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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

O. A. NO. 129 of 1994.

Date of decision : June 21, 1994.

Krushna Chandra Dhal ...

Applicant.

Versus

Union of India and another ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

21 JUN 94


(K. P. ACHARYA)
VICE-CHAIRMAN.

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Union of India and another ... Respondents.

For the applicant ... Mr.D.P.Dhalsamant, Advocate

For the respondents ... Mr. Ashok Misra,
Sr. Standing Counsel (Central)

CORAM:

THE HON' BLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HON' BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

ORDER

K.P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the impugned order contained in Annexure-2 and to allow the applicant to continue in service on the basis of the fact that his date of birth is 16th February, 1938.

2. Shortly stated, the case of the applicant is that he has been working as an Extra-Departmental Branch Post Master in Biripatta Branch Post Office in account with Pritipur Sub Office in the district of Jajpur. According to the applicant, his date of birth is 16.2.1938. The Respondent No.2, i.e. the Superintendent of post Offices, Cuttack North Division, vide his

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letter No.B/Genl-15. dated 2.7.1990 asked the applicant to submit his school leaving certificate in reply to which the applicant had submitted the original certificate on 7.3.1990. Respondent No.2 vide his Memo No.B/E.D.-79 dated 27.12.1993 issued orders maintaining that the date of birth of the applicant was 23.8.1925 and ordered his retirement on superannuation with immediate effect and accordingly relieved the applicant in January, 1994. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that the case put up by the applicant is not worthy of credence and certain manufactured documents have been made used by the applicant to substantiate his contention that his date of birth is 16.2.1938. It was further maintained by the respondents that in view of the statement made by the applicant contained in Annexure-R/1, principles of estoppel will arise against the applicant and therefore, his case should be dismissed in limine.

4. We have heard Mr.D.P.Dhalsamant, learned counsel for the applicant and Mr.Ashok Misra, learned Senior Standing Counsel(Central), for the respondents. Mr.Dhalsamant, relied upon the School leaving certificate granted by the Headmaster, Kantabania U.P.School on 20.7.1957 certifying that the applicant was admitted to the said School on 6.4.1947 and left the School on

30.10.1948. The date of birth of the applicant as recorded in the said certificate is 16.2.1938. Strong reliance was placed by Mr. Dhalsamant on this document and it was contended by Mr. Dhalsamant that in view of the unimpeachable document the Bench should hold that the date of birth of the applicant is 16.2.1938. In order to satisfy our conscience we had called upon the Headmaster of the said School to come with the relevant register to find out that whether the certificate granted vide Annexure-1 was a genuine document or not. Since the Headmaster is on leave the Asst. Teacher of the said school namely Shri Narendra Kumar Samal had appeared today as witness and his statement was recorded. The Asst. Teacher stated in his deposition that all registers including the Admission Register, Transfer Register, Attendance Register till the year 1976 are not to be found in the Office of the Headmaster of the said School. The said witness further stated that he along with the Headmaster had searched for the Registers. Since the witness stated so, we do not have any opportunity of going through the relevant register to find out whether the document, Annexure-1 was genuine or not. But the fact remains that the applicant admittedly entered into service in the year 1957 and further admitted case is that by then the applicant was in possession of the original of Annexure-1 i.e. the school leaving certificate containing the date of birth of the applicant to be 16.2.1938.

No explanation at all has been offered as to why the

certificate was not filed along with the application for appointment and/or a wrong date of birth was given by the applicant in his application. The applicant is not an illiterate person. That apart, Mr. Ashok Misra invited our attention to the contents of Annexure-R/1 which is dated 23.8.1957 and therein it is stated on 23.8.1947 that his (applicant's) age was 32 years which takes one to the year 1925 to be the date of birth of the applicant. This ^{irreconcilable} ~~irreconcilable~~ discrepancy heavily weighs with us especially because no explanation has been offered as to why the applicant did not furnish the correct date of birth according to the school leaving certificate. We, therefore, do not feel inclined to place implicit reliance on Annexure-1 while taking into consideration the contents of Annexure-R/1 for which principle of estoppel arises against the applicant. In this connection, we would rely upon a judgment of the Hon'ble Supreme Court reported in 1994(26)ATC,828, Secretary & Commissioner, Home Department and others vrs. R. Kirabakaran. In the said case Their Lordships have been pleased to rule that unless there ^{is} ~~is~~ conclusive piece of evidence to be relied upon to order change of date of birth neither the High Court nor the Tribunal should pass any orders directing change of date of birth. It has been further ruled that the High Court and the Tribunal should be very slow to interfere in the absence of conclusive proof of evidence. In the circumstances stated above, and especially in view of the

fact that we do not feel inclined to place implicit reliance on Annexure-1, we find that the case of the applicant being devoid of merit cannot be allowed.

5. Thus, this application stands dismissed leaving the parties to bear their own costs.

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MEMBER (ADMINISTRATIVE)
21 JUN 94

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21.6.94
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VICE-CHAIRMAN.

Central Admn. Tribunal,
Cuttack Bench, Cuttack.
June 21, 1994/Saranghi, Sr.P.A.