

Registration O.A.No. 487 of 1987

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Vs.

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Respondents.

Hon.D.K.Agrawal, JM

2. The Respondents have not denied that a representation was made by the Applicant in the year 1978

The Agreement

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for change of date of birth. However, it has been urged by them that it was not considered proper to change the date of birth. It has also been pleaded that the Applicant, according to the proposed date of birth, was ineligible for entering into Govt. service on 23.6.1948 being less than 18 years of age. The Respondents impliedly have taken a plea that a wrong date of birth, if any, is the own doing of the Applicant in order to secure a benefit of entering into service.

3. There is no denial of the fact that the Rules of Recruitment require that a person must have attained the age of 18 years at the time of entering into service. According to the proposed date of birth, the Applicant was less than 18 years of age on 23.6.48 when he was appointed as a Substitute T.C.. Therefore, the first point for determination is as to whether a person who was ineligible for entering into service according to the proposed date, can claim a change in date of birth after having declared his age at the time of entering into service ? Is he estopped or not from doing so ? This question came up for consideration before the Jabalpur Bench of this Tribunal in the case of Ghasite Lal Vs. Union of India (1986 ATC-224) wherein it was held that in such circumstances, an employee is estopped from challenging the recorded date of birth. The second point is as to whether the application is liable to be dismissed on the ground of laches and delay. Even if it be accepted that a representation was made by the Applicant in the year 1978 for change in recorded date

*Dr. K. S. Rao*

of birth, why he did not move the Court thereafter? In the case of Dharam Pal Vs. Union of India and another (1 (1989) ATLT-(CAT)-32), it was held that a civil servant must approach the Court within time and in case the matter is allowed to hang on till the retirement time, the application is liable to be rejected on the ground of laches and delay. The Hon. Supreme Court in the case of G.C. Gupta and others Vs. N.K. Pandey and others ('Judgment Today' 1987 (2)-446) have quoted from the case of State of M.P. & others Vs. Nandlal Jaiswal and others :-

"Now, it is well settled that the power of the High Court to issue an appropriate writ under Art. 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction...."

4. In the instant case, the situation is the same. The Applicant did not challenge the action or inaction on the part of the Railway administration in effecting a change in the date of birth till May 1987 when he was due to retire in Dec. 1987. In the case of Sarju Prasad Vs. Union of India and others (1989(9) ATC-93), the Calcutta Bench of the Tribunal almost in the similar circumstances held that the Applicant in such a situation is not entitled to any relief. The conclusion, therefore, is that the Applicant deliberately did not mention his age according to matriculation certificate produced by him at the time of entering into service because that would

*Disagreed*

have made him ineligible for entering into Govt. service. He is further guilty of laches and delay on his part. There is yet another aspect of the matter. The Applicant has already retired in Dec.1987. Thus, he had no occasion to discharge his responsibilities since his retirement. In my opinion, it will be unfair to grant him benefit of two years extension of service in such circumstances.

5. In the result, the Application is liable to be dismissed.

6. In view of the above discussion, the Application is dismissed without any order as to costs.

*D. K. Agrawal*  
8/12/89  
MEMBER (J)

Dated: 8th Dec.1989  
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