

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
KOLKATA BENCH
DETAILS OF THE APPLICATION

PARTICULARS OF THE APPLICANT :

Bal Kishun Yadav, Son of Late Devraj Yadav, residing at 1G/1, Kaniskya Road, A-Zone, P.O. Durgapur - 713204, District : Burdwan, Employee of Durgapur Steel Plant under Steel Authority of India Ltd., presently posted at RMHP Department, Durgapur Steel Plant

..... Applicant.

- Versus -

PARTICULARS OF THE RESPONDENTS (SEVEN IN NOS.) :

1. The Steel Authority of India Limited, service through the Chairman, having his office at "Ispat Bhawan", 5, Lodi Road, New Delhi - 110 003.
2. Chairman, Steel Authority of India Ltd., having his office at "Ispat Bhawan", 5, Lodi Road, New Delhi - 110 003.
3. Durgapur Steel Plant, a subsidiary unit of Steel Authority of India Ltd., having its registered office at Main Administrative Building, (Ispat Bhawan), Durgapur - 713203, District: Burdwan.
4. Managing Director, Steel Authority of India Ltd., Durgapur Steel Plant, having his office at Main Administrative Building, (Ispat Bhawan), Durgapur - 713203, District : Burdwan.
5. Executive Director (Personnel & Administration) & Revisional Authority, Steel Authority of India Ltd., Durgapur Steel Plant, having his office at Main Administrative Building, (Ispat Bhawan), Durgapur - 713203, District : Burdwan.

Balkishun Yadav

6. General Manager-in-Charge (P & A), Steel Authority of India Ltd., Durgapur Steel Plant, having his office at Main Administrative Building, (Ispat Bhawan), Durgapur - 713203, District : Burdwan.

7. Deputy General Manager, RMHP (Raw Material Handling Plant), Durgapur Steel Plant, Steel Authority of India Ltd., having his office at Durgapur Steel Plant , P.O. Durgapur - 713 203, District : Burdwan.

..... Respondents

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. OA 1094 of 2011

**Present: Hon'ble Mr.A.K.Patnaik, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member**

For the applicant : Mr.I.N.Mitra, counsel

For the respondents: Mr.T.Banerjee, counsel
Mr.A.Roy, counsel

Heard on : 9.6.2017

Order on : 19.6.2017

O R D E R

Ms.Jaya Das Gupta, Administrative Member

The applicant Shri Bal Kishun Yadav has applied under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- a) An order do issue for setting aside and/or quashing the notice of superannuation dated 30.8.2011, issued by Deputy General Manager (Mech), RMHP, DSP, forthwith;
- b) An order do issue for setting aside and/or quashing the order bearing No. RMHP/08(01)/Pt/380 dated 19.11.2011 passed by Deputy General Manager (Mech), RMHP, DSP, forthwith;
- c) An order do issue directing the respondents to allow the applicant to continue his service without any disturbance thereby releasing the salary of the applicant month by month;
- d) An order do issue directing the respondents not to give any effect or further effect of the notice of superannuation dated 30.8.2011, in any manner whatsoever.

2. It is the case of the applicant that after successfully qualifying in Class V examination, he left his school with School Leaving Certificate for admission in Class VI in another school. According to him from a perusal of the School Leaving Certificate it is clearly evident that the date of birth of the applicant is 1.1.1961 (1st January, 1961). In the year 1974 the applicant enrolled his name with the Durgapur Regional Employment Exchange with a view to obtain a suitable job through the Employment Exchange. From the year 1976 he was engaged as a contractor worker in the Durgapur Steel Plant and he worked as such upto 25.6.1985.

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As per the decision taken by the recognised Unions regarding the demand of regularisation of the contractor workers, an interview letter was issued to the applicant on 11.3.1985. He was asked to submit several documents along with proof of his age to the authorities on or before 19.3.1985. He submitted all the documents as asked for within the stipulated time and he appeared before the Selection Committee for interview on 21.3.1985. It is his contention that in the prescribed application form the applicant had clearly mentioned that his date of birth is 1.1.1961 as is apparent from the School Leaving Certificate. The applicant on the basis of the documents submitted as per his averments was ultimately issued appointment letter on 22.7.1994 and he joined as Junior Technician (L-I) on 1.8.1994 by way of submitting his duly filled in prescribed joining report. He mentions that in the copy of the joining report (Annexure A/6) however, the date of birth of the applicant has been recorded as 11.11.1951 and apparently as per his pleadings he protested before the authorities that the date of birth is wrongly recorded in the joining report.

