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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.99 of 2012
Cuttack, this the 11th day of July, 2014

B.M. Bhoi Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(A.K. Patnaik)
Member (Judicial)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 99 of 2012

Cuttack this the 11th day of July, 2014

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THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

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Braja Mohan Bhoi, aged about 62 years, S/o. Late Baishnab Bhoi, Village-Mocchida, Po.Rengali, Dist. Sambalpur at present working as a Gramin Dak Sevak Branch Post Master, Mocchida Branch Office under Panchagaon Sub-Post Office, Dist-Jharsuguda. .

...Applicant

(Advocates: M/s. N.R. Routray, S. Mishra, T.K. Choudhury, S.K. Mohanty)

VERSUS

Union of India represented through –

VERSUS

Union of India Represented through

1. Secretary-cum-Director General of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi-110 116.
2. Post Master General,
Sambalpur Region,
At/P.O./Dist-Sambalpur-768001.
3. Sr. Superintendent of Post Offices,
Sambalpur Region,
At/P.O./Dist-Sambalpur-768001.

... Respondents

(Advocate: Mr. G. Singh)

ORDER

A.K. PATNAIK, MEMBER (JUDICIAL)

Being aggrieved by the order of superannuation dated 05.02.2012, therein taking into consideration the date of birth as "27.02.1947" to superannuate w.e.f. 26.02.2012, the applicant has filed this O.A. under Section 19 of the Administrative Tribunal's Act, 1985, praying to quash the said notice of retirement and allow

A.K. Patnaik

him all consequential benefits interalia stating that as per the School Leaving Certificate (SLC) supported by the inspection report submitted by the Inspector of Post Offices Jharsuguda Sub-Division his date of birth being "05.04.1950" he should have retired in the year 2015. It has also been alleged that after getting the notice, he has made representation on 16.01.2012 but the same did not yield any fruitful result.

2. The Respondents have filed their counter in which it has been stated that the applicant was working as EDBPM of Mocchida Branch Post Office in account with Panchagaon S.O. 28.08.1960. As per the descriptive particulars signed by the applicant his date of birth is 27.02.1947. The retirement age of GDS employees is 65 years and as such he was to retire from service on 26.02.2012 A.N. After receipt of the order dated 05.01.2012 for the first time the applicant preferred a representation enclosing there to copy of the SLC issued by the Head Master Bhikhampali High School, in which his date of birth has shown as "05.04.1950". The said representation of the applicant was considered and it was communicated vide RO letter No.RE/RO/44-SBP/2011 dated 20.02.2012 to the applicant that his date of birth has been mentioned as "27.02.1947" in the seniority list and also in the descriptive particulars which he had duly signed and therefore at this belated stage his request for change of date of

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birth cannot be acceded to. It has also been stated that the applicant had already been relieved from duty w.e.f. "25.02.2012" (A.N.) as "26.02.2012" was Sunday. Copy of the descriptive particulars has already been enclosed to the counter. Accordingly it has been stated by the Respondents that since the applicant has been issued notice to retire on attaining the age of 65 years taking into consideration his recorded date of birth 27.02.1947, there is no wrong on the same. Hence, they have prayed for dismissal of the O.A.

3. The applicant has filed rejoinder in which it has been stated that the applicant was selected and appointed to the post of EDBPM of Mocchida Branch Post Office in account with Panchagaon S.O. on the basis of SLC produced by him in which his date of birth was clearly stated "05.04.1950", but the reason best known to the authorities, they have recorded the date of birth of the applicant as "27.02.1947". At the time of joining the applicant was asked to sign and put his thumb impression on various blank papers which he did. The applicant was not aware at all that his date of birth has been recorded as "27.02.1947" in the descriptive particulars prepared by the Respondents on the blank sheet in which the applicant's signature and thumb impressions were taken by the Respondents. It has further been

[Signature]

stated, that be that as it may since SLC is a valid piece of evidence in support of date of birth, which clearly states the date of birth as "05.04.1950" retiring the applicant on the basis of wrong recorded date of birth, cannot be said to be bonafide exercise of power. To strengthen his stand the applicant has also placed reliance on the decision of this Bench rendered in the case of N. Panda -Vrs- UOI in O.A. No.325 of 2010 disposed of on 08.11.2011.

4. Heard Mr. N.R. Routray, Ld. Counsel appearing for the applicant and Mr. G. Singh, Ld. Addl. CGSC appearing for the Respondents and perused the materials placed on record.

5. Mr. Routray submitted that the date of birth recorded in the descriptive particulars cannot be taken as a gospel truth, as in very many cases the Hon'ble Apex Court have categorically held that the date of birth recorded in the SLC shall be the determining factor of age of an employee, more so when the Respondents written the said date of birth in the blank sheet taken by them. When the applicant established his date of birth by producing the SLC, once again, the Respondents should not have retired him on the basis of the wrong entry made by themselves. Therefore, the applicant is entitled to the relief claimed in the O.A. On the other hand Mr. G. Singh vehemently opposed the very maintainability of the O.A. on the ground that the order dated



20.02.2012 rejecting the representation of the applicant has not been challenged by the applicant in this O.A. Further he has submitted that the applicant was very much aware of the gradation list circulated much before in which his date of birth was recorded as 27.02.1947 but he did not make any effort to seek change of the date of birth, at any point of time, during his service starting from 1968 till his retirement. Therefore, he is estopped under rule to make the representation for change of his date of birth at this belated stage. Mr. Singh also submitted that the applicant has also not challenged the recording made in the description sheets which has been annexed as Annexure-R/1 to the counter. On the above ground Mr. Singh has prayed for dismissal of this O.A.

6. I have considered the rival contention of the parties with reference to the pleadings and materials placed in support thereof. Admittedly the applicant has not made any effort, even after circulation of gradation list, during his service career, if at all his date of birth was, according to him, wrongly recorded in the service records. It is also not the case of the applicant that he has not received the gradation list which according to the Respondents was published and circulated much prior to his date of retirement. The case relied on by the applicant has no application as in the said case Respondents altered the date of birth of the applicant contrary to what has been recorded in the SLC and made the applicant

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therein to retire for which after holding that the same could not have been changed without allowing any opportunity to the applicant that too contrary to the date of birth recorded in the SLC which is not the case in hand. As such the decision relied on by the applicant has no application to the present case as the facts in both the cases are different distinct. Rather admissibility/Promisability of a request for change of date of birth is well settled in the case of

Union of India v. Harnam Singh, (1993) 2 SCC 162, in which the respondent joined Government service on February 22, 1956. His date of birth was recorded as May 20, 1934 in his service book. Though, the date of birth of the respondent, as recorded in the matriculation certificate is April 7, 1938 while amending the entry about his educational qualification, the entry relating to his date of birth was not altered to correspond to the date given in the matriculation certificate and it continued to be recorded as May 20, 1934. In 1963, the respondent was transferred to the Ministry of Human Resources Development, Department of Education. On being notified about his date of superannuation as May 31, 1992, the respondent realized that he was being retired on the basis of his date of birth as originally recorded in the service-record as May 20, 1934, ignoring the date of birth as reflected in the matriculation certificate. He made a representation in September 1991 for the alteration of his date of birth but the same was rejected. He submitted yet another representation wherein a request was made, to consider his case for the correction of date of birth afresh which was turned down. The respondent submitted yet another representation wherein he asserted that he had submitted the matriculation certificate on



September 4, 1957, when the entry about his educational qualification was altered and that thereafter since he did not hear anything to the contrary, he presumed that the appellants had also corrected his date of birth in the service-book. That representation was rejected on April 22, 1992. The Tribunal, before which challenge was made against the rejection order, allowed the application filed by the respondent directing the appellant to correct his date of birth in the service record as per the date of birth recorded in the matriculation certificate. The Apex Court considered the issue and held-

7. A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. Indeed, as held by this Court in *State of Assam v. Daksha Prasad Deka* a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him. The Apex Court further held, "It is the duty of the courts and tribunals to promote that intention by an intelligible and

harmonious interpretation of the rule rather than choke its operation. The interpretation has to be the one which advances the intention and not the one which frustrates it. It could not be the intention of the rule-making authority to give unlimited time to seek correction of date of birth, after 1979, to those Government servants who had joined the service prior to 1979 but restrict it to the five year period for those who enter service after 1979

15. In the instant case, the date of birth recorded at the time of entry of the respondent into service as May 20, 1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The respondent had the occasion to see his service-book on numerous occasions. He signed the service-book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of Note 5 to FR 56 in 1979 either. His inaction for all this period of about thirty-five years from the date of joining service, therefore precludes him from showing that the entry of his date of birth in service record was not correct."

8. On examination of the facts of the present case vis-à-vis the case of Harnam Singh (Supra), I do not see any reason to invoke the judicial discretion directing the Respondents to change the date of birth of the applicant at the fag end of his service career. Another aspect, which needs emphasis is that the applicant submitted his representation on 16.01.2012. The said representation was considered by the Respondents and vide Letter No. RE/RO/44-SBP/2011 dated 20.02.2012 it was informed to that applicant that as his date of birth has been mentioned as '27.02.1947' in the seniority list and also in the descriptive particulars which he had duly signed, his request for change of date of birth as the fag of service career is not permissible. But the said order has not been challenged by the applicant in

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this OA, even after receipt of the counter. An order, even if not made in good faith, is still an act capable of legal consequence. It bears a brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause or invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders. The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. On the count also this OA is bound to be dismissed.

9. For the reasons discussed above, this OA stands dismissed by leaving the parties to bear their own costs.


(A.K. Patnaik)

Member (Judicial)