

7

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.  
ORIGINAL APPLICATION NO. 423 OF 1996  
Cuttack, this the 26th day of May, 1999

Balei Sethi ..... 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*

*G. NARASIMHAM*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*S. Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*26.5.99*

8  
8  
CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 423 OF 1996  
Cuttack, this the 26th day of May, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....  
Balei Sethi, aged about 57 years,  
son of late Banchhanidhi Sethi,  
At-Karamarga, PO-Konark, Dist.Puri ...Applicant

Advocates for applicant - M/s B.K.Nayak  
D.K.Mohapatra  
A.K.Mohapatra.

Vrs.

1. Union of India, represented through Director General of Post Offices, Department of Posts, Dak Bhavan, New Delhi.
2. Chief Post Master General, Orissa, At/PO-Bhubaneswar, District-Khurda.
3. Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar.
4. Sub-Divisional Inspector (P), Nimapara Sub-Division, Nimapara, Pin-752 106..... Respondents

Advocate for respondents - Mr.A.K.Bose  
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed that the order dated 2.5.1996 (Annexure-4) rejecting his representation and the superannuation notice dated 28.5.1996 at Annexure-6 should be quashed and the respondents should be directed to continue the applicant in the post of E.D.M.C. till he attains the age of superannuation on the basis of his date of birth as 6.12.1940 as per his School Leaving Certificate.

*S.Som*

9 (6)

2. The case of the applicant is that he joined as E.D.M.C. on 1.7.1963 and has been continuing as such since then. He learnt from a reliable source that his date of birth has been wrongly recorded in the service record as 1.7.1931 instead of the correct date of birth as 6.12.1940 as per his School Leaving Certificate at Annexure-2 and horoscope. Sub-Divisional Inspector (P), Nimapara (opposite party no.4) asked the petitioner to intimate his date of birth for preparation of gradation list and accordingly on 20.1.1996 the petitioner made an application to Superintendent of Post Offices to record the date of birth as per School Leaving Certificate. This application is at Annexure-1. Superintendent of Post Offices, Bhubaneswar (respondent no.3) directed opposite party no.4 to enquire into the matter and in the enquiry report it was mentioned that the applicant's name is Balei Sethi whereas in the School certificate the name has been mentioned as Balmika Sith. The petitioner swore an affidavit before the Executive Magistrate, Nimapara, that Balei Sethi and Balmik Sethi are one and the same person. Copy of the affidavit is at Annexure-3. On 2.5.1996 Superintendent of Post Offices informed the petitioner in his letter at Annexure-4 that his application dated 20.1.1996 for change of date of birth has been considered and rejected, but no reasons for rejection have been communicated to him. The petitioner made a further representation to Director of Postal Services in his letter at Annexure-5 and while this representation was pending the applicant received letter dated 28.5.1996 intimating that he would be retired from the post of E.D.M.C. on 30.6.1996 taking his date of birth as 1.7.1931. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

*S. J. M.*

3. The respondents in their counter have stated that in letter dated 28.5.1996 at Annexure-6 to the O.A. the applicant was intimated his date of superannuation on 30.6.1996 taking his date of birth as 1.7.1931 as per record in the attestation form. The applicant had come up only on 20.1.1996 for changing his date of birth from 1.7.1931 to 6.12.1940 and this has been rejected by respondent no.3 in his order at Annexure-4. The respondents have stated that according to the date of birth in the Attestation Form and the Gradation List published on 1.7.1992 the applicant's date of birth was recorded as 1.7.1931. It has been further stated that in the Attestation Form submitted at the time of appointment of the applicant on 5.8.1963 the applicant had indicated in column 7 that he was 32 years of age as on 1.7.1963. At that time the applicant had not submitted his horoscope or the School Leaving Certificate. As regards the School Leaving Certificate it is stated by the respondents that this has been issued in the name of one Balmika Sith. The applicant has taken the stand that Balei Sethi and Balmika Sethi are the same person. In the affidavit to that effect sworn by the applicant he has stated that he would be known as Balei Sethi with effect from 6.4.1996. The stand of the applicant is therefore held as contradictory. Lastly, it is stated that according to the instructions issued under FR 56 a person seeking change of date of birth must make an application within five years of his joining service. But in this case the applicant has come up with the prayer for changing his date of birth only on 20.1.1996, i.e., a few months before his superannuation as per the date of birth 1.7.1931 in the official record and therefore, such request could not be entertained. On the above grounds, the respondents have opposed the prayer of the applicant.

*J. Som.*

4. In this case the learned counsel for the petitioner had filed MA No.38 of 1999 for fixing an early date of hearing and accordingly in order dated 1.2.1999 the matter was posted for hearing on 31.3.1999. On that date the learned counsel for the petitioner was absent nor was any request made on his behalf seeking adjournment. In view of this, we have heard Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and perused the records, and the hearing was concluded. It was further indicated that the learned counsel for the petitioner, if so advised, may file written note of submission with copy to the other side within ten days and the matter was listed under the heading "To Be Mentioned" on 12.4.1999. On that day written note of submission was not filed. Therefore, further one week's time was allowed as a last chance to file written note of submission on behalf of the petitioner and the matter was posted to 19.4.1999. As by 19.4.1999 written note of submission was not filed, the matter was posted for delivery of orders without further awaiting for the written note of submission.

5. The admitted position between the parties is that the applicant joined as E.D.M.C., Kurujanga B.O. on 1.7.1963. From Annexure-2 enclosed to the counter it is seen that at the time of his joining the applicant filed Attestation Form on 1.7.1963 indicating against column 7 that he is 32 years of age. He also certified that the information furnished on this and other items in the Attestation Form are true. Basing on this, the respondents have taken his date of birth as 1.7.1931. This date of birth was also shown in the gradation list which was published on 1.7.1992. The applicant came up with a representation for changing his date of birth only on 20.1.1996 at Annexure-1, i.e., barely five months before his date of superannuation according to the date of

*S. S. S.*

birth as recorded. The School Leaving Certificate enclosed by the applicant showing his date of birth as 6.12.1940 has been issued only on 5.1.1996. As the applicant had himself indicated at the time of his initial appointment on 1.7.1963 that he is 32 years of age and as accordingly in the gradation list published in 1992 his date of birth was shown as 1.7.1931 there is no satisfactory explanation why he did not come up earlier for changing his date of birth. In a large number of cases Hon'ble Supreme Court have held that request for correcting the date of birth made at the fag-end of the service career is to be generally ignored. Note 6 under FR 56 also lays down that when an employee wants to correct his date of birth, such prayer must be made within five years of his joining service. In this case, the prayer has been made, as earlier noted, barely a few months before the date of superannuation as per the original date of birth noted in Government record. As regards the School Leaving Certificate, the name of the student mentioned in this certificate is Balmika Sith and not Balei Sethi. The applicant has stated and filed an affidavit that Balei Sethi and Balmika Sith are the same person, but the discrepancy with regard to the surname has not been explained. In view of this, the departmental authorities have done the correct thing by not relying on this school leaving certificate. The applicant has also not come up with any reasonable explanation as to why at the time of his joining on 1.7.1963 he had indicated that his age is 32 years when, according to his averments in the O.A., his age would have been little over 23 years. In consideration of all the above, we hold that the applicant has not been able to make out a case for changing his date of birth from 1.7.1931 to 6.12.1940.

6. In the result, the O.A. is held to be without any merit and is rejected but without any order as to costs.

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

(SOMNATH SOM)  
VICE-CHAIRMAN

26.5.99