

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.430 of 1988

Date of decision 29th March, 1989.

Kishore Chandfa Das
Son of Late Kanhei Dash
Ex-E.D.B.P.M., Pruthunathpur,
At/P.O. Pruthunathpur, Via-Manatri
Dist. Mayurbhanj.

..... Applicant

-Versus-

1. Union of India
represented by the Post-Master
General, Orissa Circle, Bhubaneswar.
2. The Superintendent of Post Offices
Mayurbhanj Division, Baripada
Dist. Mayurbhanj.
3. The Inspector of Post Offices,
Udala Sub-Division, Udala,
Dist. Mayurbhanj.

..... Respondents.

For the Applicant. Mr. Ankul Ch. Pradhan, Advocate

For the Respondents. Mr. A. B. Misra, Senior Standing
Counsel (Central) and Mr.
Mr. Tahali Dalei, Addl. Std.
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 judgement ? Yes
2. To be referred to the Reporters or not ? NO
3. Whether Their Lordships wish to see the fair
copy of the judgement ? Yes.

J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order passed by the competent authority retiring the applicant on superannuation and seeks to quash the same.

2. Shortly stated, the case of the applicant is that he was appointed as an Extra-departmental Branch Postmaster, Pruthunathpur Branch Post Office within the district of Mayurbhanj on 16.8.1961. Thereafter in the year 1970 on being asked by the Inspector of Post Offices, the applicant submitted his school leaving certificate etc. vide Annexures 1 and 2 wherein it has been mentioned that the date of birth of the applicant is actually 15.5.1924. The concerned authorities wrongly recorded the date of birth of the applicant in the service book as 5.5.1922 and therefore, wrongly the applicant was made to retire in May, 1987. The further case of the applicant is that he should actually retire on superannuation in May, 1989. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that at this belated stage, the date of birth as entered in the service book of the applicant should not be changed in any circumstances because not only the principles of estoppel would arise against the applicant but it would be found that the applicant has himself attested the oath of allegiance wherein the date of birth has been recorded as 5.5.1922 and therefore, the applicant was made to retire

on superannuation in May, 1987. It is further maintained on behalf of the respondents that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Ankul Chandra Pradhan, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) at some length. Mr. Pradhan strenuously urged before us on the basis of a judgment reported in AIR 1981 SC 1481 (Sarajoo Prasad v. The General Manager and another) that before altering the date of birth, opportunity should have been given to the person aggrieved to have his say in the matter and thereafter necessary orders should have been passed by the concerned authority. We have absolutely no dispute with this proposition of law submitted by Mr. Pradhan. This is not the only judicial pronouncement of the highest court of the land on the subject but there are beadroll of judgments delivered by the highest court of the land on the subject. Before altering the date of birth opportunity should be given to the person aggrieved to have his say. But the principles laid down in the aforesaid judgment and similar other judgments are quite distinguishable. Because in the present case, there has been no alteration of the date of birth in the service record. The postal authorities have gone by the entry made in the service book as early as in the year 1967 and the date of birth mentioned in the service book is itself on the opinion of the medical officer i.e. Asst. Surgeon, Barsahi Hospital contained in Annexure-R/4. This ^{information} ~~assumption~~ of age by the ^{him} Doctor has been attested by the applicant and thereafter the

applicant has attested in the service book. Annexure-R/3 is a declaration on oath of allegiance made by the applicant declaring the date of birth ^{to be} ~~is~~ 5.5.1922. This oath of allegiance though not signed by the applicant but from the contents of this oath of allegiance it is found that this has been given after 1.9.1967. Till 1967 the applicant has himself maintained that his date of birth is 5.5.1922. Therefore, we find that there is considerable force in the contention of learned Additional Standing Counsel (Central) that principles of estoppel would apply against the applicant. In view of the position, we find no merit in this application which stands dismissed leaving the parties to bear their own costs.

By order of
29.3.89
.....
Member (Judicial)

B.R. PATEL, VICE-CHAIRMAN,

9 agree.

By order of
29.3.89
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
March 29, 1989/Saranghi,

