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O.A. No.1137/04

Order dated. 22.03.06.

Heard Mr. B.B. Pattnaik, Ld. Counsel appearing for the Applicant and Mr. U.B. Mohapatra, Ld. Sr. Standing Counsel appearing for the Union of India and perused the materials placed on record.

2. The Applicant was engaged in Extra Departmental Organization of Postal Department during 1962. At that time, his date of birth was recorded, in the official records, as 01.01.1934 and, accordingly, he was to retire from ED engagements on 01.01.1999. During 1981, the Applicant represented to the Authorities for correction of his date of birth. According to his prayer, the date of birth was allowed to be corrected/recorded as 13.03.1942. According to the said corrected date of birth, the Applicant was to retire on 13.03.2007. In support of his case, the Applicant has disclosed that in the gradation list that was circulated during 1993, it was disclosed that his date of birth was 13.03.1942 and that, accordingly, he was allowed to continue in service beyond 01.01.1999. It is the case of the Applicant that by a communication dated 30.05.04/31.08.04, he was asked to go on superannuation from service. This direction of the Respondents is the subject matter of challenge in this Original Application filed under Section 19 of the Administrative Tribunals' Act, 1985; when the higher authority rejected the grievances of the Applicant.

3. By filing a counter, the Respondents have stated, in essence, that the date of birth, as recorded in Service Book, was not available to be corrected at the fag end of service and that any correction, even if made at

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that belated stage, is not to be accepted (being without jurisdiction) and that rightly the Applicant was relieved from service during 2004.

4. In course of hearing, Mr. U.B. Mohapatra, Ld. Sr. Standing Counsel appearing for the Respondents disclosed that the Applicant, while entering service, disclosed his date of birth to be 01.01.1934 and, therefore, he was legally estopped even for making any representation for correction of his date of birth during 1981 and that, since the Applicant was liable to be estopped to correct his date of birth at the fag end of his employment, he was to continue in service only up to 01.01.1999.

5. Mr. B.B. Pattnaik, Ld. Counsel appearing for the Applicant, while conceding the proposition that the date of birth is not be available to be corrected at the fag end of the service career, stated that the Respondents, who allowed correction of date of birth during 1981/1993, were also equally stopped to re-correct the date of birth of the Applicant at the fag end of his employment.

6. Law is well settled by now that date of birth recorded in the Service Book is not available to be corrected at the instance of the Govt. Servant, at the fag end of his employment. In the same analogy, the Department is also estopped to make any correction of the date of birth at the fag end of the employment. In the present case the date of birth of the Applicant was allowed to be corrected during 1981/1993 (from 01.01.1934 to 13.03.1942) and, accordingly, the Applicant was allowed to continue in service beyond 01.01.1999. Long thereafter, during 2004, the Respondents have (relying on the in-correct date of birth) relieved the Applicant to go on superannuation. They were in-competent to do so. That-apart, before taking a decision to the prejudice of the Applicant, the Department did not give him any notice/any opportunity to have any say in the matter and,

therefore, the impugned order dated 30.05.04/31.08.04 was an outcome of the violation of the principles of natural justice.

7. • As a necessary consequence, the impugned order dated 30.05.04/31.08.04, not being sustainable, is hereby quashed along with the rejection order under Annexure R-4 dated 17.01.05. The Respondents are hereby directed to reinstate the Applicant and grant him all service benefits and allow him to continue in service till 13.03.07; as the Respondents are stopped to make any correction (of the date of birth of the Applicant) at the fag end of his service. The O.A. is accordingly allowed. No costs.

J. Khan
22/03/06

Member (Judicial)

Order dt- 22-3-06

Copy of order
may be given to
both the Counsel.

27-3-06

Wazir B
S.O (T)