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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK.

Original Application No. 392/94.
Cuttack, this the 24th day of June, 1997

Bana Bihari Das

Applicant.

Vrs.

Union of India and 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 Tribunal or not? No

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.392 OF 1994.

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HONOURABLE SRI SOMNATH SOM, VICE-CHAIRMAN

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Bana Bihari Das,
aged about 57 years,
son of late Prana Krushna Das,
of village/PO-Barah Damodarpur,
Via-Singpur,
Dist.Jajpur,
working at present as EDBPM
at Barah Damodarpur Branch Post Office
under Singhpur S.O
Dist.Jajpur

Applicant.

-versus-

1)Union of India,
represented by Chief Post Master General,
Orissa Circle, Bhubaneswar,
District-Khurda.

2)Superintendent of Post Offices,
Cuttack (North)Division, Cuttack.

3)Asst.Superintendent of Post Offices,
Jajpur, Dist.Jajpur

Respondents.

Advocates for applicant - S.K.Dey,
B.B.Patnaik &
B.Mohapatra.

Advocate for respondents - Mr.Akhaya Ku.Misra.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN.

In this application, the petitioner, who was working as Extra-Departmental Branch Post Master (EDBPM, for short) at Barah Damodarpur E.D.Branch Post Office, has prayed for quashing the order dated 23.5.1994 retiring him from service on 6.7.1994. He has also prayed for a direction

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to the respondents to treat 19th December, 1938 as his date of birth.

2. The petitioner joined service on 21.12.1961 as EDBPM of Barah Damodarpur E.D.Branch Post Office. His case is that according to the school leaving certificate issued by Headmaster, Hatasahi Upper Primary School, on 13.4.1953, his date of birth has been shown as 19.12.1938. This certificate is at Annexure-1. He has also stated that in the inspection reports submitted by Sub-Divisional Inspector (Postal) in three years 1990, 1991 and 1992 his date of birth has been shown as 19.12.1938. These inspection notes are at Annexures 2, 3 and 4. According to him, the respondents suddenly issued him the impugned retirement notice at Annexure-5 on 23.5.1994 proposing to retire him on 6.7.1994. He immediately represented on 28.5.1994 vide Annexure-6. He sent a further representation on 27.6.1994 (Annexure-7). He states that according to Rule 15 of E.D.A. Conduct & Service Rules, E.D. Agents should be informed about their retirement at least six months prior to the date of superannuation. But in this case, the notice has been issued to him barely one month and ten days before the date of retirement. According to him, in all the official records, his date of birth has been shown as 19.12.1938 and there is no basis on which the respondents should have taken 7.7.1929

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as his date of birth, going by which he was issued the impugned order retiring him from 6.7.1994. He has also alleged that for changing his date of birth from 19.12.1938 to 7.7.1929, no notice was given to him. Lastly he has said that in the gradation list issued in letter dated 28.6.1993 (Annexure-8) against serial No.139, his date of birth was shown as 7.7.1939. It has been subsequently corrected to 7.7.1929 without any notice to him.

3. Respondents in their counter have submitted that at the time of his appointment, the applicant has submitted the descriptive roll (Annexure-R/2) showing his date of birth as 7.7.1929 and he has also given a declaration that the details furnished by him are correct. Prior to his joining, he was examined by the doctor on 17.12.1961 who has noted that the applicant was aged 32 years at that time.

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This, according to the respondents, fits in with his date of birth being 7.7.1929. As regards the date "19.12.1938" recorded in the three inspection reports, the respondents have taken the stand that the inspection reports are not conclusive proof of the date of birth. The purpose of the report is to check up the work and conduct of particular persons working in the office inspected and these details are incidental and are subject to further verification and correction. The respondents have also pointed out that by

mistake in the seniority list referred to earlier the applicant's date of birth was shown as 7.7.1939 instead of 7.7.1929. As soon as this error, which was typographical in nature, was detected, the respondents issued a correction slip. On the above grounds, the respondents have opposed the relief claimed in this application.

4. I have perused the record and have also heard Sri S.K.Dey, the learned lawyer for the applicant, and Sri Akhaya Ku.Misra, learned Additional Standing Counsel appearing on behalf of the respondents.

5. The school leaving certificate showing applicant's date of birth as 19.12.1938 was issued on 13.4.1953. If this was in possession of the applicant, there is no reason why at the time of his initial appointment on 21.12.1961, more than eight years after issuing of this certificate, the applicant had mentioned 7.7.1929 as his date of birth in the descriptive roll. It has been submitted by the learned lawyer for the petitioner that the descriptive roll was only signed by the applicant, but it was filled up by the departmental authorities. If actually the date of birth of the applicant is 19.12.1938 and the school leaving certificate was in his possession in 1953, the applicant should have come out with a reasonable explanation as to why he did not indicate the correct date of birth in

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would
the descriptive roll and why the respondents on their own
insert an arbitrary date 7.7.1929 as the applicant's date of
birth. In view of this, it must be held that the date of
birth 7.7.1929 was indicated by the applicant. This gets
further support from the declaration signed by the applicant
at the bottom of the descriptive roll. Even though this
declaration has the heading as "Marriage Declaration" the
wordings of the declaration make it clear that this has
reference to the information under various heads provided by
the applicant as recorded in the descriptive roll. If the
date of birth of the applicant was actually 19.12.1938,
there was no reason why he would have certified 7.7.1929 as
his correct date of birth by giving the declaratiion at the
bottom of the descriptive roll. It is also to be noted that
during his entire service career, the applicant has never
raised this issue before the departmental authorities. So
far as the inspection reports are concerned, these are
obviously not records on the basis of which the date of
birth of the applicant can be determined and mentioning
19.12.1938 as the date of birth in the three inspection
reports does not in any way go to prove the case of the
applicant. As regards the entry in the gradation list, it is
seen that the gradation list was issued on 28.6.1993 and was
widely circulated. In this gradatioin list against serial

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no.139 the date of birth of the applicant was shown as 7.7.1939. The learned lawyer for the applicant stated that even though the applicant was aware of this wrong date of birth mentioned in the gradation list, he did not object to this because this wrong date of birth would have resulted in prolonging his service for another six months. The respondents, on the other hand, have stated that this was a typographical error so far as the year is concerned. Instead of 7th July 1929, by mistake 7.7.1939 was typed. This also tallies with the date mentioned in the descriptive roll which has been discussed earlier. The respondents have further submitted that as the correction related to remedying a typographical error, it was not incumbent on them to issue notice to the applicant before making the correction. On a consideration of the relevant facts, it seems to me that the explanation of the respondents is more rational. The date originally mentioned in the gradation list was obviously a typographical mistake and the respondents were within their rights to correct the same without any notice to the applicant. No new evidence was taken by the respondents for making correction of this typographical error. No new conclusion was arrived at. Therefore, no notice was required under law to be given to the applicant. As I have earlier mentioned, in his entire

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service career, the applicant has never moved the departmental authorities for correction of his date of birth. It has been held by the Hon'ble Supreme Court that prayers for changing the date of birth shortly before the date of superannuation should not ordinarily be entertained. In this case, in the face of the date given in the descriptive roll and the declaration given by the applicant at the time of his initial entry in service, I hold that the applicant has not been able to make out a case that his date of birth is 19.12.1938.

6. In the result, the Original Application is held to be without any merit and is dismissed, but, under the circumstances, without any order as to costs.

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