

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 75 OF 1998
Cuttack, this the 15th day of March, 1999

Sri Paramananda Barik 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
15.3.99

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CORAM:

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

.....

Sri Paramananda Barik,
son of late Sankarsan Barik,
ex-Postman of Tihidi, Sub-Post Office,
Tihidi,
At/PO-Tihidi, Dist-Bhadrak Applicant

Advocate for the applicant - M/s P.K.Kar
K.P.Behera.

Vrs.

1. Union of India, represented through
Chief Post Master General, Orissa Circle,
Bhubaneswar.
2. The Superintendent of Post Offices,
At-Bhadrak Division,
At/PO/Dist.Cuttack.
3. Sub-Divisional Inspector (Postal), Bhadrak East
Sub-Division, Bhadrak, At/PO/Dist.Bhadrak.

..... Respondents

Advocate for respondents-Mr. Anup Kumar Bose,
Sr. Standing Counsel.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has prayed
for issue of a direction to the respondents to sanction annual
increment, house rent allowance and bonus with effect from
1.1.1988 till the date of his superannuation. He has also
asked for interest at 18% on the above arrear dues. For
adjudicating this application it is not necessary to go into
too many details of the facts of the case in view of the
counter filed by the respondents. Even then the case of the

applicant can be briefly stated.

2. The applicant was originally appointed as E.D.D.A. on 26.12.1959 and through the departmental selection he joined as Postman on 27.1.1982. While working as Postman he moved the authorities to correct his date of birth to 8.12.1944, but no action was taken on his representation. He therefore approached the Tribunal in OA No.47 of 1996 which was dismissed. Thereafter he filed Review Application No.2 of 1997 which is pending. The applicant superannuated on 28.2.1997. After retirement he came to know that one of his colleagues one Birendra Malik, whose case, according to the applicant, is similar to his, has received higher amount of pay, arrear salary, house rent allowance and bonus than the applicant. He thereafter filed representation dated 3.4.1997 before Sub-Divisional Inspector (Postal), Bhadrak (respondent no.3) claiming house rent allowance, bonus and annual increment like Birendra Malik, but no action was taken and that is why he has come up in this O.A. with the prayers referred to earlier.

3. Respondents in their counter have pointed out that originally the applicant was appointed as E.D.D.A., Samantraypur B.O in 1959 and in the attestation form submitted by him he had clearly mentioned his date of birth as 19.9.1937. On his promotion to the post of Postman on 7.1.1982 the applicant submitted another attestation form along with School Leaving Certificate purported to have been issued by Panchamukha High School, Jaleswarpur, in which his date of birth was shown as 8.12.1944. As a doubt arose as to the correct date of birth, investigation was done and it was confirmed by Headmaster of Panchamukha High School, Jaleswar, that the certificate furnished by the applicant purported to have been issued by the Headmaster, Panchamukha High School,

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Jaleswarpur is a bogus one and the applicant was never a student of Panchamukha High School, and as such the date of birth shown as 8.12.1944 in the transfer certificate No.51 dated 30.5.1970 is false. In the attestation form submitted by the applicant at the time of his initial appointment as E.D.D.A., the applicant had mentioned that he was reading in Pirhat High School in 1955. Accordingly, enquiry was made from Pirhat High School to ascertain the actual date of birth of the applicant. The Headmaster, Pirhat High School, submitted extract of Admission Register in which his date of birth was shown as 5.2.1939. After enquiry into the matter the respondents accepted 5.2.1939 as the correct date of birth of the applicant instead of 19.9.1937 indicated by the applicant himself at the time of his appointment as E.D.D.A. All these facts were placed before the Tribunal by the departmental authorities in OA No.47/96 which was dismissed. Accordingly, taking his date of birth as 5.2.1939 the applicant was retired on superannuation on 28.2.1997. Being aggrieved by the order of the Tribunal in OA No. 47/96, the applicant filed Review Application No.2 of 1997 which is pending. The respondents have further stated that the applicant was due to cross Efficiency Bar at the stage of Rs.900/- with effect from 1.1.1989, but he was not allowed to cross E.B. due to submission of false educational certificate by him moreso when the matter was under enquiry and his integrity was under investigation. The respondents have further stated in paragraph 4(j) of the counter (page 6) that subsequently the applicant has been allowed to cross EB at the stage of Rs.900/- with effect from 1.1.1989, i.e., the due date, in order dated 25.5.1998(Annexure-R/3). The respondents have further stated in this paragraph of the counter that benefits

