

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.200 OF 2009
Cuttack this the 16th day of November, 2010

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

Sri Kenalu Nag, aged about 52 years, S/o. late Gadana Nag, permanent residence of village-Rupapali, PO-Satupali, Dist- Sambalpur and at present resident of village-Jaipali, PO-Basantpur, Via-C.A.Chiplima, P.S. Burla, Dist-Sambalpur (Orissa) and at present working as Casual Labourer (Temporary Status in Live Stock Section of Central Cattle Breeding Farm, Chiplima, PO-Basantpur, Via-C.A.Chiplima, P.S. Burla, Dist-Sambalpur

...Applicant

By the Advocates: M/s.R.B.Mohapatra & D.K.Mohanty

-VERSUS-

1. Union of India & Others represented by Secretary to Government of India, Ministry of Agriculture (Deptt. Of Animal Husbandry & Dairying), Krishi Bhawan, New Delhi-110 001
2. Director, Central Cattle Breeding Farm, Chiplima, PO-Basantpur-768025, P.S.Burla, Dist-Sambalpur(Orissa)

...Respondents

By the Advocate: Mr.S.B.Jena, A.S.C.

ORDER

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER:

1. Calling in question the legality and validity of the order dated 31.5.2009(Annexure-A/6) wherein the applicant has been noticed to retire from service on 31.5.2009, this Original Application under Section 19 of the A.T.Act, 1985 has been filed seeking the following relief.

- a) to admit, issue Notices to the Respondents to show-cause/reply to the averments of the above Original Application within a stipulated period;
- b) if they fail to show cause or caused insufficiently, call for the relevant records and documents from the custody of the Respondent and after perusing the pleadings of both the parties and hearing them finally,

L

- allow this Original Application by quashing the impugned order dated 30.4.2009 passed by the Respondent No.2 in Annexure-A/6;
- c) And pass necessary order directing the Respondent No.2 to reconsider the case of the applicant and allow him to continue in his service till 31.05.2017 till he attains the age of superannuation of 60 years, taking into consideration of his actual date of birth entered in to the Admission Register of Government Primary School, Jogisarada in Annexure-A/2;
- d) And pass any other appropriate order as deems proper and fit in the interest of Justice”.

2. The facts of the case in a nutshell according to applicant are that at the time of his initial engagement as Casual Labourer in the Respondent-Department he had furnished his actual date of birth as 13.05.1957 which was also mentioned in the Muster Roll Register. It is the case of the applicant that Respondent No.2 issued a photo identity card in his favour wherein his date of birth was mentioned as 06.06.1949. While the matter stood thus, Respondent No.2 issued an Office Memorandum dated 11.2.1998 (Annexure-A/4) with regard to decision taken by them for acceptance of age on the basis of Electoral Roll published on 16.12.1983 by the Electoral Registration and Sub-Collector, Sambalpur on the ground that the applicant did not submit any documentary evidence in support of his date of birth, albeit a month's time had been granted to the applicant to submit the proof of his date of birth failing which his date of birth would be determined on the basis of the date of birth as indicated in the Electoral Roll. On receipt of the above Office Memorandum the applicant submitted a representation dated 15.2.1998(Annexure-A/5) stating therein that at the time of his initial engagement, his date of birth has been recorded as 13.05.1957 in the Muster Roll. According to applicant, he had also submitted an affidavit basing on the entry in the Admission Register of the Government Primary School, Jogisarada but to no effect; instead he has been issued with the impugned

2

notice dated 30.04.2009 (Annexure-A/6) indicating his date of retirement on 31.05.2009. Hence, this Original Application.

3. Per contra, the Respondents have filed their counter. It has been submitted that as the applicant, in spite of repeated instructions, failed to produce the proof of his age, the doctor examined the applicant and basing on the certificate issued by the doctor in the year 1998, his date of birth has been recorded as 05.05.1949 and that the applicant has so accepted without any objection. According to Respondents the change of date of birth is not permissible at the fag end of service career. The Respondents have refuted the submission of the applicant that he had submitted any such school certificate obtained from Government Primary School, Josisarada before the competent authority. It has been submitted that the applicant is well aware with regard to his date of birth as per official record as 5.5.1949, which was recorded after due examination by the ~~Railway~~ Doctor 11 years back, but he has never questioned the same at the relevant point of time. With these submissions the Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

4. The applicant has not chosen to file rejoinder refuting the points raised in the counter filed by the Respondents.

5. Heard Shri R.B.Mohapatra, learned counsel for the applicant and Shri S.B.Jena, learned Addl.Standing Counsel and perused the materials on record.

6. From the facts of the case it is an admitted position that the applicant had never submitted the proof of his age at the time of his initial engagement as Casual Labourer under the Respondent-Department. What he states is that at the time of his initial engagement his date of birth had been recorded as 13.5.1957 in the Muster Roll. But the fact remains he has not whispered anywhere as to the basis on which his date of birth had been so recorded nor has be produced the copy of Muster Roll in

l

-4- 10

corroboration of his statement. It is also an admitted position that in spite of repeated instructions issued from time to time in the year 1998 the applicant did not submit the proof of his age and the fact that on his failure in submitting the documentary evidence in support of his age he had been medically examined by the ~~Railway~~ Doctor and on the opinion and certification of the Doctor in the year 1998, his date of birth has been recorded as 5.5.1949 which has never been objected to by the applicant remains undisputed. The applicant has annexed to the O.A. as Annexure-A/2, a Transfer Certificate dated 14.3.2007 issued by the Govt. Primary School, Jogisarda wherein his date of birth has been recorded as 13.5.1957, being his date of admission on 18.7.1962 and as revealed therefrom at the time of living the school the applicant was reading in Class-II. On a close scrutiny, what is presumed from the illegible date that the applicant had left the school on 24.3.1901(Sic) – which means prior to his birth. Therefore, Annexure-A/2 certificate is incredible and cannot be relied upon. Apart from the above, the applicant has not made any statement as to what prevented him from obtaining the Transfer Certificate which he has obtained in the year 2007 at the relevant point of time in the year 1998 when he had been repeatedly instructed to submit proof of his age. The averments made in the counter that the applicant has never submitted Annexure-A/2 before the Respondent-Department at any point of time has not been refuted by the applicant by filing rejoinder. The applicant has also not produced copy of Admission Register of the Govt. Primary School, Jogisarda even though he has averred in Para-4(e) of the O.A. that basing on the entry in the Admission Register of the Government Primary School, Jogisarada he had submitted an affidavit before the Respondent in support of his age. This apart, the Tribunal cannot be swayed away by the bland submission made by the applicant that in the Muster Roll Register his date of birth has been recorded as 13.5.1957.

11

7. For the reasons aforesaid, it is held that the applicant has not been able to make out a case in his favour and accordingly, the O.A. being devoid of merit is dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER

