

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH**

This the 26<sup>th</sup> day of August, 2010

ORIGINAL APPLICATION NO.321/2010

**HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER**

Gopal Krishan Agarwal  
s/o Shri Madan Gopal Agarwal  
r/o C-1, P&T Colony, Bhagat Singh Marg,  
Sardar Patel Road, Jaipur  
at present working as Chief General Manager,  
Rajasthan Telecom Circle,  
Bharat Sanchar Nigam Ltd.  
Jaipur.

.. Applicant

(By Advocate: Mr. P.V.Calla)

Versus

1. The Union of India  
through the Secretary,  
Telecommunication Department,  
Ministry of Communication and Information Technology,  
Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi.
2. The Director General,  
Department of Telecommunication,  
Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi.
3. The Manager (Services),  
Department of Telecommunication,  
Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi.

.. Respondents

(By Advocate: Mr. Tej Prakash Sharma)

ORDER (ORAL)

The applicant has initially filed OA before the Jodhpur Bench on 29.6.2010 during the vacation period, as the Jodhpur Bench was authorized by Hon'ble the Chairman to entertain urgent matters pertaining to Jaipur Bench, in case the same are filed before the Jodhpur Bench and subsequently the matters were required to be sent to Jaipur Bench. This OA was registered before the Jodhpur Bench as OA No.156/2010 and subsequently the case file was transferred to this Bench vide order dated 9.7.2010 which was registered as OA No.321/2010. In the unamended OA, the applicant has, inter-alia prayed that the respondents may be directed to incorporate actual date of birth of the applicant into his service record i.e. 27.10.1951 instead of 6.6.1950 and further respondents may be restrained from passing any order in regard to retirement of the applicant prior to 28.10.2011. However, subsequently, the applicant filed application for amendment of OA, thereby challenging the order dated 29.6.2010 in view of the fact that representation of the applicant for alteration of date of birth was rejected vide impugned order dated 29.6.2010. The said MA No.202/2010 of the applicant for amending the OA thereby challenging the order dated 29.6.2010 was allowed and the amended OA annexed with the aforesaid MA was taken on record. In the amended OA, the applicant has taken additional prayer to the effect that impugned communication dated 29.6.2010 (Ann.A/1)

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be quashed and set-aside and the respondents may be directed to allow the applicant to work as Chief General Manager, BSNL, Rajasthan Telecom Circle, Jaipur.

2: At this stage, few relevant facts, necessary for disposal of this case may be noticed. The applicant was initially appointed by the respondent department on the post of Assistant Divisional Manager on 29.12.1975. As per his service book, his date of birth was recorded as 6.6.1950. It may be stated that date of birth of the applicant was entered in the service book on the basis of mark sheet of Secondary Education Board, Madhya Pradesh. The applicant has also placed on record Higher Secondary School Certification issued by the Secondary Education Board, Madhya Pradesh as Ann.A/2. It is the case of the applicant that date of birth in the school record was entered on the basis of verbal information made available by the personal servant of applicant's father. It is further pleaded that much after coming into the service, the applicant came to know that his date of birth is incorrect which has been entered in the service record on the basis of the certificate issued by the Secondary Education Board, Madhya Pradesh (Ann.A/2) whereas his actual date of birth of the applicant is 27.10.1951. It is further pleaded that on the basis of the material available with him he applied for birth certificate from the office of Registrar, Birth and Death as per the provisions of Registration of Birth and Death Act, 1967. The Registrar of the Birth and Death, Gwalior, Madhya Pradesh after having been satisfied and convinced on the basis of the material available before him issued the birth certificate

