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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.615 OF 1996
Cuttack, this the 11th day of December, 2002

Shri Baishnab Charan Nayak 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 ? Yes


(B.N.SOM)
VICE-CHAIRMAN

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ORIGINAL APPLICATION NO.615 OF 1996
Cuttack, this the 11th day of December, 2002

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

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Baishnab Charan Nayak, Extra Departmental Branch Post
Master(EDBPM) At/Po. Kandarsingha
Via:Parjanga, dist. Dhenkanal. **.....Applicant**

Advocates for applicant - M/s C.R. Misra & U.C. Beura, H.K. Mallick
Vrs.

1. Union of India, represented through Secretary, Ministry of Communication, Department of Post, Govt. of India, New Delhi.
2. Chief Post Master General, Orissa Circle, At/Po. Sachibalaya Marg, Bhubaneswar, Dist. Khurda.
3. Superintendent Post Offices, Dhenkanal Division, At/Po and Dist. Dhenkanal
4. Sub-Divisional Inspector (Postal), Kamakhya Nagar, Dist. Dhenkanal.
5. Head Post Master, Dhenkanal Head Post Office, At/Po & Dist. Dhenkanal.

.....Respondents

Advocate for the respondents - Mr. A.K. BOSE, SR.S.C.

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This O.A has been filed by the applicant Shri Baishnab Charan Nayak, formerly EDBPM, Kandarasingha Branch Office, praying for quashing of Memo No.A 298/PF dated 8th August 1996 (Annexure-6), issued by the Superintendent of Post Offices, Dhenkanal Division (Respondent No.3), by virtue of which the Applicant was ordered to retire on superannuation w.e.f. 30.01.1996. The applicant has also prayed for a direction to Respondent No.3 to allow him to continue in the said post of EDBPM till 31.1.2000.

2. The case of the applicant is that he was appointed as EDBPM, Kandarasingha Branch Office, on 22.10.1956. He had represented to Respondent No.3, vide his representation dated. 22.9.95, to alter his date of birth to 31.1.1935 from 31.1.1931. Respondent No.3, vide Annexure 2, asked him to submit the original copy of the transfer certificate, issued

✓ by the Headmaster of the school where he studied for verification at his end. The said Transfer Certificate, dated 22.12.1990, copy of which is at Annexure-3, was submitted to Respondent No.3 on 16.10.1995. He further averred that Divisional Gradation List of EDBPMs was served on him on 21.10.1996, wherein his date of birth was recorded as 31.1.1935. Notwithstanding this, Respondent No.3, vide Annexure-6, dated 8.8.96, ordered his retirement w.e.f. 30.1.1996 on superannuation. The charge of the office of EDBPM, Kandarasingha Branch Office, was taken over from him by Respondent No.4 on 19.08.1996, without giving any opportunity to him to represent his case. Thus the applicant has stated that, he was illegally and arbitrarily forced to retire from service 3 years before the date of his retirement.

3. The Respondents have refuted the allegations made by the applicant. Their case is that when the applicant was appointed as EDBPM, Kandarsingha Branch Office, on 22.10.1956, his descriptive particulars were collected through the Overseer of Mails, Angul, wherein the date of birth of the applicant was written as 31.1.1931. The applicant had put his signature and also his finger prints on the descriptive roll in acceptance.

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Subsequently, when the Department took a decision in 1990 to prepare the service particulars of ED officials, they did not find School Leaving Certificate of the applicant, in the personal file, and he was asked to submit this document in support of his date of birth as recorded in the descriptive particulars (Annexure-R/1). The applicant, instead of submitting his School Leaving Certificate, submitted Transfer Certificate No.20 issued by the Chendipada High School 22.12.1990, which was found to be bearing several corrections, overwriting, of the date of birth, date on which he left the School, and the date on which the transfer certificate was issued. Having noticed these shortcomings in the transfer certificate, the matter was remitted for enquiry, and on verification, it ^{revealed} ~~revealed~~ that the transfer certificate No.20 was not genuine. This fact was also confirmed by the then Headmaster of that School, vide his letter dated 10.8.1996 (Annexure-R/4). The Head Master of that School also forwarded a copy of the result sheet issued by the Utkal University in respect of the candidates who had appeared at the Annual Examination in 1954 from Chendipada High School, which included the name of the applicant against Roll No.2466 recording his date of birth as 31.1.1931.

On receipt of these documents from the Headmaster, Chendipada High School, the respondents were satisfied that "31.1.1931" was the correct date of birth of the applicant and thereafter an order was issued on 8.8.1996 retiring the applicant from service w.e.f. 31.1.1996 on superannuation.

4. Mr. H.K. Malik, learned counsel appearing for the petitioner, during hearing, submitted that the applicant was denied the benefit of natural justice, as he was retired without serving any notice on him. The order of retirement was issued on 19.8.1996 and the charge of the office was taken over by the Overseer of Mails on 27.8.1996.

5. Mr. A.K. Bose, Senior Standing Counsel, appearing for the respondents, stated that the plea of the applicant that he was not given opportunity before he was ordered to retire from service, is devoid of merit. The retirement of officials in Govt. Departments, including those working as Extra Departmental Agents, is notified in the rules, which are statutory in nature. In this circumstance, the question of affording reasonable opportunity to the applicant does not arise. The fact of the matter is that the applicant had declared at the time of his appointment

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as EDBPM that his date of birth was 31.1.1931 and he had never disputed that till 1995. Thereafter he produced a Transfer Certificate from his school which, on inquiry, was found to be a forged one. On the other hand, the Department, through inquiry with the School authorities, found out the date of birth as given by Utkal University being 31.1.1931. In the face of this unassailable evidence, the Application deserves to be rejected.

