

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

Allahabad, this the 6th day of October, 2009

**Hon'ble Mr. A.K. Gaur, Member-J
Hon'ble Mr. D.C. Lakha, Member-A**

**Original Application No.972 of 2005
(U/s 19 of Administrative Tribunal Act, 1985)**

Munnu Singh, Son of Late Shri Dwarika Prasad Yadav, resident of Village Rataniyapur, Post Nonari, District Kanpur Dehat.

..... **Applicant.**

By Advocate : Shri S.K. Bahadur

VERSUS

1. Union of India through Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. The Post Master General, Kanpur Region, Kanpur.
3. The Superintendent of Post Offices, Kanpur (M) Division, Kanpur.
4. The Sub Divisional Inspector, South Sub Division, Roora, Kanpur Dehat.

..... **Respondents**

By Advocate : Shri R.K. Tiwari

ORDER

By Hon'ble Mr. A.K. Gaur, Member-J :

By means of this OA, the applicant has claimed the following relief(s) :-

- (i) To issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 8.4.2005 passed by the Superintendent of Post Offices, Kanpur (M) Division, Kanpur/respondent No.3, which is contained in Annexure No.A-3 to this Original Application.
- (ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to consider the case of applicant for promotion with all service benefits on the post of Group 'D' cadre under preferential category and w.e.f. the date from which his next junior was promoted on such post i.e. Group 'D'.

2. The brief facts of the case are that the applicant was initially appointed as E.D.A. on 22.2.1972 and has been working since then continuously. The applicant's date of birth is 6.10.1952 and this fact was correctly noted in the gradation list prepared in the year 1989. It is also alleged that by mistake the applicant's date of birth has wrongly been shown in gradation list as 6.10.1950. Consequently, the applicant's case for promotion under the age limit of 50 years has not been considered to Group 'D' cadre. The applicant is a member of OBC community and for OBC, there is age relaxation of three years (53 years). The applicant has preferred several representations for redressal of his grievance and for correction of his date of birth in the gradation list for the purpose of promotion to Group 'D'. The applicant has filed OA No.1504 of 2004 before this Tribunal, which was finally disposed of with direction to respondents to consider and decide the representation of the applicant dated 17/20.9.2004. In the order of the Tribunal, it was also provided that in case on verification applicant's date of birth is found to be 6.10.1952, the respondents shall consider the applicant's case for the claim of his promotion. In compliance of the aforesaid direction of the Tribunal, the representation of the applicant was considered and vide order dated 8.4.2005, the representation of the applicant has been rejected. A copy of the order dated 8.4.2005 has been filed as Annexure-3. Against the rejection order, the applicant again filed a representation through Registered Post annexing his Educational Certificates. Being a member of OBC community, the applicant comes under preferential categories in respect of recruitment, promotion and confirmation.

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According to the applicant, he was placed at Serial No.46 in Gradation/Seniority List, his date of entry as EDDA is 22.2.1972 and juniors to the applicant namely Sarv Shri Sunder Lal, Indra Pal, Rajendra Kumar Santa, and Anant Bir Singh have already been promoted on the basis of order dated 2.9.2004 by the respondent No.3 (Annexure-A-9). The applicant is aggrieved by the aforesaid supersession by his juniors.

3. By filing counter affidavit, the respondents have denied the averments contained in the OA and submitted that after examining the personal file of the applicant, it is found that no appointment order was issued to the applicant by Sub-Divisional Inspector, Kanpur. However, the name of the applicant has been included in the gradation list maintained by this Office in which the age of the applicant has been mentioned as 6.10.1950, and the date of engagement is 22.2.1972. During the year 2004, in the D.P.C. for the promotion to Group 'D' post, the name of the applicant could not be considered due to his being overage even after giving him the relaxation in age for three years. According to the respondents, the applicant has produced a list of Postman examination held in February, 1989, which was prepared by the Chief Postmaster Kanpur, in which his date of birth was erroneously recorded as 6.10.1952 instead of 6.10.1950. It is also submitted that Departmental Promotion Committee held in 2004 as per direction of Postmaster General Kanpur dated 10.12.2003. As the applicant was overage hence his name was not considered by the D.P.C.

4. The applicant has filed rejoinder affidavit and submitted that the applicant's date of birth is 6.10.1952 which is mentioned in his

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certificate of Prathamik Pariksha as well as Junior High School Pariksha conducted by District Board, Kanpur. The date mentioned in the Middle Class Certificate clearly indicates that his date of birth is 6.10.1952 and in the gradation/seniority list the date of birth of the applicant has also been recorded as 6.10.1952.

5. We have heard Shri S.K. Bahadur, learned counsel for the applicant and Shri R.K. Tiwari, learned counsel for the respondents and have carefully perused the record.

6. It has been contended by the learned counsel for the applicant that the date of birth of the applicant has clearly been mentioned as 6.10.1952 and at the time of preparation of gradation list this fact was also taken into account by the respondents. The respondents have not given any reason as to why the date of birth of the applicant is mentioned as 6.10.1952. It has also been contended by the learned counsel for the applicant that the Principle of natural justice and fair play has been violated by the respondents and no opportunity of hearing has been granted to the applicant before rejecting his claim for promotion to Group 'D'. We have given our thoughtful consideration to the pleas advanced by the parties counsel and we are satisfied that in the Junior High School Certificate issued by District Board Kanpur in the year 1968, the date of birth of the applicant has been shown as 6.10.1952. The date mentioned in the Junior High School Certificate has to be relied upon and will get preference over all other documentary evidence. We are also convinced that before passing any adverse order against the applicant no opportunity of hearing has been granted to the applicant. The applicant being a

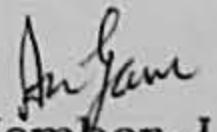
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member of OBC community has rightly been granted relaxation of three years of age. The respondents have arbitrarily rejected the claim of the applicant and no satisfactory reasons have been given in not considering the applicant's case. The Junior High School Certificate filed in support of his case has not at all been considered, learned counsel for the applicant has placed reliance on the decision rendered by Hon'ble Supreme Court in the case of **Ram Suresh Singh Vs. Prabhat Singh reported in 2009 (6) SCC 681**, wherein it is clearly observed that the date of birth recorded in the certificate issued by the Competent Authority has to be given preference over all other evidences.

7. In view of our aforesaid observations, the Original Application deserves to be allowed, the order dated 8.4.2005 is quashed and set aside. The respondents are directed to consider the case of the applicant for promotion, on the basis of date of birth recorded as 6.10.1952 in Junior High School Certificate ^{✓ Issued} ~~conducted~~ by District Board, Kanpur. The respondents are also directed to convene Review D.P.C., a fresh, within a period of three months from the date of receipt of the copy of this order, and if the applicant is otherwise found eligible, he be given the benefit of date of birth recorded as 6.10.1952, with all consequential benefits. No costs.



Member-A



Member-J

RKM/