It is his further contention that though prior to joining service in Durgapur Steel Plant he has submitted all the relevant documents and papers asked for including School Leaving Certificate as age proof in original, even then he was asked vide memo dated 24.6.1998 to appear before the Director (Medical & Health Services) on 14.7.1998 and 17.7.1998 at 8.30 AM for x-ray and age assessment by the Medical Board respectively (Annexure A/7). It is his submission that he duly appeared before the Director and before the Medical Board on 14.7.1998 and 17.7.1998 (para 4.17 of pleadings). It is his contention that after completion of the proceedings of Medical Board nothing was intimated or informed to the applicant specially regarding his age and as such he has presumed that the age he has mentioned in the School Leaving Certificate has been found as same as the age determined by the Medical Board and hence accepted.

He further submits that for the purpose of preparation of a new Identity card a fresh identity card was prepared as the old card was damaged and in

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the new identity card the date of birth of the applicant was mentioned as 31.7.1956. From this identity card the applicant as per his submission, came to know for the first time that his date of birth is recorded as 31.7.1956 and not 1.1.1961 as per his original School Leaving Certificate and immediately he requested the Departmental Manager concerned to record his correct date of birth as mentioned in the pre-employment form. However, allegedly such prayer was not entertained by the Departmental Manager. (pleadings 4.19)

He also submits that the Durgapur Steel Plant Manager published department-wise list of non-executive employees of Durgapur Steel Plant as on 1.8.2004 at the time of election for recognition of Trade Unions of Durgapur Steel Plant for the year 2004 from where it is evident that the date of birth of the applicant has been mentioned as 31.7.1956. The same date of birth is again given for the year 2011 when another department-wise list for non-executive employees of Durgapur Steel Plant was published for recognition of Trade Unions in Durgapur Steel Plant.

The Dy. General Manager (Raw Material Handling Plant) vide memo dated 30.8.2011 suddenly issued notice of superannuation upon the applicant wherefrom the applicant has been informed that he is to retire from service of the company on attaining the age of 60 years w.e.f. 30.11.2011 i.e. counting his date of birth as 11.11.1951.

Being aggrieved he moved a Writ Petition being WP No.16751(w) of 2011 (Bal Kishun Yadav -vs- Steel Authority of India Ltd. & Ors.)_ before the Hon'ble High Court of Calcutta and after hearing the sub missions made by the parties the Hon'ble High Court was pleased to dispose of the said Writ Petition with a direction upon the respondent No.7 to consider and dispose of the case of the applicant after giving an opportunity of hearing and thereby passing a reasoned and speaking order within 21.11.2011. Accordingly the applicant was asked to appear for personal hearing on 12.11.2011 in the office of Dy., general Manager (Mechanical), RMHP, Durgapur Steel Plant. It is his submission that though he pointed out repeatedly that his actual date of birth was 1.1.1961 as

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per School Leaving Certificate but a reasoned order was passed on 19.11.2011 rejecting his claim regarding his date of birth

It appears from the submission of the Id. Counsel for the applicant that being aggrieved by rejection of his prayer he originally moved CAT in OA 1094 of 2011 seeking reliefs but it was turned down on 23.11.2011 on the ground that it was not maintainable. The applicant had again moved Hon'ble High Court and Hon'ble High Court in WPCT 322 of 2011 directed on 5.3.2012 that this matter should be re-heard by the Tribunal and hence the case has come up in the OA 1094 of 2011 before us for fresh hearing.

