

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 523 OF 2007

Monday, this the 22nd day of September, 2008.

CORAM:

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Dr. K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

S.Thulaseedhara Kurup
Retired Postman
Medical College P.O
Thiruvananthapuram - 11
Residing at T.K.Bhavan, Kallampally
TC 9/134, Medical College P.O
Ulloor, Thiruvananthapuram : **Applicant**

(By Advocate Mr. V Vinod (Not present))

v.

1. Senior Superintendent of Post Offices
North Division, Thiruvananthapuram - 1
2. Director of Postal Service (Head Quarters)
Thiruvananthapuram
3. Union of India represented by the Secretary
Government of India
Department of Posts
New Delhi : **Respondents**

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

ORDER

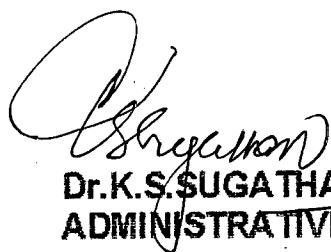
HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

It is seen that reply statement was filed way back on 22.02.08. Thereafter, several opportunities were given to the Applicant to file rejoinder. But the same was not filed so far. The case was listed on 07.03.08, 19.03.08 and 25.04.08. On the last date of hearing on 29.08.08, the counsel for applicant was re-presented by Mr.P.K.Ravisankar and he sought time to file rejoinder. Two weeks time, as last opportunity, was granted to file rejoinder within two weeks. However, when the matter was

taken up today, neither the applicant nor his counsel was present. The case was passed over. Even on the second call, none was present.

2. In the above facts and circumstances, we are of the considered opinion that neither the applicant nor his counsel is interested in prosecuting the case. Accordingly this OA is dismissed in default. There shall be no order as to costs.

Dated, the 22nd September, 2008.



Dr. K. S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

VS

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.523/07

MONDAY,..... this the 15TH day of December 2008

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

S.Thulaseedhara Kurup,
S/o.Sreedharan Pillai,
Retired Postman,
Medical College P.O., Thiruvananthapuram – 11.
(Residing at T.K.Bhavan, Kallampally, TC 9/134,
Medical College P.O., Ulloor, Thiruvananthapuram.Applicant

(By Advocate Mr.V.Vinod)

Versus

1. Senior Superintendent of Post Offices,
North Division, Thiruvananthapuram – I.
2. Director of Postal Services (Head Quarters),
Thiruvananthapuram.
3. Union of India represented by the Secretary,
Govt. of India, Department of Posts, New Delhi.Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 27th November 2008 the
Tribunal on 15/12/08 December 2008 delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant entered the Postal Department as Extra Departmental
Delivery Agent (EDDA for short) Puliyyarakonam Branch Post Office. At the
time of his entry into service he produced an attestation form which
contained his date of birth as 14.5.1119 (Malayalam Era). This attestation



form dated 15.9.1965 was authenticated by the Headmaster, Govt. HS, Pakalkuri. The applicant had also got the health certificate issued by the Assistant Surgeon, Govt. Dispensary dated 13.9.1965 wherein the certificate contains the following :-

“ His age is, according to his own statement, 21 years and by appearance about 21 years.”

2. While appointing the applicant as leave reserve Group D, the respondents had opened a service book in the name of the applicant in which his date of birth had been reflected as 19.12.1944. The 1st page of the service book has been signed by the Assistant Superintendent of Post Offices (In charge), Trivandrum North Sub Division and also by the applicant on 26.6.1980. The applicant continued in his service.

3. It was some time in early 2004 when the pension papers of the applicant were being prepared, according to the respondents, it was noticed that though the date of birth of the applicant corresponding to 14.5.1119 Malayalam Era is 29.12.1943 this date of birth was erroneously converted in Christian Era as 19.12.1944 by the then appointing authority who opened the service book. If the date of birth is taken as 29.12.1943, the date of superannuation of the applicant would have been 31.12.2003 whereas the applicant continued to work thereafter as well. It was only by 9.6.2004 that the respondents by Annexure A-1 order permitted the applicant to retire on superannuation with retrospective effect from

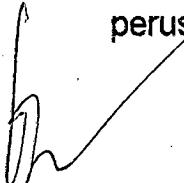


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31.12.2003 afternoon. The period of excess retention beyond the date of superannuation was stated to be regularised later as per the standing orders on the subject.

4. It was on 8.2.2005 the Senior Superintendent of Post Offices directed the applicant to explain as to why the period of over stayal in service (161 days from 1.1.2004 to 9.6.2004) cannot be treated as dies-non. Annexure A-2 refers. By Annexure A-3 the applicant contended that at the time of his recruitment as EDDA he had handed over the certificate from the Headmaster to the then appointing authority and in all correspondence and applications submitted to the Department by the applicant for the last 38 years, it is only the above date of birth (19.12.1944) that has been indicated as the date of birth of the applicant. The applicant had also submitted that he had served for the alleged excess period of 161 days and had been paid his salary. However, the salary had been recovered from his DCRG without notice and the same is irregular. Therefore, the applicant had requested to drop the proposal to treat the period from 1.1.2004 to 9.6.2004 as dies-non and also prayed for refund of the amount irregularly recovered from his gratuity.

5. Vide Annexure A-4 order dated 22.2.2005 the Senior Superintendent of Post Offices had stated, "it is the duty of the official to produce and check the correctness of his date of birth as per the certificate produced by him in other office records viz. SB and gradation list which he is entitled for perusal and further clarification. But he has failed to check the correctness

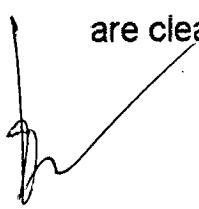


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of his service records and allowed himself to continue in the Department on the irregular date of birth which is against normal procedures and rules." Hence the Senior Superintendent of Post Offices ordered that, "the period of overstays in service of Shri.S.Thulaseedhara Kurup from 1.1.2004 to 9.6.2004 be treated as dies-non."

6. Annexure A-5 appeal to the Director of Postal Services was forwarded by the Senior Superintendent to the Appellate Authority vide Annexure A-6 communication. There was no response to the said appeal. Hence the applicant has filed this O.A with a prayer for quashing Annexure A-1 and Annexure A-4 orders and for also restraining the respondents from taking up steps under Annexure A-1 order.

7. Respondents have contested the O.A. According to them, the then appointing authority by mistake had recorded the date of birth of the applicant as 19.12.1944 whereas the actual date of birth is 14.5.1119 (Malayalam Era) corresponded to 29.12.1943 as per the Bhaskara Calender. According to the respondents, when action was initiated for processing the pension papers considering the date of birth as 19.12.1944, the Assistant Superintendent of Post Offices (A.S.P for short) Trivandrum North Sub Division reported that the date of birth of the applicant as per the gradation list of the Sub Division is 29.12.1943 and the applicant was to retire from service on 31.12.2003. The case was taken up with the Chief Postmaster General and that office has informed that since instructions are clear, there should not be any reason for excess retention of the official



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in service vide letter dated 4.6.2004 (Annexure R-2). The applicant was informed of his date of birth as per school records and it was taken that the applicant had formally relinquished his post on retirement from service on 31.12.2003. Regularisation of overstays in the Department was taken up with Postal Directorate, New Delhi and the said Directorate vide letter dated 14.1.2005 (Annexure R-3) advised that the period of overstays be treated as dies-non (as per the advice of the DoPT).

8. Counsel for the applicant submitted that there has been no prior notice at all before superannuating the applicant. If at all there is any mistake in entering in the service book the date of birth wrongly, it is only the Department which has to be blamed entirely. The said alleged mistake ought to have been rectified much earlier as in the case of the employees who are given five years time. Some justification could have been there if the respondents had retired the applicant on 31.12.2003. Instead making the applicant to work till 9.6.2004, the respondents turn around to say that it is the duty of the applicant to point out the error. This is totally unjustified.

9. Counsel for the respondents submitted that the rules do not provide for retention beyond 60 years and hence the period of overstays has to be treated as dies-non.

10. Arguments were heard and service book was requisitioned. The service book clearly reflects the date of birth as 19.12.1944. This has been authenticated both by the Department as well as the applicant. Service

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book also contains the medical certificate wherein the age of the applicant as on 13.9.1965 was indicated as 21 years. This corresponds to year of birth 1944.

11. As regards authenticity of the date of birth, in a number of decisions by the Apex Court it has been held that normally whatever is recorded in the service book should be taken as a correct date of birth. If that date of birth has been accepted by the applicant that remains the same. In **Secretary and Commissioner, Home Department Vs. R.Kirubakaran, 1994 Supp. (1) SCC 155** the Apex Court has held as under :-

“ Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement and for calculating the date of retirement, it is necessary to maintain the date of birth in the service records.”

