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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 119 of 1989.

Date of decision : April 27, 1989.

Jagannath Behera, aged about 61 years,
son of late Bira Behera, E.D.B.P.M.,
Nilagiripatna, Branch Post Office,
District-Puri. ...

Applicant.

Versus

1. Union of India, represented by the Secretary,
Department of Posts, Dak Bhavan, New Delhi.
2. Postmaster General, Orissa Circle,
At/P.O. Bhubaneswar, Dist-Puri.
3. Senior Superintendent of Post Offices,
Puri Division, At/P.O./Dist. Puri.
4. Fakir Mohan Paikray, son of late Narayan
Paikray, vill-Bada Pokharia, P.S.
Nilagiripatna, District-Puri.

... Respondents.

For the applicant ... M/s. Devanand Misra,
Deepak Misra,
R.N. Naik, Anil Deo,
B.S. Tripathy, Advocates.

For the Respondents 1 to 3 : Mr. A.B. Mishra,
Sr. Standing Counsel (Central)
Mr. Tahali Dalai,
Addl. Standing Counsel (Central)

For the Respondent No. 4 Mr. Antaryami Rath,
Advocate.

C O R A M:

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

A N D

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

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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 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(J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to pass appropriate orders directing Respondent No.3 to make due enquiry about the date of birth of the applicant and also to direct Respondent No.3 not to act on the observations regarding the retirement of the applicant on superannuation in O.A.423 of 1988.

2. Shortly stated, the case of the applicant is that while he was functioning as Extra-departmental Branch Postmaster of Nilagiripatna within the district of Puri in the year 1977-78 a departmental proceeding was initiated against him with certain allegations and the present applicant was found guilty of the charges levelled against him and was removed from service. The applicant invoked the extraordinary jurisdiction of the Hon'ble High Court of Orissa by filing an application under Article 226 of the Constitution praying therein to quash the order of removal and this formed subject matter of O.J.C.No.1868 of 1984 which was subsequently transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985 for disposal according to law. It was renumbered as Transferred Application No.370 of 1986, judgment of which was passed on 27.10.1988. The applicant was exonerated of the charge and his reinstatement was directed. Accordingly the applicant joined his service on 16.1.1989 as a result of which Respondent No.4(in the present case) who was functioning in the place of the applicant had to vacate. Thereafter, Respondent No.4 came up with an

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application with a prayer to direct the respondents not to disturb the applicant in the said case (Respondent No.4 in the present case) and to adjust the applicant Jagannath Behera in some other post. This formed subject matter of Original application No.423 of 1988 and by judgment dated 21.12.1988 we dismissed the application subject to the observation that the case of the Respondent No.4 in the present case should be considered for appointment after the applicant retires in March'89. The present applicant on apprehension to be retired on superannuation in March,1989 has come up with this application with the aforesaid prayer.

3. In their counter, the respondents maintained that ~~the~~ the date of birth as recorded in the service book of the applicant being 18.5.1924, in ordinary course he should retire on superannuation on 17.5.1989 and therefore, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.Deepak Misra,learned counsel for the applicant,Mr.Tahali Dalai,learned Additional Standing Counsel(Central) and Mr.Antaryami Rath,learned counsel appearing for Respondent No.4 at some length. Mr.Deepak Misra submitted that the observations of this Bench in the judgment passed in O.A.423 of 1988 that the applicant would retire in March,1989 was on the basis of the submission made by counsel appearing for the applicant in O.A.423 of 1988. But, infact from the counter filed in this case it would appear that the applicant would retire (according to the departmental authorities) on 17th May,1989. Furthermore, it was submitted by Mr.Deepak Misra that according to the applicant, his year of birth being 1928, he cannot be made to retire before 1993

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and in this connection, a representation contained in Annexure-1 is pending consideration of Respondent No.3 i.e. Senior Superintendent of Post Offices, Puri Division. We direct that the Senior Superintendent of Post Offices, Puri Division, Respondent No.3 would dispose of the representation according to law within 15th May, 1989. If the representation is rejected, the applicant is bound to retire on superannuation on 17th May, 1989. In no circumstances the applicant would be allowed to continue in Office after 17th May, 1989.

5. Mr. Antaryami Rath, submitted that observation should be made regarding the Respondent No.4 in the present case. We have already given our mind in our judgment passed in O.A.423 of 1988 dt.21.12.1988. It needs no repetition.

6. This application is accordingly disposed of leaving the parties to bear their own costs.

[Signature]
27.4.89
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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

9 agree.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
April 27, 1989/Saranghi.

[Signature]
27.4.89
.....
Vice-Chairman