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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5504 OF 2016

Union of India

... Petitioner

Vs.

Mr. Vishwas Jaywantrao Bhosale,
Chairman & Managing Director
Maharashtra State Warehousing
Corporation and ors.

... Respondents

Mr. Anil Singh, Addl. Solicitor General a/w. Mr. Neel Helekar, Mr. Rui Rodrigues, M.S. Bhardwaj, Mr. Ashutosh Gole for the Petitioner.
Mr. A.V. Anturkar, Senior Advocate a/w. Mr. Rahul Walia for Respondent No.1.

Mr. V.B. Thadani, AGP for the Respondent Nos.2 and 3-State.

AND

WRIT PETITION NO. 5390 OF 2016

The State of Maharashtra and anr.

... Petitioners

Vs.

Mr. Vishwas Jaywantrao Bhosale,
Chairman & Managing Director
Maharashtra State Warehousing
Corporation and anr.

... Respondents

Mr. V.B. Thadani, AGP for the Petitioners -State.

Mr. A.V. Anturkar, Senior Advocate a/w. Mr. Rahul Walia for Respondent No.1.

Mr. Anil Singh, Addl. Solicitor General a/w. Mr. Neel Helekar, Mr. Rui Rodrigues, M.S. Bhardwaj, Mr. Ashutosh Gole for the Respondent No.2.-Union of India.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.

DATE : JUNE 24, 2016.

COMMON JUDGMENT : (PER M. S. SONAK, J.)

1] Rule in both petitions. At the request of and with the consent of learned counsel for the parties, Rule is made returnable forthwith.

2] The Union of India and State of Maharashtra filed the aforesaid two writ petitions to challenge the judgment and order dated 8 March 2016 passed by the Central Administrative Tribunal (CAT) allowing the Original Application No. 743 of 2014 instituted by respondent No.1, in the matter of change of his date of birth from 1 June 1956 to 5 October 1958.

3] In pursuance of recommendations of the Maharashtra Public Service Commission (MPSC), the respondent No.1 vide appointment order dated 18 January 1984 was appointed as Deputy Collector in the State of Maharashtra with effect from 6 February 1984. At the time of such appointment, his date of birth was recorded as 1 June 1956 in the service book. This was on the basis of School Leaving Certificate furnished by the respondent No.1 himself. It is the case of the respondent No.1 that by application dated 31 January 1989, he applied for change in the service record of his date of birth from

1 June 1956 to 5 October 1958. It is further his case that for almost eight years, the authorities took no action whatsoever in the matter. On 26 September 2000, the Divisional Commissioner, Pune raised some queries, which, respondent No.1 claims, were duly answered. On 30 March 2005, the respondent No.1 was promoted/inducted into the Indian Administrative Service (IAS) Cadre. On 15 December 2008, the State Government, once again raised certain queries, in pursuance of which the respondent No.1 furnished some documents on 18 September 2010. On 4 May 2011, the State Government, by order, declined to change the date of birth in service records.

4] The respondent No.1 instituted an original application before the Maharashtra Administrative Tribunal (MAT), questioning the order dated 4 May 2011. The original application was rejected by the MAT on 10 March 2014, *inter alia*, on the ground that it lacked jurisdiction in the matter, since the respondent No.1, by then, had already been promoted/inducted into IAS Cadre.

5] The respondent No.1, on 21 March 2014, once again made representation to the State Government. Such representation was forwarded by the State Government to the Central Government on 30 May 2014 . By order dated 26 August 2014, the Central Government turned down the request of respondent No.1 for change in service records.

6] The respondent No.1, thereupon, instituted Original Application No. 743 of 2014 before the Central Administrative Tribunal (CAT), which has since been allowed by the impugned judgment and order dated 8 March 2016. The petitioners, i.e., the Central Government and State Government have been directed to effect changes in the service records of respondent No.1 by way of substitution of the date 5 October 1958, instead of 1 June 1956. The petitioners have been directed to award consequential benefits to the respondent No.1, which would include *inter alia*, extension in service, on the basis of altered date of birth. Aggrieved by such impugned judgment and order, both the Central Government and State Government, have preferred present petitions.

