

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

Original Application No. 76 of 1996

Cuttack this the 24<sup>th</sup> day of July, 1996

Nabin Chandra Mahanta ... Applicant(s)

Versus

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of ~~the~~ Central Administrative Tribunal or not ?

*Manasimha Sahu*  
( N. SAHU ) 24/7/96  
MEMBER (ADMINISTRATIVE)

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 76 of 1996

Cuttack this the day of July, 1996

C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

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Nabin Chandra Mahanta  
Vill : Bhalupahadi  
P O : Murusuan  
Dist : Keonjhar - 758 017

...

Applicant

By the Advocate:

Shri D.P. Dhalasamant

Versus

1. Union of India represented through Postmaster General Orissa Circle Bhubaneswar - 758 001
2. Superintendent of Post Offices, Keonjhar Division Keonjhar - 758 001
3. Sub-Divisional Inspector (Postal) Keonjhar (South) Sub-Division Keonjhar - 758 001

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Respondents

By the Advocate:

Shri Ashok Mohanty  
Senior Standing Counsel  
(Central)

...

O R D E R

MR. N. SAHU, MEMBER (ADMINISTRATIVE): In this application the applicant challenges the order No. B/ED-1/95 dated 1.7.1995, passed by Respondent 3, viz., Sub-Divisional Inspector (Postal), Keonjhar (South) Sub-Division, Keonjhar, intimating that his date of birth as per office record was noted as 9.1.1931 and accordingly the applicant would superannuate on 8.1.1996.

He submitted that according to T.C. No.230/15 dated 19.5.1961, issued by Rajanagar School, his date of birth is noted as 9.1.1934 and as such he would superannuate after completing 65 years of age on 9.1.1999.

2. The respondents stated in the counter-affidavit that the seniority-list of Extra Departmental Officials of Keonjhar Division was prepared on 1.1.1992 after ascertaining the date of birth and the date of appointment through the concerned appointing units, viz., Sub-Divisional Inspector of Post Offices/Assistant Superintendent of Post Offices. This seniority-list of E.D. officials was circulated amongst all concerned. The applicant did not contest the entries made therein by way of a representation regarding his date of birth. Under the recruitment rules, the candidates should not be less than 18 years of age on the date of application for the post. The applicant was appointed and had been continuing as E.D. Delivery Agent, Rajanagar S.O. since 14.12.1949. Because of the 18 year rule, his date of entry ~~only~~ could only be after 14.12.1931. His date of birth as recorded in the seniority list viz., 9.1.1931 should therefore be taken to be correct. There was no contest of this date of birth by submitting any fresh evidence in 1989. The applicant did not furnish any Transfer Certificate in 1989. He only submitted an application on 12.7.1995 to Respondent No.3 after the notification of retirement as per Annexure-1.

3. The learned counsel for the applicant Shri D.P. Dhalasamant submitted that on receipt of the applicant's

representation an enquiry was conducted by the Sub-Divisional Inspector of Keonjhar and he furnished a report. Shri Dhalasamant insisted on perusal of the report by the Court and also for the production of Admission Register of Rajanagar M.E. School. On 27.5.1996, the respondents were directed to produce the enquiry report as well as the gradation list of E.D.A.s at Divisional level. The S.D.I.(P) in his report dated 1.10.1995 states that as per Admission Register maintained by the School from 10.7.1946 to 26.6.1957, the applicant was admitted in Class-V on 26.7.1946 and his date of birth was noted as 9.1.1934. He read in the school upto 30.6.1949 in Class-VIII and he was 15 years and five months of age when he left the school. The S.D.I.(P) reports that the T.C. submitted by the applicant is genuine.

4. The learned Senior Standing Counsel Shri Ashok Mohanty submits that neither the security bond filed nor the descriptive particulars by way of Attestation Form are available readily for scrutiny. Efforts were made to trace them, but probably due to transfer of the zone, records were misplaced and missing. The applicant could not have been appointed as E.D Agent when he was less than 18 years of age. Thus the applicant, even if, the T.C. were true, gained admission into Government service on the presentation of his age as over 18 years. He secured the benefit by stating the higher age limit and this would estop him from claiming another benefit of an extended service by stating a lower age. In reply to this Shri Dhalasamant contends that the E.D. Rules came into

force very late. There was no rule governing admission when the applicant sought appointment as E.D Agent. In those days, the E.D. Agency was an informal arrangement and even minors were appointed. Such instances were not rare and they were admitted also by the Government of India in a number of other cases. In this regard he cited 1992 Vol.III SLJ 77 and O.A.424 of 1994 in which the order was pronounced by this Bench on 15.3.1996.

