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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 77 of 2009

Cuttack, this the 25th day of August, 2010

Krushna Chandra Panda Applicant

-Versus-

Union of India & Others Respondents

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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The short point for consideration in this Original Application filed U/s.19 of the A.T. Act, 1985 is whether the Applicant is entitled to TRCA with effect from 01.06.2007 i.e. the date when he superannuated from service on attaining the age of 65 years taking into consideration his wrong date of birth as '02.06.1942' until he was taken back to service by the order under Annexure-A/2 & A/3 on rectification of his date of birth as "18.02.1944". According to the Respondents the applicant having accepted the terms and conditions stipulated by the Respondents that on reinstatement he will not be entitled to the TRCA for the intervening period i.e. from the date of retirement to the date of reinstatement on the principle of 'no work no pay' joined the post, he forfeits his right to claim the said benefit subsequently. Hence it has been stated by the Respondents that this OA being devoid of any merit is liable to be dismissed.

Heard the rival submission of the parties and perused the materials placed on record. It is crystal clear from the facts and materials placed on record that for no fault of the applicant he was kept out of discharging his duties of the post on the basis of wrong entry in regard to his date of birth. Subsequently, the said wrong entry of the date of birth having been rectified the applicant was allowed to resume his duty. However, while ordering reinstatement in Annexure-A/2 the Respondents debarred him of the TRCA for the intervening period. This part of the order disentitling the

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applicant TRCA is under challenge in this Original Application filed under section 19 of the A.T. Act, 1985 after being unsuccessful in his attempt made through representation of getting the TRCA. His contention is that in no circumstances his joining will have any adverse effect on claiming the TRCA especially when he was in no way responsible or at fault for the mistake in recording his date of birth. This appears to be a reasonable stand of the Applicant. Law of estoppel will come to play only where decision is taken on agreement of both parties. In view of the above I do not find any justifiable reason for the denial of the TRCA to the Applicant for the intervening period. This view gains support from the decision of the Hon'ble Apex Court in the case of **Gendalal v Union of India and others**, reported in (2010) 1 SCC (L&S) 733. In the aforesaid case, on the basis of the recorded date of birth the applicant therein was allowed to retire. He filed OA before the Tribunal seeking change of incorrect entry of his date of birth. The Tribunal dismissed the said OA. Appeal filed against the said order of the Tribunal before the Hon'ble Apex Court and the Hon'ble Apex Court while setting aside the order of the Tribunal directed as under:

“5. For the aforesaid reasons, these appeals are allowed. The order dated 5-1-2001 is set aside. The appellant will be treated as being in service as per his date of birth being 4.6.1945. The appellant will be entitled to reinstatement and all consequential benefits including arrears of salary after deducting the terminal benefits if received by the appellant. This order shall be complied with within eight weeks from today. The appellant will be entitled to costs.”


2. When the factual scenario is examined in the background of the legal principles set out above, the inevitable conclusion is that the impugned order in so far as denying the applicant TRCA for the intervening period is concerned, the same is bound to be set aside and is accordingly set aside by directing the Respondents to calculate and pay the applicant his TRCA for the intervening period within a period of 45 days hence.

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3. In the result, this OA stands allowed to the extent stated above.

There shall be no order as to costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)

