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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 1 of 1989

~~Ex-A-Nex~~

Date of Decision : 17/9/91

Mr. Neelam Chenchaiah

Petitioner.

Mr. K.S.R. Anjaneyulu

Advocate for the
petitioner (s)

Versus

Union of India and others

Respondent.

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Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J. Narasimha Murthy, Member (Judl.)

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)


HJNM
M(J)


HRBS
M(A)

CORAM:

Hon'ble Shri J.Narasimha Murthy, Member (Judl.)
Hon'ble Shri R.Balasubramanian, Member (Admn.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This is a petition filed by the petitioner for a relief to declare the order of the Superintendent of Post Offices, Cuddapah in his letter No.B2/B/Boyanapalle, dated 22.12.1988 as arbitrary and illegal and to direct the respondents to accept the date of birth of the applicant as 29.10.1928 ^{which was} supported by birth extract, as legal, valid and correct and allow the applicant to continue in service till he completes 65 years of age. The brief facts are as follows:-

The applicant was working as Extra Departmental Branch Post Master, Boyanapalle in Cuddapah District. The Superintendent of Post Offices, Cuddapah vide his letter dated 23.9.1988 intimated that the applicant would be relieved of the duties on 4.1.1989 as he will be completing 65 years of age by that date. The applicant submitted a representation dated 7.11.1988 stating that

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

(39)

ORIGINAL APPLICATION NO.1 of 1989

DATE OF JUDGMENT: 17 SEPTEMBER, '91

BETWEEN:

Mr. Neelam Chenchaiah

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Applicant

AND

The Union of India represented by:

1. The Secretary to Government,
Dept. of Posts,
New Delhi.

2. The Superintendent of Post Offices,
Cuddapah.

3. The Sub Divisional Inspector,
(Postal),
Badvel. ..

Respondents

COUNSEL FOR THE APPLICANT: Mr. K. S. R. Anjeneyulu

COUNSEL FOR THE RESPONDENTS: Mr. E. Madan Mohan Rao,
Addl. CGSC (not present)

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3. The 2nd respondent thereupon issued orders dated 22.12.1988 stating that the applicant joined the Department on 18.2.1942 and if his date of birth is taken as 29.10.1928, the applicant would be a minor on the date of appointment and the change in the date of birth from 5.1.1924 to 29.10.1928 cannot be considered and the applicant will be discharged on the afternoon of 4.1.1989. The 2nd respondent ought to have seen that the claim of the applicant is based upon the extract of a register maintained under birth, deaths and marriage Registration Act and the rules thereunder. The action of the 2nd respondent is arbitrary, illegal and untenable in law and he is under obligation to accept the date of birth of the applicant as 29.10.1928 as legal and valid. The 2nd respondent has not doubted the genuineness of the entry or extract or order issued by the Revenue Divisional Officer under law and the 2nd respondent has nowhere stated, on what basis ~~the date~~ of the applicant of birth was entered as 5.1.1924 and the same is evidently wrong. The contention of the 2nd respondent that the applicant will be a minor at the time of appointment if his correct date of birth is taken into account, is untenable and there are several cases where persons below 18 years have also been appointed. The

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his date of birth is 29.10.1928 and he will be completing 65 years of age on 29.10.1993, enclosing in support thereof birth extract obtained from Mandal Revenue Officer, Badvel. When the applicant represented the matter personally, the Superintendent of Post Offices, stated that his name was not included in the extract and he should get his name included. Thereupon, the applicant represented on 28.11.1988 that he may be given one month time to get the proceedings of MRO to state his name. Meanwhile, the Superintendent of Post Offices, Cuddapah (2nd respondent herein) vide his letter dated 1.12.1988 stated that the change in date of birth from 5.1.1924 to 29.10.1928 and the document produced by the applicant i.e., birth extract, cannot be accepted as proof in this regard. The applicant is unable to know, on what basis his date of birth 5.1.1924 was entered by the authorities in record.

2. The applicant appeared before the MRO who submitted his report to the Revenue Divisional Officer, Rajampet and the Revenue Divisional Officer, Rajampet vide his letter dated 8.12.1988 issued orders under the provisions of Andhra Pradesh Registration of Birth and Death Rules 1977 to incorporate the name of the applicant "Neelam Chenchiah" in the birth register. The applicant obtained the certified extract and submitted the same to the 2nd respondent requesting ~~him~~ to continue him in service till he attains the age of 65 years.

MRO, Badvel. The 3rd respondent informed the applicant that alteration in the date of birth is not accepted as the applicant did not produce proper documentary evidence. Again the applicant represented that since the documentary evidence furnished by him could not be accepted as it did not contain child name, he is submitting a revised extract showing the name of the child. The 3rd respondent examined the representation and intimated the applicant on 22.12.1988 that he joined the department on 18.2.1942 and if the date of birth is taken as 29.10.1928, he ~~is~~ will be minor on the date of appointment and employment of minor is not admissible as per rules of the Department and hence change of date of birth cannot be considered and that he will be discharged on 4.1.1989 as scheduled. Thereafter, one Shri G.Venkateswarlu was appointed on 4.1.1989 (AN) as BPM, Boyanapalle relieving the applicant. The following records are available to show that the date of birth of the applicant was correctly recorded as 5.1.1924.

