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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO: 41 OF 1991

Date of decision: 15th July, 1992.

S. Sundarajan Applicant
Versus
Union of India and others Respondents

For the Applicant M/s J.Das,
B.S.Tripathy,
K.P.Misra,
B.K.Sahoo,
S.Mallik,
P.K.Mohapatra,
Advocates.

For the Respondents No.1 Mr. Aswini Kumar Misra, Sr. St.
Counsel (Central)

For the Respondent No.2 Mr. K.C.Mohanty, Government Advocate
for the State of Orissa.

CORAM:

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. Whether be referred to the reporters or not? Yes.
3. Whether ~~the~~ Lordships wish to see the fair copy of the judgment? Yes.

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Central Administrative Tribunal,
Cuttack Bench, Cuttack.

Original Application No.41 of 1991

Date of decision: 15th July, 1992.

S. SUNDARARAJAN .. APPLICANT
VERSUS
UNION OF INDIA AND OTHERS .. RESPONDENTS

For the Applicant : M/s J.Das, B.S.Tripathy, K.P.Misra,
B.K.Sahoo, S.Mallik, P.K.Mohapatra,
Advocates.

For the Respondent No.1 : Mr.Aswini Kumar Misra,
Sr.St.Counsel.

For the Respondent No.2 : Mr.K.C.Mohanty, Government Advocate
for the State of Orissa.

C O R A M

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN

J U D G M E N T
K.P.ACHARYA, VC Here is a Member of the Indian Administrative Service of the Orissa Cadre serving under the State of Orissa in a high position being the Additional Development Commissioner and Secretary, Planning and Co-ordination Department seeking to have an extension of his service under the Government by obtaining a direction to the Central Government and the State Government of Orissa for correcting his date of birth as recorded in the service Book.

2. According to the applicant, his ~~actual~~ date of birth though actually being 13.9.1936 has been incorrectly recorded as 2.2.1935 beginning from the School Registers and consequently

in the Matriculation certificate and necessarily the same date month and year finds place in his application for taking the examination for Indian Administrative Service and in the service book. Further case of the applicant is that though he had discovered the inadvertant mistake soonafter joining the service, no steps were taken at that point of time because such incorrect date of birth was recorded in the matriculation certificate. According to the applicant cause of action arose in his favour by virtue of Government of India (Cabinet Secretariat) Department of Personnel Notification No.29/27/71/AIS (II) dated 4.12.1971 amending the All India Services (Death cum-Retirement Benefits) Rules, 1958, which was called as "All India Services (Death cum-Retirement Benefits) Second Amendment Rules, 1971 (hereinafter called the Rules)". Rule 16A(i) of the said rules runs as follows:

"16A. Determination of date of birth: (1) For the purpose of the determination of the date of superannuation of a member of the service, such date shall be calculated with reference to the date of his birth as accepted, or determined, by the Central Government under this rule."

Rule 4(a) provides as follows:

" Every member of the Service holding office immediately before the commencement of the All India Services (Death Cum Retirement Benefits) Amendment Rules, 1971, shall within three months from such commencement make a declaration as to the date of his birth".

Rule 4(b) provides as follows:

" On receipt of a declaration made under clause (a) the Central Government shall, after making such inquiry as it may deem fit with regard to the declaration and after considering such evidence, if any, as may be adduced in support of the said declaration, make an order, within four months from the date of such declaration determining the date of birth of such member".

