

MA No. 301/2020 in OA No. 181 of 2020

Sri Harish Chandra Sahoo
vs.

Union of India represented through Secretary, Department of Posts

Order reserved on 20.11.2020

Date of Order: 11.12.2020

For applicant: Mr. T. Rath, counsel.

For respondents: Mr. J. K. Nayak, counsel.

ORDER

The applicant had filed the OA No.181 of 2020 submitting that he was selected and appointed temporarily as EDBPM Anlakuda vide appointment letter dated 06.08.1977 and he was continuing in service till SPOs, Mayurbhanj vide letter dated 25.07.2018 directed the IPs, Baripada (W) Sub Division to discharge the applicant from service. The applicant was discharged from service on 27.07.2018 on the plea of incorrect recording of date of birth and instead of paying him ex gratia gratuity and severance allowances the SPOs, Mayurbhanj division vide letter dated 24.09.2018, 22.10.2018 and 19.03.2019 served notice on the applicant to credit an amount of Rs. 532603/- under UCR towards the refund of Pay & Allowance i.e. TRCA paid for the period of overstay from 20.01.2015 to 30.06.2018 and the applicant was further informed regarding withholding of TRCA for the duty period from 01.07.2018 to 27.07.2018.

2. It is stated in the MA No. 301/2020 that the applicant had submitted his representation dated 09.10.2018 objecting to the unnecessary harassment and requested the officials to pay his gratuity and other retirement benefits. The applicant submitted that he could not challenge the order of premature retirement since the original certificate based on which he had entered into service was destroyed during the year 1983 cyclone. The applicant submitted that since his representation dated 09.10.2018 did not yield any response he once again submitted a representation on 14.03.2019. In response to his representation dated 14.03.2019, the Supt of Post vide letter dated 02.04.2019 directed the applicant to submit claim application through Sub Divisional Head and reiterated the earlier demand to deposit amount of Rs. 532603/- through UCR. The applicant further submitted that the applicant decided to approach the Tribunal against the above order but due to old age ailments, poor financial status and lack of appropriate guidance he failed to do so immediately. Finally with the help of one of his retired colleague he could file the present OA on 04.03.2020. Hence the delay may be condoned and present OA needs to be accepted for adjudication on merit.

3. The respondents' counsel objected to the MAs on the ground that the OA is barred for suppression of facts. The respondents submitted that the applicant knowing very well his exact date of birth should have retired on his own terms on completion of 65 years as per instruction contained in Directorate letter no. 18-

41/2002-GDS dated 05.12.2003 without waiting for order of discharge as per rule and further the applicant in his attestation from submitted on 28.10.1977 specifically mentioned his date of birth as 20.01.1950. The respondents further submitted that the applicant has not challenged the discharge order within one year or preferred any representation against the said order within time and since the applicant has not submitted any representation against the order dated 25.07.2018 within the limited period, hence his prayer of the applicant to quash Annexure A/7, A/8 and A/11 in the OA is not entertainable by Tribunal in this OA. The respondents submitted that the applicant in his representation dated 09.10.2018 had accepted the discharge order and now this cant be challenged in this OA without approaching the authority as per CAT procedure rules. It is further submitted by the respondents that representation of the applicant dated 09.10.2018 was duly considered and rejected on 22.10.2018 which the applicant has not disclosed in the OA and not challenge the same and since repeated representation will not save limitation hence this OA is not maintainable.

4. The applicant in his reply to objection filed by the respondents submitted that the claim of the respondents that the applicant has accepted his retirement vide Annexure A/12 is absolutely not correct rather he has challenged the illegal counter demand of the department strongly and since his school leaving certificate got destroyed in the year 1983 flood he could not immediately react to the illegal order under Annexure A/7 and A/8 but after contacting the lawyer and on his advice he collected the gradation list and inspection reports and challenged the same in the present OA for which there has been some delay. The applicant further submitted that he had not suppressed order dated 22.10.2018 of the respondents but had challenged it which event he respondent no. 3 has himself described the order dated 22.10.2018 as reminded to Annexure A/11. The applicant submitted that the authority had published the gradation list time and again showing the date of birth of the applicant as 24.05.1954 instead on 20.01.150 and the applicant remembers submitting the documents and putting some signature but the applicant had not written any thing in the so called descriptive particulars which was maintained and kept in custody with the respondents and he raises doubt that either the IR reports and gradation list has not been prepared correctly or the so called date of birth has been later incorporated by the present authorities. The applicant further submitted that the document under Annexure R/1 has not been gazetted to assume the status of a circular and has not been communicated to the applicant.

4. Learned counsel for the applicant and respondents were heard on the matter. The applicant has been discharged from service on 27.07.2018 on the ground of incorrect recording of date of birth. It is claimed by the applicant that his ex-gratia gratuity and severance allowances have not been paid. Subsequently he has been asked vide letter dated 24.09.2018, 22.10.2018 and 19.03.2019 to credit a sum of Rs. 532603/- towards refund of pay and allowance i.e. TRCA for the period of

overstay from 20.01.2015 to 30.06.2018. He had taken the plea that he could not challenge the order of premature retirement as the original certificate was destroyed during the cyclone of the year 1983. He had submitted representation dated 09.10.2018 and 14.03.2019, thereafter the Superintendent of Post Office have asked him to submit his claim application as per letter dated 02.04.2019. The applicant has specifically taken the ground that due to old age ailments, poor financial status and lack of appropriate guidance he could not file the case immediately. Therefore there is no sufficient material from the other side to disbelieve the said plea taken by the applicant for the delay in filing this case.

5. Accordingly in the interest of justice and in order to give the applicant proper opportunity to present his case before the Tribunal with regard to said claim towards ex-gratia gratuity, severance allowance etc. and to make out his case against any recovery to be made from him by the respondent department, the delay in filing the case is condoned and MA is accordingly allowed but in the circumstances without cost.

6. The OA be listed on 08.02.2021.

(SWARUP KUMAR MISHRA)

MEMBER (J)

(csk)