

2

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 168 OF 1993

Cuttack this the 18th day of October, 1994.

Laxmidhar Swain	...	Applicant
	Vrs.	
Union of India & Others	...	Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? *yes*


(D. P. HIREMATH)
VICE-CHAIRMAN

3

4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO:168 OF 1993

Cuttack this the 18th day of October, 1994.

CORAM:-

THE HONOURABLE MR. JUSTICE D.P. HIREMATH, VICE CHAIRMAN.

...

SHRI LAXMIDHAR SWAIN, 61 years,
S/o Late Gadadhar Swain,
At/Po-Jamudiha,
Via- Sajanagarh,
Dist- Balasore.

... ..

APPLICANT

Vrs.

1. Union of India represented
by the Chief Postmaster General,
Orissa Circle, Bhubaneswar,
Dist-Puri.
2. Superintendent of Post Offices,
Balasore Division,
Balasore-756 001,
Dist-Balasore.
3. Sub-Divisional Inspector (Postal),
Raj Nilgiri Sub-Division,
At/Po-Raj Nilgiri,
Dist-Balasore,
PIN-756 040.

... ..

RESPONDENTS

.....

ORDER

D.P. HIREMATH, V.C. The applicant was appointed as E.D.D.A-cum-
E.D.M.C. by the appointing authority ^{on} dated 15. 1. 1965
at Jamudhia Branch Post Office in Balasore district.

4

He applied for that post on 7.1. 1965 and alongwith his application, an attestation form came to be appended which bears the date of attesting officer as 9.1. 1965. It appears that the Inspector who received the application, Annexure-R/1, directed to prepare the appointment letters and place before him by his order dated 8.1. 1965 which could be found at the foot of Annexure-R/1 of his application. In the attestation form, Annexure- R/2 ' his exact date of birth' was shown as '7.6.1926' and on that basis the "present age " was shown as '38 years 7 months and 3 days'. From the date of appointment, he continued to serve as such till he was retired on 13.3.1992. Though he attained the age of superannuation on 6.6.1991 when he completed the age of 65 years, if his date of birth was taken as 7.6. 1926, on account of inadvertance of respondents, he continued for another 9 months after attaining the age of superannuation. It appears, after he was so retired, he made representation to the Superintendent of Post Offices, Balasore by his letter dated 23.6. 1992 that as per the School Leaving Certificate, his date of birth is 7. 5. 1931, which could be verified on the School records and therefore, he was entitled to continue in service till 27.5.1996. Terming this representation as his appeal against his retirement, he stated therein that he is not much

educated and he had studied in Class-V in Sajanagarh U.P. School and at the time of appointment, then Inspector of Post Offices, Balasore who was appointing authority appointed him, by his order dated 14.1.1965 after getting the School Certificate issued by the Headmaster on 15.1. 1965. Xerox copies of the documents were produced by him. Therefore, what he represented was that the appointing authority himself obtained the certificate from the School in which he had studied and in which his date of birth was mentioned as 7.5. 1931. He also referred, therein to a letter said to have been written by the Postmaster Balasore Head Office dated 3.2. 1984 and the reply to it confirms his case. Annexure-R/3 is the reply sent by the Superintendent of Post Offices which only stated that the appeal of the applicant was rejected.

2. With these facts on record, the applicant has now approached this Tribunal with a prayer to quash the order Annexure -2 superannuating him with a direction to the Respondents to correct his date of birth as 7. 5. 1931 in the record and allow him to the benefit of four years of service and also to give him incidental benefits. His sole grievance is that because the postal authorities have acted on

incorrect information with regard to the date of birth, the order of superannuation becomes unsustainable. During the arguments, however, the learned counsel for the applicant has confined himself to a prayer that he may be permitted to make a representation to the superior authority and that direction should be given to consider his representation as principles of natural justice were not observed when he was superannuated and no opportunity was given to him to say about the date of birth on which the respondents were acting.

3. In their counter, the Respondents have reiterated that what the petitioner has represented in his representation as well as in his attestation form clearly made out that he was born on 7.6.1926 and some time later he managed to get a certificate on which he seeks to rely upon and after the appeal was preferred an enquiry was conducted by the Inspector on the directions of the Supdt. of Post Offices and no such record in the school to evidence his date of birth now he wants to project could be available. On his own showing, the petitioner was born on the date he gave in the attestation form. To the other part of the argument, namely opportunity should be given now to make representation, it is argued that practically there is no reason to apply

the principles of natural justice because no notice was required to be given prior to retirement and being in the custody of the transfer certificate for more than 25 years, the petitioner did not avail of it and therefore, there is no failure of the principles of natural justice.