in favour of the applicant on 29.12.1992. The applicant has also placed on record copy of the birth certificate dated 29.12.1992 as Ann.A/3 whereby date of birth of the applicant has been shown as 27.10.1951. It is further case of the applicant that after obtaining birth certificate, the applicant requested the department to make necessary correction in the service record vide communication dated 28.6.1993 (Ann.A/4) and the said representation of the applicant was forwarded by the office of the Divisional Engineer (Admn.) to the Chief General Manager, Telecom vide order dated 27.8.1993 (Ann.A/7) and also by the Assistant General Manager (Admn.), M.P. Telecom Circle, Bhopal to the Chief General Manager, Telecom but no heed was paid to the same. It is further pleaded that when no heed to the claim of the applicant was paid, yet from last one year he raised his grievance by making representation one after another vide representations dated February 26, 2010, April 12, 2010, May 4, 2010, May 31, 2010 and June 17, 2010 (Ann.A/9 to A/13). ~~As~~ This part of the averment find mention in Para 4.7, 4.8 and 4.11 in the OA. In para 4.12 the applicant has stated that now the respondents after considering representation have rejected his claim vide impugned communication dated 2.7.2010 (Ann.A/1) in view of the conditions laid down in the DOPT's OM dated 19.5.1993 which was received by the applicant on 3.7.2010. Thus as per the applicant, the impugned order Ann.A/1 is illegal and as per Section 35 of the Evidence Act, the Death and Birth Register maintained by the Statutory Authority raises a presumption of correctness and are admissible, yet the birth certificate obtained by the applicant way

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back in the year 1992 was not taken into account. The applicant has also pleaded that the letter dated 19.5.1993 which formed basis for rejecting the representation has not been made available to him. It is on the basis of these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have specifically stated that entry in the service book regarding the date of birth of the applicant has been made at the instance of the applicant and the applicant has not raised any objection regarding his incorrect date of birth for 17 years and it was in the year 1993 that he has raised a dispute regarding correction of his date of birth which representation of the applicant was rejected in the year 1994. Thus, according to the respondents, subsequent representation made by the applicant at the fag end of his service career cannot be entertained in view of the law laid down by the Apex Court in the case of State of T.N. Vs. T.V.Venugopalan, 1994 SCC (L&S) 1385. However, the department again considered his representation dated 12.4.2010 which again was disposed of vide letter dated 29.6.2010. The respondents have also categorically stated that representation submitted by the applicant in the year 1993 was disposed of vide letter dated 7.2.1994 and the same was not challenged by the applicant in any forum. The further representation even though was not required to be considered but the same was disposed of vide letter dated 29.6.2010 and accordingly the applicant was retired from service as per statutory rules and service

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conditions of the applicant. The respondents have also placed on record extracts from the service book where the date of birth of the applicant has been mentioned as 6.6.1950 and also declaration given by the applicant on 11.8.2003 in Form-3 [Rule 54 (12)] whereby the applicant has recorded his date of birth as 06.06.1950.

4. The applicant has also filed rejoinder. The fact that his earlier representation dated 1.11.1993 was rejected vide order dated February 2/7, 1994 (Ann.R/2) has not been disputed. In the rejoinder, the applicant has stated that after receipt of above communication, when the applicant came to know about the judgment rendered by the Hon'ble Supreme Court of India in the case of CIDCO vs. Vasudha Gorakhnath Mandeviekar, 2010 (1) M.P.L.J.55, and when the applicant received correct date of birth certificate from the statutory authority again made a representation which was actively considered by the competent authority and rejected vide communication dated 29.6.2010 (Ann.A/1). Thus, the limitation will start after passing of the impugned order dated 29.6.2010 (Ann.A/1).

5. It may be stated that the Vacation Judge vide order dated 2.7.2010 while issuing notices to the respondents has granted ex-parte mandatory stay on the premise that his date of birth was correctly determined in the year 1992 and immediately thereafter he had approached the concerned department for correction of the same, but no decision has been rendered in the matter. Thus, the Vacation Judge observed that balance of convenience is on the side of the applicant as there may not be prejudice caused to

the department as such, if the applicant has to be continued for 16 more months. Thus, direction was given to the respondents to the effect that the applicant would be considered as continuing in service for further period of 14 days from 30.6.2010 with all consequences going from it including the continuation of the present post as on 30.6.2010. However, the said interim order was not continued by the Division Bench vide order dated 19<sup>th</sup> July, 2010 relying upon the decision of the Apex Court in the case of Burn Standard Co. Ltd. and Ors. vs. Dinabandhu Majumdar and Anr. AIR 1995 SC 1499 whereby the Apex Court has categorically held that the High Court should not grant interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation of his employment, because of the well settled legal position governing such correction of date of birth which reasoning is reproduced in para 7 of the order. This Tribunal has also relied upon the judgment of the Apex Court in the case of Secretary and Commissioner, Home Department and Ors. vs. R.Kirubakaran, 1994 SCC (L&S) 449 and also another judgment in the case of State of T.N. vs. T.V.Venugopalan. This Tribunal further observed that the applicant stood already retired on 30.6.2010, as such, the interim stay in the nature of mandatory relief after the retirement of the applicant could not have been granted by the learned Vacation Judge on the basis of the law laid down by the Apex Court in the case of Dayanand Vedic Vidyalaya Sanchalak Samiti vs. Education Inspector, Greater Bombay and Another, (2010) 1 SCC (L&S) 705 and Shiv Shankar and



