

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 585 OF 2001
Cuttack, this the 03rd day of April, 2003.

Alexis Gelapi. 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 Central Administrative Tribunal or not? Yes


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 585 OF 2001
Cuttack, this the 07th day of April, 2003.

CORAM:-

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. M. R. MOHANTY, MEMBER (JUDL.)

ALEXIS GOLAPI,
Aged about 59 years,
S/o. Late Ananda Golapi,
At: Christianpetta,
PO: Jeypore,
Dist: Keraput.

..... Applicant.

By legal practitioner: Mr. P.C. Chhinchani, Advocate.

& VRS.:

1. Union of India represented by the Secretary, Ministry of Information & Broadcasting, Govt. of India, Sastri Bhawan, New Delhi-110 001.
2. Prasar Bharati Broadcasting Corporation of India, represented by the Director General of All India Radio, Akashvani Bhawan, Parliament Street, New Delhi-110 001.
3. Station Director, All India Radio, At/PO: Jeypore, Dist. Keraput. Respondents.

By legal practitioner: Mr. S.B. Jena, ASC (Central).

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :-

Applicant, named Alexis Golapi, being aggrieved by the orders of the Respondents (under Annexures-4, 5 and 6; in retiring him from service and ordering for adjustment of the payments made to him; due to his continuance in service beyond the actual date of retirement) has filed this Original Application U/s. 19 of the A.T. Act, 1985; by the said order to be highly illegal, arbitrary and against the principles of natural justice.

2. According to the Applicant his date of birth as certified by the Dean of JELC of Jeypore-Deanery being 04-09-1942, he was entitled to retire in the year 2000 and thereafter, by virtue of enhancement of retirement age upto 60 years, he ought to have been allowed to continue in employment upto 2002. Since the Respondents, without taking into consideration the date of birth given out in such certificate, forced the applicant to retire from service w.e.f. 31.07.1997; the impugned order dated 08-30-2009 (by which he was given retirement) is not sustainable.

3. Respondents have filed their counter stating therein that even though in volume-I of the Service Book, the date of birth of the Applicant has been recorded as '15.07.1939' but in volume-II of the Service Book of the Applicant, the said date of birth has been rounded up and shown as '04-09-1942' and that, the said correction has not been attested by any body. It is submitted by the Respondents that no supporting record is available with regard to the change of the date of birth of the applicant in the volume-II of the service book. It is further submitted by the Respondents that since the change of the date of birth in the second volume of the service book is/was beneficial to the Applicant, it was suspected by the Deptt/Respondents that the same had been done by the Applicant. Lastly it has been submitted by the Respondents that at the fag end of service career, the Applicant is estopped to ask for any change of the date of birth. However, on being found that by mistake the applicant had been allowed to

continue beyond his date of retirement under order dated 3-3-2000, the Applicant was relieved from his duties w.e.f. 31.7.1997 taking his date of birth to be 15.7.1939

4. Heard Mr.Chinchani, Learned Counsel appearing for the Applicant and Mr.S.B.Jena, Learned Additional Standing Counsel appearing for the Respondents and perused the records.

5. Law is well settled (in the case of UNION OF INDIA VRS HARNAM SING reported in AIR 1993 SC 1367) that at the fag end of service career, a Government servant is not entitled to claim any change of his date of birth. Equally, the Department is also estopped from changing the date of birth (recorded in the service book of a Govt.servant) at the fag end of his service career. Here in this instant case no impeachable evidence has been placed showing the date of birth; contrary to what has been recorded in his service book i.e. 15.7.1939. It was also not the case of the Applicant that change of date of birth was made in the service book vol.II by virtue of the document under Annexure-3. This document is dated 6.1.2000. In this view of the matter, the Applicant has rightly been asked to retire w.e.f. 31.7.1997 (AN) in order dated 08.03.2000.

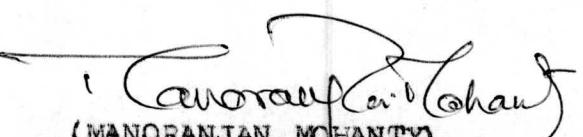
6. But at the same time, this Tribunal cannot ^{shut-} sort its eyes to the fact that for the fault of the Department/ Respondents, the Applicant was allowed to continue in service till 18.3.2000. Therefore, since he was allowed to continue in service for the fault of the Department/ Respondents and he had performed his duties during these

periods, retiring him retrospectively cannot be said to be a just decision. In this view of the matter, we hold that since the Applicant had performed his duties during these periods, he was entitled to the wages/salaries and that no recovery can be made from the Applicant. In case no charges/Crl. proceedings has yet been started against the Applicant, his retirement dues should be paid forthwith.

7. In the result, therefore, this Original Application is partly allowed. No costs.


(B.N. SOM)

VICE-CHAIRMAN


(MANORANJAN MOHANTY)

MEMBER (JUDICIAL) 07/04/03