12. In a number of cases in subsequent years also the above has been followed. In **State of U.P. Vs. Gulaichi, (2003) 6 SCC 483** the Apex Court has held as under :-

“ The entry i.e. 31.7.1929 appears to have been made simultaneously by one and the same person at the time when other entries were made in FR Form 13. The respondent has herself signed the page at Serial No.8, whereas the entry relating to the date of birth is at Serial No.5.”



13. Similarly in State of U.P. Vs. Shiv Narain Upadhyaya. (2005) 6 SCC 49 the Apex Court has held as under :-

“ Normally, in public service, with entering into the service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, and it is necessary to maintain the date of birth in the service records.”

14. Again in State of Gujarat Vs. Vali Mohd. Dosabhai Sindhi. (2006) 6 SCC 537 the Apex Court has held as under :-

“ Normally, in public service, with entering into the service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, and it is necessary to maintain the date of birth in the service records.”

15. In Seema Ghosh Vs. TISCO. ([2006] 7 SCC 722) the Hon'ble Supreme Court consider the case where the certificate of the Medical Board was accepted regarding date of birth. When this was questioned by the employee, his claim was rejected. The Apex Court has held in that case as under :-

“ The workman did not challenge the opinion of the Medical Board constituted by the management for determining the age of the workman and the management permitted the workman to work till his attaining the age of retirement. Therefore, the workman in the present case is estopped from challenging the correctness of the opinion of the Medical Board after his retirement.”

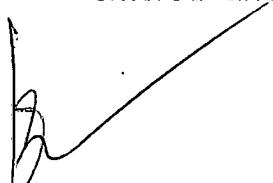


16. Apart from the above almost proximate to the facts of the present case is the case of one Hari Singh Vs. State of Bihar. (2000) 10 SCC 284 wherein earlier than the date of birth as indicated in the service book the employee was superannuated without notice. But the Apex Court has held that the appellant must be deemed to be continuing in service until duly superannuated in accordance with law. The Apex Court has held as under :-

“1. Leave granted.

2. The appellant entered government service and in the service book his date of birth is recorded as 1.12.1943. On that basis he would have superannuated on 30.11.2001. The competent authority however has passed an order retiring the appellant from service treating his date of birth to be 17.7.1936. This order is on the basis that when the appellant entered for training in 1961, his date of birth being 1943 he could not have got that training, inasmuch as he had not completed 19 years of age, as required under the rules. The learned counsel for the appellant however controverts this position, inasmuch as, according to him, it is only for a substantive appointment and not from training. We are not however delving into an inquiry on this aspect inasmuch as, in our opinion, the impugned order of the Government cannot be sustained as concededly the Government never put the employee on notice to indicate that the date of birth as entered in the service book is incorrect though it could have done so. Since no notice has been given to the employee concerned for accepting a date of birth other than the one entered in the service book, the impugned order of retirement cannot be sustained. We set aside the impugned order altering the date of birth of the appellant. The appellant must be deemed to be continuing in service until duly superannuated in accordance with law.”

17. In addition to the above Note 6 under FR 56 gives the procedure for alteration of the date of birth. Once in the service book the date of birth is entered and accepted by the employee, the same normally cannot be



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changed. If at all it has to be changed, a set procedure has been evolved. This Note does not, however, provide for alteration of date of birth at the instance of Government.

18. In view of the above position of the Apex Court under rules on the subject as well as taking into account the fact that there has been no prior notice to the applicant and that the applicant did serve the Department for 161 days, the Department is not justified in treating the period from 1.1.2004 to 9.6.2004 as dies-non. The amount withheld by the Department towards adjustment of the salary paid to the applicant for the above period has to be necessarily refunded by them.

19. In view of the above, Annexure A-1 and Annexure A-4 orders are hereby quashed. It is declared that the applicant is deemed to have retired only on 9.6.2004. The respondents are directed to refund the amount recovered from the terminal benefits of the applicant after adjusting pension amount paid for the aforesaid period.

20. Under the above circumstances, there shall be no order as to costs.

(Dated this the 15TH day of December 2008)



K.S.SUGATHAN
ADMINISTRATIVE MEMBER

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K.B.S.RAJAN
JUDICIAL MEMBER