

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 139 OF 2001.
Cuttack, this the 14th day of January, 2002.

HEMANTA BISWAL.

....

APPLICANT.

:VERSUS:

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 Central Administrative Tribunal or not? No.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
14.1.2002

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.189 OF 2001

Cuttack, this the 14th day of January, 2002.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

HEMANT BISWAL, 65 years,
S/o. Late Bhika Biswal,
Village/Post: Samara,
District: Bolangir.

APPLICANT.

By legal practitioner: Mr. P. K. Padhi,
Advocate.

: VERSUS :

Union of India represented through its
Chief postmaster General, Orissa Circle,
Bhubaneswar, Dist. Khurda.

2. Superintendent of Post Offices,
Bolangir Division,
Bolangir,
At/Po/Dist: Bolangir.

3. Assistant Superintendent of Post Offices
in charge, Central Sub-Division,
At/Po/Dist: Bolangir-1.

.... RESPONDENTS.

S. J. Som
By legal practitioner: Mr. J. K. Nayak,
Additional Standing
Counsel (Central).

....

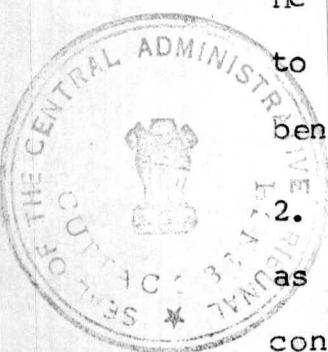
O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed for quashing the order dated 19.12.1997 (Annexure-8) directing that the applicant would retire on superannuation on 31.12.1997 taking his date of birth as 1.1.1933. He has also prayed for quashing the order dated 6-1-1998 relieving him of the post of EDMC, Samara Branch Post Office w.e.f. 31.12.1997 on his refusal to get relieved. He has further prayed for a direction treating the applicant to be in service till 31.12.2000 and for all consequential benefits including back wages.

2. The case of applicant is that he was appointed as EDMC, Samara Branch Post Office on 26.6.1961 and continued as such till he is forcibly retired on 31.12.1997. His case is that according to the School Leaving Certificate (Annexure-2), his actual date of birth is 1-1-1936 and therefore, he should have retired on 31.12.2000. Applicant has stated that a copy of the SLC was supplied by him to the authorities at the time of preparation of the gradation list in his letter dated 26.7.1997 (Annexure-4). Applicant has further stated that the Asst. Supdt. of Post Offices, (Respondent No. 3) enquired about the date of birth of the applicant from the Headmaster, Samara Govt. Primary School and the Headmaster wrongly intimated the Respondent No. 3 in letter dated 29.8.96 (Annexure-6) that as per the admission register, the applicant has been admitted in the School on 1.1.1940 at the age of

SJM



seven years and his actual date of birth has not been recorded in the admission register. The same headmaster in his subsequent letter dated 13.9.96 (Annexure-7) indicated that the applicant was a student of the school upto 31.3.1948. He had been promoted to Class-IV and Transfer Certificate was issued from the office on 31.7.1948. As per the counter-foil of the Transfer Certificate, his date of birth is 1.1.1936. Applicant has further stated that he was never informed of this fact and after coming to know of this he obtained this letter from the Headmaster. Applicant has stated that in pursuance of the letter dated 29.8.1996, Respondent No. 2 ordered to retire the applicant w.e.f. 31.12.1997 ignoring the subsequent letter dated 13.9.1996. He has time and again represented to the Departmental Authorities for his reinstatement but without any result. In the context of the above, he has come up in this petition with the prayers referred to earlier.

J. N. M.

3. Respondents have filed counter opposing the prayers of applicant. It is stated that the applicant was appointed as EDMC, Samara BO and he joined the post on 30.8.1 955 vide his charge report at Annexure-R/1 but the order of appointment was not available with the Appointing Authority (Respondent No. 3). Accordingly, applicant was asked in letter dated 6.1.1997 and 21.7.97 to supply copy of the appointment order and original Transfer Certificate if available with him but the applicant did not respond. The Xerox copy of TC was incomplete as Cols. 3&12 were blank. It is stated that confidential

A

enquiry was made from the School about the date of birth and the Headmaster in his letter dated 29.8.1996 (Annexure-R/20) intimated that as per admission Register, applicant was admitted on 1.1.1940 at the age of seven years. The descriptive particulars of applicant show that he has written his year of birth as 1933 and age 22 years. Accordingly, his date of birth has been taken as 1.1.1933. Applicant was informed in letter dated 30.8.1997 that his date of birth is taken as 1.1.1933 for all service purposes. This letter was received by the applicant on 2-9-1997 but he did not send any reply. Accordingly, taking his date of birth as 1.1.1933, he was retired w.e.f. 31.12.1997 on attaining the age of 65 years. It is stated that the letter dated 13.9.1996 of the Headmaster and the date 1.1.1936 mentioned in the counter-foil of TC were not considered genuine as these differ from the descriptive particulars. It is also stated that the date 1.1.1936 in the gradation list can not be taken as correct. It is further stated that the applicant has approached the Tribunal in May, 2001 three years after his superannuation. In the above context, Respondents have opposed the prayers of applicant.

