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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.**

O.A./~~EXX~~ No. 223 of 1996 Decided on: 16/09/

Balram KishanApplicant(s)

(By Shri g.D. Bhandari Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri R.L. Dhawan Advocate)

CORAM:

THE HON'BLE SHRI LAL B. DAS, MEMBER (A)
THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter yes or not?
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBR (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 223 of 1996

New Delhi this the 16th day of October, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Balram Kishan
S/o Shri Hans Raj,
R/o A-3/114, Janak Puri,
New Delhi.

... Applicant

By Advocate Shri G.D. Bhandari.

Versus

1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

3. Divisional Railway Manager,
Northern Railway,
Ambala Cantt.

.. Respondents

By Advocate Shri R.L. Dhawan.

ORDER

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Applicant contests the action of the respondents in retiring him from service with effect from 31.12.1995 taking his date of birth as 1.1.1938. His case is that on being informed suddenly in the second week of October, 1995 that he would stand retire from service, he submitted a representation and also along with it a copy of the School Leaving Certificate, which indicated his correct date of birth as 31.1.1938. Accordingly, he claims that he should have been retired only on 31.1.1996.

2. Applicant was appointed as B.M. Khalasi Group

'C' on 5.2.1958 and was promoted in due course to the grade of highly skilled fitter. The respondents contend that at the time of his appointment, his date of birth was indicated as 1.1.1938, both in his application for such appointment dated 13.2.1957 and also in the record of service maintained by the respondents. The respondents contend that necessary entries in the record of service were duly signed by the applicant also, a copy of which has been shown at Annexure R-1.

3. Applicant cites the case of Mallela Sreerama Murthy and C.T. Rangami Vs. Union of India represented by the General Manager, S.C. Railway, Secunderabad and two others of the Full Bench of the Hyderabad Bench of the Tribunal reported in 1990(1) SLR 264 to point out that where rules promulgated under Article 309 are silent on any point, the gap can be filled by executive instructions which would be enforceable only if they do not conflict with the rules. I have seen this decision and I am afraid that this decision does not help the applicant. As pointed out by the respondents in their counter-reply, the rules relating to date of birth have been specifically incorporated in Rule 225 of the Indian Railway Establishment Code Volume I which specifically provides that every person on entering railway service, shall declare his date of birth which shall not differ from any declaration express or implied for any public purpose before entering railway service. It is also provided that date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It is open to the General Manager in the case of Group 'C' and 'D'

railway servant to cause the date of birth to be altered where in his opinion it has been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in service longer than if the alteration had not been made.

4. The applicant then raises the contention that in the wake of bifurcation of Delhi Division and Ambala Division, his service record was transferred from Delhi Division to Ambala Division and he claims that in the absence of record in the Ambala Division, it could not be made a ground to retire him on 31.12.1995, whereas his claim that his date of birth was correctly entered as 31.1.1938 in the service record of the applicant maintained by the Delhi Division. The respondents produced the original service record of the applicant maintained by the Delhi Division showing his date of birth as 1.1.1938 and, therefore, this contention of the applicant is not valid as the original record of the Delhi Division is also available for perusal. The applicant also relies on the judgment of the Madras Bench of the Central Administrative Tribunal in R. Sankaranaryanan Vs. Union of India, 1990 (7) SLR page 646 to contest that rejection of request on the ground that it was not made within a period of 5 years of entry in service would be illegal as the provisions in this behalf were held to be inapplicable to persons appointed before the date of issue of notification. This decision is also not helpful in the case of the applicant. The respondents have not rejected his request because of the belated representation. The decision of the respondents was based on the factual

record in regard to the date of birth which was shown as 1.1.1938 in the record of service maintained by the respondents, a copy of which is also produced by the respondents at Anneuxre R-2. The applicant also cites the Apex Court's case in Jeevan Kishore Vs. Delhi Transport Corporation, 1980 (2) SLR 513 to point out that where there is conflicting date of birth, scientific fixation of age by the Medical Board should be resorted to by the respondents. I am afraid that the facts and circumstances of this case are not parimateria in the case of the applicant and this decision also does help the applicant. Applicant also pleads that due enquiry should be conducted by the respondents to determine the correct date of birth. This plea is also not tenable. From the original record produced by the respondents, it is seen that in the application for the said post dated 12.2.1957, the applicant had indicated in his own handwriting the date of birth as 1.1.1938. Subsequently in the employees record of service as seen in File No. 727E/22/3021, the date of birth is shown as 1.1.1938 both in figures and in words and had been duly attested by the applicant himself. At the time of appointment to the said post on 5.2.1958, the applicant had already become 20 years of age and, therefore, it cannot be said that the applicant had falsely stated his date of birth to obtain an advantage otherwise inadmissible due to under-age. It is also seen that in the various seniority lists published from time to time, the applicant's date of birth had been shown only as 1.1.1938 and, therefore, the applicant's claim that he was shocked to be informed by a letter in July, 1995 that he was due to be retired on 31.12.1995, cannot be accepted as a reasonable plea. It is a settled law that application

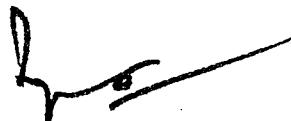
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for any correction in date of birth of an inservice employee should be made within 5 years from the date when the rules have come into force. Applicant had raised a dispute about the date of birth only at the time of his retirement. If he had not made such a representation within the aforesaid period and if no such application is made, the applicant loses his right for claiming correction of date of birth. (vide State of Tamil Nadu Vs. T.V. Venugopalan, 1994(5) SCC 337). In a recent decision of the Apex Court in Union of India and others Vs. C. Rama Swamy and Others, SCSLJ 1997 (2) page 118, their Lordships observed as follows:-

" In matter relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of person who is sought to be appointed may be a relevant consideration to assess his suitability." (emphasis added)

5. In the light of the above and in the facts and circumstances of the case of the applicant here, the principle of estoppel is clearly applicable and, therefore, the claim of the applicant cannot be legally sustained.

6. In the conspectus of the above discussion, there is no merit in this application. Accordingly, the application is dismissed. There shall be no order as to costs.



(K. MUTHUKUMAR)
MEMBER (A)

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