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**O.A.No. 229 OF 2004.**

ORDER DATED: 22<sup>nd</sup> March' 2006

In this Original Application filed under section 19 of the Administrative Tribunals Act, 1985, the Applicant (a retired GDSMC of Rasulpur GDS Branch Post Office) has challenged the retirement notice (issued under Annexure-A/6 dated 03-02-2004; in which he was asked to face retirement on 19-06-2004; by taking his date of birth to be 20-06-1939) and the rejection (of his request for change of his date of birth in the service book as 14-10-1942 in place of 20-06-1939) issued under Annexure-A/7 dated 15-05-2004. He has also prayed for a direction to the Respondents to pay him all the consequential service and financial benefits for the period he was wrongly kept away from duty till attainment of the date of retirement by taking into consideration his actual date of birth as 14-10-1942.

2. Respondents, having filed their counter, have raised objections to the prayers of the Applicant. They have stated in their counter that the Applicant has rightly been asked to go on retirement (on attaining the age of 65 years of his age, completed by taking into consideration his date of birth as 20-06-1939 as declared by him in the descriptive particulars submitted, under his signature, at the time of joining in service) and, regarding

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sustainability of the order of rejection under Annexure-A/7, the Respondents, by taking support of Rules as also various judge made laws on the subject, have averred that there is clear prohibition for entertainment of such belated request for change of date of birth; especially at the fag end of service career and, therefore, there was nothing wrong in rejecting the request for change of date of birth at the fag end of his service career.

3. Heard learned counsel appearing for both sides and perused the materials placed on record. With regard to the request of change of date of birth recorded in the service records (at the fag end of service career) of a Govt. servant, is no more resintegra and, in this connection, it is more than enough to refer the decision of the Hon'ble Apex Court of India rendered in the case of **UNIONI OF INDIA vs. HARNAM SINGH** (reported in 1993) 24 ATC 92= 1993 SCC (L&S) 375). In present case, learned counsel appearing for the Applicant has made endeavour to establish that the decision rendered by the Apex Court is much distinct and different by stating that Respondents did not make the Applicant aware of his wrong entry date of birth in the service records, at any point of time before the same could come to the notice of Applicant (either by circulating the gradation list or by supplying copies of the service book/descriptive particulars maintained by the Department) and that the Applicant came to

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know of the wrong entry of his date of birth (in the service record) only during 2002; when he immediately made representation (annexing the SLC issued by the Govt. High School at Jaleswar) with request for rectification of the mistake in regard to his date of birth and that, date of birth recorded in the SLC being an authenticated one as held by the Hon'ble Supreme Court, the request of the Applicant ought not to have been turned down. By stating so, learned counsel appearing for the Applicant has led emphasis that since the laches is attributable to the Respondents, hyper technical objection, of delay in approach, should not stand on the way of the Respondents for dispensation of justice or to correct an error committed by the Respondent-Department.

4. On the other hand, learned counsel appearing for the Respondents, by leading emphasis on the various averments put forth in the counter, has stated that whatever the fact of the matter, belated claim (with regard to change of date of birth recorded in the service records) is not available to be acceded to as per the Rules/laws of the land. Hence, Learned counsel appearing for the Respondents has prayed for dismissal of this Original Application.

5. Having heard the parties at length, no convincing reason has been found out in this case to interfere with the matter – rather, Applicant



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is estopped, under law, to seek any change of his date of birth, for having disclosed his date of birth to be 20-06-1939 by him at the time of entry into the service. Rules specifically envisage that the date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration, of course with the exception that (a) if such request of change of date of birth comes within five years of his entry into Government service or (b) it is clearly established that a genuine bona fide mistake had occurred. Such a question ultimately, came up for consideration before the Hon'ble Supreme Court of India in the case of Harnam Singh(supra) and Their Lordships have been pleased to observe as under:-

“The date of birth entered in the service records of a civil servant is, thus, of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date ;of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims is generally applied to by the Courts and Tribunals. It is nonetheless competent for the Court to fix a time limit in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A

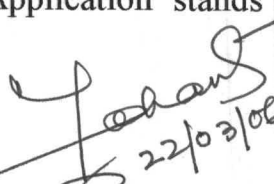
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Government servant who makes an application for correction of date of birth beyond the time so fixed, therefore, cannot claim as a matter of right the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly, but it has to be applied with all its rigour and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allowed the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age”.

6. The above view of the Hon'ble Supreme Court has again been reiterated in the case of **STATE OF TAMIL NADU vs. T.V.VENUGOPAL** reported in 1994 SCC (L&S) 1385; wherein, after referring to its earlier decisions on the issue, the Supreme Court also indicated the limited scope of judicial review in these matters. In other decisions, the Supreme Court also deprecated the practice of employees making request for change of date of birth at the fag end of their career and on the even of their retirement.

7. Be that as it may, in view of the law governing the field, the prayer made in this Original Application, in fact is not available to be granted by this Tribunal. Accordingly, this Original Application stands dismissed by leaving the parties to bear their own costs.

  
22/03/08  
(M.R.MOHANTY)  
MEMBER(JUDICIAL)