

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 445 OF 2000.
Cuttack, this the 1st day of May, 2002.

SURYA NARAYAN MISHRA.

APPLICANT.

VRS.

UNION OF INDIA & ORS.

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 No. Central Administrative Tribunal or not?

Manoranjan Mohanty
01.05.2002

(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

....

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 445 OF 2000.
Cuttack, this the 1st day of May, 2002

C O R A M

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL)

....

Surya-Narayan Mishra, Aged about 61 years,
Son of late Krupasindhu Mishra, Retired
E.D.D.A, Bhramarpur B.O, Village-Samasingi,
Sasan, PS: Nuagaon, PO: Bhramarpur,
Via-Khariaguda, Dist. Ganjam, PIN- 751209. APPLICANT.

By legal practitioner; M/s. S. K. Mohanty, S. P. Mohanty, P. K. Lenka,
Advocates.

- VERSUS -

1. Union of India represented through its
Secretary, Departments of Posts, Dak Bhawan,
New Delhi.
2. Sub-Divisional Inspector (Postal), Digapahandi,
Sub-Division, Dist: Ganjam.
3. Senior Superintendent of Post Offices,
Berhampur (Ganjam) Division, Berhampur-1.
4. Director of Postal Services, Office of
the Postmaster General, Berhampur Region,
Berhampur, Dist. Ganjam. RESPONDENTS.

By legal practitioner; Mr. S. B. Jena, Additional Standing Counsel.

O R D E R

(ORAL)

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

Applicant while continuing as Extra Departmental
Delivery Agent (in short "E.D.D.A."), Bhramarpur Branch Post
Office, faced with a notice, under Annexure-1, dated 3rd Jan.,



2000 calling upon him to face retirement from service with effect from 10-01-2000. He was, however, relieved on 08-01-2000, under Annexure-3. As it appears, the Applicant was asked to face retirement on 10-01-2000 (by the Respondents) by treating the date of birth of the Applicant to be '10-01-1935'. It appears, from the materials on record, that at the time of entry in service, the Applicant disclosed his date of birth to be '10-01-1935'. But from the gradation list, prepared subsequently during 1995, it appears that the date of birth of the Applicant was corrected and shown to be '03-07-1939'. This corrected date of birth has been recorded, under Annexure-2, i.e. the gradation/seniority list of EDAs as on 01-07-1995 issued by the Department. In the present Original Application, the Applicant has prayed for issuance of a direction to the Respondents to treat his date of birth to be '03-07-1939' for all purposes and consequently, to allow him to retire on 03-07-2004.

2. Law is well settled in the case of UNION OF INDIA VRS. HARNAM SINGH reported in 1993(24)ATC 92 and in the case of STATE OF TAMILNADU VRS. T. V. VENUGOPAL reported in 1994 SCC (L&S) 1385 that the date of birth of a Government servant as recorded in his service record, should not be allowed to be corrected, at his instance, at the fag end of his service career. On the same analogy, the Government/employer is equally estopped from altering the date of birth of a Government servant, at the fag end of his service career, to his prejudice. Here is a case, where the Government/Respondents corrected the date of birth of

the Applicant from '10-01-1935' to '03-07-1939' and the said corrected date of birth has been reflected in the gradation list drawn as on 01-07-1995, under Annexure-2. Therefore, the Government/Respondents are estopped, under law, to put the clock back/to alter the date of birth already modified/corrected since 1995 and that too at the fag end of the service career of the Applicant. Apart from the question of estoppel, the Respondents could not have re-altered the date of birth of the Applicant from '03-07-1939' without giving notice to the Applicant/without giving due respect to the provisions of Article 14 of the Constitution of India. An order, by the Authorities, to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of natural justice and fairplay. The Rule that "a party, to whose prejudice an order is intended to be passed, is entitled to a hearing" applies to administrative orders alike judicial bodies of persons vested with authority to adjudicate upon matters involving civil consequences. That apart, nothing was available to be answered being no answer for noncompliance of the principles of natural justice; the Respondents of this case are bound to lose. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary exercise of power by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of

a person, duty to act judiciously is implicit in the exercise of such power. If these essentials of justice are ignored and an order to the prejudice of a person is passed, such an order is a nullity and that is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case. This aspect is also no more res-integra in view of the judicial pronouncement of the Honourable Apex Court of India in the case of STATE OF ORISSA VRS. DR. (MISS.) BINAPANI DEI AND OTHERS reported in AIR 1967 SC 1269 and in the case of H. L. TREHAN AND OTHERS VRS. UNION OF INDIA AND OTHERS reported in 1989(9) Administrative Tribunals Cases 650.

