

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Respondent not filed.

DB
3/9/01

Bench

For hearing

DB
6/11/01

Bench

Order No. 8 dated 7.11.2001

Learned counsel of both sides have abstained from Court work protesting against law and order incident in Puri involving learned advocates and constables. Pleadings in this case have been completed and the matter is posted today for final disposal. Hon'ble Supreme Court in the case of Raman Services (P) Ltd. v. Subhas Kapoor, JT 2000 (Supp.II) SC 546, have strongly deprecated the practice of courts adjourning cases on the ground of strike by advocates. In the concluding sentence of the judgment their Lordships have observed as follows:

"The defaulting courts may also be contributory to the contempt of this Court."

From the above, it is clear that the Hon'ble Supreme Court have held that by giving adjournments on the ground of strike by lawyers, Court may be contributing to the contempt of the Hon'ble Apex Court. In view of this, the matter could not be adjourned. The petitioner absent on call. I have perused the pleadings of the parties.

2. In this O.A. the petitioner has prayed for a direction to the respondents to retain the applicant in service till his superannuation on 20.1.2004 taking his date of birth as 21.1.1939.

3. The case of the applicant is that he was appointed as EDMC, Golbai B.O. in 1956. At the time of his appointment, he submitted his original Transfer Certificate dated 9.11.1957 granted by the Head Master,

Bhagabati M.E.School, Golbai, showing his

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date of birth as 21.1.1939. Accordingly, the applicant was due to retire on 20.1.2004 on attaining the age of 65 years. But Sub-Divisional Inspector (Postal), Balugaon, in his letter dated 11.9.2000 (Annexure-1) issued order for the applicant's superannuation on 6.3.2001 by taking his date of birth as 7.3.1936. After getting the memorandum, the applicant filed representation on 18.9.2000 enclosing a duplicate copy of transfer certificate dated 9.11.1957. But without due consideration, his representation was rejected. The applicant has stated that as his date of birth is 21.1.1939, he should have been retained in service till 20.1.2004 and in the context of the above, the applicant has come up with the prayer referred to earlier.

4. The respondents in their counter have opposed the prayer of the applicant. They have stated that at the time of appointment of the applicant as EDMC in 1956, in the descriptive roll his date of birth was shown as 7.3.1936. His age on the date of appointment was recorded as 20 years, six months and 15 days. The applicant signed the descriptive roll, copy of which is at Annexure-R/1. The respondents have stated that the applicant has come up with the representation for changing his date of birth only at the fagend of his service career and therefore this prayer could not have been considered. On the above grounds, the respondents have opposed the prayer of the applicant.

d. Sum.

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5. The applicant in his rejoinder has reiterated his averments. The only point to be noted is that in his rejoinder the applicant has stated that Annexure-R/1, i.e., the descriptive roll is a forged document.

6. I have considered the rival averments of the parties in their pleadings carefully. The descriptive roll has been challenged by the applicant as a forged document on the ground that as the applicant has read upto Class X and is a literate person there was no necessity for taking his finger prints at the bottom of the descriptive roll and this, according to the applicant, shows that the descriptive roll is a forged document. I am unable to accept the above contention because the applicant has signed in the descriptive roll and besides the signature, his finger prints have also been taken. In all descriptive rolls besides the signature finger prints are also taken and this by itself will not prove that the descriptive roll is a forged document. This contention is accordingly rejected.

7. In the descriptive roll the applicant's date of birth has been shown as 7.3.1936. The applicant claims that his date of birth is 21.1.1939. The respondents have pointed out, to my mind correctly, that if the date of birth of the applicant is taken as 21.1.1939, then on the date of his appointment on 22.9.1956 he would have been less than 18 years and would not have been

S. B. M.
eligible for appointment as EDMC. The applicant having taken the advantage of his

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date of birth being shown as 7.3.1936 cannot again turn back and make a claim that his date of birth is 21.1.1939.

8. The second aspect of the matter is the transfer certificate dated 9.11.1957 showing his date of birth as 21.1.1939. The respondents have stated in their counter that this certificate was verified from the school and it was found ^{that} one Kalu Charan Sethi was admitted in Class IV on 30.7.1949 and his date of birth is 21.1.1939. The applicant's name is Kulamani Sethi and not Kalu Charan Sethi. It is also stated that the Head Master of the school could not produce the original certificate book from which the duplicate transfer certificate was issued. The applicant in his rejoinder has stated that his name is actually Kulamani Sethi. But by mistake, in the admission register it was mentioned as Kalu Charan Sethi. He also filed an affidavit to this effect sworn in 1982 (Annexure-6). This affidavit does not bear the stamp or signature of the officer before whom it was sworn and in any case the name of the person whose date of birth is 21.1.1939 and the name of the applicant differ. There is no explanation why the transfer certificate was issued in the name of Kulamani Sethi showing his date of birth as 21.1.1939 when in the admission register the name of the concerned person has been written as Kalu Charan Sethi. In view of the above, I hold that the applicant has failed to prove that his date

of birth is 21.1.1939. It is also to be noted ^{that}

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the applicant represented for changing his date of birth only after getting the notice of retirement. In case he had actually filed an affidavit in 1982, then he would have been aware about the discrepancy in the name and would have been aware that there would be problem later on with regard to date of birth. There is no explanation why he did not represent at that time in 1982 regarding alleged wrong recording of his date of birth.

9. In view of my above discussion, I hold that the applicant is not entitled to the relief claimed by him. The Original Application is held to be without any merit and the same is rejected. No costs.

Somnath Somi
(SOMNATH SOMI)
7.11.2001
VICE-CHAIRMAN

AN/PS

Free copies of final
order dt. 7.11.2001
issued to counsel
for both sides.
DB
S/XI/01
S.O (T)