

Sri Rabinarayan Das

.....

Applicant

Vrs.

Union of India and others .....

Respondents

ORDER DATED 19/5 SEPTEMBER 2007

This Original Application was filed on 28.3.2007 and was placed before the Bench on 30.3.2007 for considering the question of admission and at the request of the learned counsel for the applicant, was adjourned to 3.4.2007. After hearing the learned counsel, the Bench by order dated 3.4.2007 directed issuance of notice of motion for admission returnable by four weeks and the matter was posted to 8.5.2007. On 9.7.2007 Shri S.B.Jena, learned Addl.Standing Counsel appearing for the Respondents prayed for time to file counter and on his prayer being allowed, the matter was adjourned to 31.7.2007.

2. On 31.7.2007 the learned counsels M/s Rajjeet Roy and S.K.Singh for the applicant and Shri S.B.Jena, the learned ASC for the Respondents were absent on account of Advocates' strike on Court work before this Bench on the basis of purported CAT Bar Association resolutions. In this connection, I would like to refer to the decision of the Hon'ble Supreme Court in the case of **Ramon Services Private Limited vrs. Subhash Kapoor and others, reported in JT 2000 (Suppl.2) S.C. 546**, wherein at paragraphs 24, 27 and 28 Their Lordships have held that no Advocate could take it for granted that he would appear before the Court according to his whims and fancies or conveniences. It would be against professional ethics for a lawyer to abstain from the Court when the cause of his client is called for hearing or further proceedings. In appropriate cases, the Court itself could pass effective orders for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in



the legal profession and the defaulting Courts might also be contributory to the contempt of the Hon'ble Supreme Court. Keeping in view the above decision of the Hon'ble Apex Court, I perused the records and reserved the order.

3. The Bench entertained a doubt about the maintainability of the O.A. in as much as the Telecom Organization has become Bharat Sanchar Nigam Ltd. , a Government of India Enterprise. If the applicant's services have been transferred to BSNL, as per his option or otherwise, then he cannot maintain the O.A. before the Tribunal in the absence of appropriate notification issued by the Central Government under Section 14(2) of the Act. However, in view of the Affidavit filed by the applicant 3.7.2007 stating that he has been continuing as a Government of India employee, the Bench thought it fit to leave aside the question of maintainability for the limited purpose of considering the question of ~~admission~~ <sup>time barring ad.</sup> of the O.A., more particularly when the learned Addl. Standing Counsel appearing for the Respondents was silent about the maintainability of the O.A. before the Tribunal.

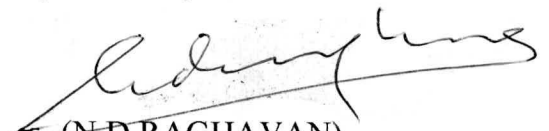
4. The applicant is presently working as Junior Telecom Officer (TES Group B), Khurda Telephone Bhawan, Khurda. He has filed this O.A. for a direction to the Respondents to correct the date of birth of the applicant as 9.12.1949 instead of 31.3.1947. He has also prayed for interim relief to direct the Respondents not to retire him taking 31.3.1947 as his date of birth until disposal of the O.A. The applicant entered the service 29.5.1973 in the Telecom Department. He has stated to have made representations 27.2.1974, 11.7.1978, 15.9.2001, 2.11.2001, 29.4.2002 and 18.1.2007 for correction of his date of birth from 31.3.2007 to 9.12.1949. As per Note 6 of FR 56(m) a request for correction of date of birth is required to be made within five years of his entry into Government service. According to the applicant, he had made a representation on 27.2.1974 and if no decision was taken by the concerned authorities, he should have approached the appropriate court of

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law within a reasonable period. He has apparently not done so. His repeated representations on 11.7.1978, 15.9.2001, 2.11.2001, 29.4.2002 will not save the delay of more than thirty years in as much as the cause of action for the applicant had arisen some times in 1974 or 1975. The applicant has also not filed an application for condonation of delay nor has he explained the delay in the O.A. itself.

5. The applicant has claimed correction of his date of birth, as aforesaid, on the basis of certain gradation lists. I have carefully perused the record and considered his claim. The gradation lists dated 14.5.2001, 28.7.2004 and 12.1.2005 which, according to the applicant, indicate the date of birth of the applicant as 9.12.1949 are not valid documents to determine the date of birth of the applicant. The applicant has stated that the High School Certificate indicates his date of birth as 31.3.1947. He has stated that a representation dated 23.1.1964 was made by him to the Secretary, Board of Secondary Education, Orissa, for correction of his date of birth as per the report of the Headmaster. He has not specifically stated in the O.A. as to whether his date of birth in the High School Certificate has been corrected. The Hon'ble Supreme Court, High Courts and Tribunals have laid down in a catena of decisions that request for change of date of birth should not be entertained at the fag-end of one's service career.

6. In this view of the matter, the Original Application is rejected in limine at the stage of admission, as being barred by limitation and also being devoid of any merit.

  
(N.D. RAGHAVAN)

VICE-CHAIRMAN

*fix for pronouncement*  
*on 19.09.07 at 230pm*  
*ide*