This rule is contained in Annexure-1. In pursuance thereto, the applicant addressed a letter to the Secretary to the Government Department of Personnel, Cabinet Secretariat declaring the date of birth to be 13.9.1936 and the applicant further requested the Central Government to accept the declaration and order necessary correction in the relevant records. The applicant had enclosed thereto certified copy of entry in the birth Register (relating to his date of birth) certified copy of the entry in the birth Register relating to the birth of his elder brother, Shri S. Seshadri and copy of letter No. Dis. 780/56 dated 7.2.1956 from the D.P.I., Madras refusing to accept the request of the applicant for alteration of his date of birth. Vide letter No. 6608 dated 22.4.1972 (contained in Annexure-3) the Deputy Secretary to Government in the Political & Services Department (now redesignated as General Administration Department) conveyed to the applicant the orders of the Central Government entrusting the matter to State Government for enquiry and further more the applicant was called upon to furnish necessary evidence and documents in order to substantiate his case and in reply thereto vide letter dated 15.5.1972 contained in Annexure-4, the applicant submitted the very same documents to the State Government for consideration and necessary orders. On 23.6.1976, the Additional Secretary to the Government of Orissa in Political and Services Department transmitted the Office Memorandum of the Cabinet Secretariat dated 31.5.1976 to the applicant, Shri Sundararajan informing him that the Government of India feels inclined to determine the date of birth of Shri Sundararajan as 2.2.1935 and further more an opportunity was given to the applicant, Shri Sundararajan to

file a representation. Mr. Sundararajan filed a representation on 30.7.1976 contained in Annexure-6. Since the matter was not finally disposed of, Shri Sundararajan addressed a D.O. letter to Mr. Dandapani, Secretary, Department of Personnel, Government of India and in reply thereto Vide Annexure-9 dated 14/16th May, 1990. Shri Sundararajan was informed that under the Rules, it is not possible to change his date of birth and therefore, the matter stands closed. Hence, an application under section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant Shri Sundararajan with a prayer to declare that the date of birth of the applicant is 13.9.1936 and consequential benefit of extending the date of superannuation be decreed in favour of the applicant.

3. In the counter, filed on behalf of the Union of India represented through the Secretary to the Government of India in the Department of Personnel and Training (Respondent No.1) it is maintained that all the documents filed by the applicant Shri Sundararajan to substantiate his case of incorrect date of birth having been recorded in the official documents and the date of birth recorded in the birth register were duly considered from all aspects and following the rules in force, the Government came to a conclusion that it was not possible to change the date of birth and therefore, rightly the prayer of the applicant before the Government was rejected and finally the applicant was informed accordingly. The case being devoid of merit is liable to be dismissed.

4. In the counter, filed on behalf of the State of Orissa (Respondent No.2), it is maintained that once the date of birth has been declared to be 2.2.1935 in no circumstance it should be changed to 13.9.1936 especially when the date of birth

has been recorded in the Matriculation certificate as 2.2.1935.

Therefore, the case being devoid of merit is liable to be dismissed.

5. In addition to the above mentioned averments finding place in the pleadings of the said respondents, a common ground has been taken both by the Central Government and the State Government that the case is barred by limitation. Therefore, this application should be in limine dismissed.

6. I have heard Mr. Jayant Das, learned Counsel for the applicant, Mr. A.K. Misra, learned Standing Counsel (CAT) for the Respondent No. 1 and Mr. K.C. Mohanty learned Government Advocate appearing for the State of Orissa.

7. Before I discuss, the pleadings of the parties relating to the date of birth of the Petitioner and the evidence placed before me, question of limitation mooted at the bar should be first disposed of. It was contended on behalf of the Central Government and the State Government that the case is barred by limitation because on 31.5.1976, Mr. Sundararajan having been informed by the Additional Secretary to the Government of Orissa in Political and Services Department that the Government of India feels inclined to determine the date of birth of Shri Sundararajan as 2nd February, 1935, cause of action, if any, arose in favour of the applicant atleast from 31st May, 1976 and therefore, soon thereafter, Mr. Sundararajan should have laid his grievance before the appropriate forum and not having done so, the case is barred by limitation especially because under section 21 of the Administrative Tribunals Act, 1985, the Tribunal cannot take cognizance of any cause of action said to have accrued in favour of a person aggrieved prior to 1.11.1982. It was further

submitted that conceding for the sake of argument that the cause of action in favour of the Petitioner did not accrue on 31st May, 1976 but it certainly accrued in his favour soon after 1st November 1985 when the Administrative Tribunals Act, 1985 came into force. Finally, it was contended by both the counsel that the case should be dismissed in limine being barred by limitation.

8. In no circumstances, it can be held that the cause of action arose in favour of the Petitioner to ventilate his grievance before a court of law soon after 31st May, 1976 because while forwarding the Memorandum of the Government of India, the Additional Secretary to the Government of Orissa in Political and Services Department informed Mr. Sundararajan that the Government had given an opportunity to file a representation and accordingly Mr. Sundararajan filed a representation on 30th July, 1976 which remained pending for consideration by the Central Government. There appears to be no evidence as to whether the final order of the Government of India was communicated to the Petitioner Mr. Sundararajan prior to 16th May, 1990. The only evidence placed before me is the reply dated 16th May, 1990 (Annexure-9) sent to Mr. Sundararajan in response to the D.O. letter addressed to Mr. Dandapani by Mr. Sundararajan. Therefore, there is no escape from the conclusion that for the first time after 16th May, 1990, the Petitioner Mr. Sundararajan knew that his ~~request for~~ correction of his date of birth had been turned down by the Government of India and in my opinion then only the cause of action arose in favour of the Petitioner. Had the Petitioner moved a court of law soon after 23rd June, 1976, the court would have certainly expressed the view that since the Government of

India have not finally disposed of the representation of the Petitioner it is premature on the part of the petitioner to invoke the jurisdiction of a court and therefore, I am of opinion that rightly Mr. Sundararajan did wait for final orders of the Government of India and he got information about the final orders soon after 16th May, 1990. This application was filed on 21st February, 1991 i.e. within one year from the date on which he was informed. Hence I find no merit in the contention put forward on behalf of the Central Government and that of the State Government that the case is barred by limitation. I would unhesitatingly hold that the case has been filed within the period of limitation.

9. Now coming to the crucial question regarding determination of ~~date~~ of birth of the Petitioner at the cost of repetition, I may say that the service records indicate that the petitioner was born on 2nd February, 1935 whereas the case set up by the Petitioner is that he was actually born on 13th September, 1936. Admittedly in the Matriculation certificate the date of birth has been recorded as 2nd February, 1935. Law is well settled in a plethora of judicial pronouncements by the Apex Court, High Courts in India and all the Benches of the Central Administrative Tribunal that the date of birth recorded in the Matriculation Certificate would be the basis for determining the date of birth of a particular Government employee but such date of birth may be altered provided that there is ~~unimpeachable~~, credible, unshaken and conclusive evidence indicating that the date of birth recorded in the Matriculation Certificate is incorrect. Such evidence may be of direct nature or circumstantial which could be accepted with utmost certainty without leaving

any iota of doubt in ~~one's~~ mind. This settle position of law was not rightly and fairly disputed at the bar and therefore, there is no necessity of citing the judge made law.

10. At this stage it is worthwhile to note that Mr. Jayant Das learned counsel for the petitioner relied upon a judgment of the Jabalpur Bench reported in ATR 1992 (1)CAT 162(K.V.Jain Vs. Union of India and others) and contended that the facts of the case decided by the Jabalpur Bench being exactly similar in nature, the view expressed in the judgment should be made applicable to the facts of the present case. In order to appreciate the evidence on record, it would be ~~profitable~~ to succinctly repeat the case of the petitioner at this stage. The fact that the date of birth of the petitioner was recorded as 2nd February, 1935 right from the School career of the Petitioner till his service records were prepared was undisputed. In order to substantiate his case, the petitioner solely relies upon the entries in the birth register of himself and his elder brother Shri Sesadri to convince the court that there has been a wrong recording of the date of birth in the School registers, Matriculation Certificate and the same being carried into the service records. This being the situation, the court is now required to address itself as to whether the entries in the birth registers of the Petitioner and that of his brother could be accepted with utmost certainty. Law is equally well settled that entries in the birth registers are not conclusive pieces of evidence though it would be acted upon if other evidence unimpeachably supports the case of the person aggrieved. In my opinion, the entries in the birth register would be an ^{to} evidence/fortify the conclusions of the court based on other direct or circumstantial evidence. Now turning to the entries

