

OA, 21/01

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

For admission.

Bench

Patra

8/9

AFR

13. 26.03.02

At the request of learned Counsel for the petitioner matter is adjourned to 09.04.02.

[Signature]
Member (J).

14. 9.4.2002

Heard Shri P.K.Padhi, the learned counsel for the Applicant and Shri U.B.Mohapatra, learned Addl.Standing Counsel for the Respondents and perused the records.

Applicant entered into service as Extra Departmental Mail Carrier and at the time of entry into service he disclosed his date of birth to be 10.3.1931, as recorded in the Attestation Form vide Annexure-R/3. Accordingly he was to face retirement from service on attaining the age of 65 years on 9.3.1996. But a Gradation List issued by the Postal Department as is available under ^{an} Annexure to O.A., the date of birth of the applicant has been shown as 17.8.1939 and, accordingly, the claim of the applicant is that he is due to face the retirement on attainment of 65th years of ^{his} age on 16.8.2004. Because the applicant faced the retirement under Annexure-1 dated 9.2.1999, w.e.f. 13.2.1999, ~~with~~ he has filed the present Original Application for redressal of his grievances.

On the face of the date of birth as recorded in the Attestation Form under Annexure-R/3 (which is recorded as 10.3.1931), the applicant's O.A. ought to have been dismissed;

[Signature]

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because at the fag end of his service career applicant's claim to correct his date of birth is not permissible. But for the reason of the fact that ~~as~~ has been disclosed in Para-7 of counter filed by the Respondents, the applicant has got a case. It has been disclosed in Para-7 of the counter that at the time of preparation of Gradation List (as enclosed as Annexure to O.A.) the applicant was asked to disclose his correct date of birth and at that time he disclosed his date of birth to be 17.8.1939. As per the counter, the applicant disclosed this date (17.8.1939) to Respondent No.3 and the said Res. No.3, having accepted the said date to be the correct date of birth of the applicant, reported the factom to Respondent No.2, who, in his turn, not only accepted the same, but also recorded 17.8.1939 to be the correct date of birth of the applicant in the Gradation List for general information of all concerned; which has been annexed to the O.A.. Thus the Respondents were estopped to reverse the correct date of birth of the applicant, as recorded in the Gradation List, at the fag end of his service career without putting the applicant to notice and asking for explanation, if any. As is apparent, no such show cause notice had been issued to the applicant in this regard and, by virtue of order under Annexure-1 dated 9.2.1999, notice of retirement has been served, retiring him from service w.e.f. February/99. Since the applicant has faced with the retirement in gross violation of the principles of natural justice,

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the action of the Respondents giving effect to retirement of the Applicant vide Annexure-1 dated 9.2.1999 is to be set aside; which is hereby ordered. The applicant, as a consequence thereof, shall be deemed to be continuing in service. A formal order of reinstatement be issued by the Respondents within one month hence. The applicant is also entitled to backwages for the entire ^{intervening} period and the said amount should be paid to him within a period of three months from the date of receipt of copies of this order.

However, liberty is granted to the Respondents to give notice to the applicant for correction of his date of birth from 17.8.1939 to 10.3.1931 and only after hearing him, they can pass the consequential orders, if any.

The O.A., as per observations and directions made above, is accordingly allowed; but without any order as to costs.

Jabari
09.04.2002
MEMBER (JUDICIAL)

Free copy of
the order dt. 9.4.02
given to the
both counsel.

Paba
19/4

S-O