

A SHEO NANDAN SINGH  
v.  
UNION OF INDIA AND ORS.

NOVEMBER 22, 1995

B [K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Service Law :*

C *Date of birth—Declaration in service record—Superannuation on the basis of—Unsuccessfully challenged before the Tribunal—Dismissal—Appeal—Paucity of—Authentic record—Employee held not entitled to the relief.*

D The appellant, who entered Railway Service as Shunting Porter, was to retire on January 31st, 1984 (AN) on the basis of his date of birth declared in the service record i.e. January 22, 1926. He unsuccessfully challenged the superannuation order before the Tribunal. The employer took a stand before the Tribunal that the record was manipulated and service register was removed from record by the appellant in connivance with the Office Superintendent.

E In appeal to this Court it was contended for the appellant that he had declared his date of birth as January 22, 1936 but the respondents have deliberately withheld the service documents and consequently the appellant was entitled to remain in service for 10 more years. The respondents took a stand that the file relating to service record of the appellant was missing.

F Dismissing the appeal, this Court

G HELD : In view of state of record and paucity of the authentic material on record, it is difficult to place implicit reliance on the contention of the appellant. The Tribunal, therefore, was right in dismissing the petition, though for different reasons. Under these circumstances, no relief can be given to the appellant. [578-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11437 of 1995.

H From the Judgment and Order dated 4.4.90 of the Central Ad-

ministrative Tribunal, Patna in O.A. No. 306 of 1989.

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S.B. Sanyal, Sanjay Kr. Ghosh and Deba Prasad Mukherjee for the Appellant.

N.N. Goswami, A.K. Verma, W.A. Qadri and V.K. Verma for the Respondents.

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The following Order of the Court was delivered :

Leave granted.

The appellant entered Railway service as Shunting Porter on April 26, 1955. It would appear from the service record that his date of birth was declared to be January 22, 1926. On January 7, 1984, the appellant was informed that he was to retire on January 31, 1984 (A.N.) since he attained the superannuation on January 21, 1984. Thereon, the appellant gave a reply stating that his date of birth was January 22, 1936 and that therefore the order of retirement is not correct. Accordingly, he approached the High Court by filing Writ Petition No. CWJC No. 353 of 1984 which was transferred to the Tribunal. The Tribunal rejected the said writ petition holding that the Union of India was not a party. Then he filed O.A. No. 306 of 1989. The Tribunal by order dated April 4, 1990 dismissed the application on the ground of *res judicata*. Thus this appeal by special leave.

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The contention of the appellant supported by Shri Sanyal, learned senior counsel, is that the appellant had declared his date of birth as January 22, 1936 which could be reflective from the periodical medical inspection reports made by the authorities which noted that his date of birth. The respondents have deliberately withheld the documents and that, therefore, the appellant is entitled to the declaration that he is not liable to retire until he attains the superannuation age of 58 years.

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The respondents stated before the Tribunal in the first instance that the record was required to be produced in the High Court and one Mr. P.C. Ghose, D.S.(G) was entrusted with the record to meet their Advocate Mr. A.B. Ojha. According to the endorsement made by the Sr. D.P.O. on November 29, 1988 the S. R. of the appellant together with the file was taken by Mr. P.C. Ghose to meet Mr. A.B. Ojha, their Advocate in connection with the case laid by the appellant. When that was required back by letter dated December 23, 1988, the Advocated had stated that "no

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- A such paper was with him". Under those circumstances, it was explained that the file relating to the service record of the appellant was missing. It was also stated by the Tribunal in the earlier proceedings that the definite stand taken by the respondents was that the record was manipulated and service register was removed from record by the appellant in connivance with the Officer Superintendent (G). It would thereby appear that the service record of the appellant with the respondents is not available.

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- C The only question now is whether the appellant is liable to retire on attaining the superannuation on January 21, 1984 as contended by the Department or is entitled to remain in service for 10 more years treating his date of birth to be January 22, 1936.

- D In view of state of record and paucity of the authentic material on record, we find it difficult to place implicit reliance on the contention of the appellant. The Tribunal, therefore, was right in dismissing the petition, though for different reasons. Under these circumstances, we cannot give any relief to the appellant.

The appeal is therefore, dismissed. No costs.

T.N.A.

Appeal dismissed.