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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 140 of 1987

Date of decision 4th May, 1989

Sri Harihar Giri, aged about 59 years,
S/o Late Sanatan Giri, Resident of
Village Purjunpur, Via-Jhumpura,
Dist. Keonjhar.

..... Applicant

-Vs-

1. Union of India, represented by the
Post master General, Orissa Circle,
Bhubaneswar.
2. Superintendent of Post Offices,
Keonjhar Division, Keonjhar Garh
Dist. Keonjhar.

..... Respondents

For the Applicant. ... M/s. P.V. Ramdas,
B.K. Panda, Advocates

For the Respondent Mr. A.B. Misra, Senior Standing
Counsel (Central)

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN
AND

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed
to see the judgment ? Yes
 2. To be referred to the Reporters or not ? *yes*
 3. Whether Their Lordships wish to see the fair
copy of the Judgment ? Yes.
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:- J U D G M E N T :-

K.P.ACHARYA, MEMBER (JUDICIAL) In this application under Section 19 of the Administrative Tribunal's Act, 1985 the Petitioner prays for a declaration that his date of birth is 1st January, 1928 and not 15th January, 1922.

2. Shortly stated the case of the Petitioner is that he was appointed as Extra Departmental Branch Post Master, Parjanpur within the district of Keonjhar on 22nd August, 1962. According to petitioner his actual date of birth is 1st January, 1928, yet the Postal Authority have wrongly recorded the date of birth of the Petitioner in his service book to be 15th January, 1922 and terminated services of the petitioner in the month of January, 1987. Hence this application with the aforesaid prayer.

3. In their counter the Opposite party maintained that the date of birth of the petitioner has been recorded in the service book according to declaration given by the petitioner in his own hand contained in Annexure-R-1. Petitioner has himself declared his date of birth to be 15th January, 1922. It is too late in the day to give a different version at a belated stage which should be taken with a pinch of salt. It is further maintained by the Opposite parties that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. P.V. Ramdas, learned Counsel for the Petitioner and Mr. A.B. Misra, Learned Senior Standing Counsel for the (Central) at some length. Mr. Ramdas strongly relied upon the school leaving certificate Annexure-A/1 and particularly the entry made against Sl. No. 6 i.e. the date of birth as

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recorded in the Admission Register showing 1st January, 1928.

It was emphatically contended by Mr. Ramdas that the date of birth as mentioned in the school leaving certificate or Matriculation certificate being conclusive piece of evidence courts are required to safely act upon the certificate. To substantiate his contention Mr. Ramdas relied upon a judgment of the Principal Bench reported in A.T.R. 1987(1) CAT 414 (Sri Hiralal -Vs- Union of India). The Hon'ble Chairman speaking for the Bench observed in the said case that the age of a particular Govt. servant should be decided on the basis of the entry made in the School leaving certificate or Matriculation certificate and change or correction of date of birth affecting the interest of a particular party should be ordered after an enquiry is conducted and the party concerned is given an opportunity to have his say in the matter. Exactly in the same line there are plethora of judicial pronouncements by the highest Court of the land. We have absolutely no dispute on this well settled position of law contended by Mr. Ramdas. Even though we have no dispute ^{with} ~~in~~ _{the} this settled position of law yet the Judge made law has gone to the extent of saying that while determining the age of a particular party on the basis of Matriculation certificate or school leaving certificate, the court has to ~~be~~ ^a probe into the surrounding circumstances to find out whether the preponderance of probability works out in favour of a particular Govt. servant and whether the surrounding circumstances support the entry in the said certificate. Rightly and fairly this settled position of law was not disputed at the Bar. Mr. A. B. Misra, the learned Senior

Standing Counsel while opposing the arguments of Mr. Ramdas

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vehemently submitted that prayer of the petitioner should not be allowed because equity helps those who come with clean hands to the Court. The learned Senior Standing Counsel invited our attention to Annexure R-1 which is styled as 'Attestation Form'. The un-disputed position before us is that the 'Attestation Form R-1) has been written by the petitioner in his own hand and it has been signed by the petitioner after certifying that the informations finding place therein are correct and complete to the best of the knowledge and belief of the petitioner. From the handwriting and signature appearing in the 'Attestation form' (Annexure-R-1) we are of opinion that the Petitioner is well versed with English language and he has himself written in the 'Attestation Form' that his date of birth is 15th January, 1922. To add to this we would find from the attestation Form (R/1) that the petitioner was reading in Girison H.E. School, Keonjhar from January, 1937 to July, 1943 and had passed class IX whereas from Annexure-1 over which considerable reliance was placed by Mr. Ramdas it would appear that the transfer certificate Annexure-1 had been issued by the Headmaster ^{Keonjhar} ~~P.N.~~ High School stating that the Petitioner had read up to class IX and school leaving certificate was prayed to be issued to enable the petitioner to open the service book which appears to us to be far from truth because the certificate has been admittedly obtained on 4th August, 1980 and much prior to it the petitioner had entered service and service book had been opened. Question of holding an enquiry does not arise because in the present case the authorities have not changed or corrected the date of birth

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of the petitioner but they have acted on the entry made by the Petitioner in his own hand stating his date of birth. Taking into consideration the above mentioned facts a strong suspicion^s arises in our mind regarding the truth of the case put forward by the Petitioner. We are in complete agreement with the submission of learned Standing Counsel that the Petitioner in this case has not come up with clean hand. Such being the position we do not feel inclined to accede to the prayer of the Petitioner's Counsel Mr. Ramdas to direct the Superintendent of Post Office, Keonjhar to effect an enquiry because we are of opinion that it may ultimately lead to a wild goose chase.

5. In view of the aforesaid discussion we find no merit in the application which stands dismissed leaving the parties to bear their own costs.

Before we part with this case we would like to observe that in Annexure-2 it has been mentioned that the service of the petitioner has been terminated. Actually the petitioner has retired on superannuation. Therefore, we direct that in place of the Word 'termination' it should be written 'retired on superannuation' entitling

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the petitioner to all financial benefits such as gratuity etc and any other financial benefit which the petitioner is entitled to receive under the rules and the same if not already paid be paid within two months from date of receipt of a copy of this judgment.

[Signature]
4/5/89

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MEMBER (JUDICIAL)

B.R.PATEL, VICE-CHAIRMAN

I agree.



[Signature]
4.5.89

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VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
4th May, 1989/Mohapatra