in the birth register which form subject matter of enclosure to Annexure-4 on which reliance was placed on behalf of the petitioner to substantiate his case that his date of birth is 13th September, 1936, one would find that against the Column meant for recording the date of birth - it has been mentioned '13-09-1936' in respect of one male child born to 'Vylur Srinivasachariar'. Mother's name of the child has been mentioned as 'Vanjulaththammal' and the address has been mentioned as 'The-Agraharam'. So far as the next copy of the birth register is concerned, which is said to be recorded date of birth of the elder brother of the petitioner named as Shri Sesadri, it has been mentioned therein that one male child was born on 22nd August, 1934 and father's name of the male child has been mentioned as 'Srinivasaraghavachariar' and the mother's name has been mentioned as 'Vanjulam'. The father's name and the Mother's name of both the male child are in great variance. From the cause title it appears that Mr. Sundararajan mentioned his father's name as 'V.N.V. Srinivasaraghavachariar'. Here also it is found that the father's name recorded in the birth register varies from the father's name mentioned in the cause title. These irreconcilable discrepancies had not escaped the notice of Mr. Sundararajan and therefore in the DO letter dated 15th May, 1972 addressed to Mr. N.C. Naik Deputy Secretary to Government of Orissa in the Department of P & S, Mr. Sundararajan stated as follows:

" The small discrepancies you notice in the names and place of parents are due to the fact that the entries relating to my birth were made on the basis of an oral report to the registering authority by the village headman while the details of my brother's birth were elicited from the house by the registering authority himself as will be seen from the extracts. For instance my mother's name is VANJULAM correctly recorded in the register relating to my brother's birth. But the village headman has reported it as 'Vanjula thth ammal' in my case

as the suffix 'Ammal' is added to higher caste ladies while lower caste people take their names. So it has been recorded accordingly. Similarly he has reported my father's name as 'Srinivasachaiar' though it should be 'Srinivasarashavachaiar' due to ignorance as my birth took place in my mother's native village and the headman of that village was not quite conversant with my father's name. But in the case of my brother, the registering authority has made proper enquiries and recorded it correctly. Regarding the place, it is 'Thevanarvilagam Agraaharam' as recorded in the case of my brother. But the headman has briefly referred to it as 'The Agraaharam' taking only the first letter of the name of the 'Agraaharam'. Thus, the discrepancies are minor and if any, they only show the genuineness of the maintenance of a village level register in the rural circumstance".

In view the above statement of Mr. Sundararajan, the undisputed position is that there are discrepancies in the certified copy of the birth register of the petitioner. Mr. Sundarajan vis-a-vis the entries in the birth register of his brother Shri Sesadri, relating to the names of the father and mothers and the village home address of both the male children out of whom one is claimed to be Shri Seshadri and the other Mr. Sundararajan himself. There is absolutely no other evidence to corroborate the assertion of the petitioner. I feel reluctant to act on the uncorroborated testimony of the petitioner. According to Mr. Sundararajan, it is a minor discrepancy but according to me it is vital contradiction and an irreconcilable major discrepancy touching the merits of this case.

