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CAT (PROCEDURE) RULES

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 370 OF 1995
Cuttack, this the 28th day of June, 1996

Shri Durga Charan Rout

...

Applicant

Vrs.

Union of India & others

....

Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

A.K.C.
(A.K.CHATTERJEE)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.370 OF 1995
Cuttack, this the 28th day of June, 1996

CORAM:

HONOURABLE SHRI JUSTICE A.K.CHATTERJEE, VICE-CHAIRMAN
(Calcutta Bench)

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Shri Durga Charan Rout,
59 years,
son of late Sanatana Rout,
Village-Kundi, Mahanga,
District-Cuttack,
at present working as E.D.D.A.,
Kumuda Jaipur E.D.S.O.

... **Applicant**

By the Advocates

M/s A.K.Misra &
J.Sengupta.

-versus-

1. Union of India, represented through
Secretary, Government of India,
Department of Posts,
Daktar Bhawan,
New Delhi.
2. Chief Post Master General,
Orissa Circle, Bhubaneswar.
3. Sr. Superintendent of Post Offices,
Cuttack North Division,
Cuttack.
4. S.D.I.P. Salipur,
Cuttack

By the Advocate

O R D E R

A.K.CHATTERJEE, VICE-CHAIRMAN

The applicant is an Extra Departmental Delivery Agent having joined the service on 30.4.1969 and a notice dated 7.7.1995 was served upon him whereby he has been asked to retire on 17.7.1995 on the basis that his date of birth is 18.7.1930. The applicant contends, relying upon a certificate granted by the authorities of a school where he was a student for sometime, that he was born on 18.7.1936 and as such he should continue in service for six years more beyond 17.7.1995. In the circumstances, the instant application has been filed to quash the notice dated 7.7.1995 and for other appropriate reliefs. The applicant had also made a representation on 11.7.1995 asserting that his date of birth was in fact 18.7.1936, but no action upon such representation has been taken.

2. The respondents in the reply contend that the date of birth of the applicant was shown as '18.7.1930' in the gradation list dated 27.8.1993 which was duly circulated to all concerned and the applicant raised no objection to the date of birth as recorded therein. It was also contended that after receipt of the notice of the instant application, enquiry was made in the school which was supposed to have granted the certificate on which the applicant relies and it was learnt that the relevant school register was stolen long ago.

3. The applicant has come up with a rejoinder denying that the gradation list was circulated or it was ever

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brought to his knowledge and accordingly it was not possible for him to raise any objection to the date of birth as recorded therein.

4. Regarding the certificate of the school it seemed that it was incapable of verification as the school authorities have reported loss of the relevant register. Although this is a matter over which neither the applicant nor the respondents had any hands, still the broad fact remains that the certificate relied upon by the applicant is a document the genuineness of which could not be checked and in such situation, it may not be safe to place reliance on this document particularly in the facts and circumstances of the present case.

5. A perusal of the gradation list undoubtedly reveals that the age of the applicant as noted therein at serial No.355 tallies with that indicated in the notice of superannuation dated 7.7.1995 and if it is found that this gradation list duly came to the knowledge of the applicant soon after it was published, but still he chose to remain silent and decided to ventilate his grievances about it for the first time only after receipt of the notice of superannuation, then certainly it would weaken his case to a considerable extent. The applicant, however, contends in the rejoinder filed by him that the gradation list was never brought to his knowledge and as such it was not possible for him to raise any objection about the date of birth as recorded in it. A reference to the gradation list would

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show that it was distributed to all the concerned officials and therefore, it may be held without any fear of error that it was duly brought to the notice of the applicant when it was published in 1993, but he preferred to remain silent over the date of birth as recorded therein. The learned counsel for the applicant, however, contends that under the Rules, gradation list has to be shown to all the officials whose particulars are entered in the list and their signature should be obtained thereon as a token of acknowledgement of their scrutiny of its contents. The learned counsel for the applicant was given an opportunity to produce the Rule spoken of by him which, however, was not produced, but a letter by the Superintendent of Post Offices of another Division, namely, Keonjhar Division dated 16.5.1995 addressed to all concerned officials, together with gradation list of Extra Departmental Agents of ^{that} Keonjhar Division corrected upto 1.3.1995 was produced. This letter by the Superintendent of Post Offices of Keonjhar Division indicated that the Postmaster to whom the letter was addressed was requested to send a certificate to the effect that the gradation list of Keonjhar Division corrected upto 1.3.1995 has been circulated among all the staff of his office and their signature obtained against their name in token of having seen his/her particulars. Now it does not appear that this certificate was required pursuant to any Rule in this regard and even if so, such Rule was in force when the gradation list in question in the present application was circulated sometime in August, 1993. Neither in the Original

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Application nor in the rejoinder the applicant had stated about any Rule requiring the signature of Extra Departmental Agents to be obtained on the gradation list and this question having been raised only for the first time at the time of hearing of the application, naturally the Respondents had no opportunity to counter the same. In such circumstances, it must be held, as already observed, that the applicant was duly aware of his particulars noted in the gradation list which was distributed not only to the concerned officials but even to the Union of Extra Departmental Agents. The unexplained silence of the applicant in such situation over all these years regarding the date of birth as noted in the gradation list touches the root of his case.

6. Along with the rejoinder the applicant has also filed a certificate of extract from the original record of birth maintained by the Registrar of Births and Deaths. This certificate was obtained only on 20.10.1995, that is to say, ~~months~~ after the Original Application was filed and it reads that the information stated therein has been taken from the record of birth which is in the Register for 1995. It appears that the birth was registered only on 4.9.1995 which was also ^{about} a couple of months after the Original Application was filed. In such circumstances, this certificate hardly proves the case of the applicant for the obvious reason that weight to such documents is given only if the birth is recorded contemporaneously with the event.

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7. It appears that for recording the birth in the Register, the applicant had made an application before the competent authority and an enquiry was held by a Magistrate with the help of the police and the report of the police indicated that the applicant was born on 18.7.1936. The basis of such finding in police enquiry has remained obscure and therefore, I am not in a position to attach any importance to it.

8. Considering the totality of circumstances in all its bearing, it must be held that no interference by this Tribunal, as desired by the applicant, is called for on this application filed by him for rectification of date of birth only on the eve of his retirement.

9. The application is, therefore, rejected. No order is, however, made as to costs.

A.K. Chatterjee
28.6.86.
(A.K.CHATTERJEE)
VICE-CHAIRMAN

A.Nayak, P.S.