5. I have carefully considered the rival submissions. I am of the view that the law has crystallised by a series of Supreme Court decisions on the subject. In this case the fact remains that on 16.3.1992, a gradation list of EDAs at Divisional level corrected upto 1.1.1992 was prepared and circulated. It was positively directed that this gradation list be circulated amongst all the EDAs through Overseer Mails and the Overseer Mail has been asked to obtain signatures of the EDAs against their names in the gradation list. The representations, if any, were to be forwarded. The applicant's name has figured as Number-1. His date of birth was recorded as 9.1.1931 and the date of appointment was noted as 14.12.1949. Inspite of denials of the applicant that this has been circulated I assume that it was within his knowledge soon after a general circulation. He failed to send any representation. It was only after he received the notice of retirement that he hastened to obtain a copy of the School Leaving Certificate on the basis of which he claims to be three

years younger than what he actually is. I further hold that the date of birth and the date of appointment recorded by the Respondents while preparing the gradation list were taken as stated in the counter-affidavit from existing records, viz., service particulars, security bond details which for one reason or the other are not readily traceable for production at the time of hearing. I do not think that the respondents have invented or conjured up all these dates. This is a comprehensive Divisional list of as many as 95 E.D. employees. The applicant, therefore, did not avail of the opportunity to make a representation as soon as this Divisional Gradation List was circulated to him. He cannot deny ignorance of this list. In Secretary and Commissioner, Home Department vrs. R.Kribakaran 1993(5) SIR SC 585, the Supreme Court laid down that in the absence of rules or executive instructions prescribing a time-limit for correction of date of birth, such application for correction should be made within a reasonable time. This proposition was further reiterated by the Supreme Court in subsequent decisions. In Union of India and Others vs. Harnam Singh 1993 SCC (L&S) 375 the Supreme Court had occasion to interpret Note 6 to F.R. 56 and held that even where no period of limitation is fixed, the request must be made within a reasonable time and a limit of five years from the date of entry into service would be the reasonable time. Though the FRs as such are not applicable to the Extra Departmental Agents, this ratio in Harnam Singh's case was reiterated by the Apex Court

in State of Tamil Nadu vs. T.V.Venugopal 1994 SCC (L&S) 1385. The Supreme Court has also indicated the limited scope of judicial reviews in these matters. In a string of other decisions the Supreme Court also deprecated the practice of employees making request for change of date of birth at the fag end of their career and on the eve of their retirement. The Supreme Court very firmly laid down in a recent judgment in Union of India vs. Kantilal Hemant Ram Pandia. In that case the Ahmedbad Bench of the C.A.T. in its decision in O.A. 283 of 1987 had noted the ratio of judgment in the case of Harnam Singh, but had still chosen to allow the Original Application on the ground that the Railway Administration had not complied with specific direction of the Tribunal to go into the nature of evidence adduced by the applicant which in that particular case happened to be the School Certificate. The Supreme Court reversed the order of the Tribunal and observed that stale claims and belated applications for alteration of the date of birth recorded in the Service Book at the time of initial entry made after unexplained inordinate delay on the eve of retirement need to be scrutinised carefully and interference made sparingly. I take it that the date of birth as recorded in the service particulars from which gradation list was prepared is within the knowledge of the applicant and, whether true or not, found place in the records on the basis of his declaration. The applicant acquiesced with the recorded

date for over four decades and has sought alteration of date of birth only after receiving the notice of retirement. The proposed date of birth of the applicant would render him ineligible for government service at the time of entry in service. He cannot derive benefit at both ends of the service ladder. There are two Central Administrative Tribunal Bench decisions in support of the above proposition 1989(9) ATC 93, Calcutta, 1988(6) ATC 224, Jabalpur.

In view of the above discussion, the respondents rightly refused to countenance the claim for alteration of date of birth. The application is dismissed. No order as to costs.

Kanashankar  
( N. SAHU ) 24/7/96  
MEMBER ( ADMINISTRATIVE )

B.K.Sahoo//