

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE MRS JUSTICE ANIS

-
WRIT PETITION NO. 17291 of 2014 and 17221 of 2014

COMMON ORDER:

(per Hon'ble Sri Justice K.C.Bhanu)

Since common point is involved in both these Writ Petitions, they are being disposed of by this Common Order.

2. Writ Petition No.17291 of 2014 is filed challenging the order dated 04.04.2014 in Original Application No.020/00033/2014 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short, 'the Tribunal'), whereas Writ Petition No.17221 of 2014 is filed challenging the order dated 29.04.2014 in Original Application No.020/00273/2014 passed by the Tribunal.

3. The brief facts that are necessary for disposal of Writ Petition No.17291 of 2014 may be stated as follows.

(a) The first respondent herein filed the Original Application No.020/00033/2014 stating *inter alia* as follows:

First respondent herein was directly recruited to Indian Administrative Service (for short, 'IAS') in the year 1979 and was allotted to Andhra Pradesh cadre. At the time of applying to the Union Public Service Commission (for short, 'the UPSC'), he mentioned his date of birth as 07.06.1954 as shown in the school records. In the year 2011, first respondent was issued a notice of enquiry to produce additional documentary evidence with regard to the social status of his family to prove the linkage of the first Respondent with his forefathers in connection with the enquiry initially started during 2004. On that, the first respondent started making enquiries with regard to his date of birth and searched in

the records of Anakapalli municipality. During the course of the enquiry, it came to his notice that his date of birth is 07.06.1956, but not 07.06.1954. He immediately obtained birth certificate as per the Birth and Death Registration Act, 1886 and submitted a representation dated 02.08.2012 for correction of his date of birth. The first respondent also filed Original Suit No.171 of 2012 before the Principal Junior Civil Judge, Anakapalli for correction of date of birth in service record. The Union of India, the State of Andhra Pradesh, the Director of School Education, the District Collector, the Revenue Divisional Officer and the Municipal Registrar of Birth and Deaths were made as parties to the suit. After contest, the learned Judge passed a decree in favour of the first respondent on 23.11.2012 by declaring his date of birth as 07.06.1956. Thereafter, he made representation dated 30.03.2013 to the second respondent herein followed by other representations dated 23.04.2013 and 11.06.2013 for correction of his date of birth. As there was no response from the officials, he filed Original Application No.1140 of 2013 before the Tribunal seeking declaration of his date of birth. The Tribunal gave interim direction to consider the representation of the first respondent. Ultimately, his representation was rejected on 16.12.2013. Challenging the same, he filed the present Original Application.

(b) First respondent in the Original Application (petitioner in Writ Petition No.17291 of 2014) filed counter affidavit before the Tribunal stating *inter alia* as follows:

On receipt of the representation of the first respondent, the petitioner sought comments from the Government of Andhra Pradesh and the Government furnished the requisite information. The Government is not bound to alter or change the date of birth

on the basis of a decree. Basing on the information given by the Department of Legal Affairs, the representation of the first respondent dated 02.08.2012 was considered under Rule 16A of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (for short, '1958 Rules') and also on feasibility of invoking Rule 3 of All India Service (Conditions of Service-Residuary matter) Rules, 1960 (for short, '1960 Rules') and his request was rejected as it was not found to be a case to be considered under Rule 3 of 1960 Rules and it is not a case of causing undue hardship to the first respondent.

4. Considering the material on record, the Tribunal found that the order impugned in the Original Application dated 16.12.2013 is not justifiable and not sustainable under law, and accordingly, quashed the same and directed the first respondent therein to alter date of birth of the first respondent herein as 07.06.1956 in the place of 07.06.1954 in the service records and continue him in service till he attains superannuation, and accordingly, allowed the Original Application. Aggrieved by the same, Writ Petition No.17291 of 2014 is filed by the Union of India.

