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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 127 OF 1999

Cuttack, this the 21st day of May, 1999

Krishna Chandra Mohapatra 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)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21.5.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 127 OF 1999
Cuttack, this the 21st day of May, 1999

CORAM:

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

.....

Krishna Chandra Mohapatra
aged about 61 years,
son of late Padmalav Mohapatra
At/PO-Ambo,
P.S-Nandipada,
District-keonjhar,
working as E.D. Branch Post Master,
Ambo Branch Office,
District-Keonjhar

..... Applicant

Advocates for applicant - M/s R.K.Nayak
A.K.Swain
B.Mohanty
P.N.Dash.

Vrs.

1. Union of India, represented through its Secretary of Post and Telecommunication Department, Shahajahan Road, New Delhi.
 2. Superintendent of Post Offices, Keonjhar Division, At/PO/Dist.Keonjhar.
 3. Sub-Divisional Inspector (Post Offices), Anandpur Sub-Division, At/PO-Anandpur, District-Keonjhar.
 4. Head Post Master, At/PO-Keonjhargarh, District-Keonjhar
- ... Respondents

Advocate for respondents - Mr.S.Behera
A.S.C.

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 quashing the notice of retirement at Annexure-1 with a direction to the respondents to permit the petitioner to continue in his post till 24.8.2003 with all service benefits. The second prayer is for a direction to the

respondents not to invite applications as per notice at Annexure-6 for filling up of the post now held by the applicant. By way of interim relief, it has been claimed that during the pendency of the O.A. the notice of retirement should be stayed. The prayer for interim relief was not considered as the learned Additional Standing Counsel appearing for the respondents submitted that he will file counter before the date of retirement of the applicant on 29.5.1999 and the matter may be disposed of by that date. Accordingly, counter has been filed with copy to the other side.

2. The applicant's case is that he was appointed as EDBPM, Ambo E.D.B.O. in Keonjhar District on 15.11.1961. All on a sudden on 24.2.1999 respondent no.2 issued retirement notice at Annexure-1 indicating that as per the office record the date of birth of the applicant is 30.5.1934 and therefore he would retire on 29.5.1999 on attaining the age of 65 years. The applicant's case is that as per School Leaving Certificate at Annexure-2 and as per the horoscope his date of birth is 24.8.1938 and therefore his date of retirement will be 23.8.2003. The applicant has further stated that on 16.10.1995 respondent no.2 made a surprise inspection of the applicant's office and in his inspection note he has mentioned the date of birth of the applicant as 24.3.1938. It is further stated by the applicant that in the gradation list for the year 1998 the applicant's date of birth was wrongly written as 24.3.1934 and the applicant filed representation dated 15.1.1999 at Annexure-4 for correction of his date of birth to 24.8.1938. But no orders were passed on his representation and the impugned notice of retirement has been issued to him directing him to retire with effect from 29.5.1999. Because of the above, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant was appointed as EDBPM, Ambo EDBO on 15.11.1961 and at the time of his appointment, he submitted the attestation form duly filled in and the descriptive particulars with his thumb impression. In both these documents he has mentioned his date of birth as 30.5.1934. Accordingly, the applicant was informed in the letter at Annexure-1 that he would be retired on attaining 65 years of age on 29.5.1999. As regards the School Leaving Certificate, it is stated that the matter was enquired into by S.D.I.(P), Anandpur, who submitted a report which is at Annexure-R/3. In this report it has been mentioned that the School was established on 18.8.1952 as is seen from the Stamp of the school on the top of the School Leaving Certificate which is at Annexure-2 of the O.A. But the applicant has entered the school on a date prior to this, i.e. 10.7.1952. It is further stated in this report that the applicant joined service on 15.11.1961. But the certificate produced by him has been procured on 27.7.1964 and the writing "1964" has also been corrected and overwritten. The impression and seal of the Headmaster are also not legible. S.D.I.(P) has also enclosed a report from the Headmaster which is at Annexure-R/4 in which the Headmaster has reported that from the certificate it appears that original date of issue of the certificate was 27.7.1954, but it has been overwritten and corrected as 27.7.1964. It is also stated by the respondents that the Sub-Divisional Inspector (P) was directed to examine the applicant for the purpose of checking up the Office Order Book. But the applicant neither attended the office of Sub-Divisional Inspector (P) nor submitted the Office Order Book. It is also submitted that the applicant has approached the Tribunal without waiting for the orders on his representation. On the above grounds, the respondents have opposed the prayers of the applicant.

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4. We have heard Shri R.K.Nayak, the learned counsel for the petitioner and Shri S.Behera, learned Additional Standing Counsel for the respondents and have perused the records.

