

**Central Administrative Tribunal
Lucknow Bench, Lucknow**

O. A. 578 of 2005

This, the 21st day of December, 2011.

**Hon'ble Justice Shri Alok Kumar Singh, Member (J)
Hon'ble Shri S. P. Singh, Member (A)**

Tribuwan Prasad Dubey, aged about 57 years S/o, Late Ram Harsh Dubey, R/o House No. E-1/704, Vinay Khand, Gomti Nagar, Lucknow presently employed as U. D.C. Middle Ganga Divison-II, Central Water Commission, Jal Tarang Bhawan, Alignaj, Lucknow (U.P.).

Applicant

By Advocate Shri R. C. Singh.

Versus

1. Union of India through it's Secretary, Ministry of Water Resources Development Shram Shakti Bhawan, New Delhi-1.
2. Chairman, Central Water Commission Sewa Bhawan, R. K. Puram, New Delhi-23.
3. Superintending engineer, Hydrological Observation Circle, Central Water Commission, 156, Basant Vihar Phase-I, Dehradun (U.P.).

Respondents

By Advocate Shri S. P. Tripathi.

ORDER

By Hon'ble Shri S. P. Singh Member (A)

This O.A. has been instituted for setting aside the impugned orders dated 8.11.2005 (Annexure-A1(i)), 30.12.2005 (Annexure A1(ii), Inquiry Report(Annexure-A-2)& and the proceeding sheet dated 5.4.2005 (Annexure A-3) to the O. A. Before starting the arguments, the submission of the learned counsel for the applicant which has been recorded in order passed on 1.12.11 is as under:

“Before starting of the arguments, learned counsel for applicant Sri R. C. Singh submits that now, the relief pertaining the quashing of proceeding sheet dated 15.4.2005 (correct date is 5.4.2005) has become redundant because it has merged in the final order dated 30.12.2005 i.e. an order for compulsory retirement. Similarly, he says that the relief regarding quashing of the order dated 8.11.2005 by means of which, supply of documents was refused has also become redundant for the similar reasons



as it has also merged in the final order dated 30.12.2005."

Therefore, he would be contesting only the order dated 30.12.2005 i.e. the order of compulsory retirement.

2. The case of the applicant briefly stated is that he was appointed initially as Class IV employee on Faraka Barage Project on 1.9.1965 when his educational qualification was 8th passed. He passed his matriculation examination in 1969 and then applied for correction of the date of his birth entered in the service record as 9.8.1946, claiming that his correct date of birth was 9.8.1948. He was then appointed as a Lower Division Clerk on the same project on 19.9.1970 when he again made representation for correction in the date of birth as above.

3. The applicant was issued a charge sheet on 24.11.2004 for holding an Inquiry under Rule 14 of CCS(CCA) Rules, 1965, (Annexure A-16) alleging that the applicant had given false date of birth at the time of entering into the government service and thereby, exhibiting lack of integrity and acted in a manner which is unbecoming of a government servant. Thus, the applicant violated provisions of Rule 3 (1) of CCS Conduct Rules 1964. The applicant had earlier filed an O.A. No. 526/2004 challenging the order dated 7.10.2004 of the department which was communicated to him vide letter dated 30.10.2004 conveying that the authenticated date of birth initially entered in the Service Book of the applicant i.e. 9.8.1946 would be treated as valid. The O.A. 526/2004 was dismissed as it was found meritless by this Tribunal on

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7.10.2005. (Annexure-15). The relevant paras of order of this Tribunal dated 7.10.2005 in O.A. 526/2004 are reproduced as under:

"11. Having thoughtfully considered the rival contentions of both the parties it is established on record that the applicant joined as class IV employee on 1.9.65 when he was middle class, pass. He passed his Matriculation subsequently, claiming that his date of birth was 9.8.48. When he joined the employment on 1.9.65 he had disclosed his date for birth as 9.8.1946. It cannot be disputed by the applicant that if his date of birth i.e. 9.8.1948 as altered on his request on 22.1.1978 is taken to be correct, he would not have been eligible to enter the Government service. Further, there can be no denying the fact that date of birth of an employee can be altered only if it would not make him ineligible for entry into Government service. It is so provided in the FR 56 Note 6 under this rule inter alia provides:

"An alteration of date of birth of a Government servant can be made, with the sanction of Ministry or Department of the Central Government, or the Comptroller and Auditor General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving:

- (a) a request in this regard is made within five years of his entry into Government service;
- (b) it is clearly established that a genuine bona fide mistake has occurred; and
- (c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service commission examination in which he had appeared, or for entry into Government service on which he first appeared at such examination or on the date on which he entered Government service."

12. In the case of the applicant two of the above conditions did not exist at the time when alteration was done on 22.1.1978(22.10.78). Further, the case of the respondents is that the Superintending Engineer, who altered the date of birth of the applicant on the basis of Educational Qualification has not acted with due diligence to verify the genuineness/bonafides of the claim made by the applicant regarding his date of birth; that rules regarding alteration in the date of birth clearly require that any such request of an employee can be acceded to, if it is clearly established that genuine and bonafide mistake had occurred in recording the date of birth and that changed date of birth would not make the applicant ineligible to enter into government service.

13. As desired by this Bench, the respondents had also produced the Service Book of the applicant

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at the time of arguments, same has been perused. It has been found there-from, that the applicant submitted verification-roll in prescribed proforma before his Service Book was prepared. This clearly indicates the date of birth of the applicant as 9th August, 1946 and his age is recorded as 19 years 9 months as on the date when verification from was submitted on 28.11.1965. The verification from is duly signed and verified by the applicant. The verification form accompanied medical certificate dated 14.9.1965 issued by the Medical Officer, who certified that he had examined the applicant. Before him, applicant declared his aged as 19 years. The Medical Officer has specifically stated in this respect: His aged is according to his own statement 19 years and by appearance about (also he is) 19 years'. This means that the applicant not only stated in the verification from his date of birth as 9.8.1946 and his aged as 19 years 9 months as on 28.11.65, but also declared before the Medical Officer on 14.9.65 that he was 19 years of aged. Later on, after he passed the Matriculation examination, giving his date of birth as 19.8.48, he sought correction in the date of his birth. This change was allowed by the Superintending Engineer under whom applicant was working as UDC. According to the respondents, Superintending Engineer had no authority to do so, nor he acted, in accordance with rules regarding change in date of birth. No doubt, no objection was obtained by the officer, concerned, but if he had acted contrary to the instructions regarding change in date of birth, his action cannot be justified, especially, when the altered date of birth rendered the applicant ineligible for entry into government service. The law as laid down in Vishambhar Singh's case (Supra) squarely applies to the facts of the present case. Alteration in the date of birth of the applicant is done by the Superintending Engineer at the request of the applicant. Approval given by the Chairman, CWC was conditional i.e. if the Superintending Engineer concerned was satisfied about the bonafides of certificate produced by the applicant.;

14. It was held in State of U.P. and other Vs. Gulaichi ((2003) 6 SCC, 483 that if change in date of birth is endorsed by a person not authorized to do so, and the entry made in the Service Book is signed by the employee, the date as entered in the Service Book cannot be held as incorrect.

15. While submitting his Rejoinder the applicant sought to establish that before correcting his date of birth an enquiry was conducted by the Superintending Engineer, and for his satisfaction he relied upon the communications received by him. Copies of these communications are filed as Annexure R-1, R-2, R-3 and R-4 by the applicant to establish that correct date of his birth was 9.8.1948. From perusal of these documents it is found that applicant knew even in 1963, that his date of birth as recorded in the School was 9.8.1948, but he declared in 1965

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while entering into Govt. Service that his date of birth was 9.8.1946. In such a case, he dishonestly and fraudulently made false statement to gain entry into service, despite the fact that he was under age. In the facts and circumstances of the case, proposed action vide impugned orders does not call for any interference.

16. In the light of above discussion, it becomes abundantly clear that the present O.A. is motivated to avoid disciplinary action already initiated against the applicant by the authorities because, in either of the cases whether the correct date of birth is 9.8.1948 as claimed by the applicant or it is 9.8.1946 as recorded initially in his service record, the applicant is liable to some action in accordance with service rules. The O.A. is found meritless and hence is dismissed. No orders as to costs."

The applicant filed Writ Petition No. 1835(SB) of 2005 as mentioned in para 7 of this O.A. against order of the Tribunal in O.A. 526/2004 mentioned above. During the course of hearing on 23rd November, 2010, the learned counsel for the applicant undertook to inform this Tribunal the latest status in respect of Writ Petition No. 1835(SB) of 2005 which was reported to be pending in the Lucknow Bench of Hon'ble High Court Allahabad. On the next hearing i.e. on 5.1.2011, the learned counsel for the applicant informed that the Writ Petition No. 1835(SB) of 2005 mentioned in para 7 of the O.A. was pending and is likely to be listed in the next week in the Hon'ble High Court. However, till the date of reservation of this order, no stay order from the Hon'ble High Court could be produced by the learned counsel for the applicant nor any such information regarding any stay granted by the Hon'ble High Court in this regard was ever produced.

4. After the applicant was issued a charge sheet on 24.11.2004 under Rule 14 of CCS (CCA) Rules 1965, he denied the charge leveled against him (Annexur-17). It was then decided by the department to proceed ahead

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with the departmental enquiry and Inquiry Officer was accordingly appointed. The applicant submitted his detailed representation to the Inquiry Officer dated 6.4.2005 (Annexure 18). The Inquiry Officer conducted the inquiry further and submitted his inquiry report to the Disciplinary Authority. The disciplinary Authority enclosed and sent the inquiry report to the applicant for his comments and his representation if any. Thereafter, the disciplinary authority issued impugned order dated 30.12.2005 compulsory retiring the applicant with immediate effect. It was further ordered that the applicant shall be entitled to 90% compensation pension and gratuity both as per Rule 40 of CCS (Pension) Rules 1972 (Annexure A1(ii)).

5. The Inquiry Officer gave his analysis of evidence against the Article of charge in the Inquiry Report which was communicated to the applicant by the Disciplinary Authority as mentioned above as under:-

"Analysis of the Evidence:

ARTICLE-1

In Support of the charge of giving false date of birth at the time of the entering into Government Service by Charged Officer, the Disciplinary Authority has relied upon the documentary evidence: contained in first page of service book of Shri T. P. Dubey, UDC (Exhibit-P-1). Verification Roll pasted in service book (Exhibit-P-2), Medical Certificate under SR-3 pasted in service book (Exhibit-P-3), letter dated 20.12.2002 regarding verification of Matriculation Certificate of C.O. (Exhibit-P-4), letter dated 01.01.2004 regarding verification of Junior High School Certificate of C.O. (Exhibit-P-5), Audit Para of PAO, MOWR, New Delhi (Exhibit-P-6). During production of the above documentary evidence the above exhibits, the Exhibits P-1 to P-3 were found relevant to the Article of charge and Exhibit P-4 to P-6 were found relevant to the statement of imputation as stated by P.O.

In support of his defence against the allegation for giving false date of birth i.e. 09.08.1946 at the time of entering into the Government service by C.O. relied upon (i) Certificate issued on 23.8.1963 by Head Master, Junior High School, Sarvjeetpur Patti, Pratapgarh (Exhibit-D-1), (ii) Primary School Certificate issued on 19.5.1960 (Exhibit-D-2) (iii) Certificate of Basic Sickness Adhikari, Pratapgarh No. 6723 dated

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12.9.2002 showing the date of birth (Exhibit-D-3) letter No. 6840 (6) dated 16.10.1969 of Executive Engineer, C.S.D., F.B. Project office order of quasi permanency (Exhibit-D-4). Since Exhibit D-1 to D-2, were issued before the initial appointment of C.O., D-3 indicating the confirmation of passing Junior High School Examination in 1963 and D-4 confirming quasi permanency with effect from 01.09.1968 as Barkandaz these Exhibits have been considered relevant to the case.

Findings:

ARTICLE-1

- (I) The available evidences on which the Disciplinary Authority made itself reliance about giving false information at the time of entry in the Government Service by Shri T. P. Dubey are only documentary evidence exhibits P-1 to P-6 (Sate evidences). The exhibits P-1 to P-6 were provided by the C.O. at the time of entry in the Government Service and is pasted in his Service Book. Exhibits P-4 to P-6 are letters on verification of certificates, Mark sheet, date of birth etc. In reply to preliminary investigations made by the Disciplinary Authority and on Audit paras by AAO, (I-A), MOWR and further made available to the I.O. for inquiry.
- (II) On the other hand the C.O. has relied upon the documentary evidences. Exhibits D-1 to D-4 (Defence documents) which are letter on certificates issued in connection with educational qualification, date of birth and an order of declaration of Quasi permanency.
- (III) In the statement of Defence dated 5.1.2005 and 6.4.2005 submitted by C.O. he stated as follows:
 - (a) Regarding entry made in the first page of the service book (exhibit-1) C.O. stated that date of birth and content on the first page of service book was not shown to him and was a clerical mistake which he could not check up due to lack of his English knowledge. As the circumstances and evidence appear going against C.O., question No. 2 dated 9.5.2005 was put by Inquiry Officer to C.O. and his reply thereon recorded as due to lack of his English knowledge and told by dealing clerk as formality, CO signed in the first page of the service book.
 - (b) Regarding entry in Verification Roll (exhibits-2) was filled up by the then dealing hand appended the signature in token of entry made by him in good faith and it was beyond his knowledge to read out the matter printed in English. As the circumstances and the evidence was felt going against him. Question No. 3 dated 9.5.2005 was put by Inquiry Officer to CO that why did CO append his signature under certification for correctness...and accept date of birth as 8(a) 9th April 1946, present age 8(b) 19 years 3 months (approx.) along with other particulars of the verification roll and his replies thereon that was due

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to lack of his English knowledge and assured by dealing hand as formality he signed the police verification form.

