

(1979) 07 AHC CK 0004
In the Allahabad High Court
Case No : Writ No. 6317 of 1974

Surendra Singh

APPELLANT

Vs

Divisional Engineer, Telegraphs and Another

RESPONDENT

Date of Decision : 03-07-1979

Acts Referred:

Citation : (1979) AWC 623

Hon'ble Judges : K.N. Singh, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : Faujdar Rai and R.N. Singh, for the Appellant; M.P. Bajpai and J.N. Tewari, for the Respondent

Final Decision : Allowed

Judgement

K.N. Singh and B.D. Agarwal, JJ.—The Petitioner has prayed for the issue of a writ of certiorari to quash the order of the Divisional Engineer, Telegraphs, Allahabad, dated 20-9-74 directing the Petitioner to retire from government service with effect from 30-11-74 on having attained the age of superannuation and also for the issue of a writ of mandamus directing the opposite parties to correct the Petitioner's date of birth in his service book.

2. The Petitioner joined service as Lineman in the Post and Telegraphs Department of the Central Government in the year 1940. Later on he was promoted as Telephone Operator. Before joining the service the Petitioner had passed Vernacular Final Examination in 1935 conducted by the Departmental Examination. In the certificate issued by the Registrar of the Departmental Examinations of the United Provinces the Petitioner's date of birth was recorded as September 21, 1921. While in service the Petitioner appeared at the High School Examination with the permission of the departmental authorities and passed the same in 1952. The High School certificate issued by the Board of High School and Intermediate Education mentioned the Petitioner's date of birth at 21st Sept. 1921. Since in his service book the Petitioner's date of birth was mentioned as 1-12-1916, he applied for the correction of the same but the

departmental authorities did not pay any attention to his request.

3. The Petitioner was required to obtain postal life insurance policy under the rules of service. He applied for the same and in that document he mentioned 21-9-1921 as his date of birth, but the papers were returned back to him under the letter dated 25-11-1952 with a direction that there was discrepancy in the date of birth as mentioned in the proposal as it was different from the date given in the service roll. The Petitioner thereupon made an application to the Divisional Engineer Telegraphs on 22-6-1953 for correction of entry relating to his date of birth in his service book. The Petitioner submitted attested copy of the Vernacular Final Examination and later on he further submitted the certified copy of his High School certificate. It appears that no orders were passed on the Petitioner's request. Ultimately in 1968 the Petitioner again made an application to the Post Master General requesting him to correct the entry in the service book on the basis of his High School certificate. The Post Master General by his letter dated 3-10-1970 rejected the Petitioner's request on the ground that no correction could be made at the fag end of the Petitioner's service. This information was communicated to the Petitioner, by the Div. Engineer, Telegraphs, Varanasi under his letter dated 15-10-70. In these circumstances the Divisional Engineer Telegraphs issued the impugned order dated 28-9-1974 informing the Petitioner that he would retire from service on 30-11-74.

4. There is no dispute between the parties that the age of superannuation is 58 years. If the Petitioner's date of birth as mentioned in the Vernacular Final Examination certificate and High School certificate is correct, the Petitioner has right to continue in service till 20th September, 1979, but if the date of birth mentioned in the service book is correct, the Petitioner could have retired on 30-11-74. The Petitioner has been making persistent efforts to get the entry in the service record corrected but the opposite parties did not consider his request in an objective manner. The plea taken by the Post Master General that the Petitioner's date of birth could not be corrected at the fag end of his service is wholly misconceived. The sequence of facts as stated earlier clearly show that the Petitioner has been making persistent efforts since 1953 for correction of entry in the service record but the departmental authorities did not seriously consider his case. The documents produced by the Petitioner clearly show that his date of birth as mentioned in the High School certificate is correct. The Respondents have failed to place any material to show that the date of birth as mentioned in the High School certificate is suspicious or incorrect. In these circumstances the Respondents were under legal duty to consider the Petitioner's case and pass suitable order. Since the opposite parties failed to apply their mind objectively to the document produced by the Petitioner, the notice issued by the Divisional Engineer dated 29-7-74 is illegal and not sustainable in law.

5. We do not consider it necessary to remand the matter to the Respondents for reconsidering the matter as in the next two months' period the Petitioner is to

retire from service even on the basis of his date of birth mentioned in the High School Examination certificate. The opposite parties have failed to place any material before the court to doubt the authenticity of the date as mentioned in the aforesaid certificate and they have further failed to show any valid reason for rejecting the Petitioner's claim. The Petitioner has during the pendency of the writ petition continued in service under interim order of the court. In view of these special facts and circumstances of this case, we do not consider it expedient to direct the opposite parties to re-determine the issue as it would further delay the matter. We, therefore, hold that the Petitioner is entitled to continue in service and to receive benefits of service on the basis of his date of birth as mentioned in his High School certificate and we further direct the Respondents to act accordingly.

6. In the result we allow the petition and quash the order of the Divisional Engineer dated 29-7-74. The Petitioner is entitled to his costs.