- a) The record of services maintained by SDI (P) Badvel showed the date of birth as 5.1.1924.
- b) In the application dated 11.12.1970, the applicant himself noted his date of birth as 5.1.1924.
- c) In the Inspection reports on the Branch Office for the years 1986, 1987 and 1988, the SDI (P), Badvel clearly

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2nd respondent cannot dispute the correct date of birth when it is supported by ^{an} authentic extract of birth register. Hence, the applicant filed this application for the above said relief.

4. The respondents filed a counter with the following contentions:

The applicant was appointed as BPM, Boyanapalle by the then Superintendent of Post Offices, Nellore w.e.f. 18.2.1942. As per the report of the then SDI(P), Cuddapah Sub Division, the age of the applicant was shown as 22 years vide letter No.A/1074, dated 24.3.1942. As per the register available in the office of the 3rd respondent, the date of birth of the applicant was recorded as 5.1.1924. According to the date of birth, the applicant was to complete 65 years of age by 4.1.1989. Accordingly, the 2nd respondent issued a notice to the applicant on 23.9.88 that he would be discharged on the afternoon of 4.1.1989. The applicant submitted a representation to the 3rd respondent on 7.11.1988 stating that his date of birth is 29.10.1928 and that he will have to work upto 28.10.1993 and in support of his contention he produced an extract of birth and deaths issued by

[Signature]

6. Heard the learned counsel for the applicant, Shri K.S.R.Anjaneyulu. The only point for consideration is that the applicant was appointed as Extra Departmental Branch Post Master on 18.2.1942. By the date of appointment, one should be a major i.e., above 18 years of age. By that time, the applicant's age was recorded as 22 years and he was appointed at that time. Subsequently, a register was maintained showing particulars regarding date of birth, date of joining etc., and in that register his date of birth was recorded as 5.1.1924 and in the application dated 11.12.1970 the applicant himself noted his date of birth as 5.1.1924 and in the inspection held in 1986, 1987 and 1988, his date of birth was mentioned as 5.1.1924. The ^{Inspection} report was perused by the applicant and the report was pasted to the record by the applicant. The applicant verified his date of birth and noted previously but he did not claim at any early date with regard to his date of birth. It is a common point that a minor cannot be appointed as EDBPM. The age of the applicant at that time was noted as 22 years and in the register his date of birth was recorded as 5.1.1924. Now the applicant is relying on the MRO report. The MRO report gives no particulars. At the time of noting the date of birth of the applicant, his name was also written. Generally, at the time of birth, child may not be named and it is absurd to note the name of the boy at that time. It also did not disclose that whether it is issue number 1, 2 or 3 in that record/report. That record which was brought to existence very recently just before the retirement of the applicant

recorded the date of birth as 5.1.1924. The applicant received the copies of the Inspection reports and pasted them in the office order book. Had he really got an objection for noting the date of birth incorrectly, he should have got all liberty to object the same by submitting a representation then itself. He remained silent, till a discharge notice was served and then came up with a plea for alteration of date of birth, which is an after thought.

5. Request for alteration of date of birth has to be approved with the sanction of the Ministry and it will be allowed, if a request was made within 5 years of his joining, or if a genuine mistake occurred in recording his date of birth, and the altered date of birth should not make him ineligible for his recruitment. Hence, the ~~xxxxxx~~ above conditions stipulated in Govt. of India, Ministry of Finance notification No.7(2)E.V./691, dated 26.5.1969 did not apply to the present case. The applicant remained silent nearly 42 years and when a notice was served on him about his discharge, he came up with a plea for alteration. Further, it is for the applicant to explain reasons as to how he remained silent for 42 years. For the reasons stated above, the respondents contend that the application is devoid of merits and it is liable to be dismissed.

To

1. The Secretary to Government, Union of India,
Dept.of Posts, New Delhi.
2. The Superintendent of Post Offices, Cuddapah.
3. The Sub-Divisional Inspector, (Postal)
Badvel.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.Bench.
5. One copy to Mr.E.Madanmohan Rao, Addl.CGSC.
6. One spare copy.
7. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.Hyd.

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can be viewed with any suspicion and moreover if his date
of birth is 29.10.1928 and he got recorded evidence
also with him, nothing prevented the applicant to
claim for change of date of birth at any time before
his retirement date was announced. The applicant kept
quiet all these years and just before his retirement,
he claims that his date of birth is 29.10.1928 and
produced MRO certificate to that effect.

7. In view of the facts before us, we need not
place much reliance on the MRO certificate when the
earlier date of birth of the applicant is available/register
The earlier date of birth noted in the register can
be taken as an authenticated evidence to show the
date of birth of the applicant. There are no tenable
grounds to entertain this application and the application
is liable to be dismissed.

8. The application is accordingly dismissed.
There is no order as to costs.

MS

R. Balasubramanian

(J. NARASIMHA MURTHY)
Member (Judl.)

(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 17/9/91 September, 1991.

*17/9/91
Registration*