

7

O.A. No. 194/07

ORDER DATED 12th May, 2008

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Challenging Annexure-A/4 order the applicant has filed this application for a direction to the Respondents to allow him to continue in service and retire only on superannuation as his accepting date of birth is 18.02.1944 instead of 02.06.1942. The applicant was working as a GDSDA from 1965 onwards on getting appointment as EDDA. As per his educational records, Annexure-A/1 SLC certificate dated 04.08.1961 the date of birth of the applicant is noted as 18.02.1944. If so, as per the rules of posts, ED staff Service Rules the applicant has got the right to work up to the age of 65.

2. This Tribunal heard Mr. D.P. Dhalsamant, Ld. Counsel for the applicant and Mr. P.R.J. Dash, Ld. Counsel for the Respondents. Mr. Dhalsamant submits that as per Annexure-A/1 the date of birth of the applicant is 18.02.1944 and not 02.06.1942 as stated in Annexure-R/2.

3. Relying on the counter affidavit filed for and on behalf of the Respondents, Mr. Dash submits that as per the description of the service particulars of the applicant kept in the office of the Post Master (HSG-1) Bargarh H.O, the date of birth of the applicant is recorded as 02.06.1942. This particulars were followed by the

8

Department in all other services purposes of the applicant. The Counsel further submits that even as per the gradation list (Annexure-R/3) and other records kept by the Department, it is clearly recorded that the date of birth of the applicant is 02.06.1942. If so, the stand taken by the Department with regard to the date of birth of the applicant is tenable.

4. After having gone through the contentions of the Counsels on either side and on perusing the records produced in this O.A this Tribunal is of the view that though Annexure-A/4 order and the counter affidavit are on the basis of the records or the service particulars of the applicant kept by the Department, as the applicant has produced Annexure-A/1 certificate issued by the School authority the reasons stated in Annexure-A/4 order is not sustainable. It is only proper for the authorities to check the veracity of the Annexure-A/1 certificate as the applicant was not in a position to check the date of birth entered by the authorities during 1965 at the time of his service and he had kept this School certificate with him that have to be verified. Under the above circumstances of the authorities, apart from that the applicant has already file an appeal before the Director Postal Services, Sambalpur Division, Sambalpur and the appeal was not seen properly considered by the appellate authorities. In the above circumstances this Tribunal see that the case of the applicant has to be reconsidered by the authorities and to pass appropriate orders thereon as expeditiously as possible. In the above circumstances Annexure-A/4 is hereby quashed and the Respondent No.3 the appellate authority has to reconsider the appeal filed by the

RD

applicant and to take a decision on verification of the records already filed by the applicant and to give a further opportunity to prove his case before the appellate authorities. Accordingly, this O.A is allowed by quashing Annexure-A/4 and Respondent No.3 is directed to consider the case of the applicant afresh as aforesaid within 03 months from the date of receipt of the copy of this order and pass appropriate order and the result shall be communicated to the applicant within the stipulated time. There will be no order as to cost.

5. Copy of this order shall be given to Mr. D.P. Dhalsamant, Ld. Counsel for the applicant and Mr. P.R.J. Dash, Ld. Counsel for the Respondents.

L. Kappan
MEMBER (J)