Ors. vs. Board of Director, U.P.S.R.T.C. and Anr. 1995 SCC (L&S) 1018 without adjudicating the matter on merit.

6. I have heard the learned counsel for the parties and gone through the material placed on record. At the outset, it may be stated that the applicant is not entitled to any relief on the ground that the applicant made representation regarding change of date of birth based upon the certificate issued by the Registrar (Birth and Death), Gwalior, Govt. of M.P. which representation dated 1.11.1993 was rejected vide order dated 7.2.1994. The applicant has suppressed this fact from the learned Vacation Judge, as can be seen from the order dated 2.7.2010 whereby contention of the learned counsel for the applicant was noticed by the Vacation Judge to the effect that his representation regarding date of birth has not been decided so far. It is on the basis of this mis-statement of fact, the Vacation Judge has granted <sup>mandatory</sup> ~~monetary~~ relief thereby directing the respondents to consider the applicant as continuing in service for a further period of 14 days from 30.6.2010, though he stood already superannuated. Even in the amended OA, the applicant has also suppressed the fact that his representation dated 1.11.1993 stood already rejected vide order dated 7.2.1994. Rather, as can be seen from the pleading made in the OA, more particularly, para 4.7, 4.8, 4.9 and 4.11, the case projected by the applicant is that he is making continuous representations since 1993 which were also forwarded by the subordinate authorities to the higher authorities but now a decision has been taken by the respondent vide communication dated 29.6.2010 (Ann A/1)



whereby representation of the applicant has been rejected. In the rejoinder, the applicant has specifically admitted that the subsequent representation of the year 2010 was made by the applicant as decision taken vide order dated 7.2.1994 (Ann.R/2) in the year 1994 required reconsideration in the light of the subsequent judgment rendered by the Apex Court in the case of CIDCO vs. Vasudha Gorakhnath Mandeviekar (supra). Since the request regarding change of date of birth of the applicant as sought vide his representation dated 1.11.1993 has already been rejected by the competent authority vide order dated February 2/7, 1994 (Ann.R/2) and this order has attained finality, no relief can be granted to the applicant based upon rejection of subsequent representation vide order dated 29.6.2010 (Ann.A/1), more particularly, when the applicant has not challenged validity of the order dated February 2/7,1994 (Ann.R/2) as arbitrary or illegal. As such, this Tribunal cannot go into merit of the decision taken by the respondent vide Ann.R/2, as such, the present OA is liable to be dismissed on this sole ground as also on the ground of suppressions of material fact.

7. That apart, the applicant is also not entitled to any relief in view of the statutory provisions governing date of birth which make it clear that declaration of age made at the time of or for the purpose of entry in to service is conclusive and binding on the Government servant and an application for correction of age can be made by the Government servant within a period of 5 years from the date of entry into service. At this stage, it will be useful to notice Note-6 to FR-56, governing correction of date of birth in service

record substituted by Govt. of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms vide notification 19017/79/Estt.A dated November 30, 1979 published as S.O. 3997 in the Government of India Gazette dated December 15, 1979 which provision limits the exercise of the right by the Govt. servant to seek alteration of his date of birth only within the specified period and thus reads:-

"Note 6- The date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made with the sanction of a 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 if-

- (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 mistaken 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 the date on which he first appeared at such examination or on the date on which he entered Government service."

According to above amendment, it is obvious that the request for correction of date of birth is required to be made by the Government servant within five years of his entry into Government service and his date of birth may be corrected if it is established that a genuine bona fide mistake had occurred while recording his date of birth at the time of his entry into Government service.

