

10

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 28 OF 1998

Cuttack, this the 17th day of July, 2000

Shri Madhabananda Behera 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*

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
17.7.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 28 OF 1998
Cuttack, this the 17th day of July, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

.....
Shri Madhabananda Behera, aged about 58 years, son of
Rama Chandra Behera, At/PO-Sisua, Via-Astaranga,
Dist.Puri

..... Applicant

Advocates for applicant - M/s.A.K.Mishra
B.B. Acharya
J.Sengupta
D.K.Panda
C.Mohanty
PRJ Dash
G.Sinha

Vrs.

1. Union of India, represented through its Chief Post Master General,Orissa Circle, Bhubaneswar, District-Khurda.
2. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar, Khurda.
3. Sub-Divisional Inspector, Nimapara, Sub-Division, Dist.Puri

..... Respondents

Advocates for respondents - Mr.A.K.Bose
Sr.CGSC.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for quashing the order dated 18.8.1997 rejecting his representation regarding date of birth. The second prayer is for a direction ~~to the respondents~~ to the respondents to correct the date of birth of the applicant from 12.3.1932 to 18.3.1939 and accordingly allow the applicant all service and financial benefits till he attains the age of superannuation at 65 years taking his

date of birth as 18.3.1939. The respondents have filed counter opposing the prayer of the applicant and the applicant has filed a rejoinder. It is not necessary to refer to the averments made by the parties in their pleadings separately because these will be considered at the time of discussing the submissions made by the learned counsel of both sides.

2. The applicant has stated and the respondents have not denied that he was initially appointed to the post of EDDA on 6.1.1962 and became EDBPM, Sisua from 31.7.1990. The applicant has stated that the departmental authorities published a gradation list of ED Agents taking into account the position as on 1.7.1992. In this gradation list the date of birth of the applicant was shown as 12.3.1932. The applicant's case is that his actual date of birth is 18.3.1939 and on getting the gradation list he represented on 18.6.1992 (Annexure-2). The respondents have stated that no representation was submitted by the applicant. They have stated that the representation is purportedly addressed to Inspector of Post Offices, Nimapara (respondent no.3) who is not the appointing authority. The applicant did not file any representation to Senior Superintendent of Post Offices, Bhubaneswar Division (respondent no.2) who is the appointing authority. The applicant has further stated that no action was taken on his representation and that is why he filed further representations on 129.5.1993 and 17.10.1994 which are at Annexures 3 and 4.

He has further stated that on 10.11.1994 Inspector of Post Offices made a surprise inspection of the applicant's office and in his inspection note at Annexure-5 the applicant's date of birth was recorded as

18.3.1939. In two subsequent inspection notes dated 16.10.1995 and 26.12.1996 his date of birth has been mentioned as 18.3.1939. According to the applicant while the matter stood at this point, suddenly in letter dated 10.3.1997 (Annexure-9) he was directed to retire on 11.3.1997 taking his date of birth as 12.3.1932. He made a further representation on 29.3.1997 but this representation was rejected in the impugned order dated 18.8.1997 at Annexure-11. In the context of the above facts the applicant has come up with the prayers referred to earlier.

3. As earlier noted the respondents have filed counter opposing the prayer of the applicant.

4. I have heard Shri A.K.Mishra, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents. The learned Senior Standing Counsel for the respondents was directed to file such record which may be available with the respondents on the basis of which they have taken the date of birth of the applicant as 12.3.1932. After several adjournments the learned Senior Standing Counsel filed letter dated 3.5.2000 from respondent no.2 indicating that Annexure-R/8 is the basic document and besides this they have no record. This annexure has been taken note of.

5. From the above recital of the pleadings of the parties it is clear that the applicant has come up at the fagend of his service career with representation to correct the date of birth. According to him he filed representation on 18.6.1992 (Annexure-3). The respondents have denied that any such representation

was filed. In any case if it is taken for argument sake that the representation was actually filed by the applicant on 18.6.1992 there was no reason why he waited till 12.1.1998 to file this OA. Under the Rules after giving six months time for disposal of his representation he should have approached the Tribunal within one year therefrom. It is therefore clear that the petition is barred by limitation.

6. The second point is that Annexure-R/8 is the draft of the gradation list in which the applicant's date of birth was originally shown as 5.7.44. This was corrected by the Inspector to 12.3.1932. The respondents have stated that this correction must have been made on the basis of some record which however is not available. As regards the school leaving certificate which has not been enclosed by the applicant, it has been submitted by the respondents that from Annexure-R/5 it is seen that in this school leaving certificate his date of birth has been mentioned as 18.3.1939. This school leaving certificate has however been issued only on 19.7.1993, i.e., after the applicant, according to his statement, had filed his first representation on 18.6.1992 which, according to the respondents, was never filed. The respondents have pointed out that in this certificate it has been shown that he has passed Class V whereas the applicant had on earlier occasion given a statement that he was studying in Class VII. The applicant has tried to explain this discrepancy by stating that he was studying in Class VII in private. The respondents have pointed out that there

S. Jam

is no system of reading in Class VII in private. The respondents have clearly stated that on enquiry they have found that this certificate dated 19.7.1993 has been actually issued by the school. But they have declined to act on this certificate because of the discrepancy in the certificate as mentioned above. The respondents have also pointed out that for the post of EDBPM Class V pass was never the minimum qualification at any point of time.

7. Law is well settled by a series of decisions of the Hon'ble Supreme Court that the representations at the fagend of the service career for correction of date of birth are not to be ordinarily entertained. Moreover, FR 56, Note 6 provides that any such representation should be made within five years from the date of entry into Government service or within five years from the date of the notification making this provision which came into force in 1979. The applicant has stated that he had no means of knowing that his date of birth has been recorded as 12.3.1932 and therefore he could not have filed representation earlier. As we have already noted, even accepting his submission that he filed the first representation on 181.6.1992 the present OA has been filed six years thereafter and only after the applicant has been retired from service. The fact that the applicant has not enclosed the scool leaving certificate and has also not mentioned anything in his OA about the school leaving certificate makes it clear that he has deliberately not referred to this document even though in his representation to the Department he has referred to this School Leaving Certificate. This may be because according to the School Leaving Certificate he did not have the minimum qualification for the post of

J Jm

EDBPM in which post he has been working from 1970. The action of the respondents in not acting on the School Leaving Certificate cannot be found fault with because of the discrepancy about the educational qualification mentioned in the School Leaving Certificate and as mentioned by the applicant to the departmental authorities on other occasions.

8. In consideration of all the above, I hold that the Application is without any merit and the same is rejected but without any order as to costs.

Somnath Som
(SOMNATH SOM)
17.7.2000
VICE-CHAIRMAN

AN/PS