5. The brief facts that are necessary for disposal of Writ Petition No.17221 of 2014 may be stated as follows.

(a) The first respondent herein filed the Original Application stating *inter alia* as follows:

First respondent herein was directly recruited to IAS in the year 1987 and was allotted to Andhra Pradesh cadre. His date of birth was shown as 01.07.1954 in the school records. But, his original date of birth is 28.02.1957. His mother realised the mistake occurred in school records and obtained birth extracts from the concerned statutory authority in 1985 and made

application to the District Educational Officer (DEO), Kurnool to correct his date of birth in S.S.C. Register. The DEO addressed a letter to the Director of School Education on 09.10.1985 referring the matter to the higher authority. Thereupon, the Director of School Education requested the District Collector, Kurnool on 16.10.1985 to cause enquiry and furnish specific remarks on the application of his mother. The District Collector, in turn, addressed to the Head Master, Zilla Parishad High School, Peddakadubur, Kurnool District calling for original records, and also issued notice to mother of the first respondent on 06.01.1987 informing her to attend enquiry and sought for certain information.

Accordingly, she furnished information on 27.01.1987. Thereafter, there was no correspondence in the matter. The above aspects had taken place prior to the first respondent joined in IAS. As date of birth of the first respondent in school records was shown as 01.07.1954, the same was carried out in the service records. After death of his mother, he came to know in the year 2010 about the proceedings initiated by his mother and immediately he made a representation to the District Collector, Kurnool seeking details and outcome of the issue. As there was no response from the District Collector, he gave a representation on 18.08.2013 to the second respondent, who forwarded the same to the petitioner herein on 28.08.2013. But, his claim was rejected by proceedings dated 01.10.2013.

The first respondent sought information relating to the file regarding the claim of his mother. The said information was given. As per the Births and Death Register, his date of birth is 28.02.1957. Then, he filed Original Application No.1267 of 2013, which was allowed by the Tribunal directing the respondents therein to consider his case under Rule 3 of 1960 Rules and pass

appropriate orders. Thereupon, the order dated 12.12.2014 impugned in the Original Application was passed. Challenging the same, he filed the present Original Application.

(b) The first respondent in the Original Application (petitioner in Writ Petition No.17221 of 2014) filed counter affidavit stating *inter alia* as follows.

The first respondent had shown his date of birth as 01.07.1954 at the time of submitting application for civil service examination, and had there been any discrepancy already existed prior to the said examination, he should have brought about it to the notice of the UPSC. As per Rule 16 (4) of 1958 Rules, date of birth as accepted by the Central Government shall not be subject to any alteration except where it is established that a *bona fide* clerical mistake had occurred in accepting the date of birth under sub-Rule (2) or (3). It is the uniform policy of the Government that the date of birth once entered by the concerned officer in the service records is not changeable on any ground except for a clerical mistake while entering it. In the present case, there is no clerical error in recording date of birth of the first respondent. The representation of the first respondent was examined and considered in accordance with the Rules and the judgment of the Apex Court and the same was rejected.

(c) The second respondent in the Original Application (second respondent in Writ Petition No.17221 of 2014) filed counter in the Original Application stating *inter alia* as follows:

The first respondent has not served the State Government in any capacity before his appointment to IAS in the year 1987, and so the State Government Service Conditions for the purpose of alteration/ correction of date of birth in service records are not applicable to his case, and the competent authority to consider his

request for correction of date of birth is Union of India. State Government has no role to decide and pass orders on the request of the first respondent.

6. Considering the material on record, the Tribunal held that the order impugned in the Original Application dated 12.12.2014 is not justifiable and hence the same is quashed and consequently directed the respondents in the Original Application to alter the date of birth of the first respondent herein as 28.02.1957 in place of 01.07.1954 in the service records and continue him in service till he attains superannuation i.e. 28.02.2017, and allowed the Original Application. Aggrieved by the same, Writ Petition No.17221 of 2014 is filed by the Union of India.

7. The short point that falls for consideration in these two Writ Petitions is whether the exercise of discretion by the Central Government under Rule 3 of Rules 1960 is proper or not ?

8. Learned Assistant Solicitor General of India appearing for the petitioner in both the Writ Petitions contended that Rule 3 of 1960 Rules is an enabling provision to the Central Government to relax any of the Rules including the correction of date of birth; that it is the uniform policy of the Government not to alter the date of birth of a civil servant once it is entered in his service records; that if the dates of birth of the first respondent in the Writ Petitions is altered, the service conditions and promotion of other employees would be affected, and that these aspects have not been considered by the Tribunal in right perspective, and hence, he prays to set aside the impugned orders of the Tribunal.