7] Mr. Anil Singh, learned Additional Solicitor General for the Union of India and Mr. V.B. Thadani, learned AGP for the State of Maharashtra have made the following submissions in support of their respective petitions:

A] There is serious doubt as to whether the respondent No.1 had indeed applied for change in date of birth in the service records within a period of five years from the date of appointment. The circumstance that the alleged application dated 31 January 1989 was accompanied by an affidavit dated 1 March 1989, in fact, renders it impossible that any complete application

seeking such change was made within a period of five years from the date of initial appointment. The learned counsel submitted that in absence of satisfactory proof that the respondent No.1 had indeed applied for alteration within a period of five years from the date of initial appointment, there was no question of the CAT directing alteration in service records at the stage when there were hardly three months remaining for the respondent No.1 to attain the age of superannuation;

B] Assuming that the application dated 31 January 1989 was indeed made by respondent No.1 on the date indicated upon application, there is delay and laches involved in the matter of pursuing such alleged application. Such delay and laches extends to almost over two decades. Besides, at the stage when the respondent No.1 was promoted/inducted into the IAS Cadre on 31 March 2005, the date of birth as originally recorded was accepted by respondent No.1, without any serious demur. The learned counsel, therefore, contended that on basis of pleas of delay, laches, acquiescence and estoppel, no relief could have been granted to respondent No.1;

C] Assuming that the application for alteration was indeed made within five years from the date of

appointment, no case was made out for favourable consideration of such application considering the scope and import of Rule 16-A of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (Central Rules) and for that matter Rule 38 of the Maharashtra Civil Service (General Conditions of Services) Rules, 1981 (State Rules). The learned counsel submitted that inasmuch as the CAT has failed to take into consideration the true scope and import of such statutory Rules, there is jurisdictional error, which warrants interference with the impugned judgment and order;

D] The material produced on record by respondent No.1, at the best, was of doubtful nature. There were unexplained alterations and over-writings in the Register of Date of Births. The names of persons involved, did not completely tally. The CAT, clearly exceeded the jurisdiction in elevating such doubtful material to the status of “*irrefutable evidence*”. Accordingly, learned counsel submitted that there is clear perversity in the impugned judgment and order by the CAT; and

E] Finally, the learned counsel submitted that the CAT, in making the impugned judgment and order has

ignored the various relevant parameters laid down by the Hon'ble Apex Court in the matters of change of date of birth in the service records, including *inter alia*, the effect of such relief upon other employees in the cadre, awaiting their promotion, consequent upon the retirement of incumbent Government servant. The learned counsel submitted that the impugned judgment and order is in fact, contrary to the principles laid down by the Hon'ble Apex Court in several decisions on the subject.

8] Mr. Anturkar, learned senior advocate appearing for respondent No.1 -Vishwas J. Bhosale, submitted that the application dated 31 January 1989 made by the respondent No.1, was well within five years from the date of his original appointment and therefore, there was full compliance with the limitation period prescribed under Rule 38 of the State Rules. Mr. Anturkar submitted that the circumstance that such application was not attended to by the State Government for several years, is not a circumstance that can be held against the respondent No.1. Mr. Anturkar further pointed out that it was never the case of either the State Government or the Central Government that no such application for correction was ever made or that such application was made beyond period of five years from the date of initial appointment. On the aspect of discrepancy in the date of affidavit accompanying the application dated 31 January 1989,

Mr. Anturkar submitted that since no such issue was ever raised before the CAT, the petitioners may not be permitted to raise such issue for the first time before this Court. In this regard, Mr. Anturkar placed reliance upon the decision in case of ***Bondar Singh and ors. Vs. Nihal Singh and ors***¹, to submit that in absence of pleadings on an issue, no evidence can be looked into in relation therein. In any case, Mr. Anturkar submitted that possibly the affidavit accompanying the original application dated 31 January 1989, was lost and the respondent No.1 filed a fresh affidavit bearing the date 1 March 1989. Mr. Anturkar maintained that had this issue been raised before the CAT, the respondent No.1 would have certainly filed an affidavit in order to explain such discrepancy.

