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O.A. No. 254/2006.

Order dated: 13.2.2007

Brief fact of the matter is that the applicant on being selected to the post of Extra Departmental Branch Post Master (now Gramin Dak Sevak Branch Postmaster) of Beruda Branch Post Office joined on 25.01.1962 A/N. The age of retirement of EDA/GDS employees are 65 years. It is the case of the Applicant that though his date of birth is 01.01.1945 and he is to retire on reaching the age of superannuation w.e.f. 01.01.2010, he has illegally been asked to retire from service vide Memo No.B/ED-74 dated 13.10.2005 (Annexure-5) with effect from 22.03.2006 by wrongly taking his date of birth as '23.03.1941'. It is his case that representation against the impugned Memo under Annexure-5 asking him to retire having not yielded any result, he has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 praying to quash the memo dated 13.10.2005 (Annexure-5) with further direction to allow the Applicant to continue in service till 01.01.2010 by taking his correct date of birth as 01.01.1945 instead of 23.03.1941.

2. In support of the above stand, it has been averred by the Applicant that though in the inspection report of the CI made during 1990, the dates of birth of others were recorded at appropriate places in respect of

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the applicant it was mentioned as 'nil' and the same was repeated in the inspection made during 1991. However, during the inspection of the year 1993, Respondent No.2 asked the applicant to produce the SLC to ASP I/C of Jajpur for preparation of gradation list as the date of birth in the report of IR 1992 at para 2 noted by oral version. As nothing was intimated to the applicant in writing, the applicant did not submit any such certificate. However, on receipt of the retirement notice, though he has submitted representation enclosing the SLC (Annexure-6) no heed was paid to the same and ultimately, the applicant had to superannuate from service on the basis of wrong entry of his date of birth.

3. Respondents by placing counter have contested the stand taken by the applicant in his Original Application. It has been maintained that it is wrong to say that the date of birth of applicant was not available in the record. It was very much available in the service record maintained by the Department. In the service record, the date of birth was recorded as 23.03.1941 based on the descriptive particulars submitted by the applicant at the time of his appointment/joining in the post. It has been maintained that in the gradation/seniority list published/circulated from time to time, his date of birth was mentioned as 23.03.1941 (Annexure R/1, R/2, R/3 and R/4) but the applicant at no point of time raised any objection with

regard to the above stated date of birth. They have therefore, resisted the claim of the applicant by stating that having not raised any objection well within the time, at this stage he is estopped under law to say that the date of birth recorded in his service sheet is in any way wrong. Therefore, they have strongly denied the claim of the Applicant.

4. Heard the rival submissions of the parties and perused the materials placed on record.

5. Learned Counsel appearing for the applicant has submitted that when the SLC (Annexure-A/6) clearly discloses that the date of birth of the Applicant is 01-01-1945 it is unbelievable that the applicant had furnished his date of birth as 23.03.1941. He has therefore, submitted that either the recording of the date of birth in the descriptive particulars is wrong or the same has been prepared after taking the signature of the applicant in the blank sheet. He has also argued that for the sake of justice, when the applicant requested by producing the SLC to correct the incorrect entry so far as his date of birth is concerned, without making any enquiry, the respondents ought not to have retired him from service. He has therefore, fervently prayed for acceptance of his prayer made in this OA.

6. Per contra, Learned counsel for the Respondents has strongly opposed the prayer of the Applicant stating that this is an after

thought plea taken by the applicant only to continue in service for more years. At no point of time, the applicant has made grievance with regard to his date of birth. He has obtained and produced the SLC/Transfer Certificate only after getting the notice of retirement. It was, therefore, thought just and proper not to pay any credence to the said certificate/representation of the applicant and accordingly, he was allowed to retire.

7. From the above, it is clear that at no point of time the applicant raised any claim so far as his grievance of **wrong entry** of his date of birth in the service record; although he was made aware of it through the gradation list published and circulated to every one including him. It is also not a case that he had no knowledge about the gradation list. He has also not denied the signature/thumb impression found in the descriptive particulars under Annexure-R/1. The fact remains that he has submitted his representation for change of date of birth at the fag end of his service career i.e. only after receipt of the retirement notice. The Hon'ble Supreme Court in numerous decisions over a span of nearly one decade have laid down and reiterated the principles which this court must apply with regard to the effect of belated claim for change of date of birth in service record. I do not think it necessary to burden this judgment by referring to all of them and it would suffice to refer to the decisions of the Hon'ble Supreme Court rendered in

the case of **Harnam Singh v. Union of India and others**, 1993 (24) ATC

92 wherein it has been held by Their Lordships that belated applications for alteration of date of birth recorded in service book at the time of entry into service should not be entertained.

8. In view of the law laid down by the Hon'ble Apex Court, it is not necessary to go further deep into the matter. Therefore, this Original Application fails and is accordingly dismissed by leaving the parties to bear their own costs.

B.B.M.
(B.B.MISHRA)
MEMBER (A)