9. On the other hand, the learned senior counsel Sri D.Prakash Reddy appearing for the first respondent in Writ Petition No.17221

of 2014 vehemently contended that it is a total non-application of mind by the Central Government in passing of the impugned order in the Original Application and that except extracting the facts leading to correction of the date of birth and citing the decision of the Supreme Court, no reasons are given in the said order, and that in the said order, there was no denial of the facts that led to make request for correction of date of birth; that it is case where mother of the first respondent initiated proceedings for correction of his date of birth before his entry into service and that the earlier directions given by the Tribunal in Original Application No.1267 of 2013 have not been followed in right perspective and therefore the Tribunal rightly allowed the Original Application and hence, he prays to dismiss the Writ Petition.

10. On the other hand, learned counsel Sri J.Sudheer for the petitioner in Writ Petition No.17291 of 2014 contended that case of the first respondent stands on par with the case of one Sri T.Radha, wherein the Central Government relaxed Rules under Rule 3 of 1960 Rules and allowed him to continue his service as per corrected date of birth, and that date of birth of the first respondent as mentioned in the service records is a *bona fide* mistake and considering the material on record, the Tribunal rightly allowed the Original Application and hence, he prayed to dismiss the Writ Petition.

11. In Writ Petition No.17291 of 2014, the following facts are not denied or disputed. Initially, in the year 1999, the District Collector, Visakhapatnam issued a notice to one of the brothers of the first respondent with regard to social status. 7 years thereafter, the Collector issued a fresh notice to produce additional documentary evidence. While searching for the documentary

evidence as required, it revealed that in the year 1956, his birth was registered in Anakapalli municipality. Immediately, he obtained a Birth Certificate and represented to the Department of Personnel and Training (DoPT). As the representation was not considered, he filed Original Suit No.171 of 2012 before the Principal Junior Civil Judge, Anakapalli for declaration of his date of birth. The said suit was decreed. The official respondents are parties to the civil suit. It is not the case of the petitioner or the official respondents that his birth register is manipulated or fabricated for the purpose of this case. The genuine entry of his date of birth in the municipal records of the Anakapalli Municipality is not denied or disputed. The decree was passed by the civil court after contest and findings of the civil court have become final. So, from the evidence produced by the first respondent, it is clearly shown that his date of birth is 07.06.1956.

12. Similarly, in case of first respondent in Writ Petition No.17221 of 2014, his mother applied for correction of his date of birth as his date of birth was entered by mistake in school records as 01.07.1954. Thereupon, she made an application to the District Collector. Then, lot of correspondence had taken place between the government officials and his mother during enquiry in pursuance of the order of the District Collector. Original records relating to his status in Zilla Parishad High School, Peddakadubur, Kurnool District and the enquiry conducted by the Tahsildar would clearly go to show that his date of birth is 28.02.1957. But, after 1997, his mother did not pursue the matter further. Therefore, his date of birth was carried in his service records as per the school records. He also obtained a fresh Date of Birth certificate from the Tahsildar of Peddakadubur mandal, Kurnool District, who is the

competent authority. So, the material placed by him i.e. original records relating to his status in Zilla Parishad High School, Peddakadubur, Kurnool District and the enquiry conducted by the Tahsildar would clearly go to show that his date of birth is 28.02.1957. Even the petitioner or the official respondents did not dispute about the fact that prior to entry into his service, his mother made an application to the authorities concerned, who caused enquiries, but no action had been taken further. It is also not the case of the petitioner or the official respondents that the correspondence between the officials and mother of the first respondent is fabricated or pressed into service for the purpose of getting benefit or deriving advantage to continue him till 28.02.2017 in service.

13. So, in both the cases, it is a genuine mistake in wrongly mentioning the dates of birth of the first respondent in both the Writ Petitions in their respective school records. Even the Government or the official respondents did not deny about the correct dates of birth of the first respondent in both the Writ Petitions as mentioned in Births and Death Register and the Certificate issued by the authorities concerned.

14. Rule 16-A of 1958 Rules reads thus:

“16 (1) For the purpose of determination of the date of superannuation of a member of the service, such date shall be calculated with reference to the date of his birth as accepted by the Central Government under this rule.

16 (2) In relation to a person appointed, after the commencement of the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1971-

(a) Indian Administrative Service under clause (a) or clause (aa) of sub-rule (1) of rule 4 of the Indian Administrative Service (Recruitment) rules, 1954; or

(b) the Indian Police Service under clause (a) or clause (aa) of sub-rule (1) of rule 4 of the Indian Police Service (Recruitment) Rules, 1954; or

(c) the Indian Forest Service under clause (a) or clause (aa) of sub-rule (2) of rule 4 of the Indian Forest Service (Recruitment) Rules, 1966;

the date of birth as declared by such person in the application for recruitment to the service shall be accepted by the Central Government as the date of birth of such person.

16 (3) In relation to a person to whom sub-rule (2) does not apply, the date of birth as recorded in the service book or other similar official document maintained by the concerned government shall be accepted by the Central Government, as the date of birth of such person.

16 (4) The date of birth as accepted by the Central Government shall not be subject to any alteration except where it is established that a bonafide clerical mistake has been committed in accepting the date of birth under sub-rule (2) or (3)."

Perusal of the above provision makes it clear that only *bona fide* clerical mistake, if committed in accepting the date of birth at the time of entry into service, can be corrected. There is no provision in the above Rules to correct date of birth of a member of All India Service if there is genuine mistake committed while entering the date of birth of any person in the school records. But, there is enabling provision to the Government to relax the rules or regulations in certain cases as per Rule 3 of 1960 Rules, which reads thus:

"3. Power to relax rules and regulations in certain cases:

Where the Central Government is satisfied that the operation of-

(i) any rules made or deemed to have been made under the All India Services Act, 1951 (61 of 1951) or

(ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any particular case, if may, by order, dispense with or relax the requirements of that rule or regulations, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.”

The above enabling provision gives power to the Central Government to relax any rule relating to the conditions of service of a person appointed to All India Service, if it causes undue hardship to any particular case. So, the Central Government, by an order, dispense with or relax requirement of that rule or regulation, as the case may be.

15. There cannot be any dispute that date of birth entry in the service records of a member of All India Service is of utmost importance for the reason that the right to continue in service stands decided by its entry in the service records. The government servant who has declared his age at the initial stage of recruitment is not precluded from making a request later for correcting his age. It is open to a civil servant to claim correction of his date of birth if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth. But, the government servant must do so without any unreasonable delay. Therefore, the Government has to keep in mind the factors in terms of the Rules in disposing of the correction of date of birth.

16. Case of the Government is that if the orders of the Tribunal under challenge are allowed to be continued, it would have deleterious effect of over-riding and upsetting the service records

maintained in due course of administration for promotion to All India Services and seniority of its members. It is the specific case of the Government that it is the uniform policy of the Central Government that date of birth of an officer once entered into his service register, is not changeable on any ground at all except in case of any clerical mistake while entering into the date of birth and any subsequent change in the source of information itself regarding date of birth does not make it incumbent for the Government of India to make consequential changes in its service records.

17. There cannot be any dispute that the proceedings rejecting correction of date of birth of a civil servant must contain reasons. Recording of reasons in support of the order is considered to be a part of natural justice and every administrative authority is bound to record reasons in support of the orders passed by it. Failure to give reasons amounts to denial of justice. As rightly contended by the learned senior counsel appearing for the first respondent in Writ Petition No.17221 of 2014, the orders impugned in the Original Applications do not contain any reasons at all. As seen from the said orders, the only ground taken by the Government is that any change in the date of birth may unduly affect promotion prospects of other members of the service and it is not a case of undue hardship, and that it is the policy decision of the Government not to correct date of birth. Except these two grounds, there is no mention as to how it will have impact on the promotion prospects of other members of the service or how undue hardship is caused to other members. As contended by the learned Assistant Solicitor General, if it is a case of uniform policy that under no circumstances, date of birth entry in the

service records can be altered or changed on any ground, then it can be accepted if the Central Government is following the same principle in respect of each and every candidate of All India Services. Further, there cannot be any dispute that ordinarily, this court should not interfere with the policy decision of the Government unless there is arbitrary exercise of power or any discrimination is shown from one person to another person. In such a case, there is no difficulty in rejecting the cases of the first respondent in both the Writ Petitions, and in such circumstances, no arbitrariness can be attributed to the Central Government.

18. It is a settled law that there should not be any discrimination from one officer to another officer as discrimination strikes at Article 14 of the Constitution of India. What is enjoined by Article 14 of the Constitution of India is that State shall not, by its acts, discriminate as between two individuals who are similarly circumstanced. Therefore, the persons, who are aggrieved, if any discrimination is shown to them when compared with any other person whose case stands similarly situated, can challenge the validity of the order impugned in the Original Application.

19. Rule 3 of 1960 Rules is not meant for rejecting the genuine claims of alteration or correction of date of birth. The said residuary power is given to the Government to relax the rules *inter alia* with regard to correction of date of birth basing on the unimpeachable and impeccable evidence produced by the parties.

From the facts and circumstances of the case, it is clear that there are no laches on the part of the first respondent in both the respondents in applying to the Central Government for correction of their respective dates of birth by duly relaxing the rules in terms of Rule 3 of 1960 Rules. In case of first respondent in Writ Petition No.17291 of 2014, his correct date of birth came to light

when he made enquiries in pursuance of the notice issued by the District Collector with regard to fresh social status certificate. In case of first respondent in Writ Petition No.17221 of 2014, he came to know about his correct date of birth after death of his mother, who admittedly gave several representations to several authorities for correction of his date of birth, and as he was not aware of the steps being taken by his mother for getting his correct date of birth altered and as he came to know about the same in the year 2000, he made representations.

20. The learned Assistant Solicitor General relied on a decision in *Union of India v. Harnam Singh*[\[1\]](#), wherein it is held thus: (para 7)

“A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may

operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. Indeed, as held by this Court in *State of Assam v. Daksha Prasad Deka*, (1971) 2 SCR 687 : (AIR 1971 SC 173), a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him. This court said: : "The date of compulsory retirement under F.R. 56(a) must in our judgment, be determined on the basis of the service record; and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistent with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record, and may apply for correction of the record. But until the record is corrected, he cannot claim that he has been deprived of the guarantee under Article 31](2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of birth entered in the service record."

He also relied on a decision in *State of U.P. & another v.*

Shiv Narain Upadhyaya[\[2\]](#), wherein it is held thus: (paras 6 & 7).

"Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, and it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement waking up from their supine slumber raise a dispute about their service records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the concerned Administrative Tribunals, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

4. MOST of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of

birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction, of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of *State of Assam v. Daksha Prasad Deka*, this Court said that the date of the compulsory retirement "must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure." In the case of *Government of Andhra Pradesh v. M. Hayagreev Sarma* the A. P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the rules framed by the State Government referred to above. It was, inter alia, observed by this Court:

"The object underlying Rule 4 is to avoid repeated applications by a government employee for the correction of his date of birth and with that end in view it provides that a government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth."

In the aforesaid cases, as per the service regulations applicable to the government servants therein, a time limit is fixed to correct the date of birth. So, in such circumstances, it is held that as the Government fixed the time limit in the service rules, no application for correction of date of birth of the government servant can be entertained after expiry of such time. Therefore, the above decisions have no application to the facts of the present cases.

21. With regard to exercise of judicial power, learned counsel for first respondent relied upon the following decisions.

(a) In *Indian Railway Construction Co. Ltd. v. Ajay Kumar*^[3], wherein it is held thus: (para 13).

“One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. IT is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. (See *State of U.P. and others v. Renusagar Power Co. and others* (AIR 1988 SC 1 737). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. IT must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories : (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.”

(b) In *State of NCT of Delhi & another v. Sanjeev*[\[4\]](#), it is held thus: (para 20)

“The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in *CCSU* case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:

"...Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. THE first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community."

Lord Diplock explained "irrationality" as follows:

"By 'irrationality' I mean what can by now be succinctly referred to as *Wednesbury unreasonableness*'. It applies to a decision which is too outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

(c) In *Union of India & others v. Flighth Cadet Ashish Rai*,^[5]

it is held thus: (para 6)

"There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority exceeded its powers (c) committed an error of law (d) committed breach of the rules of natural justice and (e) reached a decision which no reasonable Tribunal would have reached or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner : (i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. (ii) Irrationality, namely, *Wednesbury unreasonableness*, (iii) Procedural impropriety."

(d) In *Bhubaneswar Development Authority & another v.*

Adikanda Biswal & others^[6], it is held thus: (para19).

"We are of the view that the High Court was not justified in sitting in appeal over the decision taken by the statutory authority under Article 226 of the Constitution of India. It is trite law that the power of judicial review under Article 226 of the Constitution of India is not directed against the decision but is

confined to the decision making process. The judicial review is not an appeal from a decision, but a review of the manner in which the decision is made and the Court sits in judgment only on the correctness of the decision making process and not on the correctness of the decision itself. The Court confines itself to the question of legality and is concerned only with, whether the decision making authority exceeded its power, committed an error of law, committed a breach of the rules of natural justice, reached an unreasonable decision or abused its powers.”

(e) In *S.R.Tewari v. Union of India & another*^[7], it is held thus: (para 20).

“The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure. (Vide: *Tata Cellular v. Union of India*, AIR 1996 SC 11; *People's Union for Civil Liberties & Anr. v. Union of India & Ors.*, AIR 2004 SC 456; and *State of N.C.T. of Delhi & Anr. v. Sanjeev alias Bittoo*, AIR 2005 SC 2080).”

22. There cannot be any dispute that the scope of judicial review of administrative action in setting aside the impugned orders before the Tribunal must be within the parameters. Judicial review is the exercise of the inherent power of the Court/Tribunal to determine whether the action of the Government is lawful or not, and to award suitable relief. In judicial review, the Court is not concerned with the merits or correctness of the decision, but is concerned with the manner in which the decision is taken or order

is made. It is a fundamental mechanism for keeping the public authority within its due bounds and for upholding the Rule of Law.

23. With regard to correction of date of birth, the learned counsel relied upon the following decisions.

(a) In *Mohd. Yunus Khan v. U.P. Power Corporation Ltd. & others*,^[8] it is held thus: (para 12)

“No material has been placed before us in regard to existence of a statutory rule fixing a time frame for filing an application for correction of the date of birth in the service record. Even if there was such a provision, the same, in our opinion, would not be of much significance as respondents had not shown that the mistake in the matter of recording of date of birth in the service record was known to appellant at any earlier point of time. If appellant's contention is correct that he came to learn about it only in April, 1988 whereafter he filed a representation, it must be held that there was no delay on his part in this behalf. An employee may take action as is permissible in law only after coming to know that a mistake has been committed by the employer.”

(b) In *Amrik Singh & others v. Union of India & others*,^[9] it is held thus: (para 10)

“REGULATION 7, earlier reproduced, has reference to the Select List, received from the State, being approved by the Commission. Ahluwalia was in this list and by virtue of that inclusion in the Select List, was posted against a Cadre post with effect from 11-11-1965. REGULATION 8 authorises such appointment of the members of the State Police Service. However, Rule 9 of the Indian Police Service (Cadre) Rules 1954 has a crucial impact in regard to temporary appointments of non-cadre officers to Cadre posts. We have earlier extracted the Rule, but in substance, the exercise prescribed by the Rule is that, when the Cadre post is vacant and no Cadre Officer is available a non-cadre officer may fill the vacancy for a period beyond three months if the State Government reports to the Central Government the reasons therefore and it is not ordered to be terminated. The Central Government may permit a non-cadre Officer to fill Cadre post for a period exceeding six months provided it reports the full facts to the U.P.S. C. and acts responsibly in the light of the advice of the Commission. In the present case, no such report by the State Government to the Central Government was sent, no consultation by the Central Government with the Commission was done. We are agreed that by-passing the Public Service Commission bespeaks *prima facie*

impropriety, but we are not inclined to consider this grievance as destructive of the officiation of Ahluwalia in the special conspectus of facts present here. For one thing, Ahluwalia has nothing to do with the error; for another, no senior of Ahluwalia suffered, thirdly, the Central Government, in exercise of its power to relax the Rules, in good faith and, indeed in equity, did relieve the officer against this violation. That power to relax exists is admitted, although a feeble challenge to its vires was made in passing. When we consider the year of allotment what looms large is Rule 3 (iii) (b). Continuous officiation is the decisive factor. Assuming that what is needed is regular officiation and not physical officiation, it is perfectly open for the Central Government to relax any irregularity by relaxing any particular rule or regulation. We have earlier indicated the scope of this power and reproduced the Rule itself. It is not arbitrary because the Rule contains guidelines, Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship then the iniquitous consequence thereof may be relieved against by relaxation of the concerned Rule or REGULATION. There must be undue hardship and, further the relaxation must promote the dealing with the case "in a just and equitable manner". These are perfectly sensible guidelines. What is more, there is implicit in the Rule, the compliance with natural justice so that nobody may be adversely affected even by administrative action without a hearing. We are unable to see anything unreasonable, capricious or deprivatory of the rights of anyone in this residuary power vested in the Central Government. Indeed, the present case is an excellent illustration of the proper exercise of the power. We are, therefore, satisfied that the Central Government was right in invoking its power to relax and regularize the spell of officiation, which was impugned as irregular or illegal. The consequence inevitably follows that the officer Ahluwalia was rightly assigned 1961 as the year of allotment."

24. In pursuance of the direction of this Court in W.P.M.P. No. 26612 of 2014 in W.P. No.17291 of 2014, the petitioner was directed to produce the files relating to any member of All India Service whose date of birth has been corrected after entry into service, exercising the residuary power under Rule 3 of 1960 Rules. In pursuance of the same, one file relating to Sri T.Radha has been produced before this Court. It is a case where in the application for Civil Services Examination, his date of birth was

mentioned as 23.01.1956, but the same was not accepted by the UPSC for the reason that date of birth shown in the Matriculation Certificate enclosed along with the application was 20.10.1954. Subsequently, his date of birth in the Matriculation Certificate was corrected by the concerned State Government authorities as 23.01.1956. Considering his representation, the Government passed order dated 04.01.1993 in Proceedings No.25015/1/92-AIS (II), Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), New Delhi, which reads thus:

“WHEREAS Shri T.Radha had declared 23.01.1956 as his date of Birth in his application for the Civil Service Examination, 1982, but the UPSC had accepted his date of birth as 20.10.1954 on the basis of the entries made in his matriculation certificate.

AND WHEREAS the Government of Tamilnadu has subsequently corrected the date of birth of Shri T.Radha in his matriculation certificate from 20.10.1954 to 23.01.1956.

AND WHEREAS Sub-rule (4) of Rule 16A of the AIS (DCRB) Rules permits alteration of date of birth only when it is established that a bonafide clerical mistake has been committed in accepting the date of birth, and the Central Government are satisfied that non-correction of the date of birth will bring undue hardship to the officer.

Now, therefore, Central Government in exercise of the powers conferred under rule 3 of the All India Service (Residuary Matters) Rules, 1960 hereby relaxes the rule 16A of the AIS (DCRB) Rules and orders that the date of birth of Shri T.Radha, IAS (AS:83) be altered in the service records from 20.10.1954 to 23.01.1956.

By order and in the name of the President.”

25. If the contention of the learned Assistant Solicitor General that as a policy, the Central Government is not correcting the date of birth of any members of All India Services after entry of the date of birth, is accepted, certainly the case of Sri T.Radha ought not to

have been considered by the Central Government. In the above case, admittedly, the Central Government has invoked Rule 3 of 1960 Rules for correction of date of birth by relaxing Rule 16A of 1958 Rules. From the facts of Sri T.Radha's case, it is clear that though he claims that his date of birth is 23.01.1956, the same was not accepted by the UPSC, and his date of birth as mentioned in the Matriculation Certificate i.e. 20.10.1954, was subsequently corrected by the State Government authorities as 23.01.1956, and which led to issuance of the aforesaid order dated 04.01.1993.

Having exercised the discretion in relaxing the Rules in correcting the date of birth of Sri T.Radha, the same should have been extended to the case of the first respondent in both the Writ Petitions also and the same yardstick ought to have been applied to their case also. Therefore, the contention that it is a policy matter of the Government of India not to accept the correction of the date of birth of a member of All India Services, is wholly untenable and devoid of merit. Under no circumstances, it can be said that there is uniform policy of the Central Government to reject the claims of members of All India Service in case of correction of date of birth.

26. The object of Rule 3 of 1960 Rules is to enable the Government of India to relax the rigour of any rule. Even the learned Assistant Solicitor General did not dispute about the residuary power of the Government to relax any rule including Rule 16A of 1958 Rules. The claim of the first respondent in both the Writ Petitions regarding alteration of their respective dates of birth is a legitimate one and they produced unimpeachable evidence, which is admissible under Section 35 of the Indian Evidence Act, 1882 viz. (i) the document must be in the nature of

an entry in any public or any official book, register or record; (ii) it must state a fact-in-issue or a relevant fact; (iii) the entry must be made by a public servant in discharge of his official duties or in performance of his duties which shall be enjoined by the law of the country in which the relevant entry is kept. All the above conditions have been fulfilled in the case of first respondent in both the Writ Petitions. Therefore, the entries made by a public servant in discharge of his official duties in the register maintained can be received as evidence. The documents containing the correct dates of birth of the first respondent in both the Writ Petitions are not in dispute. When the documents have high probative value because they are not disputed, denying the benefit of service of two years to them, on the face of it, causes undue hardship to them. Despite an opportunity being given to the petitioner herein, it has not considered the applicability of Rule 3 of 1960 Rules.

27. With regard to the contention of affecting the service conditions of other officers by correction of the dates of birth of the first respondent in both the Writ Petitions, a specific plea has been taken in the counter filed by the first respondent in Writ Petition No.17221 of 2014 has not been denied or disputed that the service conditions of other officer would be affected adversely in altering the dates of birth. Therefore, it can be said that interests of any other officer would not be affected at this stage. The Hon'ble Supreme Court of India in *Amrik Singh v. Union of India* (9 supra) dealing with Rule 3 of 1960 Rules observed : "It is not arbitrary because the Rule contains guidelines. Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the iniquitous consequence thereof may be received against by relaxation of the

concerned Rule or Regulation. There must be undue hardship and further the relaxation must promote the dealing with the case 'in a just and equitable manner'."

It is also not in dispute that promotions/time scales are being given to the members of the All India Services batch-wise on time bound basis. In such circumstances, the service conditions of any other juniors of the first respondents herein would not be affected adversely.

28. Therefore, on the following grounds, the orders impugned in the Original Applications are liable to be set aside.

(a) The proceedings issued by the petitioner herein in respect of the first respondent in both the Writ Petitions do not contain any reasons at all to reject their claim for correction of their respective dates of birth though their claims are genuine, correct and the dates of birth as claimed by them are not denied or disputed by the petitioner;

(b) The residuary power under Rule 3 of 1960 Rules has not been exercised by the petitioner in spite of the earlier directions given by the Tribunal in Original Application No.1267 of 2013;

(c) Total discrimination is being shown from one candidate to another candidate, and therefore it is whimsical;

(d) It is not the uniform policy of the Government not to correct the date of birth of civil servants after they are entered in service records, so as to reject the claims of the first respondent in both the Writ Petitions.

29. Therefore, the Tribunal rightly allowed the Original Applications. None of the findings of the Tribunal is shown to be perverse or not based upon any admissible material available on

record. In the absence of any perverse findings, the impugned orders need no interference by this Court. The Writ Petitions are devoid of merit and are liable to be dismissed.

30. The Writ Petitions are, accordingly, dismissed. No costs. Miscellaneous Petitions pending, if any, in the Writ Petitions shall stand closed.

K.C.BHANU, J

ANIS, J

.1.2015
DRK

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE MRS JUSTICE ANIS

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COMMON ORDER
in

WRIT PETITION NO. 17291 of 2014 and 17221 of 2014

(per Hon'ble Sri Justice K.C.Bhanu)

.01.2015

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- [1] (1993) 2 Supreme Court Cases 162
 - [2] (2005) 6 Supreme Court Cases 49
 - [3] (2003) 4 Supreme Court Cases 579
 - [4] (2005) 5 Supreme Court Cases 181
 - [5] (2006) 2 Supreme Court Cases 364
 - [6] (2012) 11 Supreme Court Cases 731
 - [7] (2013) 6 Supreme Court Cases 602
 - [8] (2009) 1 Supreme Court Cases 80
 - [9] (1980) 3 Supreme Court Cases 393