9] Mr. Anturkar further submitted that the application made by the respondent No.1 on 31 January 1989, was entirely in consonance with relevant State Rules as well as Central Rules. Mr. Anturkar also submitted that the evidence produced by respondent No.1, in the form of extracts from Register of Birth, was conclusive and irrefutable. The CAT has acted well within its jurisdiction in accepting such evidence and on the basis thereof directing correction in the service records. By reference to the '*family tree*', placed on record, Mr. Anturkar submitted that if the date of birth of respondent No.1, is to be regarded as 1 June 1956, then that leaves a gap of hardly two to three months between the respondent No.1 and his elder

1 (2003) 4 SCC 161

brother, which is a biological impossibility. Mr. Anturkar assailed the findings in the orders made by the State and Central Government, including in particular their assumption that respondent No.1 would have been less than five years of age when admitted to the Primary School, in case, his correct date of birth, i.e., 5 October 1958 is accepted. Mr. Anturkar submitted that even if the correct date of birth, i.e., 5 October 1958 were to be accepted, respondent No.1 would be well above five years of age when admitted to the Primary School. Mr. Anturkar submitted that there is nothing on record to even remotely suggest that the respondent No.1 has derived any undue advantage or benefits on the basis of the date of birth recorded in the service book or for that matter the date of birth recorded in the School Leaving Certificate. Mr. Anturkar submitted that all these relevant considerations had in fact been ignored by the petitioners and the CAT was justified in allowing the original application and granting relief to respondent No.1. The exercise undertaken by the CAT, therefore, warrants no interference considering the restrictive parameters of judicial review under Articles 226 and 227 of the Constitution of India.

10] Having heard the learned counsel for the parties, perused the records and examined the impugned judgment and order made by the CAT, we now proceed to evaluate the rival contentions.

11] The respondent No.1 was appointed as Deputy Collector vide order dated 18 January 1984, but with effect from 6 February 1984. Alongwith his Original Application No. 743 of 2014 instituted by respondent No.1 before the CAT, he had annexed a copy of application dated 31 January 1989, allegedly made by him to the State Government seeking alteration in the date of birth in the service book from 1 June 1956 to 5 October 1958. the application states that the following three documents have been enclosed alongwith the application

- (i) Birth Certificate;
- (ii) School Leave Certificate; and
- (iii) Affidavit.

12] The affidavit enclosed alongwith the application, however, bears the date 1 March 1989. At least in the original application, there was no explanation whatsoever in the context of such an obvious discrepancy. Some explanation at the very outset, was necessary, because, in a catena of judgments, the Hon'ble Apex Court has held that an application for alteration of date of birth in the service records, if made, beyond five years from the date of initial appointment, is liable to be rejected, upon the said ground alone. The circumstance the application dated 31 January 1989 was accompanied by an affidavit dated 1 March 1989, raises doubt as to whether such application was indeed made within a period of five years from the date of initial appointment.

13] The perusal of the record does indicate that the plea in the context of affidavit dated 1 March 1989 may not have been specifically raised by either the State Government or the Central Government before the CAT. However, that by itself, is not an excuse for the respondent No.1 not explaining this obvious discrepancy in the original application, at the outset. The belated attempt in this Court, to contend that the affidavit enclosed alongwith application dated 31 January 1989 was misplaced and therefore, fresh affidavit was furnished on 1 March 1989, hardly inspires much confidence.

14] However, lest respondent No.1 complains that since such issue was not specifically raised by the petitioners before the CAT and therefore, respondent No.1 has not dealt with the same, we make it clear that we do not propose to interfere with the impugned judgment and order made by the CAT or non-suit the respondent No.1 on the ground that the application for alteration made by him was beyond the prescribed period of five years as provided under the Rules. We are satisfied that there are several reasons, which render the impugned judgment and order made by the CAT, unsustainable.

15] In matters of this nature, the Hon'ble Apex Court in case of ***Secretary & Commissioner, Home Department and ors. Vs. R. Kirubakaran***², has observed thus:

2 AIR 1993 Supreme Court 2647

“An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is

on the applicant, to prove the wrong recording of his date of birth, in his service book”

(emphasis supplied)

16] Similarly, in case of ***Government of Andhra Pradesh and anr. Vs. M. Haygreev Sarma***³, the Hon'ble Apex Court has held that the date of birth recorded in the service book on the basis of School Leaving Certificate at the time of entry into service, cannot be ordinarily changed even on the basis of extracts of entries contained in Birth and Death Register maintained under the Births, Deaths and Marriages Registration Act, 1886.

