

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A. No. 223 of 06

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member [J]

Md. Mozamil S/o Late Ijhar Hussain

Vs.

Union of India and Others

Counsel for the applicant : Shri Pravin Kumar

Counsel for the respondents : Shri B.N. Gupta.

ORDER [Oral]

10.12.2007

S. Srivastava, M [J] :- By means of this OA the applicant has challenged the order dated 17.1.2005 whereby the applicant was made to retire with effect from 31.1.2005 on the basis of date of birth recorded in the service record.

2. The facts in brief are that the applicant while working as GDS was selected for promotion to Group 'D' cadre. He joined on the promotional post on 25.5.95, and on attaining the age of superannuation, he was made to retire with effect from 31.1.2005. Accordingly, he superannuated with effect from 31.1.2005. According to the respondents, the date of birth recorded in the descriptive particulars of the applicant was 15.1.1945. On the other hand, the applicant claims that his date of birth is 16.1.1950. In support of his claim, he has filed photo copy

of Postal Endowment Assurance policy dated 30.3.90 [Annexure A/2] wherein his date of birth is shown as 16.1.1950.

3. The respondents have filed written statement stating therein that the applicant's date of birth as recorded in service record is 15.1.1945. The applicant has signed the first page of service book, ^{accepting} his date of birth as 15.1.1945. The photo copy of the descriptive particulars is at Annexure R/2. Therefore, on the basis of date of birth as recorded in service particulars, the applicant was made to retire.

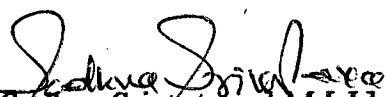
4. The respondents have further stated that the applicant was granted provisional service gratuity, retirement gratuity on 16.5.05 and final GPF on 8.9.2005. All the retirement benefits have been paid to the applicant in the year 2005, and the applicant did not raise any dispute regarding correction in the date of birth. The applicant also filed OA 391 of 06 for grant of pension which was dismissed by this Tribunal vide order dated 12.7.2006.

5. Heard learned counsel for the parties and perused the pleadings. Admittedly, the applicant has filed the present OA after retirement. He had accepted all the retirement benefits in the year 2005 itself, and during his service life he did not challenge the date of birth recorded in the service particulars. The Hon'ble Supreme Court, in the case of State of Orissa and Others vs. Ram Nath Patnayak, 1997 SCC [L&S] 1141, has held that when the entry was made in the

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service record and the employee was in service, he did not make any attempt to get the service record corrected, any amount of evidence produced subsequently would be of no avail. In the case of Commissioner of Police vs. Bhagwan B. Lahane, 1997 SCC [L&S] 719, the Apex Court held that the employee seeking correction must show that recorded date of birth was due to negligence of some other person or that the same was an obvious clerical error. In the instant case, the applicant did not challenge the date of birth during his service tenure and filed the instant OA in the year 2006 for correction of date of birth. It is settled law that the settled facts cannot be unsettled. A government employee settles about his educational qualification or date of birth etc at the time of entry into service. Therefore, these settled facts cannot be unsettled after retirement, particularly when the retiree has accepted retiral dues without any objection. The law is that the change of date of birth during service tenure can be made only on the basis of clinching evidence. Therefore, there is no scope for the Tribunal to interfere at this stage.

6. In view of the above, I do not find any ground to interfere in the matter. Resultantly, the OA is dismissed without any order as to the costs.


[Sadhna Srivastava] M [J]

/cbs/