

O.A.NO.185/2002.

ORDER DATED 31-5-2002.

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the Applicant prays to quash the notice of retirement of the Applicant dated 15-2-2002 and declare that the date of birth of the Applicant is 21-6-1939 and he is entitled to continue in service till 3-6-2004.

2. The case of the Applicant, now working as Extra Departmental Branch Post Master of Titira Branch Post Office of Jagatsinghpur, is that his date of birth is 21-6-1939 (as per his School records filed as Annexure-1 to this Original Application) but it was wrongly recorded as 4-6-1937 (in the service records) at the time of his entry in service. It is the further case of the Applicant that later, on the strength of his representation, the Authorities corrected his date of birth to be 21-6-1939 and that despite such correction carried out in the revised gradation list, the Applicant has been given notice under Annexure-2, dated 15-2-2002 (to face superannuation on 3-6-2002) by treating his date of birth to be 4-6-1937. As it appears the Applicant has carried a representation under Annexure-3 dated 22-2-2002. No heed having been paid to the said representation of the Applicant, he filed the present Original Application for redressal of his grievances referred to above.

3. The Respondents have filed their counter, inter alia stating therein that on the basis of the date of birth furnished

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by the Applicant, at the time of entry into service, he is due to retire on 3-6-2002 on attaining the age of superannuation /65 years. The Respondents have stated that the date of birth of the Applicant as furnished in the descriptive rolls being 4-6-1937; nothing wrong was committed by the Respondents in issuing the notice under Annexure-2, dated 15-2-2002. An additional counter has been filed today. A rejoinder has also been filed by the Applicant today.

4. Heard Mr. Mohanty, learned counsel for the Applicant and Mr. A.K. Bose, learned Senior Standing Counsel appearing for the Respondents.

5. It is submitted by the Advocate for the Applicant, during the course of argument, that there are instances; wherein the date of birth of the employees have been corrected even after the retirement notice given to them. But in the instant case; even^{if} the School Leaving Certificate shows the date of birth of the Applicant to be 21-6-1939, he has been asked to retire on 3-6-2002. It is further stated by the Advocate for the Applicant that even though, after the notice of retirement on 22-2-2002, he has made a representation to the Superintendent of post offices (under Annexure-3) stating all the facts, no communication has been made to him and, apparently, no enquiry has been made on the allegation of the Applicant that the date of birth of Applicant was corrected in the gradation list maintained at Jagatsinghpur ASP's Office.

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6. On the other hand, learned Senior Standing Counsel appearing for the Respondents submitted that the Applicant has been asked to retire on 3-6-2002 on the basis of the date of birth as 4-6-1937 given in the descriptive particulars as under Annexure-R/1 and, as such, at this belated stage no request for change of date of birth of Applicant should be accepted.

7. Learned Counsel for the Applicant has specifically pointed out that on the basis of the School Leaving Certificate, the date of birth of the Applicant had been corrected and the same had been reflected in the copy of the gradation list maintained in the Jagatsinghpur ASP Office. In order to substantiate his stand, the Applicant prayed to call for the gradation list from the Respondents and, accordingly, the same were called for. Learned Senior Standing Counsel produced the gradation list, as maintained in the Office of the Supdt. of Post Offices at Cuttack; which showed no correction of date of birth of the Applicant. However, without showing any excuse, he failed to produce the copy of the gradation list said to be maintained at Jagatsinghpur ASP Office. It is the specific case of the Advocate for the Applicant that after making necessary enquiry the gradation list (at Jagatsinghpur) was corrected and, therein the date of birth of the Applicant was recorded as 21-6-1939. In support of the stand of the Applicant that his date of birth is 21-6-1939, the Applicant has submitted xerox copy of the School leaving Certificate (showing the date of birth of the Applicant to be 21-6-1939) as Annexure-1. It is not the case of the Respondents that the same is not a genuine document nor it is their case that

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the date of birth recorded therein to be not correct.

8. It is settled principle of law that one should not be allowed to correct his date of birth at the fag end of his service career. On the same analogy, the authorities are equally estopped to act reversely. The authorities having permitted and accepted correction of date of birth from 4-6-1937 to 21-6-1939 (as alleged by the Applicant) the authorities are also equally estopped to act adversely (to the interest of the Applicant) without following the principles of natural justice. If the correction had already been carried out previously, as alleged by the Advocate for the Applicant, the Respondents are estopped to act reversely at the fag end of the service career of the Applicant.

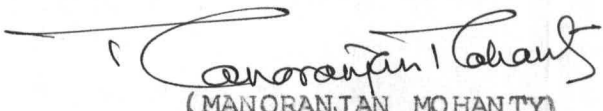
9. Instead of making a roaving enquiry into the matter (as has been, virtually, prayed for in M.A.No.467/2002) the Respondents are hereby directed to cause an enquiry on the genuineness of the School Leaving Certificate issued by the Headmaster of Gadibrahma vidyapitha (and produced by the Applicant as Annexure-1) and on the allegation of the Applicant that his date of birth had already been corrected (in the gradation list maintained at Jaga-tsinghpur ASP Office) as 21-6-1939 and that he is not required to retire on 3-6-2002 and, while doing so, the Respondents should give adequate opportunity to the Applicant. Till the enquiry in question is over, ^{Annexure-2, dated 15-2-2002 shall remain stayed &} the Applicant should be allowed (by the Respondents) to continue in his post/service as EDBPM of Titira BO; and, in case it is found that the Applicant's

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date of birth is 21-6-1939, it is directed further ,
the Respondents should give benefits to the Applicant
as due and admissible under law.

10. With the above observations and directions,
this Original Application is disposed of.No costs.


(MANORANJAN MOHANTY)
MEMBER(JUDICIAL) 31/05/2002