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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. No. 707/92

Date of decision: 20.9.94

BISHAN LAL

: Applicant.

VERSUS

UNION OF INDIA & ANR. : Respondents.

Mr. P.D. Khanna : Counsel for the applicant.

Mr. Manish Bhandari : Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Ms. Usha Sen, Administrative Member

FOR HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

Heard the learned counsel for the parties.

2. The applicant is litigating for justice/legal justice since 1977 and he is still agitating and making a submission for legal and equitable justice. Justice delayed is justice denied. In the present judicial system, for early and timely justice, one has to wait for decades and decades and in some cases, the grandchildren of the plaintiff even cannot get the justice or decision of their dispute which was created by their fore-fathers. In a democratic country, unless some change is there about the attitude of the persons who are at the helm of the affairs in delivering justice and also of the persons who are at the helm of the affairs of other two wings of State, namely, the Executive and the Legislative, there cannot be a justice.

3. The poor Waterman is agitating this case since 1977 on the ground that he has wrongly been retired though his date of birth is 3.3.1939 and not 3.3.1919. The respondents have not even cared to file the reply of the petition of the applicant. Instead of litigating for years together, justice could have been done to the applicant by rectifying the mistake. The applicant filed the suit in the Civil Court which was transferred to the Tribunal and the Tribunal decided the said suit

vide Judgement dated 28.10.1997 delivered in T.A. No. 833/86. Paras 9 and 10 are very important for the purpose of consideration of the judgement of the Tribunal given earlier. This Tribunal has stated: " After bestowing our careful consideration on the facts and circumstances of this case, we find that it was an eminently fit case which needed a proper inquiry on receipt of the representation made by the plaintiff for rectification of his date of birth." Directions were also given to consider the documents produced and the documents available and examine the case in the light of the observations made. It is a case in which the poor applicant has become the victim of the loss of the original service sheet and the service record, the respondents should have taken the action against those officers who are responsible for the loss of the original service sheet or service record which was signed by the applicant. They have not come with a case that any action has been taken against those officers who are responsible for the loss of the original sheet or service record. Even they have not dared to say that how the new service record was prepared and on what basis it was prepared and whether in the preparation of the new service record the applicant was asked to furnish the information required for the preparation of the new service record. Even after the preparation of the new service record, the signature of the applicant was not taken on that.

4. We have gone through the order, Annexure A-2, passed by the Chief Personnel Officer which is based on no facts and some disturbing elements have also crept in between the intervening period, i.e. after the judgment of this Tribunal and the judgement given by the C.P.O.

5. Originally, there was a medical certificate which was prepared in 1948. This medical certificate was considered by the Tribunal at the time of the decision in T.A. No. 633/86, decided on 28.10.87. In last few lines of para 8 of the Judgement, this Tribunal has held as under:

"So far as the medical examination certificate of March 3, 1948 is concerned, it was stated by the learned counsel for the respondents that column of age has not been filled up."

That means it was the case of the respondents themselves that the column of age was blank at the time when the original T.A. was argued. Now the C.P.O. reads that the date of birth has been mentioned as 3.3.1919 and not 3.3.1929. When that column was blank at the relevant time which was seen by the Tribunal how the new entries have crept in in that certificate has not been explained by the respondents. Apart from that, there is more material on record in favour of the applicant. Annexure A-3 is the letter issued by the Station Supdt., Ajmer to the Station Master, Tabiji where the applicant was transferred on 8.6.69. In this letter which was issued about 8-9 years before the actual retirement, the date of birth has been shown as 3.3.1929. The applicant's case is that the date is correctly mentioned therein. The C.P.O. has come to the conclusion that the Supdt. has unauthorisedly mentioned the date in the said letter. Let us assume that it may be a case of unauthorised entry in the letter but it must be based on record or the CPO could have inquired from the officer who had issued the letter in 1969 on what basis he had entered the date of birth as 3.3.29. Mere saying that it was not within the jurisdiction of the Supdt. to mention the date in the letter will not suffice and the burden heavily lies on the respondents to disprove the date of birth mentioned in this letter. It is the second fault of the respondents; earlier they have

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lost the record and now they say that the Supdt. was not competent, but they have not dared to ask the Supdt. on what basis he has made the entry in the said letter. The third document which has not been considered properly by the respondents (CPO) is Annexure A-4, the medical certificate which was issued on 6.10.1969 by the Railway Doctor. In this certificate, the age of the applicant has been shown as about 40 years, naturally, the date of year of the birth comes to 1929. This letter was also issued 10 years back by the Railway Doctor and it was with the Railway authorities. They could have disputed this certificate even at that time but they have not done it and so this certificate issued by their representative is of a binding character against them as an admission unless they rebut it by cogent evidence. The other document is the Annexure A-13 which is the seniority list of Levermen published in the year 1969. In this seniority list, the details about the date of birth, date of appointment, date of confirmation etc. have been given. In this seniority list, the date of birth of the applicant has been shown as 3.3.1929 and the date of appointment as Leverman is 30.9.51. Earlier, he was Waterman.

6. It will not be out of place here to mention that if the date of birth is considered as 1919, then the applicant cannot be appointed in the year 1948 as he will be above 28 years. Maximum age limit has been shown for the purpose of eligibility for appointment as Class IV employee is that he should not be below 18 years and should not be above 28 years. Thus, if the date of birth is 1919, he will be above 28 years. So, he will not be eligible for appointment and this goes against the respondents that the applicant was appointed in 1948 and this also supports the theory of the applicant that he was only of 19 years and he was eligible for appointment. Thus,

for the reasons mentioned above, we are not inclined to accept the view taken by the C.P.O.

7. In the result, we accept the O.A., set aside the order, Annexure A-2 dated 4.8.1988 conveyed by letter dated 25.8.88 and direct the respondents to treat the date of birth of the applicant as 3.3.1929 instead of 3.3.1919. The applicant shall be entitled for all consequential benefits. He shall also be entitled for the regular salary of the intervening period of earlier retirement on account of the mistake of the respondents. The respondents shall pay Rs. 1000/- as costs of litigation.

Usha Sen

(USHA SEN)
Administrative Member


(D.L. MEHTA)
Vice-Chairman