11. Provisions contained in the Administrative Tribunals Act, 1985 laying down that the Tribunal can exercise powers of a Civil Court eventually authorises the Tribunal to record evidence of witnesses. This provision was neither foreign nor unknown to a

highly placed officer like Mr. Sundararajan. He did not like, for the reasons best known to him to either offer himself as a witness to stand the test of cross-examination nor he chose to bring forth corroborative oral evidence to support his contention that the village headman had taken wrong informations and had wrongly recorded the name of the father of the Petitioner, name of the mother of the petitioner and the name of the village. This story appears to me to be absolutely improbable because if the registering authority had made proper enquiry and recorded the correct matters including the date of birth in respect of Shri Seshadri, I find no reason as to how and why the Village headman would collect wrong informations and make wrong and incorrect entries in respect of father's name, mother's name, village address and the date of birth. The oral report to the registering authority in respect of Shri Seshadri if correctly received and recorded, I cannot conceive the reason for which the oral report made to the village headman in respect of the Petitioner Mr. Sundararajan was in correct. According to Mr. Sundararajan his birth took place in his Mother's house and therefore, neither the mother of the petitioner nor any member of the family could make a wrong statement to the Headman in regard to the name of the mother and father and the name of the village. The possibility of a person residing at a place other than the states of Andhra Pradesh or Madras may not be conversant with the language, pronunciation and the peculiar names of persons or villages of Madras or Andhra Pradesh and hence there may be ⁱⁿ some difficulty in following the dialect of the local language but for a local person there would not be any such difficulty. Therefore, it is far beyond my comprehension that a local person who is acquainted with the local language would ever commit a mistake regarding the name of village etc.

That apart, the information regarding date of birth would have been given to the Headman or collected by him on the very date of birth or within one or two days thereafter. It is not the case of the Petitioner that information regarding the date of birth was either given or collected long after the actual date of birth. Therefore, the village headman could never have committed any mistake in recording the correct date of birth. Conceding for the sake of argument that there has been an inadvertant mistake committed in regard to father's name, Mother's name etc.

12. There appears to be another infirmity appearing in regard to this aspect which cuts at the root of the case. The alleged incorrect entries in the birth register did not come to the notice of Mr. Sundararajan for the first time when he had addressed the letter dated 15th May, 1972 to Shri N.C.Naik enclosing thereto the certified copy of birth register of the Petitioner Mr. Sundararajan and that of his brother Shri Sesadri (Annexure 44). Therefore, it can be easily presumed that by 4th February, 1972 these discrepancies had come to the notice of Mr. Sundararajan when he addressed a letter to the Secretary, Ministry of Personnel vide Annexure-2 dated 4.2.1972 enclosing copies of the birth register and therefore by that time Mr. Sundararajan had set the ball rolling to have his date of birth corrected according to the entry in the birth register. Necessarily one has to put a question to himself while judging the conduct of the party affected and preponderance of probability as to what steps he took to remove the discrepancies ? The only answer is in the negative. No document has been filed to indicate that such steps were taken at the earliest possible of time and therefore, it would not be unjustifiable to presume that no steps were taken in this regard., by Mr. Sundararajan .

Preponderance of probability strongly works against the Petitioner. The cumulative effect of all these facts and circumstances stated above drives one to an irresistible conclusion that the entry in the birth register indicating the ~~date~~ of birth of a male child on 13th September, 1936 has not been satisfactorily established to have any relation with the date of birth of the Petitioner Mr. Sundararajan, Son of 'V.N.V.Srinivasaraghavachariar'. Having come to this conclusion, there is no further scope for the court to consider the argument of the learned Counsel appearing for the Petitioner that the elder brother Mr. Sesadri ~~of the Petitioner~~ Mr. Sundararajan could not have been only five months and ten days elder to Mr. Sundararajan if his date of birth is 2nd February, 1935. I am of the opinion that it has not been conclusively established that both the entries in the relevant birth registers relate to Mr. Sesadri and Mr. Sundararajan.

