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NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Order dated 2.5.2001

Being aggrieved with the order of the Department, retiring the applicant from the post of E.D.D.A/M.C., Palikiri B.O. w.e.f. 28.2.1999 taking his date of birth as 1.3.1934, the applicant has approached this Tribunal praying that order of retirement dated 13.1.1999 at Annexure-9 be quashed and he be allowed to continue in service till March, 2004, taking his date of birth as 1.3.1939, as recorded in the Gradation List, which is at Annexures-2 and 3. Respondents have filed their counter opposing the prayer of the applicant. Applicant has not filed any rejoinder.

We have heard Shri P.V.Ramdas, learned counsel for the petitioner and Shri A.K.Bose, learned Sr.St.Counsel for the respondents and also perused the pleadings.

For the purpose of considering this petition it is not necessary to go into too many facts of this case. Applicant has stated that he was appointed as E.D.D.A/M.C. on 1.10.1970, which is borne out by the appropriate entry against his name in the Gradation List at Annexure-3. Respondents have pointed out that the applicant was appointed as E.D.D.A./M.C. w.e.f. 1.3.1968. In support of their stand respondents have enclosed order dated 18.5.1968, a contemporaneous document issued by the Inspector of Post Offices, Bhadrak (West), appointing the applicant to the post of E.D.D.A. Palikiri w.e.f. 1.3.1968. In this order applicant's date of birth has been mentioned as 1.3.1934. Annexure-R/2 is the report signed by the applicant at two places on 15.4.1968, showing that he had assumed the charge of E.D.D.A, Palikiri w.e.f. 1.3.1968. From this it is clear that the applicant joined the post of E.D.D.A., Palikiri on 1.3.1968 and not on 1.3.1970, as stated by him. But nothing turns on this. The present controversy is with regard to date of birth of the applicant. In support of his contention that his date of birth is 1.3.1939, the applicant has relied on School Leaving Certificate vide Annexure-1 and the Gradation list at Annexure-3, in both of which his date of birth has been shown as 1.3.1939. Respondents

1. Receipt showing
issue of copy
of County not sent
11. Respondent's
11. Advt. 10.11.2000
for end

1.11.2000

Rejoinder not filed.
12/12/00 Bench

Rejoinder not filed.
12/12/00 Bench

Rejoinder not filed.
12/12/00 Bench

Rejoinder not filed.
12/12/00 Bench

for admission
and final hearing

1/5/2001
Bench
S. J. Ram

NOTES OF THE REGISTRY

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have stated that the entry showing the date of birth of the applicant as 1.3.1939 in the gradation list is a mistake and it was later on corrected and the correct date of birth has been shown in his Service Book as 1.3.1934. It is submitted by the learned counsel that before such correction no show cause notice was issued to the applicant and as ~~such~~ such correction has ^{civil} ~~severe~~ consequence, going by the several decisions of the Hon'ble Supreme Court, he was entitled to show cause notice before such correction could be made.

We have considered the above submissions carefully. Gradation list is not a substantive document to establish the correct date of birth of a Government employee. For this purpose, reference has to be made to the service record. In the instant case Respondents have enclosed an Attestation Form at Annexure-R/4 signed by the applicant on 15.4.1968, which shows his date of birth is 1.3.1934. It is stated that entries made therein, more particular applicant's age being 34 years in 1968 were also certified by the Local Sarpanch. It is has been urged by the learned counsel for the petitioner that Annexure-R/4 is a forged document as the applicant's signatures do not tally and even if it is taken for granted that the applicant has signed this form, the entries made therein including the entry with regard to date of birth have been filled in by somebody else. We are not inclined to accept the above submission because on comparison of signatures of the applicant at Annexures-R/4 and R/2, which is charge report, assuming the charge of the office of E.D.D.A., we find, prima facie, this form has not signed by some one else. The fact that entry might have been ~~xx~~ made by someone else is of no consequence, because the applicant had certified in the form itself that above entries are correct to the best of his knowledge. Moreover, Annexure-R/3 is an application made by the petitioner seeking the post of EDDA/MC, Palikiri. This application has been signed by him on 2.4.1968 and in this application the petitioner has written in his own hand that he is 34 years of age. From this, ~~it is~~

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also it is clear that the applicant's age in 1968 was 34 years and therefore, there is nothing wrong in taking his year of date of birth as 1934, as recorded in the attestation form. It is also seen that in the order issued on 15.3.1968 appointing the applicant to the post of EDDA/MC, Palikiri it was mentioned that his date of birth is 1.3.1934. Applicant kept quiet about his date of birth for all these years, even after issuance of this order in 1968 and therefore, according to established position of law, he cannot be allowed to challenge the same after passage of so many years at the fag end of his service career.

As regards School Leaving Certificate produced by the applicant at Annexure-1, respondents have pointed out and this has not been denied by the applicant by filing any rejoinder that on receipt of representation from him on the S.L.C. an enquiry was made by the departmental authorities in the concerned school and a large number of irregularities with regard to this certificate came to notice. It was found that the relevant entries in the concerned register in the school have been overwritten and according to such overwritten entry the age of the applicant on the date of admission to the school has been recorded as ~~three~~ 3 years, 10 months and 29 days. This alone shows that SLC, which in any case has been obtained only in the year 1998 cannot be relied on. In consideration of the above, we hold that the departmental authorities have rightly taken the date of birth of the applicant as 1.3.1934 and he has been correctly made to retire from service in 1999 by the order at Annexure-4.

In the result, we hold that the applicant has not been able to make out a case for any of the reliefs prayed for. D.A. is held to be without any merit and the same is rejected, but without any order as to costs.

MEMBER (JUDICIAL)

V. Ramana Murthy
VICE-CHAIRMAN
2.5.2001

Free copies of
final order
dt. 2.5.2001
issued to counsel
for both sides.

2.5.01
4.5.01

S.O.C.T.