3. Per contra it is the case of the respondents in brief that the applicant had ample opportunities to represent against the alleged wrong entry of date of birth in his personal file, but at no point of time had he ever represented against such to the respondent authorities. Also when the pre-retirement notice was served on the applicant instead of representing against such notice to the authorities, he straightway approached the Hon'ble High Court. This was also as per submission of Id. Counsel for the applicant in Court during course of hearing. According to the authorities since as per the direction of the Hon'ble Apex Court any prayer for alteration of date of birth has to be made within five years of date of entry into service and since in this case such was not resorted to and also due to various findings of the authorities, the applicant does not have any case in this regard and hence the OA should be dismissed.

4. Heard both the counsels extensively and consulted the original records.

5. Right at the beginning it is expedient to point out there is not a single scrap of paper given as evidence that the applicant at any point of time represented to the authorities against the alleged wrong recording of his date of birth.

It appears from the copy of the Memorandum of Settlement between the Steel Authority of India Ltd., Durgapur Steel Plant and their workmen represented by (1) United Contractors' Workers Union, Community Hall, Trunk Road, Durgapur-4, (2) Thikadar Mazdoor Congress, 6/2 Gurunanak Avenue, Durgapur-5, (3) DSP, Thika Mazdoor Union, C-II, Chaitanya Avenue, Durgapur

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- 5 and (4) Durgapur Contractors' Workers Union, 13/13 Einstein Avenue, Durgapur - 5 that as per para 5.5A.(iii), that "All those medically fit and up to 45 years of age as per medical examination report will be considered for absorption as regular workmen in L-I grade with other benefits as applicable to regular workmen of Durgapur Steel Plant. Their absorption will be done in phases during the financial year 1994-95 & 1995-96. This is, however, subject to clearance/exemption from appropriate Government and statutory reservation etc.

Such workmen will be absorbed w.e.f. 1.8.1994 and the remaining medically fit workmen will be absorbed in the second phase from 1.4.1995. It is expected that they will work under the contractors before they are absorbed."

Accordingly on 11.3.1985 he was issued an interview letter asking for documents including a certificate establishing his date of birth (Annexure A/2). Annexure A/3 which is an application form regarding the bio-data of the applicant mentions that his date of birth is 1.1.1961. Proof of age has been submitted by the applicant to the authorities as per interview letter issued on 11.3.1985. However, at this point Id. counsel for the respondents has objected that as required in the applicant's bio-data form of Durgapur Steel Plant, as per para 16 where particulars of enclosures, attested copies of academic certificates/ caste certificates and other testimonials as mentioned are supposed to be submitted, no such documents were submitted by the applicant. However, the applicant was issued an appointment letter on 22.7.1994 (Annexure A/5) and he was asked to report to the office of Manager (Personnel & Recruitment) by 1.8.1994 positively by 10 AM along with all documents for joining w.e.f. 1.8.1994. We find that this is as per the Memorandum of Settlement submitted by the Id. Counsel for the respondents.

6. On going through the records in the OA and in the original file submitted by the respondents, we find there are grave contradictions in the submissions of the applicant which will be evident from the facts placed below :

- (i) Id. Counsel for the applicant had pointed out that as per appointment letter dated 22.7.1994 the applicant at the time of joining had to produce the

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certificates in original regarding his age/date of birth along with other documents. Accordingly the applicant joined on 1.8.1994 (Forenoon) (Annexure A/6). As such Annexure A/6 which is submitted by the applicant himself is set out below :

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✓ ANNEXURE - 116

To The Manager (Tech) Sectt.,
Bhilai Steel Plant

Sir,

With reference to your letter no. 26-1/USM/10.42 dated 22.07.94.
and to report no. 22 day to-day dated 11.03.94 (27/1) as Jr. Technician (I-1)
in the scale of Rs. 1500-20-1530/- (L-1).

1.8.94.