17] In the present case, if the impugned judgment and order is perused, it is quite apparent that the CAT has not even adverted to much less, taken into consideration the principles laid down by the Hon'ble Apex Court in case of ***R.Kirubakaran (supra)*** or ***M. Haygreev Sarma (supra)***. There is absolutely no consideration to the 'chain reaction' referred to by the Hon'ble Apex Court, which is bound to arise by the grant of relief to the respondent No.1, at a stage when there were hardly three months left for him to superannuate on the basis of date of birth as recorded in the service book. Besides, we are satisfied that this was not at all case where the respondent No.1 can be said to have made out a very clear case or that the material produced by him on record was conclusive in nature and not merely

3 (1990) 2 SCC 682

“plausible”. As observed by the Hon'ble Apex Court, onus is upon the party seeking alteration in service record and such onus is required to be discharged by producing evidence, which may amount to *“irrefutable proof relating to his date of birth”*.

18] The respondent No.1, in this case, has basically relied upon extracts from Birth and Death Register of the year 1956, apart from certain self serving affidavits. The explanation that the record of date of birth as 1 June 1956 in the school records might have been some mistake, is hardly an explanation which deserves acceptance in the facts and circumstances of the present case. The original Register of Birth was shown to us, since, only xerox copies of the extract forms a part of the record. In the Register, against the entry upon which respondent No.1 places reliance, the name indicated is **“Prakash Jaiwantrao Marutirao Bhosale”**. The name **“Prakash”** has been bracketed and beneath the same the name **“Vishwas”** is inserted. There is some overwriting, even insofar as the actual record of date of birth is concerned. There are some illegible initials in the matter of bracketing the name of **“Prakash”** and the inclusion name of **“Vishwas”**. At this point of time, it is impossible to determine whether the changes were made by some authorised officer and when. The ink for making the original entries and the alterations, at least *prima facie*, does not tally. Except for certain self serving affidavits made by respondent No.1 and his brother, there is no reliable material produced

by the respondent No.1 to indicate his name was also “**Prakash**” in addition to “**Vishwas**”. No other records whether contemporaneous or otherwise have been produced to indicate that respondent No.1 also used an alias “**Prakash**”. Suffice to observe that the CAT has certainly exceeded jurisdiction in elevating such doubtful material to the status of “*conclusive proof*”, or “*irrefutable evidence*”.

19] The CAT, in the impugned judgment and order, has made reference to the ‘family tree’ and the age of elder brother of respondent No.1. The CAT had reasoned that if date of birth of elder brother of respondent No.1 is 24 June 1956, then the respondent No.1 could not have been born on 1 June 1956. In this regard, we have again perused the records, including, the original Register of Births in relation to elder brother of respondent No.1. In the Register, the elder brother is referred to as “**Dharrao Jaywantrao Bhosale**”. However, there is other record which indicates that the elder brother is referred to as “**Shankar**”. Again, apart from self-serving affidavits, there is no credible material on record to indicate that “**Dharrao**” and “**Shankar**” are the one and the same person.

20] Upon taking into consideration the material on record, we are satisfied that the respondent No.1 had failed to discharge the onus cast upon him to produce the evidence amounting to “*conclusive proof*” or “*irrefutable proof*”. The material produced on record by the

respondent No.1, certainly did not qualify as “*conclusive proof*” or “*irrefutable proof*”. On basis of such doubtful material, the CAT, clearly exceeded the jurisdiction vested in it, by permitting alteration in the date of birth, at a stage when the respondent No.1 was, within hardly three months to attain the age of superannuation on the basis of date of birth recorded in his service book. The CAT has ignored the law laid down by the Hon'ble Apex Court in case of ***R.Kirubakaran (supra)*** , in making the impugned judgment and order.

21] We are also satisfied that the respondent No.1 had failed to make out any case warranting alteration in service records, particularly, considering the position of the statutory rules as applicable in the present case.

22] The Original Application No. 743 of 2014, in which, the impugned judgment and order has been made had been instituted by respondent No.1 to challenge the Central Government's order dated 26 August 2014, rejecting the application dated 21 March 2014 seeking alteration in service records. Such application was required to be considered by the Central Government on the basis of provisions contained in Rule 16-A of the Central Rules, which read thus:

“16-A Acceptance of date of birth-
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)."*

23] Mr. Anturkar, learned senior advocate with his forensic skill pointed out that Rule 16(2) was inapplicable to the case of respondent No.1 and that the case had to be considered under Rules 16(3) and 16(4) of the Central Rules. Assuming this is so, there is no material on record to establish that some bonafide clerical mistake had been committed in accepting the date of birth of respondent No.1 in terms of sub-rule (3) of Rule 16 of the Central Rules. In this case, the service records, at the stage of initial appointment of respondent No.1 were maintained by the State Government. Therein, the date of birth of respondent No.1 was indicated as 1 June 1956. This was on the basis of School Leaving Certificate produced by respondent No.1 himself. There was no clerical mistake in the matter of record of such entry in the service book. At the stage, when the respondent No.1 was promoted/inducted into the IAS Cadre, there is nothing on record to establish that the respondent No.1 did not accept this position or accepted this position under protest or without prejudice to the then pending dispute. In these circumstances, it is quite apparent that respondent No.1 had failed to make out any case warranting the alteration in service records in terms of Rule 16-A of the Central Rules.

