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ORIGINAL APPLICATION NO:139 OF 1989.

Date of decison: October 16, 1990.

.... Applicant

Versus

.... Respondents

: M/s A. Patnaik, L.Pangari
S.Udgata, Advocate

: Mr. T. Dalai, learned Addl.
Standing Counsel (Central)

C O R A M:

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

A N D

THE HON'BLE MR. N.SENGUPTA, 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 Lordship's wish to see the fair copy of the judgment ? Yes.

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J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN

In this case the applicant has challenged the order of the Superintendent of Post Offices, Balasore Division (Respondent No.2) retiring him from service as Extra Departmental Branch Post Master (E.D.B.P.M.) Srirampur Branch Post Office with effect from 29th April, 1989 on the ground of superannuation. His contention is that he joined the service under the Postal Department at the age of 18 years on 9.9.1949 as E.D.B.P.M. Srirampur and his date of birth is 10.12.1932 and he would have been superannuated on completion of 65 years of age on 9.12.1997.

2. The Respondents have maintained in their counter affidavit that the applicant has infact ~~been~~ superannuated on 29.4.1989 according to the available evidence and he has been rightly retired compulsorily with effect from this date.

3. We have heard Mr. A. Patnaik the learned Counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the Respondents, and gone through the relevant records. Mr. Patnaik has contended that the applicant has not been given any opportunity to prove his case in regard to his date of birth before the competent authority and as such in

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this regard the principle of natural justice has been violated. He has in this connection cited the judgment of the Hon'ble Supreme Court in the case of the State of Orissa Vs. Dr. Binapani Dei and others reported in A.I.R. 1967 SC 1269. For correct appreciation of the case we would like to quote below the relevant portion from the ^{at} ~~course of~~ ~~the~~ judgment :

" The State has undoubtedly authority to compulsorily retire a public servant who is superannuated. But when that person disputes the claim he must be informed of the case of the State and the evidence of support thereof and he must have a fair opportunity of meeting that case before a decision adverse to him is taken".

The Hon'ble Supreme Court have further ^{observed} ~~stated~~ that ;

" Even an Administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting of explaining the evidence".

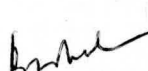
Mr. Dalai on the other hand has contended that the applicant has been given due opportunity to make representation or have his say otherwise and that the decision taken by the Department to retiring him on superannuation from 29.4.1989 has not been arrived at arbitrarily without any basis. In this connection he drew our attention to the impugned order, a copy of which is at Annexure-8 . This order is dated 20th March, 1989 and it says that the termination of service of the applicant on superannuation will take effect from 29th April, 1989. There was, according to Mr. Dalai more than

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a month at the disposal of the applicant to make representation to the Competent Authority if he had any grievance. Mr. Dalai has further referred to Annexure-1 dated 5.8.1977 which required the applicant to send the original School Leaving Certificate along with the original appointment letter to the office of the Superintendent of Post Offices, Balasore Division . The applicant informed vide his letter dated 14.8.1977 (Annexure-2) that he had furnished necessary certificate at the time of his appointment and that there is no other certificate nor the original appointment letter was available with him. The Competent Authority asked on 21.11.1985 vide Annexure-3 to produce such documents wherein his date of birth would have been shown and also intimate the name of the Institution where the applicant had last studied and left the institution. As there was no reply from the applicant another letter was sent by the Superintendent of Post Offices on 8.10.1986 (vide Annexure-4) reminding him to produce documents in support of his date of birth and the particulars of the institution where he had last studied within ten days from the date of receipt of this letter. It was made clear in that letter in case no reply was received from him within the time limit it would be presumed that

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he had no document to furnish in support of his date of birth and action as deemed proper would be taken in the matter. The applicant vide his letter dated 25.10.1986 (Annexure-5) informed the Superintendent of Post Offices that he had only his horoscope to show that his date of birth was 10.12.1932 and that no other document was available and he would produce the horoscope when required. On the basis of various documents Mr. Dalai has argued that the applicant has been given adequate opportunity to produce evidence in support of his claim in regard to his date of birth. On perusal of these documents we are convinced that the applicant had been given reasonable opportunity to place before the Competent Authority of all the materials having a bearing on his date of birth besides his horoscope. We agree with Mr. Dalai that the horoscope cannot be relied upon without corroborative evidence and in this case there was no such evidence produced by the applicant. Mr. Patnaik has argued that at the instance of the Superintendent of Post Offices the applicant appeared before the Chief District Medical Officer (C.D.M.O.) Balasore and the CDMO has assessed his age to be approximately 57 years on 24th March, 1988 vide Annexure-7 and as such he did not complete 65 years of age on 29.4.1989 when he was retired from service. Mr. Dalai has countered this argument by saying that the CDMO himself has stated in his report that he assessed approximately the age of the applicant only from his external appearance and any such report cannot be fully

 (underlining has been done for emphasis)

relied upon. We agree with Mr. Dalai that external appearance alone cannot be the sole basis for determination of one's age. Mr. Dalai then drew our attention to a copy of the affidavit filed by the applicant before the Sub Judge, Balasore (Annexure-R/3) where the age of the applicant has been recorded as 65 years. This affidavit is dated 17.6.1985 and signed by the applicant. As it is a sworn document, according to Mr. Dalai the Department has accepted the age of the applicant to be 65 years on 17.6.1985 and as such on the date he was retired i.e. 29.4.1989 at 69 years of age i.e. nearly four years in excess of the date of the superannuation. As against this Mr. Patnaik has produced a copy of the voters' list of village Srirampur in which the age of the applicant has been recorded to be 57 on 1.1.1988. This tallies with the age assessed by the C.D.M.O., Balasore from his external appearance. But it does not tally with the horoscope. It seems the applicant does not know his own date of birth and on different occasions he has given different dates of birth. This is apparent from his own statement at page 2 column 4 of his own application where he stated that he was 18 years of age when he joined as E.D.B.P.M. in September, 1949, though he would be 16 years 9 months and 6 days on 16.9.1949 when he actually joined the post of E.D.B.P.M. (16.9.49 date of appointment and 12.10.1932 date of birth). If this statement is to be

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believed he appears to have joined the post when he was a minor. No Rule or instructions allowing persons to join the post of E.D.B.P.M. in 1949 at an age lower than 18 years or even 18 years has been produced. Relying on Annexure-R/2 the Respondents have maintained in their counter affidavit that the minimum age was ^{prescribed} ~~five~~ at 18 years with effect from August, 1973 prior to which ~~date~~ ^{at} the minimum age was 21 years. In other words, according to them in the year 1949 when the applicant joined the post of E.D.B.P.M. the condition for appointment to such a post was that "one should not be less than 21 years" (vide Annexure-R/2). Whatever that may be law is well established that one cannot claim benefit in the matter of date of birth both at the point of entry into the service and for retirement from service. He cannot be ^{therefore} ~~allowed~~ ^{as a result} double benefit i.e. for joining the Government service and retiring from service.

4. For the reasons mentioned above we hold that principle of natural justice has not been violated in this case by the Competent Authority. We therefore, see no reason to interfere with the orders of the Superintendent of Post Offices, Balasore Division retiring the applicant on superannuation with effect from 29.4.1989. The application fails. There would be no order as to costs.

M. S. Singh
16.10.90
.....
MEMBER (JUDICIAL)



Amal Kumar
16.10.90
.....
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack/K. Mohanty