Yours faithfully,
Balkrishna Yadav
(Sd/-) (Sd/-) KISHOR YADAV
Designation: Jr. Technician

Travelling report

Enclosed for the Manager (Tech) Sectt., Bhilai Steel Plant along with copy of offer
of Rs. 1500-20-1530/- (L-1) is as follows:-

1. Qualification - Copies of examination forms submitted by
the candidate are sent herewith for taking
admission. Further communication in
this regard may be made with the depts.
(Manager)

2. Qualification - Following are the personal file no sent herewith:-
a) Qualification order (ii) Qualification copies of
marks and certificates including date of birth
b) Birth certificate (iv) Marriage report (v) Declaration
c) Family Pension (vi) Service Card (viii) Copy
of birth certificate

3. Following are the documents
a) Qualification Class VIII Pass
b) Date of Birth 11-11-51

4. Signature of Jr. Tech

Balkrishna Yadav
(Sd/-) (Sd/-) KISHOR YADAV
Manager (Tech) Sectt.
Bhilai Steel Plant

1.8.94

with
support

This
is original
is being
to my certificate
1.1.1961

It is interesting to compare Annexure A/6 which is an Annexure submitted by the applicant with the corresponding documents in the original file which is set out below :

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The Manager (Pers) Rectt.
Bhilai Steel Plant

Sir,

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Ref: Your letter No. PL-1/USW/10.42 dated 22.07.94.
- Offer of job for entry to-day the (P.C.S. 4 (1/1) as Jr. Technician (L-1)
on pay of Rs. 1500/- in the scale of Rs. 1500-20-1030/- (L-1).

Yours faithfully,

Bal Kishan Yadava

(Bal Kishan Yadav)

Designation: Jr. Technician

Department: R.M.H.C. (M/M)

Form No: PL-1/USW/10.42 (CL/10.42/272)

Date: 11.11.94

Copy sent to:

1. Manager (Pers), R.M.H.C. Services/Chrm. along with copy of offer and G.O's certificate.

2. Manager (Admin).

3. Manager (M/M) R.M.H.C. (M/M)

4. Manager of Security- 7 copies of attestation forms submitted by the candidate are sent herewith for taking necessary action. Further communication should be made with the deptt. concerned.

5. Personal file- following papers of personal file are sent herewith-

- (i) Appointment order (ii) application copies of educational certificates including date of birth.
- (iii) Photograph (iv) Medical report (v) Declaration
- (vi) Family Pension (vii) Service Card (viii) Copy of G.O's certificate.

The following has been accepted:

(i) Qualification P.C.S. VIII Pass

(ii) Date of birth 11.11.51

Manager (Pers) Rectt.
Bhilai Steel Plant

It is evident even to a layman that Annexure A/6 is not a photo copy of the corresponding document in the original records maintained by the authorities. The discrepancies which come into play are -

- i) In the original document No. 272 in reference to letter No. PL-1/USW/10.42/272 dated 22.7.1994 appears a little above the first line, while in Annexure A/6 submitted by the applicant 272 is sitting on the top of the line.

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- ii) In the original document **272** is written at the end of Memo No. but in Annexure A/6 submitted by the applicant there is no **272** at the end of Memo No.
- iii) In the original document the date is written as 1.8.94 but in Annexure A/6 submitted by the applicant the space is blank.
- iv) In the original document in column 3 'Sr. Manager, RMHP (M/M)' is written. But in Annexure A/6 submitted by the applicant the space in column 3 is blank.
- v) In column 5(i) regarding qualification in the original record Class VIII passed is written in much smaller letter size but in Annexure A/6 the letter size is much larger.
- vi) In para 5(ii) regarding date of birth the dots between date, month and year in the original documents appears much lower than what is given in Annexure A/6.
- vii) In the Annexure A/6 submitted by the applicant there is column 6 having signature of one Kishun Yadav, Jr.Tech. But in the original document there is no such signature.

Throughout the arguments made on behalf of the applicant the ld. Counsel has stoutly maintained that he was not given the copy of Annexure A/6 i.e. the joining report which was supposed to be forwarded to him. Then the question arises that how has this document been annexed by the applicant himself and also if these document was indeed in possession of him and he knew that his date of birth is wrongly recorded as 11.11.1951 why had he at that point of time i.e. on 1.8.1994 did not represent to the respondent authorities?

- (ii) The rules followed by DSP regarding date of birth is set out below :

Steel Authority of India Ltd.
Durgapur Steel Plant

No.PL. Regulation/07/Pt/620

Dated : June 9, 1982.