8. Admittedly, the applicant has not made any such request within the stipulated period of five years of his entry into Government service and grievance for the first time was raised by the applicant in the year 1993 after a lapse of about 17 years. That apart, even in the Form No.3, Rule 52(12) submitted by the applicant on 11.8.2003, after rejection of applicant's earlier representation vide order dated 7.2.1994, the applicant has mentioned his date of birth as 6.6.1950 and not 27.10.1951. Thus, in view of this statutory provision contained in the aforesaid rule, the claim of the applicant for correction of date of birth was hopelessly belated as it has not been made within a period of 5 years from the date of joining the Government service. As such, request of the applicant could not have been entertained, more particularly, at the far end of his career. It may be relevant to state here that Note-6 to FR 56 (m) (which was Note-5 of FR-56 (m) at the relevant time) was considered by the Apex Court in the case of Union of India vs. Harnam Singh, 1993 SCC (L&S) 375 and the Apex Court held that alteration sought in 1991 by the employee, 35 years after his induction into service in 1956 during which period he has several occasions to see the service book but raised no objections

regarding his date of birth, cannot be allowed in view of unexplained and inordinate delay and the Apex Court considered the question whether the employer was justified in declining the respondent's request for date of birth made after 35 years of induction into service and whether the Central Administrative Tribunal was justified in allowing the OA filed by him. While reversing the order of the Tribunal, the Apex Court in Para 7 has observed as under:-

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 within 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 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 hold by this Court in *State of Assam vs. Daksha Prasad Deka* 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 consistently 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 311(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. (emphasis supplied).

9. In *Secretary and Commissioner, Home Department and Others vs. R.Kirubakaran* (supra), the Apex Court considered the question whether the Tamil Nadu Administrative Tribunal had the jurisdiction to entertain an application made by the respondent for correction of his date of birth just before superannuation. While answering the question in negative, the Apex Court observed as under:-

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 material 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 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. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless

prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.

10. In State of Tamil Nadu vs. R.V.Venugopal (supra), the Apex Court held that where rule provided that application for alteration of recorded date of birth would be entertained only if made within a period of five years after entry into service, an employee already in service at the time of enforcement of such a rule should make the application for correction within five years from the date of enforcement of the rule otherwise he will lose his right to make such application and would not be permitted to be challenged by the Government servant at the far end of his service. At this stage, it will be useful to quote para 7 of the judgment, which thus reads:-

"7. As held by this Court in Harnam case, Rule 49 is to be harmoniously interpreted. The application for correction of the date of birth of an in-service employee should be made within five years from the date when the rules had come into force, i.e., 1961. If no application is made, after expiry of five years the government employee loses his right to make an application for correction of his date of birth. It is seen that the respondent entered into the service on 12.1.1952, and only when he was due for superannuation at the age of 58 years on 31.8.1991, he made the application exactly one year before his superannuation. The Government rejected his claim before he attained the age of superannuation on 30.8.1991. When questioned, the Tribunal, for incorrect reasons, set aside the order and remitted the matter for reconsideration. The Government considered various facts and circumstances of the GOMs No.271 and rejected the claim on 31.3.1993. The evidence is not unimpeachable or irrefutable. The Tribunal in its judicial review is not justified in

trenching into the field of appreciation of evidence and circumstances in its evaluation to reach a conclusion on merits as it is not a court of appeal. This Court has, repeatedly been holding that the inordinate delay in making the application is itself a ground for rejecting the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be correct would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entering and allowing the government employee or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereof and seek the authority to correct it. When rejected, on ground of technicalities, question them and remain in office till the period claimed for, get expired. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the relief even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is therefore a case of grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground. The appeal is accordingly allowed with costs quantified as Rs. 3000."

