

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.138 OF 2001
Cuttack this the 12th day of April/2002

M.K. Swain

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Applicant (s)

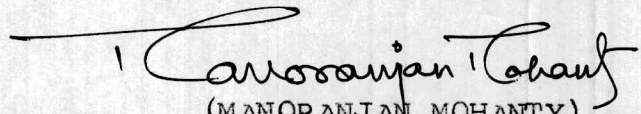
-VERSUS-

Union of India & Others...

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

12/04/2002

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK**

ORIGINAL APPLICATION NO.138 OF 2001
Cuttack this the 12th day of April/2002

CORAM:

THE HON'BLE SHRI MANORANJAN MOHANTY, MEMBER (JUDICIAL)

Manoj Kumar Swain,
aged about 22 years,
S/o.Late Surya @ Surendra Swain
Village/PO-Baraboi
PS-Delang, District-Puri

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Applicant

By the Advocates

M/s.B.Mohanty-I
S.Patra
P.K.Majhi

-VERSUS-

1. Union of India represented through its Secretary to Govt. of India, Ministry of Railways, Rail Bhawan, New Delhi
2. Railway Board, represented through its Secretary, Rail Bhawan, New Delhi
3. General Manager, South Eastern Railways Garden Reach, Kolkata, West Bengal
4. Senior Divisional Personal Officer, South Eastern Railway, Khurda Road, Dist-Khurda

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Respondents

By the Advocates

Mr.C.R.Mishra,A.S.C.
(For Res.4)

ORDER

MR.MANORANJAN MOHANTY, MEMBER (JUDICIAL): Applicant's father, while continuing as regular Gangman under S.E.Railways, died prematurely on 17.2.1999, as is evident from the Death Certificate, produced under Annexure-A/1. Within three months from the date of sudden death, the mother(widow) of the applicant submitted a representation on 17.5.1999, seeking an employment on compassionate ground in favour of her son (the applicant) in order to remove the distressed condition of the family. The said representation was forwarded by Respondent No.5 to Respondent No.4 vide Endorsement No.E/6/VII/

233 dated 17.5.1999, with the following remarks.

"Forwarded to Sr.D.P.O., Khurda Road for favour of further disposal please. Her case may please be considered as her husband expired on 17.2.99, while on duty".

The Income Certificate of the applicant's family dated 18.6.1999, as available under Annexure-A/4, was also produced before the Respondents to show the distressed condition of the family. As has been admitted in the counter, the case of the applicant was enquired into and received due approval; for which he was called for a screening, for being appointed in a Group D category post. It is the case of the applicant that he also submitted another representation on 15.11.1999 vide Annexure-A/5 (to Res.3), for providing him employment assistance on compassionate grounds, with a view to removing the distressed condition of the family. By a communication, as under Annexure-A/6 dated 25.5.2001, the prayer of the applicant, as stated above, was turned down/ rejected, without any reason. In the aforesaid premises, the applicant has filed the present Original Application, for redressal of the grievances.

2. It is the stand of the Respondents in the counter that applicant's father entered into service on 24.3.1967 and his service was confirmed on 24.3.1968. On the prayer of the applicant's father, the Respondents entered into an enquiry and directed his date of birth to be corrected from 5.3.1940 to 5.11.1942 in the service record. In course of enquiry in question, the father of the applicant produced an affidavit before the Respondents

to substantiate his claim that his date of birth was really 5.11.1942 and not 4.3.1940. It is the case of the Respondents that on the face of the fact the date of birth of the applicant's father being 5.3.1940, he was due to face the retirement w.e.f. 5.3.1998 and therefore, he having died on 17.2.1999, the applicant is not entitled to be provided with an employment on compassionate grounds. It is the further case of the Respondents that the correction of date of birth (from 5.3.1940 to 5.11.1942) was unilaterally reversed (to 5.3.1940) on 27.9.2000. Apart from this, no other objections have been raised in the counter to throttle the prayer of the applicant for compassionate appointment.

3. Heard Shri Biswajit Mohanty-I, the learned counsel for the Applicant and Shri C.R. Mishra, the learned Addl. Standing Counsel for the Respondents (Res.4) and perused the pleadings.

4. As it appears from the pleadings of the parties, the sole question for consideration is whether the correct date of birth of the applicant's father was 5.3.1940 or 5.11.1942 and whether the Respondents are justified in altering the date of birth of the applicant's ^{father,} unilaterally, at the fag end of his service career.

5. Law is well settled that prayer for correction of date of birth cannot be entertained at the fag end of the service career. Here is a case where the prayer of the applicant's father, to correct his date of birth from 5.3.1940 to 5.11.1942 in the Service Records was allowed by the Respondents way-back in 1994 and on the same analogy of law the employer is estopped to correct the date of birth of

at the fag end of the service career of an employee, as in case of the applicant's father, in the instant case. Therefore, the correction of date of birth of the applicant's father (by the Respondents) ~~on~~ 27.9.2000, reversing the same from 5.11.1942 to 4.3.1940, was bad.

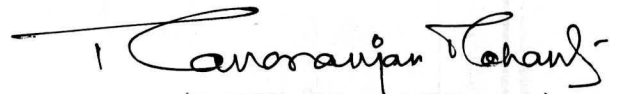
Law is well settled that nobody should be affected by an unilateral action, which is to be ~~branded as~~ arbitrary, without complying the principles of natural justice/without respecting Article 14 of the Constitution of India. Viewed from this angle, the action of the Respondents (in altering the date of birth of the applicant's father from 5.11.1942 to 4.3.1940 ^{on 27.09.2000}) was illegal, arbitrary and whimsical.

6. In the instant case, the Respondents unilaterally altered the date of birth of the applicant's father, on 27.9.2000, ~~yet~~ long after his death, in gross disregard to the principles of natural justice. Since there was violation of the principles of natural justice, the matter could have been remitted back to the Respondents to follow up due process of law; but in the present case the applicant's father, having died wayback in 17.2.1999, ~~in~~am of the considered view that no fruitful purpose would be served, if at this stage the matter is remanded to Respondents.

7. In this view of the matter, Respondents are hereby directed to accept the date of birth of the applicant's father to be 5.11.1942 as correct and give all consequential benefits to the family of the deceased railway servant, including the employment assistance to the applicant on compassionate ground, within a period of two months from

the date of receipt of copies of this order. This direction is given, because, the Respondents had followed all the formalities and procedures for providing a compassionate appointment to the Applicant and the only impediment before them ~~having~~ now been removed, they have got no other alternative but to provide an employment to the applicant on compassionate ground. It is needless to hold and say that applicant's father's date of birth being 5.11.1942 (as accepted by the Respondents wayback in 1994) he was due to continue in service till November, 2002 and he (father of the applicant) passed away on 17.2.1999, while - still in service under the Respondents.

With the aforesaid observations and directions, this O.A. is allowed, but without any order as to costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

12/04/2002

B.K.SAHOO//