- (c) Regarding certificate issued under SR-3 (exhibits-3) C.O. stated that no statement has been given by him in token and he can only say that his signature is not there. On this a question No. 5 dated 9.5.2005 put by Inquiry Officer to C.O. why did not he pointed out the medical office about the wrong statement about his age instead of submitting it to the office. Again, C.O. replied that due to lack of his English knowledge he could not check up and point out at that time.
- (d) Regarding exhibits P-4 to P-6 C.O. supports with his exhibits D-1 to D-3 provided as additional documents but states that he had submitted these documents at the time of entry in the service. In this connection, through question No. 3 to 7 dated 7.4.2005 put by inquiry officer and replies thereto by C.O., it was stated that at time of appointment he submitted Jr. High School passed certificate (exhibit D-1) by him on verbal order. Later on the same after needful was returned to him. CO further stated that he was not aware of age at the time of appointment. CO also stated that on the loss of Original Jr. High School Certificate 1963, he applied for issue of duplicate copy of the same to which letter dated 12.9.2002 (exhibit D-3) wherein Roll No. 2466, year of passing Jr. High School Exam in 1963 passed in IInd division and date of birth as 09.08.1948 has been stated.

As stated in the statement of imputation that Shri T. P. Dubey, joined Faraka Barrage Project, Farakka on 01.09 1965 as Barkandaz, has also been confirmed by CO in his statement of Defence dated 6.4.2005. Thus as stated in the Audit para of AAO (IA) MOWR vide letter No. WR/C/DA/96/98-99/597-98, dated 26.10.1998(exhibit P-6), that as per the Date of Birth 9.8.1948 and his joining on 1.9.1965, as Barkandaz in F.B. Project his age reduced to 17 years and 22 days proving that he was a minor even at the time of joining the duty.

Though Sh. T. P. Dubey stated and admitted that due to lack of his English, knowledge and in good faith or assured by dealing clerk as formality, he appended his signatures in exhibit P-1 and P-2 and submitted his Medical certificate mentioning his approx. age, essential for his entry in service, firstly; his repeated plea of lack of English knowledge can not be acceptable as the matter in the contents were merely dates in numerals or in words and he was 8th class pass with English as one of the subjects and secondly; even if he appended his signatures in good faith or assured by dealing clerk as formality, he is fully responsible for his bio data, verification roll and his Medical certificate, submitted by him to the Govt. Department.

It is evident from the above that if Sh. Dubey had stated the correct Date of Birth at the time of entering into the Govt. service, his appointment would have not been possible being a minor then. So he stated wrong date of birth in his, verification roll as well as in biodata and did not object to the

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Medical certificate indicating his wrong age for taking service in the Govt. department. Therefore, the charge for giving false documents, indicating wrong date of Birth/ declaring wrong age and the time of entry in the service is established."

6. The Disciplinary Authority vide order dated 30.12.2005 (Annexure A-1(ii)) which was filed by the applicant along with M.P. No. 15/2006 is reproduced below:-

"Whereas disciplinary proceedings were initiated against Shri T. P. Dubey, UDC, MGD-II CWC, Lucknow vide this Office OM No. 420-21 dated 24.11.2004 under Rule 14 of CCS (CC) Rules, 1965 on the following article of charge:

ARTICLE-1

Shri T. P. Dubey, U.D.C. MGD-II CWC, Lucknow, initially appointed as Barkandaz in Farakka Barrage Project, Farakka, had given false date of birth at the time of entering into the Government service and thereby exhibited lack of integrity and acted in a manner, which is unbecoming of a Government servant. By his aforesaid act, Sri T. P. Dubey, UDC, MGD-II CWC, Lucknow violated the provisions of Rule 3 (1) (i) & (iii) of CCS (conduct) Rules, 1964.

Whereas the above charge sheet sent through Executive Engineer, MGD-II Lucknow was delivered on dated 29.11.2004.

Whereas vide above OM dated 24.11.2004, Shri T. P. Dubey, UDC was given a time of 10 days to submit his written statement of defence specifically admitting or denying each article of charge. He was also informed that if he does not submit his written statement of defence on or before the stipulated date or does not appear in person before the I.O. otherwise ex-parte inquiry would be held against him;

Whereas Shri T. P. Dubey, UDC has submitted his written statement of defence as required above in which he denied the article of charge. Accordingly, the disciplinary authority appointed Sri P.S. Kutiyal, Executive Engineer, Himalayan Ganga Division, CWC, Dehradun as Inquiry Officer vide Order of even number dated 11.1.2005;

Whereas the above Inquiry Officer conducted the inquiry proceedings in which Sri T. P. Dubey, UDC participated in all hearings;

Whereas the said Inquiry Officer submitted his report on date 8.7.2005 holding that Sri T. P. Dubey, UDC had given false date of birth at the time of entry in the service. Thus, the article of charge framed against Sri T. P. Dubey, UDC vide above OM was established conclusively during the inquiry.