24] In the precise context of interpretation of Rule 16-A of Central Rules, the Hon'ble Apex Court in case of ***Union of India Vs. C.Rama Swamy and others***⁴, at paragraphs 21, 22, 25 and 26, has

4 (1997) 4 SCC 647

observed thus:

21. *The date of birth as recorded in the service-book, in the case of pre-4-12-1971 entrants, and the date as declared by an officer in the application for recruitment, in the case of post-4-12-1971 entrants, has to be accepted as correct by the Central Government and, as already indicated, this can be altered only if under sub-rule (4) it is established that a bona fide clerical mistake had been committed in accepting the date of birth. It is for this reason we find that in the orders rejecting the representation of the respondent the Central Government has stated that there was no bona fide clerical mistake which had been committed.*

22. *It was faintly submitted that on the basis of the birth certificate obtained from the Sub-Registrar's Office by the respondent as well as his horoscope it should be held that there was a bona fide clerical mistake and, therefore, the date of birth could be corrected. We are unable to accept the submission. **Bona fide clerical error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded. In the present case admittedly the date of birth indicated in the application form filled in for the purpose of taking the competitive examination was that of 17-6-1939. This date was then incorporated in his descriptive roll kept in his service record and this was duly signed by the respondent. Admittedly the respondent also believed this to be his correct date of birth, therefore, it was not a case where the date of 17-6-1939 had been incorrectly recorded in the service-book as a result of any bona fide clerical mistake. In fact in his original representation it was not even suggested by the respondent that there had been any***

clerical mistake. The positive case put forth by the respondent was that it is after the demise of his mother that he had discovered that his real date of birth was 15-6-1941 and not 17-6-1939.

25. *In matters 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 a person who is sought to be appointed may be a relevant consideration to assess his suitability.*

26. *In such a case, even in the absence of a statutory rule like Rule 16-A, the principle of estoppel would apply and the authorities concerned would be*

justified in declining to alter the date of birth. If such a decision is challenged the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, then the principle of estoppel would clearly be applicable and relief of change of date of birth can be legitimately denied. To that extent the decision in Manak Chand case does not lay down the correct law.”

(emphasis supplied)

25] The observations at paragraphs 25 and 26, in case of **C.Rama Swamy (supra)**, affords a complete answer to the contention of Mr. Anturkar that in the present case, respondent No.1, has not taken any advantage by representing his date of birth as 1 June 1956 at the stage of his initial appointment.

26] In the facts and circumstances of the present case, Rule 38 of the State Rules also does not assist the respondent No.1, in the matter of securing alteration in the date of birth in the service records. Rule 38 provides for the procedure for writing the events and recording the date of birth in the service book. Therein, it is further provided that when once an entry of age or date of birth has been made in the service book, no alteration of the entry should afterwards be allowed, unless it is shown that the entry was due to want of care

on the part of some person “*other than the individual*” or is an obvious clerical error.

27] As observed earlier, the date of birth of 1 June 1956, was on the basis of School Leaving Certificate produced by the respondent No.1 himself. As such, there was no question of any obvious clerical error in the record of date of birth as 1 June 1956. Further, if the provisions contained in Rule 38 (f) are taken into consideration, it is clear that the entry in the present case was not on account of any want of care on the part of the some person other than the individual in question, which in the present case, would be respondent No.1. If the respondent No.1 had furnished some allegedly incorrect documents, then obviously, the respondent No.1 cannot take advantage of his own mistake and insist upon correction in the date of birth, at least in the facts and circumstances of the present case.

