 as the 'cut off date'. It is not said that the 'cut off date' was unreasonable.

Indeed, employees have to share responsibility for errors in their date of birth, and it is quite fair to fix a reasonable time during which such errors could be got rectified. In respect of employees who were on job on or before 3.12.71, a provision for making representations till 31.7.73 appears to be quite reasonable. There is no error therefore in the decision of the Opposite Parties that the applicant's

representation dated 30.12.81, or for that matter
16.10.75
dated ~~31.7.73~~, were not entertainable after 31.7.73.
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9. The applicant's learned counsel made a submission that Rule 145 of the Railway Establishment Code, Volume I did not fix any time limit during which representation could be made. This is not to say that the Rule had also provided that the representation could be made at any time. In other words, Rule 145 of the Railway Establishment Code contained a gap on the question of the period of time during which representation could be made. That gap could certainly be made good by means of administrative instructions which are contained in the circulars dated 3.12.1981, Annexure-B1 and 4.8.1972 dated 23.8.1982, Annexure-B2.

10. On a careful consideration of all the matters, I am satisfied that the impugned order does not suffer from any infirmity and the application deserves to fail. The application is dismissed. Parties shall bear their own costs.

RKM

Vice Chairman

Dated the 28th July, 1989.

RKM