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CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

Original Application No.350/01807/2016
And
Misc. Application No.0350/00016/2017

Date of Order: This, the 31st Day of July 2018.

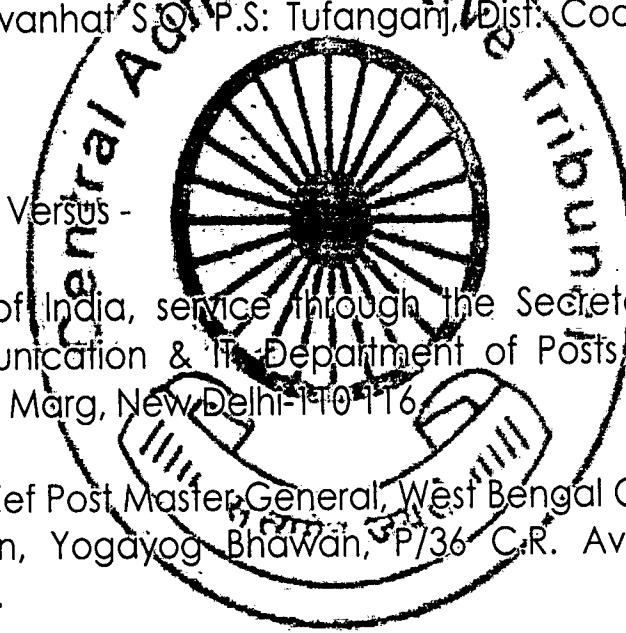
THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE DR.(MS.) NANDITA CHATTERJEE, ADMINISTRATIVE MEMBER

Shri Bakul Chandra Dey, son of Late Sailendra Chandra Dely, aged about 63 years, by procession GDSMD, Balairhat Branch Office in a/c with Dewanhat Sub Office under Cooch Behar Division, residing at Sholadanga, P.O: Balairhat via Dewanhat S.O. P.S: Tufanganj, Dist: Cooch Behar, Pin: 736134.

... Applicant

- Versus -



1. Union of India, service through the Secretary, Ministry of Communication & IT, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. The Chief Post Master General, West Bengal Circle, Yogayog Bhawan, Yogayog Bhawan, P/36 C.R. Avenue, Kolkata-700012.
3. The Superintendent of Post Offices, Cooch Behar Division, Cooch Behar - 736101.
4. The Sub-Divisional Inspector of Posts, Dinhata Sub Division, Cooch Behar - 736136.

... Respondents.

For the applicant: Mr.B.R.Das, Mr.J.R.Das

For the respondents: Mr. P.Mukherjee

ORDER (ORAL)**MANJULA DAS, MEMBER (J):**

On being mentioned the matter has been listed for interim order.

2. Heard Mr. B. R. Das, assisted by Mr. J. R. Das, learned counsel for the applicant and Mr. P. Mukherjee, learned counsel on behalf of respondents.
3. The Misc. application has been filed with a prayer for passing an interim order restraining the respondents and/or their agents or servants any further with the purported memo dated 23.11.2016 (A4 to the O.A.) by which the Superintendent of Post Office's, Cooch Behar Division (Respondent No. 3) issued the order for retirement from service on superannuation in case of the applicant and others. In the said order all together 14 GDSMD/BPM name appeared who shall retire against the date given, where the name of the applicant GDSMD which was shown to be retired on 02.01.2017.

4. The Misc. application was heard on 06.02.2017 by this Tribunal on which date Mr. Tarun Kumar Karmakar, Asst. Supdt., Circle Office, Yogayug Bhawan, Kolkata was present before the



Court on behalf of the Respondents. On the said date, Id. ^{applicant} Counsel for the ~~respondent~~ ^{applicant} prayed for interim relief, however no interim order was granted and the respondents were directed to produce the entire Original records of the applicant on 10.02.2017 for perusal of this Court.

