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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


Original Application No. 260/00690 of 2014
Cuttack, this the 16th day of February, 2016


Narayan Dash		Applicant
	Versus		
Union of India & Ors.		Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ☒

2. Whether it be referred to PB for circulation? ☒


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00690 OF 2014
Cuttack, this the 1st day of February, 2016

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER(J)
HON'BLE MR. R.C. MISRA, MEMBER (A)

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Narayan Dash,
aged about 58 years,
Son of Late Raj Kishore Dash,
at present Trilochanpur, PO: Mahajanpur,
PS: Jagatpur, Dist: Cuttack was working as MTS (Group-C)
in the Office of HRD RMS 'N' Division, Cuttack (RTD).

.....Applicant

By the Advocate(s)-M/s. A.K. Mohanty, R.K. Behera,
R.C. Pradhan and P.N. Mohanty.

-Versus-

Union of India represented through

1. C.P.M.G., Odisha Circle, Bhubaneswar, Dist: Khurda.
2. Sr. Superintendent, RMS, 'N' Division, Cuttack-1, Dist: Cuttack.
3. Head Record Officer, R.M.S. 'N' Division, Cuttack, Dist: Cuttack.

Respondents.

By the Advocate(s)- Mr. S. Behera

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ORDER

A.K.PATNAIK, MEMBER (JUDL.):

This O.A. has been filed by the applicant seeking the following reliefs:

In view of the facts and averments made in Para (4) of the O.A., the impugned orders dt. 22.08.2014 (Annexure-10) and O.A. be allowed with cost and all consequential and financial benefits be allowed with 18% interest for causing harassment be imposed on erring officials and the applicant be allowed to work as MTS Group 'C' till his retirement i.e. 29.2.2016.

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The impugned order dated 22.08.2014 reads as under:

“In pursuance to the SSRM, RMS ‘N’ Division, Cuttack Memo No. SSRM/Con-Misc/2014 dated 22.08.2014, Shri Narayan Dash, MTS Group-C, O/o HRO, RMS ‘N’ Division, Cuttack is hereby retired and relieved from Govt. service on 22.08.2014 afternoon”.

2. According to the applicant his date of birth was correctly rectified and recorded as “29.02.1956” instead of “29.02.1954” as February, 1954 was not a leap year so as to accept the recording made in the School Leaving Certificate, i.e. 29.02.1954, as correct.
3. The Respondents have filed their counter stoutly denying the contentions made in the O.A. and, consequently, the relief sought in the O.A. and praying for dismissal of this O.A.
4. Mr. A.K.Mohanty-A, Ld. Counsel for the applicant, placing reliance on the averments made in the O.A. and the annexures appended thereto submitted that on 26.04.1978 the applicant was engaged as EDMM under SRO ‘N’ Division, Dhenkanal. On 14.10.1982, he was appointed as MTS under the SRO ‘N’ Division, Jajpur Road. He read up to class ‘X’. In the said School Leaving Certificate submitted by the applicant his date of birth was recorded as 29.02.1954. Subsequently, the applicant submitted an affidavit that his date of birth is 29.02.1956 and not 29.02.1954 as February, 1954 was not a leap year. Accordingly, his date of birth recorded in the service book was corrected by the competent authority. In the gradation list prepared and published on 01.07.1991 the date of birth of the applicant was shown to be 29.02.1956. On

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04.01.2001, the S.R.O. of the Balasore had corrected the date of birth of the applicant as 29.02.1956 after verifying the fact that February, 1954 is not a leap year. On 26.02.2014, the HRO (HSG-I) RMS 'N' Division, Cuttack, asked the applicant to produce the documents concerning his date of birth. On 08.03.2014 the applicant submitted his reply stating therein that his date of birth is 29.02.1956 and not 29.02.1954 as rightly corrected by the SRO, Balasore on 04.01.2001 and in support of his date of birth as 29.02.1956 the applicant enclosed copies of Driving License and the Id. Card issued by the authority concerned. On 05.06.2014, the Sr. Superintendent of RMS 'N' Division issued a letter to all concerned giving the date of retirement of the Group 'C'/MTS officials working under the RMS 'N' Division wherein the date of birth of the applicant was taken as 29.02.1956. On the basis of a letter of the Secretary of the Postal Union the date of birth of the applicant was inquired into by the authority and ultimately the applicant was forcibly retired from service vide order dated 22.08.2014 with immediate effect. According to the applicant, such action of the authorities is not sustainable in the eyes of law as the authorities concerned swayed away with the letter of the union concerned and without due application of mind that February, 1954 was not a leap year and that date (29 February 1954) can never exist, issued the order. Accordingly, Ld. Counsel for the applicant has prayed for the relief as aforesaid.