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Whereas the undersigned considered the Inquiry Report and agreed with the findings of the Inquiry Report;

Whereas a copy of the said Report was sent to Sri T. P. Dubey, UDC vide OM of even number dated 10.8.2005 at his official address, which was delivered to him on date 16.8.2005 through Executive Engineer, MGD-II, Lucknow giving him an opportunity to submit his representation against the Report, if he so desires, within 15 days of receipt of this O.A.;

Whereas Sri T. P. Dubey, UDC, vide his letter dated 30.8.2005 requested for granting time of two months for submitting representation;

Whereas the time extension of 15 days was granted to him vide letter of even number dated 7.9.2005 which was delivered to him through Executive Engineer, MGD-II, CWC, Lucknow.

Whereas, Sri T. P. Dubey, UDC, in response to the above letter again requested vide his application dated 16.10.2005 to provide the various documents for submitting his representation. His request could not be acceded to, as all the relevant material as demanded by him during the inquiry was supplied. Finally he was directed Vide OM dated 8.11.2005, which was delivered to him through Executive Engineer, MGD-II CWC, Lucknow to submit his representation, if any, by return of dak;

Whereas, instead of submitting any representation on Inquiry Report the said Sri T. P. Dubey, UDC submitted an Appeal under rule 23 of CCS (CCA) Rules, 1965 on 18.11.2004, which was addressed to the Chairman, CWC, New Delhi. The same is found out of context.

Whereas the undersigned is satisfied that the Inquiry Officer had conducted the inquiry as per the procedure laid down under CCS (CCA) rules 1965 and reasonable opportunity was afforded to Sri T. P. Dubey, UDC to defend himself in the aforesaid proceedings.

Whereas, the undersigned in his capacity as competent Disciplinary Authority has carefully examined the records of the case including the material evidence on records. The charge against Sri T. P. Dubey is that he had given false date of birth at the time of entering into Government service. Sri T. P. Dubey joined Farakka Barrage Project as Barkandaz on 1.9.1965, when he was Middle class Pass (Class VIII) . Sri T. P. Dubey passed class VIII) in 1963 and passed Matriculation subsequently in 1969. The actual date of birth of Sri T. P. Dubey as per his Matriculation Certificate is 09.08.1948. But the date of birth of Sri k T. P. Dubey is mentioned as 9.8.1946 on the following documents, which are pasted in his service book and are documentary evidences in support of charges against him;

(i) Verification Roll submitted by Sri T. P. Dubey (in duplicate) at the time of joining Farakka Barrage Project. Verification Roll clearly indicates date of birth of Sri T. P. Dubey as 9.8.1946 and his age is written as 19 years 3 months (approximately) as on the date when Verification Roll was submitted on 28.11.1965.



Verification Roll is duly signed and verified Sri T. P. Dubey.

(ii) Medical certificate dated 14.9.1965 issued by the Medical Officer, Farakka Barrage Project. Medical Officer has certified that he had examined Sri T. P. Dubey, Medical Officer has stated: "His age is according to his own statement 19 years and by appearance about 19 years."

(iii) On the first page of service book of Sri T. P. Dubey, which was opened subsequently on 2.3.1966, and where his bio data is filled, his date of birth is written as 9.8.1946. the first page of service book has been duly signed by Sri T. P. Dubey.

The case against Sri T. P. Dubey is based on the above three documentary evidences only and there was no witness. To refute the charges against him, Sri T. P. Dubey also denied to produce or examine any witness and gave following arguments in his support during the inquiry & in his statement of defence;

- (i) That the verification Roll was filled by somebody else and he just signed it and this was done due to lack of English knowledge.
- (ii) That he did not say anything about his age before Medical Officer.
- (iii) That he just signed the first page of service book and could not check the entries due to lack of English knowledge.
- (iv) That he submitted class VIII pass certificate at the time of joining Farakka Barrage Project in ;which his date of birth is written as 9.8.1948 and he was not aware about his date of birth written as 9.8.1946 in his service book and Verification Roll.

Sri T. P. Dubey has shown ignorance and has taken the plea that he was not aware of his date of birth written as 9.8.1946 in the three documents viz. Verification roll, Medical Certificate and first page of service book. His plea is baseless and can not accepted, when he had signed, verified and submitted the Verification Roll in which his date of birth is written as 9.8.1946. He himself is responsible for the correctness of details filled in the Verification Roll. His plea that he was not aware or could not check his date of birth written as 9.8.1946 on the first page of service book (bio-data), is also not acceptable, when he had put his signature in token of its correctness. His plea that he did not declare his age before Medical Officer is also not acceptable when Medical Officer has specifically written in his certificate: "His age is according to his own statement 19 years and by appearance about 19 years."

Verification Roll or attestation form, (in prescribed format) is filled and submitted by an employee at the time of joining Government service. The form is used for character and antecedents verification through concerned District Magistrate. Sri T. P. Dubey S filled his date of birth as 9.8.1946 in this form and also verified it by signing a certificate incorporated in the form, which read as "I certify that

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therefore going information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under Government". Sri T. P. Dubey furnished false date of birth in the Verification Roll. He also declared his age as 19 years on 14.9.1965 before Medical Officer. Later on, when service book of Sri T. P. Dubey was opened on 2.3.1966, his bio-data was filled up on the first page wherein his date of birth is written as 9.8.1946. He signed the first page, without any objection, in token of its correctness. Sri T. P. Dubey has given his date of birth as 9.8.1946 at the time of joining Government service, whereas his actual date of birth is 9.8.1948. He gave false date of birth to obtain government service because with his actual date of birth he was 17 years 22 days old at the time of joining Government service i.e. on 1.9.1965 and was ineligible to join government service being underage.

Sri T. P. Dubey has also raised a question in his statement of defence/representation that once his date of birth has been altered from 9.8.1946 to 9.8.1948 in 1978 by the competent authority based on his Matriculation certificate, the case of change of date of birth should not have been reopened. Alteration in date of birth from 9.8.1946 to 9.8.1948 in the service book of Sri T. P. Dubey was not in accordance with Government rules regarding alteration of date of birth as provided under FR 56 Note 6. As per rules, if altered date of birth of an employee makes him ineligible at the time of initial appointment, the date of birth should not be altered. Sri T. P. Dubey becomes ineligible i.e. underage at the time of joining Government service by the altered date of birth. Hence, the alteration done in date of birth was not correct. Objections in this regard were also made by Ministry of Water Resources internal audit during 1991, 1999 and 2002. Hence, the alteration in date of birth done in 1978 is not valid.

The above matter related to alteration in date of birth is not related to the present charge of giving false date of birth at the time entering into Government service. Sri T. P. Dubey had given false date of birth at the time of entering into Government service. Sri T. P. Dubey had given false date of birth at the time of entering into Government service. He stated false date of birth with the motive to obtain Government service, because with his actual date of birth he was not eligible for Government service.

And whereas, the undersigned is fully satisfied that the charge of giving false date of birth at the time of entering into the Government service against Sri T. P. Dubey is fully proved by documentary evidences. The undersigned, therefore, concludes that Sri T. P. Dubey is not a fit employee to be retained in Government service since he obtained the Government service dishonestly and fraudulently and that a major penalty under CCS (CCA) Rules, 1965 is warranted to be imposed on Sri T. P. Dubey.

Now therefore, the undersigned, being the Disciplinary Authority, in exercise of the powers

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conferred under Rule 15 of CCS (CCA) Rules 1965, hereby imposes upon Sri T. P. Dubey, UDC, Middle Ganga Division-II, Lucknow the major penalty of "COMPULSORY RETIREMENT" as specified in clause (viii) of Rule 11 of CCS (CCA) Rules 1965 and he said Sri T. P. Dubey stands compulsory retired from Government Service with immediate effect. It is further ordered that Sri T. P. Dubey shall be entitled to ninety percent of compensation pension and gratuity both as per Rule 40 of CCS (Pension) Rules, 1972."

7. As mentioned above, the applicant has instituted this O.A. and is now limited his prayer only for quashing the order of compulsory retirement passed on him by the Disciplinary Authority under Rule 11 of the CCS (CCA) Rules 1965. He rushed to this Tribunal again without even waiting for final orders of Disciplinary Authority and availing statutory departmental appeal against the final order of the Disciplinary Authority dated 30.12.2005 which was later filed by the applicant vide M.P. No. 15/2005 as mentioned above. Therefore, the respondents have claimed in their counter affidavit that this O.A. is not maintainable under Section 20 of AT Act, 1985. The applicant has also fairly conceded in Para 5 of his rejoinder affidavit that he filed the present O.A. challenging the inquiry report and inaction of the respondents in considering his representations against the inquiry proceedings. However, during pendency of the present O.A., the impugned order dated 30.12.2005 inflicting the penalty of compulsory retirement upon the applicant was issued. Therefore, the O.A. was amended with the leave of this Tribunal to assail the impugned punishment order dated 30.12.2005. He further concedes that the applicant has not filed any departmental appeal under Rule 23 of CCS (CCA) Rules, 1965 against the punishment order dated 30.12.2005.

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8. We have heard the counsel for the parties and perused the records. We have also gone through the pleadings of the parties including counter affidavit filed by respondents and Rejoinder filed by on behalf of the applicant.

9. The learned counsel for the applicant submitted an electrostat copy of the confidential letter dated 10.8.2005 by means of which, enquiry report was communicated to the applicant is said to have been supplied to the applicant. According to him, it is specifically mentioned in the aforesaid letter that the enquiry report consists of Volume one to fourteen pages and page Nos. have been appended at the bottom. Vide order dated 12.10.2011, the learned counsel for the respondents was asked to seek instructions which has been recorded in order of this Tribunal dated 1.12.2011 as under:-

"In furtherance of this Tribunal's order dated 12.10.2011, the learned counsel for the respondents, on the basis of instructions received by him says that enquiry report in question comprises 14 pages only and it is complete.

