

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 40 of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Madhabananda Nayak, aged about 61 years, S/o Late Bauribandhu Nayak, At/PO – Baigani, Via – Balikuda, Dist. – Jagatsinghpur, presently working as GDSMD, Baigani BO, i/a with Balikuda SO, Dist. – Jagatsinghpur, 754108.

.....Applicant

VERSUS

1. Union of India, represented through its Director General of Posts, Govt. of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist. – Khurda, 751001.
3. Superintendent of Post Offices, Cuttack South Division, At/PO/ Dist – Cuttack, 753001.
4. Assistant Superintendent of Post Offices, Jagatsinghpur Sub Division, At/PO/Dist- Jagatsinghpur, 754103.

.....Respondents.

For the applicant : Mr.D.P.Dhalsamant, counsel

For the respondents: Mr.S.Behera, Sr. panel counsel

Heard & reserved on : 12.7.2019

Order on : 19.7.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A) :-

In this case, the applicant is aggrieved because of the rejection of his representation vide order dated 4.1.2017 (Annexure-A/5 of the OA) for not modifying the date of birth of the applicant. Following reliefs have been sought by the applicant in this OA:-

- “(i) That the order dated 21.11.06 (A/2) & order dated 4.1.2017 (A/5) be quashed;
- (ii) That direction be issued to the respondents to record the date of birth of the applicant as 3.2.1956 instead of 3.2.1952;
- (iii) And further be pleased to pass any order/order(s) as deem fit and proper to give complete relief to the applicant.”

2. The facts in nutshell are that the applicant had joined as EDDA on 16.2.1979. It is averred in the OA that the applicant came to know that his date of birth as per his service record was 3.2.1952 where as his correct date of birth should have been 3.2.1956 as per the certificates he obtained from his school. Then he made a representation dated 8.11.2016 (Annexure-A/1) to the

respondents, who took no action on it. The applicant filed an OA before the Tribunal which was disposed of with a direction to the respondents to consider his representation by speaking order. Accordingly, the respondent no. 3 has passed the order dated 4.1.2017 (A/5) which is impugned in this OA.

3. The grounds advanced in the OA are that as per the school transfer certificate dated 10.9.1972 and other documents enclosed with his representation dated 29.12.2016 (Annexure-A/4 series), his date of birth was 3.2.1956 and not 3.2.1952 as reflected in his service record. It is also urged that the order dated 21.11.2016 (A/2) passed by the respondents notifying retirement of the applicant on attaining the age of 65 years on the basis of 3.2.1952 as his date of birth is bad in law.

4. The respondent No. 3 in the impugned order dated 4.1.2017 has mentioned the following facts as under:-

"After examination of the case it is revealed that Sri Madhabananda Nayak had applied for the post of GDS MD, Baigini BO i/a/w Balikuda SO vide his application dated 20.9.1979 in which his DOB has been mentioned as 3.2.1952, corroborated by Transfer Certificate (TC) no. 19 dated 10.9.1972 issued by Head Master, Panchapandav Sailabala High School, Dhainsho and submitted by the applicant for the purpose. Besides that in the Attestation form dated 12.10.1979, submitted by Sri Madhabananda Nayak and appointment order issued by the competent authority vide memo No. PF/EDDE/Baigini/79-80 dated 28.12.1979 his date of birth has also been mentioned as 3.2.1952 (Age 27 years 8 months 07 days) which confirms that his DOB, basing on which the retirement order on superannuation has been issued by the authority vide No. PF/GDSMD/Baigini BO dated 21.11.2016 is correct. Last but not the least, in the Seniority list of GDS employees of Cuttack South Division corrected up to 1.1.2008 (issued by SPOs Cuttack South Division) the date of birth of Sri Madhabananda Nayak (Applicant) was entered as 3.2.1952, which has been accepted by him as correct and in token of that he has signed the said seniority list on 21.11.2008.

On 8.11.2016 Sri M.N.Nayak (Applicant) has submitted one representation to the Respondent No.3 requesting to accept his date of birth as 3.2.1956 instead of 3.2.1952 and has submitted two letters, one issued on 18.10.2016 by one Kabita Dei Headmaster, Panchapandav Sailabala High School, Dhainsho and another issued vide No. 27/10 dated 25.10.2016 by one Ranju Behera, Headmaster Baigini Primary School in support of his claim. The request of Sri M.N.Nayak is not at all convincing and reasonable as his DOB 3.2.1952 mentioned in service record is corroborated by documentary evidence submitted by himself at the time of appointment and he has also accepted his DOB 3.2.1952 as correct."

5. The respondents in their Counter have reiterated above stand and have also enclosed a copy of the applicant's application before his engagement at Annexure-R/2 in which the date of birth as mentioned by him was 3.2.1952. This contention in the Counter has not been contradicted by the applicant.

6. I have heard learned counsels for both the sides and perused the pleadings on record. The prayer for interim relief of the applicant not to retire him as GDS on 2.2.2017 as per order dated 21.11.2016 till disposal of the OA

was considered by this Tribunal and vide order dated 20.1.2017, no interim relief was allowed and it was observed as under:-

"I have heard the Ld. Counsels for both the sides and perused the records. The law is that at the penultimate hour the request for change of date of birth normally cannot be entertained. In the present case, the applicant has agitated some new facts only in the fag end of his service career when he is going to retire. Therefore, prima facie, no immediate relief can be granted. However, since the order dated 4.1.2017 has been challenged by the applicant, the OA is admitted. Notice be issued to the Respondents, returnable in four weeks. Counter shall be filed within four weeks therefrom. Rejoinder within two weeks after receipt of counter."

7. From the facts it is clear that the order dated 21.11.2016 has been implemented and the applicant has been retired on 2.2.2017. Regarding the merit of the OA, it is noticed that as stated in the impugned order, the applicant remained silent about his date of birth just before the order dated 21.11.2016 for his retirement w.e.f. 2.2.2017 was passed. He submitted his representation dated 8.11.2016 (A/1 series) and representation dated 29.12.2016 (Annexure-A/4 series) for change of his date of birth. It is also noted that in the representations, the applicant has not mentioned about the circumstances for which he had mentioned his date of birth to be 3.2.1952 in his application to the respondents for engagement as EDDA (Annexure-R/2) and the reason for remaining silent till 2016 when he suddenly noticed the mistake in his date of birth.

8. In the circumstances as discussed above, I am of the view that the applicant has failed to produce adequate grounds in the OA to call for any interference of this Tribunal in the matter. The OA is accordingly devoid of merit for which it is dismissed. No order as to cost.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath