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CIRCULAR

Subject - Rules regarding determination of date of birth

1.0 OBJECTIVE

To establish uniform policy and rules for determining the date of birth of employees of the company.

2.0 SCOPE

These rules shall be applicable to all employees of SAIL.

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4.0 PROCEDURE/ RULES

- 4.1 Every employee must declare his date of birth in the application on prescribed form, before his first appointment and must produce confirmatory evidence in support of his declaration as mentioned hereunder. No person should be allowed to join the services of the company without his date of birth having been declared/recorded as prescribed.
- 4.3 Each person entering the services of the company, shall in support of declaration of the date of birth, submit Matriculation/School Final Examination Certificate or equivalent examination of School Leaving Certificate.
- 4.4 In case of those who have not passed Matriculation/School Final Examination/Equivalent Examination at the time of entering the service, the following documents containing his date of birth may be accepted as evidence of age, in the order which they are enumerated below (in other words evident at (b) will be excepted only if evidence at (a) is not possible, and so on).
- (a) School Certificate from educational institution where the candidate/employee studied.
 - (b) Service record/service certificate issued by previous employer in case of candidates/employees who had been in employment under public sector enterprises/government departments or a local body prior to joining SAIL.
 - (c) Attested extracts from Register of Birth & Death maintained by Municipality, Municipal Corporation, Town/notified area or an appropriate authority;
 - (d) Baptism Certificate from Church in case of Christian employees;
 - (e) Certificate of birth from Government hospitals where the candidate/employee was born.
- 4.10 Once the date of birth is accepted and recorded in accordance with provisions of para 4.4 at the time of joining or thereafter or as determined as per provisions of para 4.6 or para 4.7 it shall become final and binding.

It is the contention of the applicant that as per above 4.4 he submitted his School Leaving Certificate and hence appointed. However, a doubt enters our mind that if we accept this submission of the applicant that his date of birth is 1.1.1961, then how is he registered with the Employment Exchange in

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the year 1974 i.e. when he was about 13 years i.e. a minor (this is provided in the List of Dates submitted by the applicant). Also how has he entered as a contractor worker in Durgapur Steel Plant from 1976 i.e. when he was about 15 years i.e. a minor. It is not feasible that the Employment Exchange, Durgapur which is a Government institution shall register a minor in the records of Employment Exchange.

(iii) Vide Annexure A/7 it appears that the applicant was called for x-ray on 14.7.1998 and for age assessment of age by Medical Board on 17.7.1998.

Annexure A/7 is set out below :

STEEL AUTHORITY OF INDIA LIMITED
DURGAPUR STEEL PLANT
OFFICE OF THE CHIEF PERSONNEL MANAGER (WORKS)

No. Plant/Pers/4.32/98/36

Dated : 24.06.1998

To
Shri Balkishan Yadav
T/No.27245(S-2)/RMHC

Through : Head of the Department

In pursuance of Memorandum of Settlement dated 17.2.1997 regarding determination of Date of Birth, your age is required to be assessed by a Medical Board of the Company.

You are, therefore, advised to report to the Business Office of the Director (Medical & Health Services) for your age assessment by the Medical Board as per following schedule:

	<u>DATE</u>	<u>TIME</u>
i) For X-Ray	14.07.1998	8.30 A.M.
ii) For age assessment by Medical Board	17.07.1998	8.30 A.M.

You are also advised to swear an affidavit in a Court of Judicial Magistrate regarding your date of birth and submit an attested copy of the same to the above Medical Board and the original to your Head of the Department.

You will be required to produce your Identity Card before the above Medical Board.

Should you fail to appear for age assessment as scheduled above, your date of birth will be determined as per available records.

Dy. Chief Personnel Manager
DURGAPUR STEEL PLANT."

However, as is apparent from the speaking order dated 19.11.2011 the applicant appeared for x-ray on 14.7.1998 but did not appear for assessment of age before the Medical Board on 17.7.1998. This is very much evident from Annexure A/7, a document dated 24.6.1998 submitted by applicant himself

that there is an endorsement of authorities that applicant appeared on 14.7.1998 for X-ray but no such endorsement for 17.7.1998 is there. At this point Id. Counsel for the applicant has averred that it was not necessary for the applicant to appear for age assessment on 17.7.1998 as the applicant as per rules had been appointed on the basis of School Leaving Certificate mentioning his date of birth as 1.1.1961. But in the same breath he also points to Annexure R/2 which is a Medical Report as a proof that the applicant actually had appeared for age assessment before the Medical Board. On closer examination of Annexure R/2 it is apparent that this is a Medical Report dated 11.11.1993 for determining his date of birth, i.e. before the applicant was actually appointed in Durgapur Steel Plant on 1.8.1994. In fact the explanation of the respondent authorities is acceptable because this medical examination was done prior to regularisation of the applicant as per Memorandum of Settlement between the Steel Authority of India Ltd., Durgapur Steel Plant and Workmen on 28.6.1994 as per para 5.5A (iii).

(iv) On perusal of Annexure A/8 it appears that Bal Kishun Yadav has applied for a new identity card as his old identity card was damaged where he has given **his date of birth as 31.7.1956 (and not 1.1.1961)** as averred by him earlier). However, against column 6 that is where applicant has mentioned his date of birth as 31.7.1956, the respondent authorities have commented that date of birth is wrong. Annexure A/8 which is an application for new identity card signed by applicant where he has averred that his date of birth is 31.7.1956, is set out below :

1.	Name :	BAL KISHUN YADAV
2.	Father's/Husband's Name :	D. YADAV
3.	Ticket Number :	227245
4.	Designation :	TECH - S-5
5.	Department & Section :	RMHP (Mech)
6.	Date of birth :	31.07.1956 (Date of his birth right I could is wrong).

Sd/-
13.8.2004
(seal)
Dated 13.8.2004.

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7. Present residential address : 1G/1 KANISHKA ROAD
8. Identification mark: CUT MARK ON RIGHT LEG
9. (illegible)
10. Number of existing PIC/TIC : 017210
11. Purpose : Damaged

B.K.Yadav
Signature/LTI
Of the employee.

For use by the office of the concerned department.

Date of birth given above has been verified his personal file and is correct."

The respondent authorities in para (5) of reply has stated that Identity Card was prepared on the basis of information supplied by the applicant himself and is only valid for ingress and egress to the plant facilities. The same cannot be relied upon as proof of date of birth.

Annexure A/9 is a copy of the fresh identity card issued on 10.9.2004 and the date of birth has been clearly mentioned as 31.7.1956 as per his averment in the application for identity card. It is strange that even at this point of time he did not represent to the authorities that the date mentioned is not correct as he had submitted his date of birth at the point of appointment as 1.1.1961. Same applies for Annexure A/10 and A/11 which are copies of final electoral roll for election for recognition of Trade Unions in Durgapur Steel Plant. In Annexure A/10 his date of birth is mentioned as 31.7.1956 and Annexure A/11 mentions the same date. Also during this time he did not represent to the authorities for wrong mentioning of his date of birth. In fact he himself has mentioned his date of birth as 31.7.1956 in his application for Identity Card.

7. Annexure R/1 is a copy of the service record where all columns except Sl. No. 14, 15, 16, 18 & 19 are to be filled in by the candidate. The Service Card was signed by Bal Kishun Yadav, the applicant on August, 1994. Column 5 which was to be filled in by the applicant himself is set out below:

"5. Date & Place of birth : 11.11.1951 Abadapur (Uttar Pradesh)".

Annexure R/1 has been matched with the original documents placed at Sl.No.13 in the original file submitted by the respondent authorities and it is

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very clear that the date of birth being mentioned is 11.11.1951 by the applicant himself. Ld. Counsel for the applicant had said that it was 11.11.1961 but that has been over-written as 11.11.1951. As it is clearly written in the service record that the date of birth is 11.11.1951 by the applicant himself in the year 1994, we see no reason to decide that 11.11.1961 has been re-written as 11.11.1951. Also the date and month has been clearly mentioned as 11.11 and there is no over-writing regarding date or month. In contrast the applicant had gave the date in Annexure A/4 as 01.01.1961 as his date of birth, and 01 cannot correspond to 11.