5. On 28.11.2017, Id. Counsel for the applicant prays for interim relief with a prayer as hereunder:-

"restraining the respondents and/or their agents or servants any further with the purported memo dated 23.11.2016 (A4) to the O.A. in case of Sri Bakul Chandra Dey, applicant herein and the Hon'ble bench be kind and considerate enough to allow the interim order as above and further interim order prayed for at Para 9 of the Original Application and quoted at Para 1 above in the instant M.A. and any other or further order or orders as to this Hon'ble Tribunal may deem fit and proper",

This Tribunal noted that despite above order dated 06.02.2017 passed by this Tribunal wherein the respondents were directed to produce the entire original records before the court, no records have been produced. It was also noted that on 02.01.2017 and 06.02.2017 respondents were directed to file their reply within 4 weeks but neither any reply nor any document filed before this court. On 28.11.2017, this Tribunal further directed the respondents to produce relevant records in pursuant to order dated 06.02.2017 and to file reply positively within the next 7 days



from the date of receipt of this order; failing which it will be presumed that the respondents have nothing to submit against the instant application and the matter will proceed ex-parte.

Copy of the said order was directed to be handed over to the learned counsel for both the parties. This Tribunal fixed the matter on 06.12.2017, however on said date no division was available and the matter couldn't be proceeded.

6. When the matter was taken up on 12.12.2017, neither any written statement nor any records have filed by the respondents, however, Mr. P. Mukherjee for the respondent is present.

7. We further noted that the applicant in the Original Application approached this Tribunal with a prayer to set aside and quashed the impugned retirement order dated 23.11.2016 so far the applicant is concerned and to amend/correct his erroneous date of birth recorded as on 03.01.1952 to actual date of birth being 09.02.1954 and correct the erroneous date of retirement as 02.01.2017 to the actual date of retirement as on 08.02.2019. It is further prayed in the OA for a direction to the respondent to dispose of the representations made by the applicant in conformity with the Hon'ble Apex Court judgement.



8. We are of the considered view that grant of interim prayer by the applicants in his M.A. will amount to be a final order, therefore, no such interim prayer as prayed is being granted. Therefore, instead of passing any interim order in the ⁱⁿ MA, we are proceeding to decide the entire matter.

9. However, we observed that the applicant in his O.A. annexed a decision of Hon'ble Apex Court, **Mohd. Yunus Khan vs. U. P. Power Corporation Ltd. And ors, (2009) 1 SCC (L&S) 83.**

Learned counsel for the applicant has relied on the said decision in support of the claim of the applicant. In the said case related to date of birth and correction of entry it was held that "no material has been placed in regard in existence of a statutory rule fixing a time frame for filling an application for correction of date of birth in service records. Even if there was such a provision the same would not be much significance as the respondents have not shown the mistake in the matter of recording of date of birth in service record was known to the applicant at an earlier point of time. The appellant filed representation immediately he came to know the mistake. An employee can take action as is permissible in law only after coming to know that a mistake has been committed by the employer."



10. In the present case on the repeated direction no reply nor any records have been produced by the respondent authorities. Situated thus, for the ends of justice, we deem it fit and proper to remand the matter to the respondent's authority to ~~take~~ ^{has the been} take an appropriate decision in the matter. We have also noted ~~has~~ that neither matter ~~has not yet admitted nor any reply has been~~ filed by the respondent authority and despite direction for production of records, no records have been produced.

11. The issue pertains to date of birth and the applicant has now retired, and on this count also, we deem fit and proper to send back the matter to the authority to take a decision in the matter at the earliest.

12. In view of the foregoing reasons, without going into the merit of the case, we direct the respondent's authority to treat this OA as a representation of the applicant and to consider and dispose of the same in the light of the decision of the Supreme Court in the case of **Mohd. Yunus Khan** (supra) by passing a reasoned and speaking order after affording an opportunity of being heard to the applicant. Accordingly, applicant is directed to send a copy of this order along with the copy of the OA before the respondent no.2 within a period of ten days from the date of receipt of this order and the respondent no.2 shall pass

appropriate orders in the light of above directions within a period of two months thereafter.

Ans: The OA, and MA are disposed of accordingly. No ans.

(DR.NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICAIL MEMBER

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