

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.53 of 1989.

Date of decision : January 8, 1990.

Shri Phagu Behera, son of late Narahari Behera,
Ex-Seaman, False Point Light House, (Retired),
resident of village-Bahakuda, P.O. Ramnagar,
via-Mahakalpara, District-Cuttack.
PIN -754224.

... Applicant.

Versus

1. Union of India, represented by the Secretary to Government of India, Ministry of Shipping and Transport, Department of Light House and Lightships, East Block, 10 Level 4-5, R.K.Puram, New Delhi-110066.
2. Director of Light Houses & Lightships, 6, Chapel Road, Hastings, Calcutta-22.
3. Headlight Keeper, False Point Light House, Paradeep, Dist. Cuttack.
4. Director General, Department of Surface Transport, Light Houses and Light Ships, East Block, 10 Level, 3-4, R.K.Puram, New Delhi-110066.

... Respondents.

For the applicant ... Mr. Antaryami Rath, Advocate.

For the respondents ... Mr. Ganeswar Rath,
Sr. Standing Counsel (Central).

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.

JUDGMENT

N.SENGUPTA, MEMBER (J) The applicant has prayed for appointing his son, Niranjan Behera on compassionate grounds and also on other grounds.

2. The material facts are that the applicant was employed as a Seaman under the Government of India Light House Department and was posted at False Point Light House as a Boatman. On 3.12.1982 while he was rowing the boat in which Government cash was being carried, he was attacked by some miscreants or pirates who wanted to loot the money that was being carried in the boat. The applicant ~~was~~ a faithful Government servant tried to resist the acts of the miscreants and in the process received serious injuries which ultimately led to his retirement on account of being incapacitated to work. The applicant's case is that he was born on 11.9.1929 and as he retired on 25.10.1983, he had not completed the age of 55 years. Therefore, his son, under the existing rules at that time was entitled to an appointment on compassionate grounds. It has further been averred that the son of the applicant whose name is Niranjan Behera had put in more than 240 days of work as a casual worker in the Office of the Light House at False Point in 1983-84 and 1984-85 and also he worked as such casual worker immediately after the applicant, his father, was hospitalised ~~being injured~~. Making these allegations the applicant has prayed for appointing his son Niranjan Behera in any post for which he is found suitable.

Manu Supta
8/1/90

3. Mr. Antaryami Rath, learned counsel for the applicant and Mr. Ganeswar Rath, learned counsel for the Central Government have been heard. It has been contended by Mr. Ganeswar Rath that the date of birth as stated by the applicant in his application is not correct and that his real year of birth is 1926 and not 1929 as alleged now. Mr. Ganeswar Rath has further contended that the applicant had himself stated his year of birth as 1926 and that was recorded in his service book. On the other hand, it has been the submission of Mr. Antaryami Rath that the date of birth as mentioned in the Pension Payment Order (PPO) issued to the applicant is 11.9.1929. Since these are two versions, the Department was requested to produce the original service book of the applicant and it has been produced. On referring to the original service book of the applicant it is found that in the first page in the column for date of birth it has been written, "With the year 1926". In this regard, learned counsel for the applicant has contended that the date of birth as mentioned in the service book is not conclusive and it may raise only a rebuttable presumption and in support of this he has drawn my attention to a decision of the Principal Bench of this Tribunal reported in ATR 1987(2)CAT 506 (R.R. Yadav v. Union of India and others). The facts of that case are somewhat different but all the same it may be stated that in that decision it was observed that a presumption, though rebuttable, about the correctness of the date of birth as recorded in the service book would be raised. On examining the other pages of the

*Mem Sub
8/1*

service book of the applicant it is found that when the applicant filed the nomination for family pension, he mentioned his date of birth as 5.1.1929. Mr. Antaryami Rath has contended that as the Department accepted this nomination, it is to be found that the Department accepted the date of birth as stated in that form. Without going into the merits of this contention it may be stated that in none of the two forms in which the date of birth as 5.1.1929 appears is there any signature of any of the Authorised Officer of the employee Department. However, the fact remains that three ~~xxxx~~ different dates appear with regard to the date of birth of the applicant, one in the service book, one in the nomination form for family pension and another in the Pension Payment Order. These discrepancies could only be resolved by a fullest enquiry into the facts. Ordinarily this Tribunal does not embark on a fact finding enquiry unless there be pressing necessity for it. For what is going to be stated below such an enquiry may not be necessary.

4. The applicant has applied for appointing his son on compassionate grounds in any Group D posts. The applicant retired on invalid pension and the incapacity to work was occasioned by his devotion to duty in checking or resisting the pirates from looting the Govt. money. The case of the applicant was not really one of retirement merely on medical grounds but the real cause for his retirement was his devotion to duty resulting in sustaining of injuries by him. Therefore,

Mem Recd 8/1/90

this is a special case deserving special consideration. Apart from this as would be evident from Annexures-8 & 9, the son of the applicant worked as a substitute Seaman from April, 1984 till upto 21.2.1985 and prior to that during the leave vacancy of the applicant, the said son of the applicant was also working as a casual Seaman. A specific averment has been made in the original application that Niranjan Behera, the son of the applicant had worked for 771 days till upto 1985 and this averment has not been specifically denied. It has now been accepted as a principle that if a person works as casual labour for more than 240 days in each of the two continuous years, he should not be thrown out of employment. Taking all the facts and circumstances obtaining in this case into account, it would be fit and proper to employ the son of the applicant in any available Group D posts under the Department provided the said son is found fit and suitable for the job. With this observation, the application is disposed of. No costs.



A. Sarangi
Member (Judicial)
8/1/90

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
January 8, 1990/Sarangi.