

Supreme Court of India

Deen Dayal Ojha vs Uttar Pradesh Public Service ... on 31 March, 1993

Equivalent citations: AIR 1993 SC 2475, (1994) ILLJ 337 SC

Bench: M Venkatachaliah, . D Thommen, S Mohan

JUDGMENT

1. Appellant Deen Dayal Ojha, a Sub-Inspector of Police in the service of the Government of Uttar Pradesh questions the correctness of the order of dismissal dated 8th September, 1982 of his writ petition by the High Court of Allahabad. The writ petition was preferred against the order dated 31st July, 1982 of the U.P. Public Service Tribunal relating to an alteration made by the respondents in the entry in his service records as to his date of birth.

2. We have heard Sri R.D. Upadhyay, learned Counsel for the appellant and Sri Pramod Swarup, learned Counsel for the respondents. On a consideration of the matter, we think this appeal should succeed.

3. On 6th July, 1942, appellant was enrolled in the military service from which he was discharged in 1946. Thereafter, on 1st January, 1947 he was appointed as a Constable in the Police Department.

4. Appellant's date of birth as entered in the Vernacular Examination Certificate was 1st November, 1925. The service record of the appellant, it is not disputed, initially had an entry indicating his date of birth as 1st November, 1925. There was some controversy whether it was 1-1-1925 or 1-11-1925. The former was an inadvertent error and the date was to be read as 1-11-1925. Appellant made a claim before the authorities that the duration of his earlier military service should be added to his service under Government. In that connection, he produced the discharge certificate dated 26th September, 1946, issued by the military authority, which indicated his age as on the date of discharge as 22 years. This document became the cause for the alteration of the date of birth in his service-records. By some ratiocination of their own, the authorities worked 22 years back from the date of his discharge from military service and fixed his date of birth as 6-7-1924. Appellant was aggrieved by this change in the entry of his date of birth, which in effect would reduce the duration of his service by about an year and four months.

The U.P. Public Service Tribunal, Lucknow, on appellant's petition substantially agreed with the reasoning of the authorities but reckoned his date of birth 22 years prior to the date of the certificate of discharge and fixed 25th September, 1924 as the date of birth, working 22 years backward from the date of the certificate and not the date of discharge as had been done by the authorities.

The High Court in a petition under Article 226 of the Constitution filed by the appellant, declined to interfere with the order of the tribunal.

5. We are afraid the whole process by which the entry as to the appellant's date of birth was altered, was impermissible as it was based on conjectures. The military-discharge- certificate said that the appellant was 22 years of age. That the date of birth must be reckoned exactly 22 years prior to the date of that certificate is strained logic. If a person has just completed the age of 21 it is possible to

describe his age as 22 years; but the assumption that the date of birth must exactly be 22 years prior, is untenable as indeed it would, in turn, require a further assumption that at the point of time the discharge certificate was issued the appellant was at the end of his 22nd year. In our opinion, there is no justification to alter the initial entry on the basis of the description of appellant's age as 22 years in the discharge certificate. Appellant could have just stepped into the 22nd year of his life or might have reached the end of the 22nd year. The alteration of the entry based on the assumption that latter was the true position is not supportable.

6. Pursuant to certain interlocutory direction dated 8th, November, 1982, the appellant has continued in service and has retired after attainment of 58 years reckoned from 1st November, 1925. He has been paid his salary for his service for this period.

The only question that survives is whether his pensionary and other retirement benefits should be calculated as if he was entitled to remain in service till attainment of the age of 58 years reckoned from 1st November, 1925. That the position should be so, does not appear to us to admit of doubt.

7. Accordingly, this appeal is allowed; the order of the High Court set aside; the writ petition filed by the appellant in the High Court is, in turn, allowed the order dated 31st July, 1982 of the U.P. Public Service Tribunal set aside.

The claim of the appellant that his correct date of birth was 1st November, . 1925 requires to be and is hereby upheld. He shall be entitled to all the retirement benefits on that basis. The appeal is disposed of accordingly. No costs.