M. P. No. 2960/2011: this is an application for permission to file supplementary rejoinder affidavit. Though it is dated 11th November, 2011, but it has been filed today along with supplementary rejoinder affidavit. In the interest of justice, it is allowed. Let it be taken on record. Learned counsel for the respondents does not want to file any supplementary counter affidavit because he has already given statement before this Tribunal on the basis of instructions received by him that the enquiry report consists of 14 pages only and it is complete."

Therefore, at this stage, in light of the facts and circumstances, the enquiry report has been issued to the applicant is stated to be complete and there is no controversy ever raised regarding it by him before either Inquiry Officer or the Disciplinary Authority.

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10. While dismissing on merit on 7.10.2005, the matter regarding the alteration of date of birth by the applicant, this Tribunal in O.A. 526/2004 did not interfere with the departmental inquiry against the applicant in respect of charge sheet dated 24.11.2004 which was issued for imposing major penalty under Section 14 of CCS (CCA) Rules 1965. As stated above, in para 16 of the order of this Tribunal dated 7.10.2005(Annexure 15) has been stated as Under:-

“16. In the light of above discussion, it becomes abundantly clear that the present O.A. is motivated to avoid disciplinary action already initiated against the applicant by the authorities because, in either of the cases whether the correct date of birth is 9.8.1948 as claimed by the applicant or it is 9.8.1946 as recorded initially in his service record, the applicant is liable to some action in accordance with service rules. The O.A. is found meritless and hence is dismissed. No orders as to costs.”

11. From the above, it is quite obvious that the applicant was trying desperately to delay the departmental enquiry by first filing OA No. 526/2004 and then approaching this Tribunal prematurely which is not permitted under AT Act under the circumstances as above.

12. The learned counsel for the applicant has passed on to this Tribunal electro state copies of the following five cases:-

(i) **State of Madhya Pradesh Vs. Bani Singh and Another-1990 (Supp) SCC 738:** This is a case law dealing with matter regarding laches involving delay of 12 years initiating disciplinary proceedings without any satisfactory explanation for the inordinate delay in issuing charge memo. The Hon'ble Apex Court held that it would be unfair

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to permit the departmental enquiry to proceed at this late stage (Para-4).

In the present O.A., this Tribunal has held as stated in Para-16 of their order dated 7.10.2005 while dismissing the O.A. 526/2004 which is reproduced in Para-3 above, this Tribunal found that the applicant had filed the O.A. 526/2004 just to avoid disciplinary action already initiated against the applicant by the authorities because, in either of the cases whether the correct date of birth is 9.8.1948 as claimed by the applicant or it is 9.8.1946 as recorded initially in his service record, the applicant is liable to some action in accordance with service rules. The O.A. was found meritless and hence was dismissed. The applicant again rushed to this Tribunal against the interlocutory orders relating to the departmental enquiry at enquiry stage. In view of the position as above, it cannot be said that delay is caused solely by the departmental authorities. The applicant had not even cared to avail of the statutory appeal which is available to him under the service rules, on which ground, the respondents have stated that this O.A. is not maintainable under AT ACT. Therefore, the cited case of **State of Madhya Pradesh Vs. Bani Singh and Ors.** does not help any way the present applicant.

(ii) **P.V. Mahadevan Vs. M. D. Tamil Nadu Housing Board- 2005 AIR SCW 5690:** In the cited case inordinate and unexplained delay of ten years in issuance of charge memo may not help the applicant in view of the factual matrix stated above in the present O.A.

(iii) **Gaya Prasad Vs. U.P. Public Services Tribunal, Lucknow-1993 (11) LCD 853:** Here in the cited case, the entire enquiry report including the portion where enquiry

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officer proposed the punishment was not furnished to the delinquent official it was held that principle of fair-play and reasonable opportunities was violated and the delinquent official was prejudiced in making representations. As stated in para 9 hereinabove, this Tribunal vide order dated 12.10.2011, directed the counsel for the respondents to seek instructions which has been recorded in the order of this Tribunal dated 1.12.2011 as under:-

"In furtherance of this Tribunal's order dated 12.10.2011, the learned counsel for the respondents, on the basis of instructions received by him says that enquiry report in question comprises 14 pages only and it is complete.

M. P. No. 2960/2011: this is an application for permission to file supplementary rejoinder affidavit. Though it is dated 11th November, 2011, but it has been filed today along with supplementary rejoinder affidavit. In the interest of justice, it is allowed. Let it be taken on record. Learned counsel for the respondents does ;not want to file any supplementary counter affidavit because he has already given statement before this Tribunal on the basis of instructions received by him that the enquiry report consists of 14 pages only and it is complete."