4. A short question, therefore, for my consideration, at this stage is whether the petitioner had adequate opportunity to represent about the correct date of birth according to him.

5. Shri Ramdas, the learned counsel appearing for the applicant referring to Annexure R/2 argued that it is a case of the petitioner that some Inspector got the signature in the attestation form and that he was not aware of the date of birth entered therein. This form is in English and the entries therein are also made against the relevant column in English. The applicant has signed in Oriya under the signature of the attesting Officer. The Respondents have produced Annexure -R/1 which is an application in Oriya wherein the age of the applicant is shown as 38 years and the applicant has stated in his application that he had studied upto Vth standard. Therefore, he could be accredited with adequate knowledge of Oriya though his statement that he does not know English could be accepted. According to Shri Ashok Mishra, if

the Postal Authorities were to rely only on the attestation form, Annexure R/2, then there would have been some scope for the applicant to state that he was not quite aware of what has been written in Annexure-R/2 but when the applicant himself gave application in Oriya indicating that he was 38 years of age on 8.1.1965 that very much coincides with the date of birth given in Annexure R/2. Mr. Mishra, therefore, has very strongly relied on his Form in Annexure R/1 which supports the entries in Ext. R/2 that he was 38 years of age. Therefore, according to him there is absolutely no substance in his present allegation that he was not born on that date. The applicant's counsel is not however, in a position to tell me who exactly wrote the contents of Annexure R/2. According to him the petitioner does not know who filled up the relevant columns in the attestation form. He has also not explained as to who wrote Annexure R/1 which is in Oriya and the applicant does not say who was the scribe of Annexure R/1. Therefore, what Ext. R/1 mentions is quite inconformity with the entries in Annexure- R/2.

6. Now coming to the opportunity that the applicant wants now to plead for to be heard again, the respondents have relied on Annexure-R/4 submitted by the Sub-Divisional Inspector(Postal), Rajnigiri

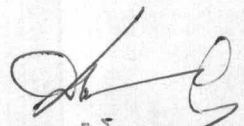
Sub-Division in which the Inspector has stated that an enquiry had been conducted after he was directed to hold enquiry by the Superintendent of Post Offices. Though the petitioner was asked to produce the original certificate, he represented that the same was burnt but refused to say so in writing. The Headmaster of the said School was not able to produce any record with regard to admission of the petitioner to the School as the same was sent to some Court to be produced and was not able to say to which court it was sent. For this reason, he was not in a position to say whether the certificate as per xerox copy, Annexure-A/1 was issued by the School in question. The original is not forthcoming. The applicant's counsel invited my attention to a decision of the principal Bench of the Central Administrative Tribunal in the case of Shri Hiralal Vrs. Union of India (SLR 1987(1) CAT 414) in which the decision of the Supreme Court in the case of Manak Chand Vrs. State of Himachal Pradesh(1976(1) SLR 402) was referred to. The substance of the decision of the Supreme Court was extracted in that decision. The Supreme Court held that a Government servant is entitled to show that the entry made in his service record does not represent

his true date of birth. That is a right which flows from his right to continue in service until he reaches the age of superannuation. He is also entitled to show that the recorded entry, which determines the date on which he attains the age of superannuation does not reflect the true position and that on its misleading basis he is liable to be retired before he in fact attains the age of superannuation. Therefore, according to him, he ought to have been given an opportunity to show cause and satisfy the appointing authority that the date of birth entered in the attestation form was not correct date of birth.

4
7. While considering whether such an opportunity ought to have been given the facts of the particular case cannot be totally ignored as well as the conduct of the person seeking such an opportunity. What is astonishing, in this instant case, is that the applicant had obtained the certificate from the School which is said to have been issued as far back as on 15.1.1965 but never made any representation to the authorities at any time that the date of birth entered or shown in the attestation form is not correct date of birth. Thus, for nearly 26 years, this certificate

though in the custody of the applicant did not see the light of the day and only after he was retired on attaining the age of superannuation, he made an appeal to the Supdt. of Post Offices. While considering whether the Tribunal should give the decision with regard to the date of birth, the facts of the case could not be ignored and whether the applicant be given opportunity to represent, defends on the facts of each case. The very authenticity of the certificate is very much suspicious. That being so, in my opinion, I do not find any infringement of natural justice from the very conduct of the applicant till he was retired. He is not entitled to any of the reliefs as claimed.

8. That being so, no merit in this petition, the same has to be dismissed and is dismissed. No order as to costs.


.....
(D. P. HIREMATH)
VICE CHAIRMAN

Central Admn. Tribunal,
Cuttack Bench/Cuttack/
K.Mohanty/18.10.94.