JMN

4. I have heard Shri P.K. Padhi, learned counsel for the applicant and Shri J.K. Nayak, learned Additional Standing Counsel appearing for the Respondents and have also perused the pleadings.

5. In course of his submission, Shri Padhi, learned Counsel for the applicant did not press his prayer for accepting his date of birth as 1.1.1936. He stated that even taking the descriptive particulars as correct, he not should have been retired on 31.12.1997. On a reference to descriptive particulars enclosed by Respondents at Annexure-R/3, I find that these descriptive particulars has been signed by the applicant himself and in this against the Col. 6 i.e. date of birth 1933 has been mentioned. In otherwords, only the year of birth has been mentioned and not the date. Against Col. 5, the age has been mentioned as 22 years. From this it is clear that going by the averments of the Respondents, themselves at the time of filling up of the descriptive roll no date of birth was noted. Only year of birth was noted. In that event under the Rules, his date of birth should have been taken as 16th of July, 1933. His age was also noted as 22 years. The relevant Rule of General Financial Rules is quoted below:

JWM

RULE 80.(1) If a Government servant is unable to state his exact date of birth but can state the year or year and month of birth, the 1st July or the 16th of the Month, respectively, shall be treated as the date of his birth.

RULE 80(2) If he is only able to state his approximate age, his date of birth shall be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment.

RULE 80(3) When a person who first entered Military employ is subsequently employed in a Civil department, the date of birth for the purpose of the Civil employment shall be the date stated by him at the time of attestation, or if at the time of attestation he stated only his age, the date of birth shall be deducted with reference to that age according to sub rule(2) of this rule.

There is a similar rule in Vol. IV of Posts and Telegraphs Manual para 139 which is also quoted below:-

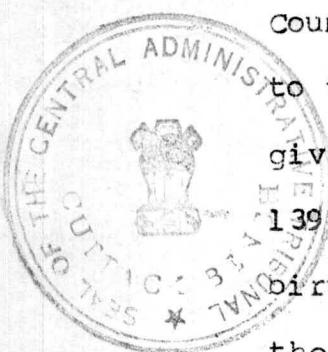
139. Discrepancies relative to the applicant's age, service, etc., must be reconciled. The entries of date of birth in both service books and service rolls should invariably be accepted in preference to any contrary statement made at the time of retirement. The entries in service books and service rolls can not be altered without the express permission of the Director-General. When only the years of birth is specified in the service book or service roll, the 1st July should be taken as the date of birth, and when the year and month are specified but not the precise date, the 16th of the month should be taken as the date of birth..

In any case, even in the absence of specific rule in P&T Manual, provisions of GFR is applicable to employees of all Central Government. Rule 80 of GFR specifically provides that in case a Government servant is unable to state his date of birth and can only state the year or year and month of birth, then 1st July should be taken as his date of birth when he is able to state only the year and when he is also able to state the month but not the date, 16th of the month should be taken as the date of birth. Sub rule-2 provides that when Govt. servant is not able to mention his date of birth but only his approximate age then his date of birth should be assumed after deducting the number of years representing his age from the date of his appointment. In this case, the applicant apparently has mentioned his year of birth as 1933 and therefore, it is not necessary to go by sub rule 2 of Rule 80 and going by the GFR his date of birth should have been taken as 16th of July. Para 139 of P&T Manual makes this position clearer. It is mentioned therein that when only the year of birth is specified in the service book or service roll, 1st July should be taken as his date of birth.

J. J. M

and when the year or month are described but not the date then 16th of the month should be taken as the date of birth. In the instant case, year has been mentioned and therefore, going by para 139 of the P&T Manual, and the descriptive sheet, the date of birth of the applicant should have been taken as 1st July, 1933. The provision regarding deducting the date of birth from his age is not applicable because that provision is **attracted** only when the Govt. servant is unable to mention even his year of birth and can only mention his age.

6. It is submitted by learned Additional Standing Counsel for the Respondents that the matter was referred to the School but as I have already noted the school has given two contradictory letters and in any case, para 139 specifically provides for cases where only year of birth is mentioned and not the date and this case is therefore, squarely governed under para 139 of P&T Manual. In view of this, it must be held that the applicant's date of birth should be reckoned as 1st July, 1933 instead of 1st January, 1933. Accordingly, the applicant ~~is~~ is due to superannuate on 30.6.1998. The action of the Respondents in retiring him on 31.12.1997 is therefore, illegal. The Respondents are directed to pay the applicant his allowances and other benefits as though he was in service for the period from 1.1.1998 to 30.6.1998. This should be done within a period of 60(sixty) days from the date of receipt of a copy of this order.



13

7. with the observations and directions made above,
the Original Application is disposed of. NO costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
14.1.2002



KNM/CM.