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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.404 of 1988

Vishwanath Tewari ..... Applicant

Versus

The Senior Supdt. Post Offices, Deoria...Respondent

Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

Petitioner Vishwanath Tewari who was working as ED Sub Post Master Khampur Deoria has by this application challenged his retirement orders passed on 5.1.1988 / 10.3.88 <sup>or alleged by him</sup> though the date of birth of the petitioner as maintained in his Service Record was 31.7.31 on the basis of which he was to be retired on 31.7.96 after attaining the age of 65 years. The application has been filed under Section 19 of the Administrative Tribunals Act, 1985.

2. The petitioner was initially appointed on 9.4.75 when he <sup>or exp he</sup> had produced the original of the certificate of Uttar Madhyama Examination passed by him in 1964. In this certificate his date of birth was shown as 31.7.31. The same was entered in his Service Record. On 26.3.83 he received the order retiring him from service on attaining the age of 65 years. No reason was indicated in this order as to why his date of birth has <sup>or been changed and has</sup> not been maintained as 31.7.31. According to the petitioner the order retiring him is <sup>or this</sup> illegal and arbitrary and so he has prayed for it to be quashed.



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3. The respondents have opposed this application on the grounds that a complaint was received regarding the petitioner's date of birth in 1981. On receipt of the same the petitioner was asked to produce the original certificate issued by the Sri Janki Sanskrit Vidyalaya. At the time of his appointment he had only submitted a copy. He informed that he had submitted the original certificate at the time of his appointment. He was however advised of the position and told to submit the original. He was also asked whether one of his sons Triveni Tripathi was also employed with the department and if so what was his date of birth. While admitting that Triveni Tripathi was his son he showed ignorance about his date of birth. He speculated that his son must be about 40 years of age in December, 1987. The son's date of birth as per his Service Record was found to be 1.1.42. On the basis of his date of birth being 31.7.31 the petitioner would be only 10 years and 5 months old when his son was born. Hence taking that the son must have been born when the petitioner was 20 or 21 years of age he was directed to be retired by the impugned order on attaining the age of 65 years.

4. I have heard the learned counsel for the petitioner and the respondents. Km. Sadhana Srivastava for the petitioner submitted that there was no basis of determining the age as  $\frac{20}{21}$  years and the respondent has admitted the age which was entered in the Service



Record as 31.7.31 on his appointment in 1975 and they cannot now unilaterally change the date of birth to the disadvantage of the petitioner. Sri K.C. Sinha for the respondents, however, opposed this on the ground that the evidence of the date of birth of the son of the petitioner was conclusive to prove that his date of birth 31.7.31 was wrong and 20/21 years was determined on the basis that this could be taken as the normal reproduction age and according to present situation a boy cannot be married before 21 years. Km.Sadhana Srivastava further contended that reproductive age starts much earlier and the age could also be assessed as 17 to 18 years on this count.

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5. There can be no dispute about the fact that the date of birth of the petitioner on the basis of his sons date of birth is absurd. He could not have been 10 years and a <sup>2</sup>/<sub>few</sub> months old when his son was born. It has not been disputed by him that Triveni Tripathi is not his son. So his date of birth must be something different. He did submit a copy of certificate showing some date of birth. The respondents had entered the declared date of birth at the time of appointment of the petitioner and they woke up regarding the non-availability of the original certificate in 1981.

6. Once a declaration of a date of birth is accepted, it cannot be changed unilaterally without



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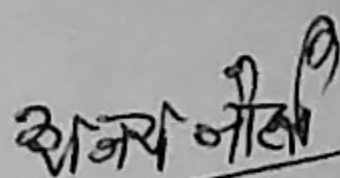
giving opportunity to the concerned person of being heard and proving his case. There should also be a systematic approach and convincing reason to make such a change. The respondent has not even written to the school from where the certificate was obtained to determine the genuinity of the certificate submitted by the petitioner. They have made a guess work and changed the date of birth to a different date. This change is not based on any scientific determination of the age or any <sup>or convincing</sup> ~~proof~~ logic. There is no doubt that the age as declared was absurd but the change has to <sup>or be made after following</sup> ~~proceed~~ a proper procedure. A municipal birth certificate or similar document could have enabled the respondent to come to a more reliable conclusion. There could have been other corroborative evidence like the ages of the brothers and sisters of the petitioner, the electoral roll - though it may not prove to be wholly dependant as it is not known on what basis the enumerator would have entered the same, could have thrown some light on the statistics regarding the family of the petitioner and their ages.

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7. According to the learned counsel for the respondent for E.D. Agents meticulous care is not exercised to determine the age etc., at the time of employment, because no minimum age is prescribed and these appointments are made in various circumstances in day to day operation.



8. Be it as it may , any unilateral change without hearing the person and making a change merely on conjectures would be violative of principles of fair play and natural justice. The impugned order dated 5.1.88 / 10.3.88 is, therefore, liable to be quashed.

9. In the result, the application is allowed and the orders dated 5.1.88 / 10.3.88 retiring the applicant with immediate effect are quashed. The respondent will, however, be at liberty to arrive at a fresh logical conclusion after giving due opportunity to the petitioner to prove his age. I make no order as to costs.



Member (A)

Dated the 21<sup>st</sup> April, 1988.

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