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such as annual increment, house rent allowance and bonus, as would be admissible consequent upon fixation of his pay after allowing crossing of EB to the applicant with effect from 1.1.1989, would be paid to him and action thereon is under process. The respondents have further stated that basic pay of Birendra Mallik was more than the basic pay of the applicant on the date of retirement and that is how he got more arrears of pay, bonus and house rent allowance than the applicant. The respondents have also stated in page 8 of the counter that the applicant has since been allowed to cross EB with effect from 1.1.1989 and as such he will get the similar benefit availed by his counterpart Birendra Malik. The respondents have denied that the applicant has ever filed any representation claiming the above benefits. On the question of payment of interest at 18%, the respondents have stated that the applicant is not entitled to interest because he is liable for the cause of withholding of increment on the ground of his misconduct in submitting a false attestation form at the time of his appointment as Postman showing his date of birth as 8.12.1944. As the matter had to be enquired into and the integrity of the applicant was under investigation, he was not allowed to cross EB and for this delay the applicant is alone responsible. On the above grounds, the respondents have opposed the prayer of the applicant for payment of interest.

4. We have heard Shri P.K.Kar, the learned counsel for the applicant and Shri A.K.Bose, the learned Senior Standing Counsel appearing for the respondents, and have also perused the records. We have also looked into the records of OA No.47/96 and RA 2/97 which were ordered to be linked up with this case. As earlier mentioned, it is not necessary to go into the facts of the earlier litigation with regard to the date of birth of the applicant because the present application is for getting arrear financial benefits. It is only to be noted that RA 2/97 has in the meantime been

disposed of and the application has been rejected.

5. The first prayer is for a direction to the respondents to sanction his annual increments, house rent allowance and bonus from 1.1.1988 till the date of his superannuation on 28.2.1997. The respondents have pointed out that the applicant was due to cross EB on 1.1.1989 and not 1.1.1988 as mentioned by the applicant. This EB has also been sanctioned with effect from the due date, i.e., 1.1.1989 in order dated 25.5.1998. Once EB has been sanctioned with effect from 1.1.1989, the applicant will be entitled to further annual increments falling due till the date of his superannuation on 28.2.1997. On 1.1.1996 he will also be entitled to revised fixation of his pay in the Fifth Pay Commission scale of pay. Accordingly, house rent allowance and bonus payable to him both prior to 1.1.1996 and after 1.1.1996 will also stand increased. The pensionary benefits payable to the applicant will also undergo increase consequent upon fixation of his pay at a higher level. As the applicant has retired with effect from 28.2.1997, this prayer of the applicant is disposed of with a direction to the respondents that his arrear increments, house rent allowance and bonus should be worked out and paid to him within a period of 90 (ninety) days from the date of receipt of copy of this order. Even though the applicant has not claimed for revision of his pension and other retiral benefits, this will necessarily follow implementation of our direction given above. In view of this, it is ordered that within another period of 90 (ninety) days the increased pension and other retiral benefits should be worked out and paid to the applicant.

6. The next prayer of the applicant is with regard to payment of interest on the arrears of annual increments, house rent allowance and bonus at 18% per annum.

The respondents have pointed out that his arrear increments could not be sanctioned because his increments were held up at the stage of crossing of EB with effect from 1.1.1989 and this EB was held up because of the laches of the applicant for filing an attestation form showing a false date of birth as 8.12.1944. This matter had to be investigated and while the applicant's conduct was under investigation, he was not allowed to cross EB. We find considerable force in the above submission of the respondents. We also find that originally when the applicant was appointed as EDDA, he himself submitted an attestation form in which he had shown his date of birth as 19.9.1937. Notwithstanding this, ^{after} an objective enquiry and checking up of contemporaneous records, the respondents have taken the applicant's date of birth to be 5.2.1939. Thus they have allowed him almost two years of additional service. The delay in crossing EB and consequent non-payment of increments and differential house rent allowance and bonus is attributable squarely to the applicant because of his furnishing of date of birth as 8.12.1944 which has been found to be false by the respondents. In consideration of this, we hold that the applicant is not entitled to payment of interest on the above amounts because the delay has been primarily caused by his action in filing an attestation form giving a false date of birth as 8.12.1944. The prayer for payment of interest is accordingly rejected.

7. In the result, therefore, the Original Application is partly allowed in terms of the observation and direction given above but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SONATH SENG)
VICE-CHAIRMAN 15.3.99