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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1120 OF 1997

ALLAHABAD THIS THE 31st DAY OF *January*, 2003

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Tabarak Hussain,
Son of Late Hakim Yar Mohamad
working as E.D.B.P.M. at Kotwali,
r/o Village : Kotwari,
Post : Rasara,
District; Ballia (U.P.)

.....Applicant

(By Advocate Shri Anand Kumar)

Versus

1. Union of India
through The Post Master General,
Gorakhpur.
2. The Superintendent of Post Offices,
Ballia, Division: Ballia (U.P.)Respondents

(By Advocate Shri A. Sthalekar)

O R D E R

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

By this O.A. applicant has sought following reliefs:-

"(a) The Tribunal may graciously be pleased to correct the wrong date of birth which has been mentioned in the Service Record as 01.07.1932 instead of 01.01.1938.

(b) The Tribunal may graciously be pleased to quash and set-aside the Impugned Letter/Notice dated 23.04.1997 (Annexure A-1) issued by the respondent no.2.

(c) The Tribunal may pleased to ^{by the Tribunal} any other writ, order or direction which is deemed fit and proper in the circumstances of the case.

(d) Cost of the application be awarded in favour of the applicant."

2. It is submitted by applicant that he was appointed as E.D.B.P.M. in 1956 at branch post office, Kotwari, District Ballia and was never shown his Date of Birth entered by them in the records as 01.07.1932 according to their own imagination without ascertaining his Date of Birth from applicant. He came

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to know that his Date of Birth has been wrongly entered as 01.07.1932 in 1976 whereas it was actually 01.01.1938 so he immediately gave a representation to Superintendent of Post Offices informing him that his Date of Birth has been wrongly shown in the gradation list as 01.07.1932 whereas it is 01.01.1938. In support he annexed the school leaving Transfer Certificate also (Annexure A-3) but no correction was carried out. Ultimately respondents issued a notice on 23.04.1997 informing him that he is due to retire on 30.06.97 and he may make representation within 10 days (Annexure A-1). Applicant immediately gave his representation on 23.04.97 (Annexure A-4). He also gave an appeal to Post Master General, Allahabad (Annexure A-5) but since respondents were adamant he had to approach the court to safeguard his interest.

3. The O.A. is opposed by respondents who have submitted that as per service records applicants Date of Birth is 01.07.1932 which bears applicants signature as well, therefore, he has rightly been retired w.e.f. 30.06.1997 and since as per applicant's own showing he came to know about his Date of Birth in 1976, filing of case in 1996 at the fag end of his career for correcting the Date of Birth is even otherwise not maintainable as held by Hon'ble Supreme Court in the case of Harnam Singh. They have also submitted Transfer Certificate is shown to have been issued on 1978 but it was never given and was submitted for the 1st time in 1996, thus, the O.A. is liable to be dismissed on this ground alone. They have relied on following judgement:-

"(i) AIR 1993, SC, 1367, U.O.I. Versus Harnam Singh.

(ii) 1994(3) SC, 514, National Airport Authority Versus M.A. Wahab.

(iii) AIR 1995, SC, 850, Chief Medical Officer Versus Khadeer Khadari.

(iv) JT 1996(3), SC, 72, U.O.I. Versus Ram Sua Sharma.

(v) 1996(2), SCC, 81, UOI Versus Miss Sarojbala."

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They have also submitted that the applicant has alleged his Date of Birth to be 01.01.1938 and he was appointed in 1956 as per his statement in para 4.1 of O.A. but the calculation would show that if Date of Birth is accepted as 01.01.1938 he would be under age on 1956 at the time of entry in the service, therefore, he cannot be allowed to take benefit from both the ends. They have thus, prayed that O.A. may be dismissed with costs *even on merits. B*

4. Respondents have produced the service record of applicant. I have heard both the counsel and perused the original record as well which shows applicant's Date of Birth has been recorded as 01.07.1932 *has back as on 21.9.56 B* in the service book which is duly signed by *B & counter signed by two witnesses B* applicant. He was VIII pass as per his own showing. Therefore, if his Date of Birth was wrongly recorded at the time of entry he ought to have challenged it at that particular time but he did not do anything, therefore, he cannot claim ignorance of his recorded Date of Birth. Even otherwise *applicant B* as per *his own averments* *he B* *is recorded B* he had come to know about his Date of Birth in 1976 but even at that time he did not file any case and it was only at the *lag* end of his career that he has filed the present O.A. on 02.06.1997, when he was due to superannuate on 30.06.97. No stay was granted by the Tribunal. It has been held by Hon'ble Supreme Court in Catena of judgements that dispute regarding age cannot be entertained at the *lag* end of his career (J.T. 2001 (4) S.C. 129). Similarly in J.T. 1996 (3) SC 6 Hon'ble Supreme Court held change of Date of Birth required after 25 years in service - Not allowed.

5. I have also seen the judgement passed by this Tribunal in O.A no.799/93 in the case of Om Prakash Versus Vaish wherein in similar circumstances the Tribunal had dismissed the O.A. I respectfully agree with the reasoning given by Tribunal. Since as per applicants own showing he was

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underage at the time of initial entry in service, therefore, he accepted the Date of Birth entered in service book as it was advantageous to him at that time, therefore, now he cannot be allowed to turn around and take a different stand at the fag end of his career. He cannot be allowed to light the

candle from both the ends. *Since applicant was aware of his recorded date of birth in 1956 itself, he can't be allowed to agitate this issue at the fag end of his career.*

6. In view of the above discussion, I am satisfied that no case has been made out for interference by the court. The O.A. is accordingly dismissed with no order as to costs.



Member-J

/Neelam/