

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No.286 of 1989.

Date of decision : September 19,1989.

Rokkam Suryanarayana Dora,  
son of Late Rokkam Ventatappa Rao Dora,  
Branch Postmaster,Vill/P.O.Goribandha,  
Via.Kosinagar, District-Ganjam. ...

Applicant.

Versus

1. Union of India, represented by the  
Postmaster General, Orissa Circle,  
Bhubaneswar-751001.
2. Senior Superintendent of Post Offices,  
Berhampur (Gm) Division, Berhampur-760005.  
District-Ganjam.

...

Respondents.

For the applicant ...

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

For the respondents ...

Mr.Aswini Kumar Misra,  
Senior Standing Counsel (C.A.T.)

-----  
C O R A M :

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 ? No.
  3. Whether His Lordship wishes to see the fair copy of the  
judgment ? Yes.
-

J U D G M E N T

N.SENGUPTA, MEMBER (J) In this application, the relief sought is for a direction to Respondent No.2 to enquire into the actual date of birth of the applicant after affording him a reasonable opportunity and for a further direction to Respondent No.2 for payment of ex-gratia gratuity and other allowances due to him.

2. The facts of the case are that the applicant entered into service as a Postmaster in Goribandha Branch Post Office on 23.4.1980. He continued in that post but on 13.4.1989 he got a letter with a direction from Respondent No.2 that he was to retire on 14.7.1989 on superannuation as he would be 65 years of age on that date. The applicant's case is that his real date of birth is 26.3.1929 and not 15.7.1924 as noted in the Transfer Certificate. His further case is that as he and another cousin of his were admitted into the same School, by mistake the date of birth of his cousin was mentioned in the Transfer Certificate issued to him by the School. After having got that letter from Respondent No.2 he made a representation on 4.5.1989 for correction of his date of birth after an enquiry. This representation was rejected on 15.6.1989. So he has approached this Tribunal for the reliefs above mentioned.

3. The respondents in their counter have stated that the date of birth of the applicant was recorded in his service book in accordance with the original Transfer Certificate produced by him and that document shows the date of birth of the applicant to be 15.7.1924. The applicant also accepted that date to be his date of birth at the time of his entry into service and he signed in the service book on 22.4.1980. Their case is that

*Member (J)*  
19.5.89

*The applicant having been provided*

the applicant having <sup>himself</sup> represented to the Department his date of birth to be 15.7.1924 cannot now turn round and say that his actual date of birth is something different from what he stated. They have also taken the plea that though the applicant produced a copy of the voter list which shows his age in 1984 to be 55, <sup>it</sup> cannot be a basis to say that his actual age was then 55 years nor can that document prove the allegation of the applicant that he was born on 26.3.1929. On these allegations, the respondents resist the prayer of the applicant.

4. There is no dispute that in the transfer certificate that the applicant produced at the time of his entry into service as Extra-Departmental Branch Postmaster, Goribandha Branch Post Office, his date of birth was 15.7.1924. The question really is whether can an employee show that the date of birth as recorded in his service book is wrong and whether the date noted in a transfer certificate or the School Register has to be accepted as correct and no opportunity can be given to the employee to say that such noting is incorrect. It has now been almost settled that a date of birth initially recorded in a service book can subsequently be changed if adequate materials are placed and in this regard a decision of the Hon'ble Supreme Court reported in AIR 1967 SC 1269 (State of Orissa v. Dr (Miss) Binapani Dei and others) may be referred to. There the question for consideration before Their Lordships of the Supreme Court was slightly different but however it may be gathered that it is permissible to enquire into the fact whether the date of birth

*Man Singh*  
17-7-81

as recorded in the service book is correct or not. There has also been a recent decision of the Supreme Court in the case of Sarjoo Prasad v. The General Manager and another, reported in AIR 1981 SC 1481. Ofcourse, in that case, the date of birth of the employee was altered by the employer after accepting it. But in the course of their judgment His Lordship Desai, J who spoke for the Court, stated that it was not proper to alter the date of birth to the disadvantage of the employee without giving the employee an opportunity, this would suggest that the date of birth as recorded in the service book can subsequently be altered provided ofcourse there are adequate materials for doing so. In a decision of the Principal Bench of this Tribunal reported in ATR 1987 (1) CAT 414 ( Shri Hari Lal v. Union of India) a reference was made to Rule 79 (2) of the General Financial Rules and there the previous decision of the Supreme Court in the case of Manak Chand v. State of Himachal Pradesh reported in 1976 (1)SLR 402 was also referred to. From that reported case it would be found that a Government servant is entitled to show that the entry made in his service record does not represent his true date of birth. So it can safely be said the matter is now concluded and it is permissible to change the date of birth subsequently.

5. Mr. A.K. Misra, learned Senior Standing Counsel for the Central Administrative Tribunal has stated as the applicant did not place any material before the Department to change the date of birth, his representation was bound to be rejected and accordingly was rejected. The contention of Mr. Ramdas is that the applicant was not given any opportunity to place the

*Mr. Ramdas*  
19.5.87

materials so as to show that the date of birth recorded in his service book or in the Transfer Certificate were wrong. From Annexure-D to the counter it would be found that the Senior Superintendent of Post Offices, Berhampur (Gm) Division rejected the representation made by the applicant making the following observation :

" As appears from the original TC submitted by you, your date of birth is 15-7-1924 and accordingly this office memo of even number dtd. 13-4-89 is issued. Thus, the question of error and its rectification now does not arise. "

There is no allegation that infact any opportunity was given to the applicant to place materials or any enquiry to have been made about the correctness or otherwise of the allegation made by the applicant in his representation dated 4.5.1989. During the course of hearing, the applicant filed a copy of the representation that he made on 4.5.1989. In that representation what the applicant asked for was an opportunity to prove that his date of birth was 26.3.1929 and not 15.7.1924. Learned Senior Standing Counsel (C.A.T.) has stated that in view of the Transfer Certificate, no enquiry was really necessary but I am unable to accept this contention. May be that the applicant may not be able to produce any material to counteract the Transfer Certificate which he himself produced at the time of appointment but that is another matter. It would be iniquitable and unjust to deny an opportunity to the applicant to place materials before his appointing authority to consider whether the date of birth as now alleged by him is correct or the one recorded in the Transfer Certificate is correct.

*M. S. Singh*  
19/9/89

6. In this view of the matter, the application is allowed and a direction is given to the respondents to afford the applicant an opportunity to place materials before his appointing authority with regard to applicant's actual date of birth. No costs.



*[Signature]*  
19.9.89  
Member (Judicial)

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
September 19, 1989/Saranghi.