3. Having heard Mr. Lenka, Learned Counsel for the Applicant and Mr. S. B. Jena, Learned Additional Standing Counsel (Central), detailing anxious considerations were given to the case in hand. It appears from Annexure-6, dated 10-05-2000 (drawn by the Senior Superintendent of Post Offices, Berhampur (Ganjam) Division that "the assessment of the date of birth of the Applicant by the then Postal Overseer (Mails) can not be taken as correct and accurate as the age of his elder brother Sri Udayanath Mishra (who was appointed on 25-2-1961 as EDDA. SB Jagadevpur was shown as 1.7.1935*. As per the view of the said Senior Supdt. of Post Offices, the Applicant being younger than his elder brother by about 3(three) years, his date of birth had been correctly shown in the seniority list as 3.7.1939. It

appears, further, from Annexure-6 that an enquiry was conducted by the ASPOs(OD) which revealed that Sri Udayanath Mishra was elder than Sri Suryanarayan Mishra (Applicant) about 3 (three) years. With these discussions, the Senior Superintendent of Post Offices, held as follows:

"As such, I find that there is some force in the contention of the official. It is submitted that there is no sufficient proof to establish the Date of Birth of the Official was 10.1.1935 as entered by the then Overseer(Mails) in the Descriptive particulars and verification rolls, ofcourse the official has signed in both the documents. But the date of Birth has been changed to 3.7.1939 in the seniority list of the Sub-Divisional Office, placing reliance on the certificate produced by the official".

The Senior Superintendent of Post Offices also came to the following conclusions at one stage:

"Seniority list of Divisional Office was also corrected accordingly. Since the Date of Birth was changed in both the seniority lists (which was shown as 3.7.1939), it could not have been changed again unilaterally and that too fag end of the career of the official."

4. The aforesaid extracted statement of the Senior Superintendent of Post Offices, Berhampur (Ganjam) Division dated 10-5-2000 (Annexure-6) goes to show that an attempt was made by the Respondents to reverse the corrected date of birth of the Applicant (already effected since 1995) but that could not have been done without following due process of law/without following principles of natural justice at the fag end of the service career of the Applicant; as fair play is a part of the public policy and is a guarantee for justice to the Citizens. In our system of Rule of law, every social agency, conferred

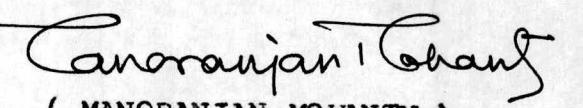
with power, is required to act fairly so that action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. There is no, in the facts and circumstances of the case, justification to hold that rules of natural justice have been ousted by necessary implication on account of time frame. On the other hand, it is always construed that the Constitutional mandate requires for an opportunity to be given to the Applicant before a decision is taken to retire the Applicant prior to the year 2004 by taking into consideration the date of birth to be in the year 1939 as recorded in the gradation list settled in 1995.

5. That apart, the Respondents, were by implication, estopped to change/alter the date of birth of the Applicant at the fag end of his service career to his prejudice. On examination of the materials on record, it is seen that the date of birth of the elder brother of the Applicant was recorded (in the official records) to be 01-07-1935 and therefore, it is held that the Applicant's date of birth could not have been '10-01-1935'. As a consequence, the corrected date of birth (03-07-1939) ought to be allowed

to hold the field.

6. Judging from any angle, the action of the Respondents in giving retirement to the Applicant, under Annexure-1, dated 03-01-2000 (w.e.f. 10-01-2000) and relieving the Applicant, under Annexure-3, dated 08-01-2000 are not sustainable in the eye of law and, therefore, those two orders are hereby quashed/set aside. As a consequence, the Respondents are hereby directed to reinstate the Applicant within a period of one month from the date of receipt of a copy of this order. Since the Applicant was thrown out of employment, in gross violation of the principles of natural justice/provisions of Article 14 of the Constitution of India, he shall be entitled to full allowances (as admissible under the EDAs Rules) for the intervening period by basing on the judgment of the Hon'ble Supreme Court of India in the case of UNION OF INDIA VRS. K. V. JANKIRAMAN reported in AIR 1991 SC 2010 holding that the normal rule of "no work no pay" is not applicable to such cases where the employee, although he is willing to work, is kept away from work by the authorities for no fault of his.

7. In the result, therefore, the Original Application is allowed in the aforesaid terms. There shall be no order as to costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 01.05.2002