6. I have carefully gone through all the records submitted before me by the Applicant and the respondents, the oral submissions made by both the Ld. Counsels during hearing and all facts and circumstances of the case.

7. The procedure regarding carrying out change in date of birth has been well established. It is also seen that the Respondent-Department had developed a procedure years back for maintaining the service records of its ED Agents by preparing descriptive particulars which included date of birth, personal marks, educational qualification, finger prints and signature. This document is also authenticated by an accredited representative of the Department, namely, Overseer of Mails in charge of the area. The service benefits of the Extra Departmental Agents are

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regulated on the basis of these service particulars. This procedure has been accepted by all the ED agents and had not been questioned ever. In this case also, the applicant has not questioned the descriptive particulars signed by him and attested by the Overseer of Mails of that area. The applicant, in this case, has tried to correct his date of birth recorded in 1956, with the help of the particulars contained in transfer certificate issued by his erstwhile school. The need for depending on the particulars contained in the transfer certificate issued by the school would have arisen only in the following situations:-

- (i) If the applicant's date of birth was not available with Utkal University, which had recorded his date of birth in 1954, on the basis of his claim certified by his school while conducting the matriculation examination;
- ii) If the Transfer Certificate recording his date of birth was not called in question.

In this case, the Transfer Certificate submitted by the applicant (Annexure 3) was found to be not a genuine one bearing overwritings and corrections of the date of birth, the date on which he had left school, the

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date up to which he had paid dues to the school etc. The Transfer Certificate at Annexure-3, produced by the applicant, was also refuted by the Headmaster of the school, vide his letter at Annexure R/4 and the latter had produced a copy of the mark sheet issued by the Utkal University, notifying the result of the Annual Matriculation Examination 1954, in respect of the candidates of Chendipada High School, where the date of birth of the applicant was recorded as 31.1.1931.

8. In deciding the present Application the issues to be addressed are - which is the most authentic document for accepting date of birth of an employee other than the birth certificate issued by a Municipal authority; whether an employer is legally bound to accept any prayer for altering the date of birth of an employee; and is there any limitation in submitting such a prayer ? For answering these issues, I would like to refer to the case of Puspa Rani Chakrabarty V. Allahabad Bank, 2000(1) SLR (Calcutta) 795, wherein it was held that the petitioner, while entering into service had given her date of birth by making entries in her own handwriting and served the Bank for several years. She did not wake up to correct her date of birth till she attained the age of superannuation. In that case, it was held

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that the right to get the date of birth corrected either on the basis of matriculation certificate or otherwise is not a legal right, far less a constitutional right. It was further held that even if there is some legal right, the same can be waived and the employer is not bound to correct the date of birth. In another case, reported in 2000 (7) SLR (Rajasthan) (D.B) 263, Omprakash Solanki Vs. State of Rajasthan, the petitioner's date of birth in the Service Book was entered as 10.4.1943. He had made an application to correct his date of birth from 10.4.1943 to 31.10.1944 only ^{at the fag end of his service.} in 1999. In that case, it was held that onus to prove wrong recording of date of birth had not been duly discharged. The certificates produced by petitioner were shrouded in mystery. The petitioner had not come to the court with clean hands and therefore he was not entitled to any relief. In the case of Eastern Coal Fields Ltd. V. Gaur Chandra Sarkar, 2000 (4) SLR (Calcutta) 375, the petition was rejected on the ground that petitioner did not protest against the date of birth recorded in his service record on the basis of medical examination and continued in service for long period and moved for correction of his date of birth in his service at the fag end

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of his service career. The Court after deprecating such practice rejected the petition.

9. In the present case also, the applicant has not come with clean hands. He had tried to fabricate documents. He had suppressed the fact of appearing at the annual matriculation examination 1954 of Utkal University. He had never disputed this date of birth as recorded in these descriptive particulars prior to 1995 i.e. some months before his date of superannuation. It was only in this representation dated 22.9.1995 that he asked for alteration of his date of birth from 31.1.1931 to 31.1.1935. Following the principles laid down in Pusparani Chakraborty's case (supra), I am inclined to reject the plea of the applicant that he had any legal right, far less any constitutional right, to ask for correction of his date of birth and consequently, his other plea of denial of natural justice in this case also falls through. The Apex Court have also held that the courts should be slow in allowing alteration in the date of birth at the fag end of the employee's career.

10. I also repeat here, as observed by the Hon'ble High Court in Puspa Rani's case (supra), that the conduct of the applicant in the instant

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case is unbecoming of a Branch Post Master. The means he adopted to achieve his goal is unacceptable. The Respondents should do well to take appropriate administrative measures to eradicate such tendencies among ED Agents who deal with public matters and are entrusted with jobs of great responsibilities. In view of the above facts and circumstances of the case and the law position in the matter, I reject the Original Application, being devoid of merit, without however passing any order regarding costs.


(B.N. SOM)
VICE-CHAIRMAN

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