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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 627 OF 1996
Cuttack, this the 10th day of November, 2000

Shri Purna Chandra Mallik

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.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som,
(SOMNATH SOM)
VICE-CHAIRMAN
10.11.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 627 OF 1996
Cuttack, this the 10th day of November, 2000.

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)
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Shri Purna Chandra Mallik, son of Bani Mallik,
At/PO-Bondamunda, District-SundargarhApplicant

Advocates for applicant - M/s D.S.Mishra
S.Behera
S.N.Biswal
D.K.Roy

Vrs.

1. Union of India, represented through the Secretary, Railway Board, Railway Bhawan, New Delhi.
2. General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal.
3. Divisional Railway Manager, South Eastern Railway, Chakradharpur Division, At/PO-Chakradharpur, District-Singhbhum, Bihar.
4. Carriage Foreman, Gr.I, South Eastern Railway, At/PO-Bondamunda, District-Sundargarh

Advocates for respondents -M/s R.Sikdar,
A.Sikdar A.Ghosh

Q R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application, the petitioner has prayed for quashing the order dated 10.8.1996 retiring him from the post of Fitter Grade-I with effect from 31.10.1996 on superannuation. By way of interim relief the applicant had prayed for staying the operation of the impugned order. The interim prayer was disposed of in order dated 30.10.1996 in which it was noted that the learned counsel for the petitioner submitted that he had filed an affidavit on 11.8.1968 stating that he was born on 2.10.1945 and the date of birth recorded in his service record as 13.10.1938 was a

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mistake. It was also stated that he had filed a representation on 17.10.1994 which had not been disposed of. The Tribunal declined to stay operation of the retirement notice but directed that the respondents shall expeditiously process his claim for correcting the date of birth and dispose of his representation and the action taken by them in this regard should be reflected in the counter affidavit. It was also ordered that in case the petitioner succeeds in the OA, he will be entitled to all the benefits as though he was in service.

2. Respondents have filed counter opposing the prayer of the applicant, and the applicant has filed a rejoinder reiterating his prayer. For the purpose of considering this petition it is not necessary to note all the averments made by the parties in their pleadings. These would be referred to while considering the submissions made by the learned counsel of both sides. The case of the petitioner in brief need however be stated.

3. The applicant's case is that he was a student of Jagannath Vidyapitha, Khandasahi and by mistake in the school record his date of birth was mentioned as 13.10.1938 though he was actually born on 2.10.1945. It is stated that the mistake was committed by the applicant's father who was an illiterate person. The applicant has stated that he filed representations on 3.3.1965 (Annexure-1) and on 2.8.1968 (annexure-1/a) along with an affidavit dated 1.8.1968 stating that his actual date of birth was 2.10.1945. He made another representation on 17.10.1994 but no action was taken and on the basis of his recorded date of birth as 13.10.1938 the impugned retirement notice has been issued to him.

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4. We have heard Shri D.S.Mishra, the learned counsel for the petitioner and Madam R.Sikdar, the learned panel counsel (Railways) for the respondents and have perused the records. The applicant had earlier filed MA No.497 of 2000 seeking a direction to the respondents to sanction provisional pension in his favour. We have heard the learned counsel of both sides on the MA which has been taken up along with OA.

5. Respondents have opposed the prayer of the applicant stating that he was initially appointed as TemporaryShed Khalasi on 7.4.1963 and at the time of his appointment he had himself declared his date of birth as 13.10.1938 and in the particulars of service filled up in the record, xerox copy of which is at Annexure-R/1 his date of birth was recorded as 13.10.1938 and the applicant has signed the same certifying the above date. The respondents have admitted that the applicant submitted a representation for correcting his date of birth on 17.10.1994, but it is stated that the same is not available in the record. They have also stated that the representations allegedly submitted by him on 3.3.1965 and 2.8.1968 are not in the record.

6. From the above recital of facts it is clear that the applicant joined the Railway service on 7.4.1963. In case his actual date of birth is 2.10.1945, then at the time of his initial appointment he would not have completed 18 years of age and would not be entitled to a Government employment. The applicant having mentioned his date of birth as 13.10.1938 and having signed the record he cannot be permitted to resile from the same moreso when he has derived a benefit as per his version by giving his date of birth as 13.10.1938.

7. The second aspect of the matter is that the applicant has not enclosed any document in support of the date of birth claimed by him. He has admitted that in the school record his date of birth has been mentioned as 13.10.1938. From the pleadings it appears that he has based his claim on the ground that he later on came to know from his mother that his date of birth is 2.10.1945. He has also given an affidavit stating that his date of birth is 2.10.1945. Law is well settled that date of birth cannot be changed on the basis of affidavit or horoscope, and merely going by his affidavit, he cannot claim that his date of birth should be changed. The learned counsel for the petitioner has submitted that according to the instructions of the Railways relating to recording of date of birth, which have been quoted in extenso in the OA, in case of doubt regarding date of birth of a person, who is illiterate or is unable to indicate his date of birth, enquiry can be made. If necessary, date of birth can be determined through medical examination. But these instructions are not applicable in the case of the applicant firstly because he is not illiterate, having read upto Class IX, and secondly he has himself indicated initially 13.10.1938 as his date of birth. Therefore, the question of sending him for medical examination for determining his date of birth does not arise. Moreover, the respondents have pointed out that the earlier instruction regarding determination of date of birth through medical examination has been withdrawn in 1971 and present instructions provide that a person who is unable to state his date of birth should not be appointed in Railway service at all.

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8. According to his date of birth the applicant was superannuated in October 1996. The respondents have admitted that he filed a representation for correcting his date of birth in 1994. Law is well settled that application for change of date of birth at the fag-end of the service career cannot be entertained. Rules also provide that any request for correction of date of birth should be made within five years of joining service. The applicant has stated that he first represented on 3.3.1965 and again on 2.8.1968. The respondents have stated that these representations are not with them. The applicant in his rejoinder has stated that from this it must be held that his representations filed in 1965 and 1968 have been misplaced by the respondents. We are unable to accept this proposition because the applicant has enclosed to the OA these two representations of 1965 and 1968. We find that both these representations are addressed to General Manager, South Eastern Railway at Garden Reach. At that time he was a Shed Khalasi and it is difficult to accept his proposition that he straightaway made representations to the General Manager who is the highest authority. In copies of these two representations it is not even mentioned that the representations have been sent through proper channel. In view of this, it cannot be held that he did in fact submit representations in 1965 and 1968. Thus, his first representation for correction of date of birth having been made in 1994, i.e., much belatedly, this is also one more ground why his prayer cannot be allowed.

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9. In consideration of all the above, the prayers made by the applicant in the OA are held to be without any merit and are rejected.

10. As regards MA No. 497 of 2000 the prayer in the MA is for a direction to pay him settlement dues. We direct the respondents that in case any of the settlement dues which are payable to the applicant strictly in accordance with rules and have not yet been paid, then the same should be paid within a period of 90 (ninety) days from the date of receipt of copy of this order. The above direction is subject to the condition that the applicant has already completed all necessary documents for getting such dues as per rules.

11. In the result, therefore, the O.A. and M.A. are disposed of in terms of the observation and direction above. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

SOMNATH SOM)

VICE-CHAIRMAN

November 10, 2000/AN/PS