5. The first point raised by the learned counsel for the petitioner is that in the retirement notice his date of birth has been shown as 30.5.1934, but in the gradation list his date of birth has been shown as 24.3.1934. Thus in the Government record itself there is discrepancy about his date of birth. Moreover, the S.D.I.(P) during his inspection has recorded the date of birth of the applicant as 24.3.1938. This is also supported by the School Leaving Certificate at Annexure-2 which shows the date of birth of the applicant as 24.8.1938. In view of this, it is submitted that the respondents should have accepted 24.8.1938 as his date of birth. We have considered the above submission of the learned counsel for the petitioner carefully. So far as the inspection note is concerned, recording the date of birth of the applicant as 24.3.1938 in the inspection note which is at Annexure-3 is of no relevance because the S.D.I.(P) while inspecting the office of the applicant, is not required or obliged to determine his date of birth. Mentioning the applicant's date of birth as 24.3.1938 in the inspection note will not have the effect of changing the date of birth as recorded in the official record. So far as the difference between 30.5.1934 and 24.3.1934 as recorded in the retirement notice and the gradation list respectively, the respondents have pointed out that at the time of the applicant joining service he submitted the attestation form and the descriptive particulars which are at Annexures R/1 and R/2. In both these he has mentioned the date of birth as 30.5.1934. It is submitted by the learned counsel for the petitioner that the Attestation Form and the Descriptive Particulars have not

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been filled up by him. He has also stated that the signature in the attestation form and the descriptive particulars is not that of the applicant. The petitioner has not given any reasonable explanation as to why the departmental authorities will forge the signature of the applicant and manufacture the attestation form and the descriptive particulars. We therefore hold that the descriptive particulars and the attestation form have been signed by the applicant. The applicant has also certified in the attestation form that the particulars given by him are true and the date of birth is one of the items and in this it has been shown as 30.5.1934. The conclusion is, therefore, inescapable that the applicant at the time of his joining has submitted the attestation form and signed it himself. Therefore, as he has himself represented that his date of birth is 30.5.1934 it is not open for him again to question that. As regards the School Leaving Certificate, apart from the fact that the date of admission of the applicant in the School has been noted as 10.7.1952 whereas the School has been established on 18.8.1952, there are other discrepancies in the School Leaving Certificate which does not inspire much confidence in this document. For example, in the School Leaving Certificate the date of admission has been mentioned as 10.7.1952 and the date of leaving the school as 31.5.1954. But in the attestation form against column 10 it is mentioned that he has entered the school on 15.1.1944 and left the school on 10.12.1950. These dates do not tally with the dates of admission and leaving given in the School Leaving Certificate at Annexure-2. Moreover, the Headmaster has pointed out that the date of issue of the certificate has been overwritten and changed from 27.7.1954 to 27.7.1964. We have verified the original of this document and we have found that in the original document the figures "1954" have been overwritten as "1964". In case the document was actually issued in 1954, then at the time of joining and

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submission of the attestation form and descriptive particulars on 16.11.1961 the applicant was in possession of this certificate and there is no reason why he has not indicated the date mentioned in the School Leaving Certificate as his date of birth. If on the other hand the certificate was actually acquired in 1964, i.e., three years after he joined service, it is not understood why he kept quiet all these years and did not take up the question of his date of birth. According to Note 6 below FR 56 it is laid down that if an employee wants to change his date of birth then he must make an application within a period of five years from the date of his joining service. The Hon'ble Supreme Court have also held in a series of decisions that applications from employees for changing the date of birth at the fagend of their service career must be discouraged. In this case the applicant having given 30.5.1934 as his date of birth in November 1961, he has not explained as to why after he got the School Leaving Certificate in 1964 as per his version, he kept quiet till January 1999 and did not move for correcting his date of birth. It has been submitted by the learned counsel for the petitioner that in the very least the Tribunal may consider issuing a direction to the departmental authorities to look into his representation for changing his date of birth and the matter may be left to be decided by the departmental authorities. We are not prepared to issue such direction for two reasons. Firstly, the applicant himself has approached the Tribunal even before expiry of six months from the date of submission of his representation in January 1999. He cannot now turn back and say that the matter should be left to be decided by the

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departmental authorities in accordance with rules. Moreover, on the basis of our analysis as above, we do not think that the applicant has been able to make out a prima facie case for correction of his date of birth. He has not explained as to how he has given 30.5.1934 as his date of birth in the attestation form and descriptive particulars. In view of this, this prayer of the learned counsel for the petitioner is rejected.

6. In the result, therefore, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him. The Original Application is held to be without any merit and is rejected but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN. 5.9.91

AN/PS