11. The ratio as laid down by the Apex Court in the case of State of T.N. Vs. T.V.Venugopalan (supra) and in the case of Harnam Singh (supra) as well as R.Kirubakaran (supra) is fully applicable in the facts and circumstances of this case. To the similar effect is the judgment rendered by the Apex Court in the case of U.P.Madhyamik Shiksha Parishad and Others. vs. Raj Kumar Agnihotri, 2006 SCC (L&S) 96, whereby the Apex Court has held that



the date of birth as recorded in the service book at the time of entry into government service shall be deemed to be correct date of birth. It was further held that where the Government servant has himself declared his date of birth in High School examination form and the same was entered in High School Certificate as well as in his service record, cannot be allowed to be changed without recourse to law just a few years before his retirement. The Apex Court while interpreting the rules framed by the UP Board of Education held that the application made by the respondent after more than 15 years and suit filed after 35 years was barred by limitation as there was no continuing cause of action and respondent's claim regarding correction of his date of birth could not be entertained after several decades specially on the eve of his superannuation.

12. It may further be relevant to mention here that the issue regarding correction of date of birth based upon Punjab Civil Services Rules Vol.I, Chapter-II was considered by the Apex Court in the case of Punjab and Haryana High Court at Chandigarh vs. Megh Raj Garg and another, JT 2010 (6) SC 334 and the Apex Court set aside the judgment and the decree passed by the Trial Court as well as the Lower Appellate Court on the ground that suit filed for correction of date of birth after 12 years after joining in service was clearly misconceived and the Trial Court committed serious error by passing decree in favour of respondent No.1 and the Lower Appellate Court and the High Court repeated the same error by refusing to set aside the decree passed by the Trial Court. The ratio

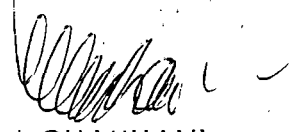
as laid down by the Apex Court in the aforesaid case is also squarely applicable in the facts and circumstances of this case.

13. Admittedly, at the time of entry into service on 23.6.1976, the applicant mentioned his date of birth as 6.6.1950 and thereafter also at the time of submission of Form-3 under Rule 54(12) the applicant has mentioned his date of birth as 6.6.1950 in the aforesaid form dated 11.8.2003 and he did not raise dispute regarding his incorrect date of birth for 17 years. The first representation dated 1.11.1993 of the applicant regarding incorrect date of birth was rejected vide order dated 2/7.2.1994. That order has attained finality as validity of the said order has not been challenged by the applicant being illegal or arbitrary earlier or even in this OA. Further, filing of another representation in the year 2010 at the fag end of his career on 19.6.2010 cannot afford fresh cause of action to the applicant. The contention of the applicant that he has made representation in the light of the subsequent decision of the Apex Court in the case of CIDO vs. Vasudha Gorakhnath Mandeviekar (supra) to the effect that under Section 35 of the Evidence Act, 1988 the certificate issued by the statutory authority relating to date of birth and entry made in such register raises a presumption of correctness cannot afford a fresh cause of action to the applicant. In the above case, the Hon'ble Apex Court has only interpreted the provisions of Section 35 of the Evidence Act, 1988 which provision exists in the statute book since 1988 and the Apex Court has only held that such entry carry presumption of correctness which presumptions are always refutable and cannot form conclusive evidence regarding

factum of date of birth and age. Thus, the judgment so relied by the learned counsel for the applicant makes it clear that burden of proving the date of birth and age is on the applicant. The applicant has not produced any evidence on record which can be said to be conclusive proof to determine that date of birth of the applicant as recorded in service book based on school certificate is incorrect and self serving declaration made by the applicant before the statutory authority after 17 years of entry of service on the basis of which the certificate was issued, cannot be said to be conclusive proof of irrefutable nature relating to his date of birth as different from the one earlier recorded, more particularly, when service rules do not permit such change after the expiry of five years.

14. Before parting with the matter, it is stated that it was a case where exemplary cost could have been imposed on the applicant for suppressing the fact regarding rejection of his representation for change of date of birth in the year 1994 and obtaining stay order by suppressing this facts from the vacation judge, but in the facts and circumstances of this case, since the applicant has retired and the applicant could not have been continued in service after his superannuation on 30<sup>th</sup> June 2010 in terms of provisions contained in FR-56, it is clarified that the applicant will not be entitled for any monetary benefits for the period during which he was permitted to continue in service pursuant to the ex-parte order dated 2.7.2010 and order dated 9.7.2010.

15. For the foregoing reasons, the OA is bereft of merit, which is accordingly dismissed. No costs.



(M.L. CHAUHAN)  
Judl. Member

R/