

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.404 of 1987 (C.M.Writ Petition No. 3611 of 1979)

Budhoo .. Petitioner  
Vs.  
Union of India .. Respondent.

Hon.G.S.Sharma, JM  
Hon.K.J.Raman, AM

(By Hon.G.S.Sharma, JM)

This writ petition received on transfer from the Lucknow Bench of the High Court of Judicature at Allahabad was filed by one Budhoo on 20.12.1979 for issuing a mandamus to the respondents to allow him to serve as a Porter in the Northern Railway upto 2.1.1989. According to him, his correct date of birth was 2.1.1931 but anyhow it was interpolated and changed as 4.4.1921 and on this basis the petitioner was retired from service on 30.4.79 while he should have been allowed to continue upto 2.1.89 in service. The writ petition is being contested by the respondent and it has filed its reply before this Tribunal.

2. This writ petition was received in this Tribunal sometime after its establishment and on 18.9.87 a notice by registered post was sent to the petitioner fixing 13.10.1987. The said notice was returned with the report dated 1.10.1987 of the Postman that the addressee is dead. Three persons alleging themselves to be the sons and legal representatives of the deceased petitioner thereafter moved an application on 18.10.1987 for their substitution in place of the petitioner and also moved another application u/s.5 of the Limitation Act supported by an affidavit for condoning the delay.



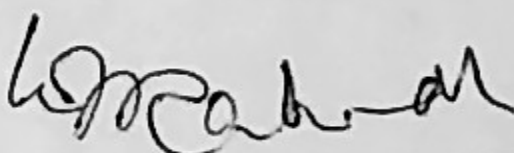
It has been alleged in the affidavit that the notice was sent by the Tribunal on 17.9.1987 through the Station Master Antoo who handed over the same to one of the applicants- Tung Nath Yadav sometime in the second week of Oct.1987 and for the first time the deponent Tung Nath Yadav came to know about the present case filed by his father in Oct.1987. The record, however, does not show that any notice was sent to the deceased petitioner through the ~~special messenger~~ <sup>station master</sup> Antoo and the notice sent to him was actually received back undelivered with the aforesaid report. The applicants have not filed along with the substitution application the notice received by them from the Station Master Antoo. This allegation is, therefore, incorrect and seems to have been made simply to plead ignorance about the case.

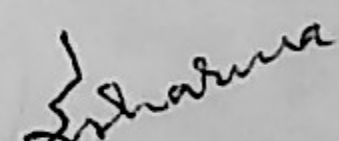
3. According to the case of the original petitioner, he was retired from service ~~after~~ <sup>about</sup> 10 years before his correct date of retirement and as such, not only his family members but others who were interested in his welfare are supposed to know about his filing the writ petition challenging his premature retirement and the sons of the petitioner, who are all major and grown up persons, should, therefore, be deemed to be knowing about this petition from the very time it was filed in the High Court in 1979 and we are unable to accept their contention ~~that~~ <sup>that of</sup> the applicants knew about this petition only in the second week of Oct.1987 ~~and~~ when the notice of this case was received by one of them through the Station Master Antoo. The original petitioner is shown to have died on 20.5.1985 more than 2 years before the present application was presented for substitution. As a matter of fact, the petition abated after the expiry of 90 days and it was no longer pending



in the eye of law when this Tribunal was established and did not stand transferred to this Tribunal u/s.29 of the Administrative Tribunals Act XIII of 1985. Further, Rule 18 of the Central Administrative Tribunal (Procedure) Rules, 1987 provides that in case of death of a party during the pendency of the proceedings before the Tribunal, the legal representatives of the deceased party may apply within 90 days of the date of such death for being brought on record as necessary parties. In this case, the original petitioner had not died when this petition was pending before this Tribunal. There is yet another ground for ignoring the application of the applicants, i.e., when a case abates, there is no question of applying for substitution and the proper course open is to apply for setting aside the order of abatement, which is always automatic, and there is no application for setting aside the abatement before us. In any case, the cause shown by the applicants for the delay in moving the substitution application is not only insufficient but is also incorrect and as such, the application merits dismissal.

4. The substitution application is accordingly rejected and as the original writ petition already stood abated before its transfer to the Tribunal, let the record be consigned.

  
MEMBER (A)

  
MEMBER (J)

Dated: 5th May 1989  
kkb