13. Another important fact cannot go unnoticed. Mr. Sundararajan must have been got admitted to the School at the initial stage by his father. It was admitted before me by Mr. Sundararajan (who was present in court) that his father is still living. Father of Mr. Sundararajan is the only competent person to say as to the circumstances under which he had mentioned the date of birth of his son in the application for admission in the school as 2nd February, 1935 knowing fully well that the date of birth of his son is 13.9.1936. Besides the father, nobody else is competent to testify the date of birth of his children. A father cannot mention a wrong date of birth of his children and in case it has been done the father alone can testify under what circumstances he had made a wrong statement. The father could have been easily examined to state the circumstances or he could have filed an affidavit to the same effect if he was not in a position to come to Cuttack.

attend and this Court. A futile attempt was made by the learned counsel appearing for the petitioner that the parent have a general tendency to minimise the age of their children in the present age but in olden times, a father is always inclined to put the age of a **child** on the higher side so as to enable the child to pass the matriculation examination in order to show that the child has attained the age fixed for the same. In my opinion judicial notice cannot be taken regarding this fact and even if taken it would amount to a surmise adopted by the petitioner and accepted by a court thereby ~~especially~~ ^{especially} ~~in view~~ travelling upon conjectures. The next reason for which judicial notice cannot be taken of this fact because father of the petitioner is alive who could have testified to this fact being subjected to cross-examination. Non-examination of the father of the petitioner who was the only competent person to testify the circumstances under which the petitioner's age was recorded as 2nd February, 1935. Casts a grave doubt in my mind regarding the story of petitioner because a material witness has been withheld from court for which law permits a court to draw adverse inference against the party who is guilty of withholding a material witness.

14. It was next contended that the Madras Government having accepted the contention of the Petitioner that the date of birth is actually 13th September, 1936 and the State Government of Orissa having agreed with the views of the Madras Government and accordingly recommendation having been made by the State Government of Orissa to the Central Government, considerable weight should be attached to the case set up by the Petitioner that his date of birth is 13th September, 1936. In this connection it may be stated that at paragraphs 4.3 of the application it

has been stated by the Petitioner that he became aware of this wrong declaration in the School Leaving Certificate Examination about his date of birth in the year 1955 and he lodged protest before the Director of Public Instructions of the Government of Madras and the Director of Public Instructions on 7.2.1956 rejected the representation of the petitioner which was communicated to the Petitioner by the Headmaster of the School on 20th February, 1956. After the second Amendment rules came into force and while the date of birth of the petitioner was disputed and the matter was entrusted to the Government of Orissa for enquiry, a reference was made to the Chief Secretary of Madras regarding the date of birth of the Petitioner by the Deputy Secretary of Government of Orissa P & S Department vide his letter No; AIS/I-90/73/9295/Gen. dated 23rd June, 1973 and in response thereto vide letter No. 3797/73-7 dated 8th January, 1974 contained in Annexure-R/2/4 the Chief Secretary, Government of Madras stated as follows:

" I am directed to state that the matter referred to in your letter has been enquired into. It is reported that 'Thiruvalargal Seshadri ' and Sundararajan are brothers born to same parents .Seshadri is elder by three years approximately and is working in A.C. Office. Statements from the cousin of 'Thiru S. Sundararajan' and from an old gentleman of the village have been obtained and they are enclosed. If Seshadri is born on 22.8.1934, the other son(i.e.) Sundararajan could not have been born on 2.2.1935. Hence the date of birth as per certified copy of extract from Birth Register(i.e. 13-9-1936, seems to be correct".

Even though Mr. Jayant Das learned Counsel appearing for the Petitioner strenuously urged before me that on the basis of the report given by the Government of Madras, this court should give a declaration in favour of the Petitioner Shri Sundararajan, I feel reluctant to accept this submission because of the following reasons. The report of the Madras Government has been mainly

based on the statement of cousin of Mr. Sundararajan and an old gentleman of the village. The name of the old gentleman has not been mentioned. His statement has also not been filed before this court to examine the same. Cousin of Mr. Sundararajan has not been named. It is not known as to what was the age of the cousin and what nature of statement he had made to the enquiry officer. Again at the cost of repetition, I may say that in the report of the Madras Government nothing has been indicated as to what stood on the way of the enquiry officer to examine the father of the Petitioner Mr. Sundararajan who was the most competent and necessary witness in this regard. Without considering all these important aspects, the Government of Madras have come to the conclusion that the date of birth mentioned in the birth register of Mr. Sundararajan seems to be correct. The word 'seems' sufficiently indicates that the Madras Government is not sure about the position. In such circumstances, I am not prepared to attach any importance to the report of the Madras Government.

15. It was next urged that acceptance of the report of the Madras Government by the State Government of Orissa and its opinion expressed in favour of the petitioner while recommending the case of the petitioner to the Central Government should heavily weigh with the court and hence a decree should be passed in favour of the petitioner. I do not find any substance in this argument, firstly because I have held no importance can be attached to the report of the Madras Government for the reasons stated above and secondly though the State Government had recommended to the Central Government for acceptance of the report of the Madras Government, yet in its counter filed before this court it is stated as follows:

"The above fact would show that the impugned order

of Government of India determining the date of birth of Shri S. Sundararajan (the Petitioner) is neither illegal nor arbitrary and it was made with due application of mind and with reference to materials/evidence(s) submitted by the Petitioner".

From the above quoted facts stated in the counter, it appears that the State Government has taken a stand in the counter which runs contrary to the recommendations already made. Therefore, in such circumstances, I do not feel inclined to attach any weight to the recommendations made by the State Government. Last but not least there are plethora of judicial pronouncements of the Apex Court and various Benches of the Central Administrative Tribunals that a particular Government employee cannot take advantage from both sides. The settled position of law was rightly and fairly not disputed at the Bar. The undisputed position before me was that the Petitioner joined the Indian Administrative Service in the year 1958. According to the stipulations contained in the advertisement and the rules on the subject, the minimum qualification and age of an applicant as on 1st August, 1957 should be 21 years. If the date of birth of the Petitioner is taken as 2nd February 1935 then the Petitioner was aged 22 years and six months as on 1st August, 1957. But if the date of birth is taken to be 13th September, 1936, then as on 1st August, 1957, the Petitioner had not attained the qualifying minimum age of 21 years and by then he was running short by one month and 12 days which would have stood on his way in entertaining an application and permitting him to sit for the competitive examination. Mr. Das learned Counsel for the petitioner contended that judge made law on this subject cannot work out against the petitioner because of the peculiar facts and circumstances of this case namely the Petitioner has been agitating for change of his date of birth

after the amendment to the rules came into force and he was called upon to furnish his date of birth. Be that as it may, the Court cannot loose sight of the fact that the Petitioner has entered into the service while he had not attained the qualifying age if his date of birth is taken to be 13th September, 1936 and therefore, the Petitioner cannot be allowed to take advantage from both sides. Mr. Das learned counsel for the petitioner again contended that as a matter of fact, the petitioner is not taking advantage from both sides because none of his juniors have any grievance on this account. It is not known, whether anybody has any grievance or not but if the Petitioner's age would have been mentioned as 13th September, 1936, then he could not have been eligible to appear at the competitive examination and could not have been taken in 1958 batch and hence some of his juniors at present might have ranked senior to him especially because the Petitioner would have gone to 1959 batch or any time later than 1959. By this the petitioner has undoubtedly already taken advantage at the time of entry and now he cannot be allowed to take advantage from both sides. This is an additional ground for which the prayer of the Petitioner cannot be allowed.

16. Before I conclude, I must say that the observations made by the Jabalpur Bench have no application to the peculiar facts and circumstances of this case which depends mostly on facts which are cleanly distinguishable from the facts of the Jabalpur Case. Every case has to be decided according to its own

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facts and circumstances.

17. In view of the aforesaid analysis of the evidence and discussions made above, I find no merit in this case which stands dismissed leaving the parties to bear their own costs.

Agarwal 15/7/92
15/7/92
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench/15.7.92/K.Mohanty.

