

PETITIONER:
SHEO NANDAN SINGH

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 22/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 SCC (1) 593 JT 1995 (9) 119
1995 SCALE (6) 761

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

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.

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.

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 apellant. When that was required back by letter dated

December 23, 1988, the Advocate had stated that "no 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.

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.

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.