

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH

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Original Application No. 29 of 1988.

Date of decision : July 12, 1988.

Parsuram Tripathy, son of Baidhar Tripathy,  
E.D.S.P.M., Patia E.D.S.O., At/P.O-Patia,  
Dist- Puri. ...

Applicant

Versus

1. Union of India, represented by the Secretary to Ministry of Communications, Government of India Secretariat, New Delhi.
2. Post Master General, Orissa Circle, At/P.O/Munsifi- Bhubaneswar, Dist- Puri.
3. Senior Superintendent of Post Offices, Bhubaneswar Division, At/P.O-Munsifi-Bhubaneswar, Dist- Puri. ... Respondents.

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M/s Dr. S.C.Dash, B.K.Patnaik  
and R.C.Rout, Advocates ...

For Applicant.

Mr. A.B.Misra, Sr. Standing  
Counsel ( Central) ...

For Respondents.

C O R A M :

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

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1. whether reporters of local papers may be allowed to see the judgment ? Yes .
2. To be referred to the Reporters or not ? No
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes .

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JUDGMENT

B.R. PATEL, VICE CHAIRMAN, In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant who was E.D.S.D.B.P.M. Patia in the district of Puri has contended that his date of birth is 7.11.1924 and as such he should retire from service only on 30.11.1989 on completion of 65 years of age but the department retired him on 31.10.1987, vide Annexure-1 on the ground that his date of birth is 23.10.1922.

2. The respondents have maintained in their counter that the applicant himself at the time of his appointment intimated the Department that his date of birth was 23.10.1922 and as such he was rightly retired on 31.10.1987 on his attaining 65 years of age on 23.10.1987.

3. I have heard Dr. Dash, learned counsel for the applicant and Mr. A.B. Misra, learned Sr. Standing Counsel for the Central Government at some length. Dr. Dash has drawn my attention to Annexure-1 which is the letter dated 29.10.87 issued by the Sr. Superintendent of Post Offices, Bhubaneswar Division intimating the applicant that he had already attained the age of superannuation as his date of birth was 23rd October 1922 and ordered that the applicant should be relieved with immediate effect. Dr. Dash has contended that the applicant has not been given even twenty-four hours notice in order to enable him to wind up his affairs before retirement. His relief with immediate effect has prejudicially affected his interest. In the counter, it was however mentioned that the applicant retired on 4.11.1987 though he completed 65 years of age on 23.10.1987. I, therefore,

donot agree with Dr. Dash that any prejudice has been caused to the applicant by the order issued on 29.10.1987, vide Annexure-1. Dr. Dash then drew my attention to Annexure-2 which is the xe-rox copy of the Middle English School certificate issued to the applicant by the Inspector of Schools, North Orissa dated 10.1.1939. In this certificate the age of the applicant has been mentioned as 14 years and Dr. Dash maintained that the applicant was 14 years of age in the month of November, 1938 when the examination was held. Calculating on this basis Dr. Dash has maintained that the applicant was born some time in November 1924. He has also referred to Annexure-3 which is the copy of the certificate issued by the Headmaster of the B.M. High School, Bhubaneswar to the effect that the applicant's date of birth is 7.11.1924. This certificate is dated 11.1.1988. On the strength of Annexure-3, Dr. Dash has urged that the date of birth of the applicant should be taken to be 7.11.1924 and the order of the Department retiring him on 31.10.1987 should be quashed and the applicant should be allowed to continue in service till 30.11.1989. Dr. Dash further averred that the applicant put in three representations vide Annexures-4A dated 2.11.1987, Annexure-4 B dated 19.11.1987 and Annexure- 5 dated 4.12.1987 to the departmental authorities to rescind the order issued vide Annexure-1 but there has been so far no response from the departmental authorities.

4. Mr. A.B.Misra, learned Sr. Standing Counsel has contended that in the attestation form filled in under the signature of the applicant the dateof birth has been mentioned

*Arshad*

to be 23.10.1922, vide col. 7 of the form and since the applicant has himself intimated 23.10.1922 to be his date of birth there was no reason for the Department to think of any other date of birth and if this was not his date of birth, the applicant should have written to the department to revise the date. The applicant did not do this during his service and only after his retirement he has produced the Middle English School Certificate and the certificate granted by the Headmaster of B.M. High School, Bhubaneswar which cannot be taken into account. Dr. Dash has questioned the authenticity of the entries in the attestation form vide Annexure- R/2. According to him, this document has been fabricated by the Department and that the applicant never made these entries himself in the form. He has further stated that the applicant did not know Sri Gangadhar Paikaray, M.L.A. who has given the identity certificate dated 28.1.1966 forming part of the attestation form. His further contention was that Sri Paikaray was never the M.L.A. of the constituency in which the applicant is a voter. In this connection, it may however be mentioned that the form of the identity certificate does not require the certifying authority to be a M.L.A. of the constituency to which the applicant belonged. It simply says that the certificate was to be signed by Members of Parliament or Legislative Assembly. The objection raised on this account by Dr. Dash is not a valid objection and as such is rejected. Dr. Dash has further admitted that the signature in the attestation form is that of the applicant himself. As the applicant himself signed the attestation form with all its entries, I cannot but conclude that these entries are either

made by him or they were made at his instance otherwise he would not have submitted it to the authorities. The attestation form itself contains a warning that furnishing of false information or suppression of any factual information in the attestation form would be a disqualification and is likely to render the candidate unfit for employment under the Government. Since the attestation form has been submitted by the applicant to the departmental authorities at the time of appointment he cannot now disown the entry in regard to his date of birth at col. 7 of the form. If for any reason it was not possible for him to mention the correct date in regard to his date of birth he should have intimated to the department the correct date of birth immediately after his appointment so as to enable the department to correct the entry in regard to his date of birth. Dr. Dash has mentioned that the M.E. School Certificate was issued as long back as 10.1.1939 and in view of its age authenticity of this document cannot be challenged. But the real point is not the authenticity of this document. Since it was in the possession of the applicant he should have brought it to the notice of the departmental authorities while he was in service. He should not have kept it with him for filing it before the Bench that too after his retirement. I therefore agree with Mr. Misra that non-production of the document which was in the custody of the applicant would give rise to adverse interference. The certificate granted by the Headmaster of the B.M. High School, Bhubaneswar was issued only on 11.1.1988 and the case was filed on 19.1.1988. Dr. Dash