5. Per contra, in a bid to torpedo and pulverize the arguments advanced by the Ld. Counsel for the applicant, Ld. Counsel for the Respondents submitted that at the time of entry to the service, the

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applicant disclosed his date of birth as 29.02.1954 which was based on the School Leaving Certificate produced by him. But the recorded date of birth was changed by the SRO, RMS 'N' Division, Balasore on 04.01.2001 as 29.02.1956 without any supportive document. The said correction of the date of birth was inquired into by the ASPO (Vigilance), O/o Chief Post Master General, Odisha Circle, by collecting information/statement from the Headmaster, Itua UP School, which confirmed the date of birth of the applicant as 29.02.1954. The applicant has also himself in his statement recorded on 21.08.2014 authenticated his date of birth as 29.02.1954. As the validity bond where the date of birth of the GDS was recorded was not available on record, the applicant was examined on 21.08.2014 by the ASPO, Vigilance Circle Office Bhubaneswar where the applicant admitted his date of birth as 29.02.1954. As per his date of birth as 29.02.1954, the applicant was to retire from service on 28.02.2014 but for the reason of the change of his date of birth to 29.02.1956, without any authority, the applicant was retained in service beyond his actual date of superannuation. When this fact came to the notice of the authority, after inquiry the applicant was retired from service on 22.08.2014 and absolutely there was no wrong committed by the authority in retiring him from service. The applicant was also proceeded under Rule 14 of the CCS (CCA) Rules for his alleged fraudulent activity in change of birth. It is a fact that the February, 1954 was not a leap year and it was a bonafide mistake but when the school authorities confirmed the date of birth of the applicant and when the applicant himself admitted his date of birth, department



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accepted that and retired the applicant from 22.08.2014. Accordingly, it has been submitted that there being no injustice caused in the decision making process in the matter, this O.A. deserves to be dismissed.

6. Ld. Counsel for the applicant submitted that the applicant was an MTS in the department and he was not the custodian of the service book. The date of birth of the applicant was rightly changed to 29.02.1956 by the competent authority with date stamp and the changed date of birth was shown throughout. After a long lapse of time, the authorities wanted to again alter the date of birth of the applicant as 29.02.1954 based on the letter of the Secretary of a Union. The ASPO (Vigilance) of the Postal Department caused an inquiry and submitted a report based on which the applicant was retired from service. The copy of the said report was not made available to the applicant to have his say on the same as required under the law. Therefore, initiation of the proceedings under Rule 14 of the CCS (CCA) Rules 1965 and retiring the applicant vide order dated 22.08.2014 are not sustainable in the eyes of law. Accordingly, he reiterated the prayer made in the O.A.

7. We have given our anxious thought to the arguments advanced by the respective parties and perused the records.

8. Respondents in their counter at paragraph 7.11 have admitted that **February, 1954 is not a leap year and this was a bonafide mistake** (emphasis supplied). However, it is the case of the Respondents that the correction of the date of birth to 29.02.1956 was without any supportive documents. Law is well settled in plethora of Judicial pronouncements that date of birth recorded in the School

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Leaving Certificate is authentic. Peculiarity in this case is that February, 1954 was not a leap year and as such it can safely be concluded that this was a mistake and the Respondents' Counsel has rightly pointed out based on the counter that such recording of 29.02.1954 was a bonafide recording. Further, law is well settled that any order/administrative action adversely affecting the interest of the parties must be in compliance with the principles of natural justice, in other hand, after giving due opportunity to the person concerned against whom such an action is taken/order is passed. Here, in the instant case, we find that date of birth of the applicant was corrected as 29.02.1956 which was maintained throughout till it was altered to 29.02.1954 and the applicant was made to retire on 22.08.2014 but without giving any notice in compliance of the principle of natural justice. It is the further case of the applicant that the report of inquiry conducted by the ASPO (Vigilance) was also not supplied to him prior to taking action on the same and merely because the applicant stated that his date of birth is 29.02.1954 before the ASPO (Vigilance) that cannot be taken as true as February, 1954 was not a leap year.

9. It is not the case of the Respondents that any action has been taken against the authority who had corrected the date of birth of the applicant at a particular point of time. The doctrine of legitimate expectation and promissory estoppel at once come to the play when the date of birth of the applicant was corrected to 29.02.1956 possibly for the reason that February, 1954 was not a leap year. Secondly, without any notice to the applicant whatsoever in compliance of the principle of

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natural justice, alteration of the said date of birth and thereby retiring the applicant also is against the principle. Similarly, we also find that the applicant was made to retire based on the inquiry conducted by the ASPO (Vigilance) on the allegation made by the Secretary of a Union but before acting upon the said report the applicant ought to have been supplied a copy of the report of the inquiry in compliance of the principle of natural justice. We also note that trite proposition of law is that while taking action adversely affecting the interest of an individual, the authorities has to keep in mind that justice is constant. Its object and purpose is to render each one his/her due. The instant case frescoed and depicts a scenario that amplify how due to vicinity of the authority manning the department has audaciously and in this O.A. obnoxiously thrown all the values of the principle of natural justice.

10. We recollect the legal maxim “boni judicis est ampliare justitiam” which implies that it is the role of good judge to enlarge or extend justice.

11. At the cost of repetition, we reiterate that the Respondents in their counter have candidly admitted that there could not be 29th day in 1954 as the same was not a leap year and recording of this date as a date of birth was bonafide mistake and, therefore, they ought not to have retired the applicant when at one point of time based on the aforesaid assertion the date of birth of the applicant was changed to 29.02.1956. In the above, view of the matter, we hold that retiring the applicant from service vide order dated 22.08.2014 is unjustified and hence the order is, accordingly, quashed. However, we make it clear that since the applicant

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has retired w.e.f. 22.08.2014 and admittedly he did not work thereafter, on the principle of no work no pay applicant is not entitled to any backwages, however, the period shall be counted for all other purposes.

12. With the aforesaid observation and direction, this O.A. stands disposed of. No costs.



(R.C.MISRA)
Member (Admn.)



(A.K.PATNAIK)
Member (Judl.)

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