

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 12 of 1995

Cuttack this the 9th day of February, 1996

Laxmikanta Mohanty ... Applicant(s)

Versus
Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

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

4.5.1.1
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 12 of 1995

Cuttack this the day of February, 1996

C O R A M:

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

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Laxmikanta Mohanty, aged about 58 years, Son of Late Gourishyam Mohanty, Ex-Postman of Dailibati, P.O:Charishree, Vda:Gabakunda, Dist:Puri

...

Applicant

By the Advocate: M/s. A. Deo

B.S. Tripathy
M.P.J. Ray

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1. Union of India, represented by its Secretary in the Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi
2. Chief Postmaster General Orissa, Circle, Bhubaneswar Dist:Khurda
3. Senior Superintendent of Post Offices, Bhubaneswar Division Bhubaneswar, Dist:Khurda
4. Accounts Officer (Pension) Office of the Deputy Director of Accounts, Cuttack-5, Dist:Cuttack

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Respondents

By the Advocate: Mr. Ashok Mishra,
Standing Counsel (Central)

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O R D E R

MR .H .RAJENDRA PRASAD, MEMBER (ADMN) : The applicant, Shri Laxmikanta Mohanty, was serving in Old Town Post Office, Bhubaneswar, as Postman. His date of birth had been recorded as 27.4.1936 in the Service Book opened on his entry into service.

2. A complaint is stated to have been received by the authorities that the real date of birth of the applicant was not as noted in the record, but that he was born in January, 1925. The matter was thereupon investigated in course of which the applicant was called upon to produce his certificate of education on 24.1.1991. The applicant is stated to have replied that he did not possess any certificate of education, but furnished the names of Schools where he had received education. The authorities then addressed the Head-masters of the two schools whose names had been given by the applicant to ascertain his real date of birth. The Headmasters confirmed that his date of birth was 9.1.1925 as was found recorded in the relevant admission registers. The applicant is also stated to have admitted this date, i.e., 9.1.1925, as his true date of birth.

3. Thus the official who was actually to retire on 8.1.1983 continued in service till 23.5.1991 when he was ordered to retire after the mistake in the date had been reported, enquired into and rectified.

4. The applicant thus continued in service for 8 years more than what was his due. The D.G. Posts ordered

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that the excess service rendered by the official beyond the due and normal date of his retirement was to be treated as re-employment and that the ^{said} excess period would not count for qualifying service for purposes of pension etc., since he was found to have continued in service unauthorisedly beyond his entitlements.

5. Consequent to this order, the respondents took action to regulate his pay for the excess period of service in accordance with the Government of India, Ministry of Finance O.M. No.8(34)-Estt.III/57 dated 25.11.1958, 31.3.1960 and related instructions. It was revealed that the applicant had received a total of Rs.59,807.80 in excess of his entitlement during the period of his extended service. This amount was ordered to be recovered from the dearness relief of the pensioner. The order of recovery was stayed by this Tribunal on 9.1.1995.

6. The grievance of the petitioner in this Original application is that his date of birth was changed by the authorities unilaterally and without his knowledge; that the recovery is therefore illegal and arbitrary; that the orders passed by the D.G.Posts treating the excess period of service as re-employment do not call for any recoveries to be made; that the recovery violates the principles of natural justice; and that he was not responsible for the entry of the wrong date of birth in his service book.

7. The respondents in their counter-affidavit state the facts which are broadly as given above. They

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produced copies of the admission registers furnished by the concerned school authorities. It is also disclosed that the applicant himself, on a previous occasion, gave his date of birth as 9.1.1925, while applying for leave in 1969. The respondents next state that the date of birth was changed with the full knowledge of the applicant after he had admitted the correct date of his birth during the inquiry into the matter on the basis of the details of the schools attended by him.

8. In the light of the facts revealed from the record, it is apparent that the applicant was not unaware of his real date of birth, and that he was also aware that his continuation in service beyond 8.1.1983 was therefore incorrect. The evidence produced by the Headmaster of concerned schools where he received education also goes against his contentions. While it is true that a heavy recovery would impose considerable strain on the financial resources of a Group C employee, one cannot see how this can be avoided, however painful it might prove to be. It is to be noted that during his 'extended' service, the applicant had received the pay, allowances and increments. The basic flaw in his argument is that he was unaware of the proposed change in the date of birth which had become inescapable in the light of the facts disclosed by the respondents. It is also seen that the change was made fully with his knowledge. Under the circumstances the relief claimed by him is

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not admissible and cannot be granted. If the authorities had wrongly fixed his pay owing to inadvertence or their own mistake, the matter would have been different and some consideration could have been extended to him. ^{However, that} is not seen to be the case, the excess service having been the result entirely of the applicant's own acts of commission. The applicant, it has to be held, had full knowledge of his own date of birth and also the incorrect entry of the same made in the Service Book.

9. The facts and issues of the cases cited by the applicant (AIR 1965 SC 81) and (AIR 1967 SC 1269) (wrongly cited by the applicant) are different from the facts as related to this case and therefore, not applicable to it.

10. The application is to be disallowed and is hereby disallowed. No costs.

1.5.1.1
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

09 FEB 96.

B.K.Sahoo//