*Prakash*

has not produced any other evidence to prove that the entries in the attestation form were in fact manufactured by the Department and in the absence of any corroborative evidence it is not possible for me to accept the contention of Dr. Dash that the entries in the attestation form were fabricated or made by the Department with an ulterior motive. Dr. Dash also has not produced any evidence as to why the Department should manufacture these entries. No malafide has been ascribed or proved against the Department. Moreover, the attestation form has been signed by the applicant himself and his signature would go to show that he has subscribed to all the entries made in the form. In the absence of any other information supplied by the applicant during his tenure in regard to his correct date of birth, the Department had no other reason to alter the date of birth furnished by the applicant in the attestation form and they have to go by the entries so made and they have rightly decided that the applicant completed 65 years of age on 23.10.1987. The decision to retire him on 31.10.1987 or with effect from 4.11.1987 as has been mentioned in the counter has been rightly taken and I have no occasion to interfere with the decision of the Department. Mr. A. B. Misra has cited the judgment of the Hon'ble Orissa High Court reported in 1982 (2) S.L.R. 225 ( Laxman Swain vrs. Managing Director, Steel Authority of India Ltd. Rourkela ). Mr. Misra has drawn my attention to para 14 of this judgment particularly to sub-para (v) which reads as follows :-

" The date of reaching the age of superannuation must be determined on the basis of service record and not on what the employee claims unless the service record is first correct ."

In this case there was no occasion for the Department to correct the date of birth as the applicant has failed to furnish any information till after his retirement. Dr. Dash has however contended that the applicant was not given any opportunity to prove his case in regard to his correct date of birth, and he has drawn my attention to para 14 (iv) which reads as follows :-

" Where the employee seeks to change the date of birth to gain advantage of a date of superannuation later than the date available from the service record, ordinarily the employer should give the employee proper opportunity to prove his case and should give due consideration to the evidence brought before it ".

But as stated above, there was no occasion for the Department to give any opportunity to the applicant since the employee never sought a change in the date of birth recorded in the departmental records. Dr. Dash also cited the judgment of Calcutta Bench of the Central Administrative Tribunal reported in A.T.R. 1986(1) CAT 366 ( Manoranjan Dey vrs. General Manager, Chittaranjan Locomotive Works). In the case before Calcutta Bench the applicant was a Grade I Fitter in the Chittaranjan Locomotive Works. He entered service as a S.T. boiler maker on 25.1.1951 and was promoted in due course as Fitter. In February 1983 he asked for an age certificate from his employer for the purpose of taking a new L.I.C. policy. In June 1983 he got a certificate which showed his date of birth to be 16.12.1927. He disputed his date of birth and submitted representations. The root of the problem in this case was that the original service book could not be traced which has given the opportunity to the applicant to raise the dispute so far as his age is

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concerned . The facts of the present case are not similar to those before the Calcutta Bench and as such, the judgment of the Calcutta Bench is not applicable to this case. The other judgment cited by Dr. Dash is of the Gujrat High Court reported in S.L.R. Vol. 34, 1983 (3) 231 ( Baba Visram vrs. Divisional Railway Manager ( Estt), Western Railway, Vadodara and others ). In that case the High Court held that as the petitioner belonged to a backward class without adequate schooling, he could not be recorded as having sufficient knowledge that he could get the certificate about his birth and held that " in the circumstances of the case, it would be safer to hold that he had no knowledge or information with regard to his correct date of birth on the date of his joining service ". In the present case , the applicant cannot be treated to be either an illiterate or not having sufficient knowledge to be unable to produce any evidence in regardto his date of birth. In fact as has been stated above, he furnished the attestation form in which he recorded his date of birth. The M.E. School Certificate furnished by him his proof enough that he had sufficient knowledge about what he was writing in the attestation form. The decision of the Gujrat High Court therefore does not apply to the present case. Dr. Dash also placed before me the judgment of the Hon'ble Supreme Court reported in A.I.R. 1981 S.C. 864 ( P.Nagamuni vrs. Government of Andhra Pradesh and another ) . The facts of this case are also not similar to the facts of the present case. No dispute in the present case has been raised by the applicant before the departmental authorities in regard to his date of birth before



his retirement and there was no question for the Department to enquire into the correctness of the date of birth particularly when the date of birth was intimated by the applicant himself in the attestation form. Dr. Dash has also invited my attention to the instructions issued by the Director General, P & T on maintenance of service of E.D. Agents. These instructions however refer to the internal working of the department and have no direct bearing in the present case. Moreover, these instructions were issued vide D.G.P & T.letter No. 5-4/72ED Cell, dated 18.8.1973. The applicant joined service in 1966. These instructions therefore cannot have ~~the~~ retrospective effect.

5. For the reasons stated above, I find no merit in the application which stands dismissed. In the circumstances of the case, parties to bear their own costs.



*Bardoli* 12.7.88  
.....  
Vice Chairman.

Central Administrative Tribunal,  
Cuttack Bench.  
July 12, 1988/Roy, Sr.P.A.