Therefore, in light of the facts and circumstances as above, the enquiry report as issued to the applicant is stated to be complete and there is no controversy ever raised by the applicant either before the Inquiry Officer or the Disciplinary Authority. In view of this position, the cited case may not be again very helpful to the applicant.

Two other cases of Central Administrative Tribunal Jabalpur Bench (O.A. No. 652/2005) **Kailash Naik vs. Union of India** and this Tribunal in (O.A. No. 427/2006) **Jhabbar Yadav Vs Union of India and Others** are distinguishable keeping the factual matrix of the present case as stated above.

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Learned counsel for the applicant has not prepared any index or brief giving the relevant extract/paras containing ratio which is applicable nor he has elaborated it in the Court explaining as to how these citations are helpful to the applicant considering distinguishable facts and circumstances mentioned in the foregoing paras in the case of the applicant.

13. In (1994) 3 SCC 357 Union of India Vs. Upendra Singh the Apex Court has ruled as under:-

"4. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view.

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6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be"

14. In yet another case, Bank of India Vs. Jagram, AIR 2007 SC 2793, it was held that the scope of judicial review in a disciplinary case is limited to looking into decision

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making process. It is not against merits of the decision as laid down by Apex Court.

15. We find that the disciplinary proceedings have been conducted in conformity with the principles of natural justice and as per the procedure laid down in CCS (CCA) Rules 1965. The applicant has been given fair treatment at all stages by the inquiry officer and by the disciplinary authority while passing the impugned order of compulsory retirement. The applicant did not approach the appellate authority with an appeal in prescribed form under Rule 23 of the CCS (CCA) Rules 1965. The authorities have given their findings based on cogent material and after appraisal of the entire relevant facts on record which have been captured in the foregoing paras above.

16. Procedural provisions laid down under CCS (CCA) Rules 1965 were strictly followed at all stages and adequate opportunity was given to the delinquent official. Procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent employee. They are generally speaking conceived in his interest. Violation of any or every procedural provision cannot automatically vitiate the inquiry held or the order passed. If no prejudice is established to have resulted there from, no interference is called for. The case of **State Bank of Patiala and others Vs. S. K. Sharma, 1996 (2)SLR 631** holds good as stated above.

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17. In view of the facts and circumstances mentioned in the foregoing paras, it is quite clear that this applicant has been trying to avoid or delay the departmental proceedings as already been mentioned by this Tribunal while dismissing his earlier O.A. 526/2004. In this O.A. 526/2004, the applicant challenged the order dated 7.10.2004 of the department which was communicated to him vide letter dated 30.10.2004 conveying that authenticated date of birth initially entered in the service book of the applicant i.e. 9.8.1946 would be treated as valid. The O.A. 526/2004 was dismissed as it was found meritless by this Tribunal. The Tribunal found that O.A. 526/2004 is motivated to avoid disciplinary action already initiated against the applicant by the authorities. The respondents have rightly claimed that this O.A. is not maintainable under AT ACT, 1985. The applicant has also fairly conceded in para 5 of the rejoinder affidavit that he filed the present O.A. challenging the enquiry report and in action of the respondents at that stage in considering his representations against the enquiry proceedings thereby admitting that he did not file any departmental appeal in the manner prescribed under Rule 23 to 27 of the Central Civil Services (Classification Control and Appeal) Rules, before approaching this tribunal. Therefore, the present O.A. is hit by Section 20 of the AT ACT which deals with the disposal of applications where other remedies have not been exhausted before approaching the Tribunal. Section 20(1) of the AT ACT says that:

“(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

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(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

- (a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
 - (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.
- (3) For the purpose of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

In view of the above position, this application also hit by Section 20(1) of AT ACT.

18. Considering the facts and circumstances mentioned above in the present case, we do not find any ground for interference of this tribunal. We have not found anything arbitrary or perverse in the above findings recorded by the inquiry officer or the disciplinary authority who are declared as the competent authorities under the CCS (CCA) Rules 1965, to record their findings and pass appropriate order. We do not find any scope to interfere with these findings and orders of the competent authorities.

19. In view of the position as mentioned above, and also keeping in view the orders/rulings of the Hon'ble Supreme Court, we do not find any illegality or irregularity in the impugned order of the disciplinary authority compulsory

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retiring the applicant. Proceedings have been conducted strictly within the provisions of the CCS (CCA) Rules 1965. The OA is therefore, devoid of any merit and is liable to be dismissed.

20. The O.A. is accordingly dismissed. Parties to bear their own costs.

S.P.S.
21.12.11
(S. P. Singh)
Member (A)

Alok Kumar Singh
21.12.11
(Justice Alok Kumar Singh)
Member (J)

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