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CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

M.A. NO. 68/2003 in O. A.No.136/2003  
Date of Decision : this the 21<sup>st</sup> day of May, 2004

**Hon'ble Mr. G.R.Patwardhan,  
Administrative Member**

.....

Kedar Lal S/o Shri Raghunath by caste Rawat  
Aged about 65 years,, Ex Shunt Master 'A'  
Lalgarh Station and presently residing at  
Opp. Railway Quarter No. T-13, Rampura Basti,  
Lalgarh, Bikaner.

.....Applicant.

[By Mr.Nitin Trivedi, Advocate, for applicant]

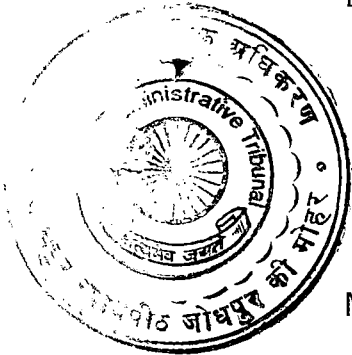
Versus

1. Union of India through General Manager  
Northern Western Railway, Headquarters  
Building, Jaipur.
2. Divisional Railway Manager,  
Northern Western Railway, DRM's Office, Bikaner.
3. The Senior Divisional Personnel Officer,  
Northern Western Railway, DRM's Office, Bikaner.
4. The Senior Divisional Operating Manager,  
Northern Western Railway, Bikaner.

.....Respondents.

[By Mr. Salil Trivedi, Advocate, for respondents]

ORDER  
[By the Court]

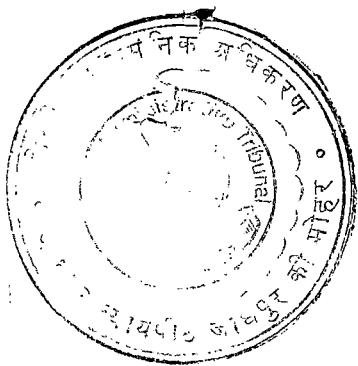


M.A. No. 68/2003 has been filed by Kedar Lal, Ex. Shunt Master, Lalgarh Station with a prayer to condone delay in filing O.A. no. 136/2003 against the Union of India, Divisional Railway Manager, Bikaner and Others.

2. It may be relevant to appreciate the case of the petitioner as disclosed in Original Application. He maintains that he was
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retired by respondent Railways on 31<sup>st</sup> March, 1995 instead of 31<sup>st</sup> March, 1997 despite the date of birth being recorded as 10.3.1939 in the Service Records as per matriculation certificate. It is his case that he has served them well – worked hard and in due course of time, got promotion and in the year 1994, sought voluntary retirement; but this was not accepted on the ground that an enquiry was pending. According to the applicant, the Railways were under the impression that his real date of birth was 10<sup>th</sup> March, 1937 and that he had forged documents to make it appear as 10<sup>th</sup> March, 1939. After the enquiry, Railways came to the conclusion that the date of birth was 10<sup>th</sup> March, 1937 and so decided to retire him w.e.f. 31<sup>st</sup> March, 1995. The applicant submitted his defence in the enquiry and after considering all aspects the Railways decided to close the same. It is the contention of the applicant, that this decision, absolves him of the charge of fraud and thus upholds the date of birth as 10<sup>th</sup> March 1939 and so the retirement should be held as invalid with all consequential benefits. The applicant seems to have made a representation on 19<sup>th</sup> February, 1999 to the Divisional Railway Manager, Bikaner without any response. The Original Application therefore ends with a prayer that the retirement on 31<sup>st</sup> March, 1995 be held illegal and benefits from 1<sup>st</sup> April 1995 to 31<sup>st</sup> March, 1997 provided to the applicant; gratuity; commuted pension and arrears of salary along with interest @ 18% per annum be also granted.

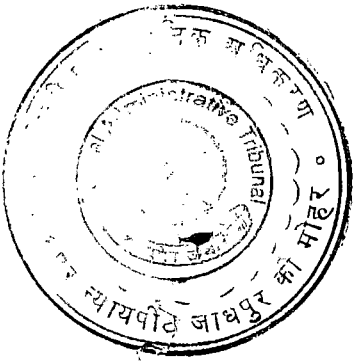


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3. However, the descriptive portion in M.A. mentions (in para No.1) that the O.A. has been preferred only for encashment benefits w.e.f. 1<sup>st</sup> April, 1995 to 31<sup>st</sup> March, 1997 as well as his terminal benefits after revising the pay.

4. The ground taken to explain the delay in preferring the O.A. has been explained by saying that non-provision of encashment benefits is a continuous wrong and so the O.A. may be treated as within limitation.

5. Learned advocate for both the parties have been heard and records perused. The M.A. has been opposed on the ground that even though non-payment of dues may be a continuous wrong, the delay in availing the opportunity has to be explained and mere filing of a representation without following it up cannot justify the delay.



6. In the O.A. in paragraph 1 (a) it is mentioned that there is no specific order under challenge but the O.A. has been preferred only to seek encashment benefits for the period 1.4.1995 to 31.3.1997 on account of premature retirement. The relief clause in para 8 also suggests that the premature retirement of the applicant w.e.f. 31.3.1995, is to be declared illegal. However, there is no prayer for determining the date of birth of the applicant which would be crucial to decide if at all the Respondent-Railways have committed mistake in calculating the same. Only three Annexures have been enclosed to the O.A. -

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A/1 is a communication from the Divisional Railway Manager, Bikaner saying that as the proceeding for major penalty is pending, the prayer of voluntary retirement cannot be accepted. Annex.A/2 is another communication from the Divisional Railway Manager dated 6.3.1998 indicating that in view of the explanations offered by the applicant, the standard form 5 dated 6.1.1995 (perhaps some kind of a charge sheet), has been filed. Annex. A/3 is a representation by the applicant dated 19.2.1999 to the Divisional Railway Manager to accord sanction for payment of pay and other allowances for the period 1.4.1995 to 31.3.1997.

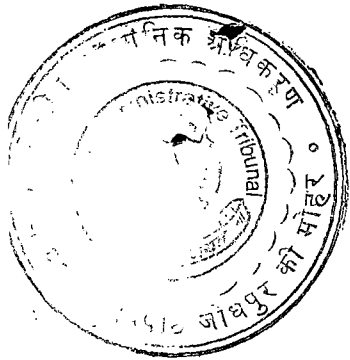
All these make it very clear that without challenging the basis of the so called premature retirement i.e. the date of birth, the applicant is taking a circuitous route to claim certain benefits. He has not enclosed a copy of the so called order retiring him prematurely; nor, he has challenged the same; nor has he prayed in the O.A. to accept the date of birth as indicated by him as the valid one. Since he himself has been remiss in pursuing his remedy in right time and in the appropriate manner, this cannot be condoned through the M.A.

7. In the result, the M.A. is devoid of any merit and is, therefore rejected.

*[Signature]*

[ G.R.Patwardhan]  
Administrative Member

Jrm



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Part II and III destroyed  
in my presence on 24/10/13  
under the supervision of  
section officer (J) as per  
order dated 12/10/2013

J.R. Smith  
Section officer (Record) 24.10.2013