28] In the present case, both the Central Government as well as State Government, on the basis of material produced before them had concurrently declined to alter the date of birth of respondent No.1 in the service records. Although, there might be some difficulty accepting some part of the reasoning, we are satisfied that the material produced on record by the respondent No.1 could never have been elevated to the status of “*conclusive proof*” or “*irrefutable proof*”, so as warrant alterations. Besides, the scope of interference

with such decisions of the Central Government and the State Government is quite limited. In case of ***G.M. Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and ors.***⁵, the Hon'ble Apex Court has observed that in a case where the controversy over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by the following procedure prescribed under the service rules or general instructions issued by the employer and it is not the case of the employee that there has been any arithmetical mistake or typographical error patent on the face of record, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer.

29] The law laid down by the Hon'ble Apex Court as aforesaid, will equally apply in the matter of exercise of similar jurisdiction of judicial review by the CAT. If the relevant considerations were to be taken into account by the CAT, there was really no case made out to interfere with the concurrent decisions taken by the Central Government and the State Government in the present case. This was clearly not a case of any obvious and bonafide clerical, arithmetical or typographical error apparent on the face of record.

⁵ (2000) 8 Supreme Court Cases 696

30] We are also satisfied that considerations like delay, laches, acquiescence and estoppel arose, in the facts and circumstances of the present case, but, such considerations were ignored by the CAT in making the impugned judgment and order. For example, even if we are to proceed on the basis that the respondent No.1 applied for alteration on 31 January 1989, it is his own case that such application remained unattended for a period of eight years. In fact, the record indicates that upto the year 2000, i.e., for a period of almost eleven years, there was no follow up. In the year 2000, the respondent No.1 claims to have responded to some queries. Again, the record is by no means clear on this aspect. Thereafter in 2005, the respondent No.1 was promoted/inducted into the IAS Cadre. At this stage, there is no material on record to indicate that the respondent No.1 disputed the date of birth in the service book or made it clear that the induction/promotion was without prejudice to the then pending dispute in this regard. Again, in the year 2008, some documents were demanded from the respondent No.1. The respondent No.1 furnished such documents after two years, i.e., in 2010. In this regard, it must be stated that it is not sufficient for a Government employee to merely keep on making repeated representations. It is necessary that the Government employee approaches a Court or Tribunal for redressal of his grievances, if, the same are not redressed within reasonable period. In the present case, there is no record of even repeated representations by respondent No.1. There is no merit in the contention that the State

Government's order dated 4 May 2011 was not final rejection, but merely expression of opinion. Suffice to note that all these facts and circumstances which are clearly borne from the record indicate that the issues of delay, laches, acquiescence and estoppel arose in the matter and that the CAT completely ignored the same in making the impugned judgment and order.

31] In the facts and circumstances of the present case, we are constrained to observe that it is doubtful as to whether the respondent No.1 did apply for alteration in the date of birth in his service book within the period of five years from the date of his initial appointment. However, we do not wish to hold against the respondent No.1 on such basis and therefore, we have proceeded on the basis that the application for alteration was made within the prescribed period. Nevertheless, the record bears out that such application was never pursued by the respondent No.1 with proper dispatch. Further, the material produced on record by the respondent No.1 could not have been regarded as conclusive proof or irrefutable proof, though, this is the test prescribed in case of in case of ***R. Kirubakaran (supra)*** when dealing with requests for alteration of date of birth in service records. In fact, the extracts from the Birth Register produced by respondent No.1 had alteration and over-writings, which were not suitably explained. The names of persons referred to in the Registers did not entirely tally with the respondent No.1 or his brother. This was not a

case of any bonafide clerical error so as to attract the provisions contained in Rule 16-A of the Central Rules or Rule 38 of the State Rules. None of the parameters prescribed under the said Rules were applicable to the case of respondent No.1. The decisions of the Hon'ble Apex Court and the principles laid down therein, in such matters were ignored by the CAT in making the impugned judgment and order. The considerations like delay, laches, acquiescence and estoppel, which arose in the facts and circumstances of the present case, were also ignored by the CAT in making the impugned judgment and order. The impact, which the grant of relief to respondent No.1, at this stage, would have upon the other officers in a cadre has been ignored. In case of ***R. Kirubakaran (supra)***, the Hon'ble Apex Court, has made reference to “*chain reaction*” which is very relevant consideration, but the same has been ignored by the CAT in making the impugned judgment and order. For all these reasons, we are satisfied that the impugned judgment and order made by the CAT warrants interference. Accordingly, the impugned judgment and order is set aside.

31] Rule is accordingly made absolute in both the petitions. There shall, however, be no order as to costs.

[M. S. SONAK, J.]

[V. M. KANADE, J.]