8. Annexure A/12 is the superannuation notice dated 30.8.2011 and is set out below :

STEEL AUTHORITY OF INDIA LTD.
DURGAPUR STEEL PLANT
OFFICE OF THE GM (RMHP)

SUPERANNUATION NOTICE

The following employee(s) attached to RMHP Department will retire from the services of the company on attaining the age of superannuation (60 years) with effect from month and year mentioned against his name.

Sl. No.	NAME & T.NO.	DESIGN. & CODE	DEPT. CODE	DATE OF JOINING	DATE OF BIRTH	DATE OF SUPER-ANNUATION
1	BAL KISHUN YADAV, 227245	SR. TECH., 407	27001	01.08.1994	11.11.1951	30.11.2011

No. RMHP/08(01)/Pt./343
Dated : 30.08.2011

Dy. Genl. Manager
RMHP, DSP."

At this point of time also instead of making a representation to the authorities he directly ventilated his grievance before the Hon'ble High Court of Calcutta which ordered for re-consideration by the authorities in WPCT 16751 (w) of 2011. Such reasoned and speaking order was issued on 19.11.2011 is set out below :

STEEL AUTHORITY OF INDIA LIMITED
DURGAPUR STEEL PLANT
RAW MATERIAL HANDLING PLANT

No. RMHP/08(01)/Pt./380

Date 19.11.2011

REASONED ORDER

challenging the notice of superannuation dated 30.08.2011 issued by Dy.GM (Mech), RMHP and praying for withdrawal of the said notice.

The matter was heard before Hon'ble High Court at Calcutta on 29.9.2011. The Hon'ble Justice Debasish Kar Gupta was pleased to dispose of the writ petition by directing the respondent authorities to take a decision on the age dispute of the writ petitioner on the basis of the report of the medical board and other relevant records and after giving the petitioner an opportunity of hearing within 21.11.2011.

In terms of the directive passed by the Hon'ble Justice, the petitioner Sri Bal Kishun Yadav was asked to attend a personal hearing before DGM(Mech), RMHP on 12.11.2011 at 0300 PM.

Accordingly, Sri BAL KISHUN YADAV attended the said personal hearing. During the personal hearing Sri Yadav submitted a written statement titled 'Notes of Agreement' in support of his contention. Although Sri Yadav stated that he would submit relevant documents in support of his contention but subsequently, he did not submit any such documents.

The undersigned being the respondent no. 7 of the above mentioned writ petition considered the submission of the petitioner during the course of personal hearing. The relevant records and documents available relating to the matter were also considered.

I have gone through the submission made by Sri Bal Kishun Yadav and have also considered the available documents on records

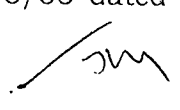
Clause 4.1 of the Company's Rules regarding determination of date of birth provides that "No persons should be allowed to join the services of the Company without his date of birth having been declared/recorded as prescribed."

Further clause 4.10 of the Company's Rules provides that "In respect of those employees whose date of birth has already been recorded in the descriptive roll/declaration form/service book of the employee and signed/thumb impressed by him, the date so recorded shall be deemed as final and binding."

Accordingly Sri Bal Kishun Yadav himself declared his date of birth as 11.11.1951 in the prescribed Service Card on 19.08.1994 as stipulated in the Rules of the Company and not any other Date of Birth. The same date of birth/age matches with the recorded date of birth in his Medical Examination Report and his Joining Report. As such, it was accepted by the Company as final and binding date of birth of Sri Bal Kishun Yadav. The School Leaving Certificate submitted by him with his Pre-employment application was taken as a proof of his qualification only.

As per above mentioned clause 4.10 the date of birth recorded in his Service Card has been taken as final and binding and therefore date of birth mentioned in any other documents like Identity Card, Union Election Electoral rolls, etc. cannot be given cognizance for the purpose of determining his date of birth subsequently. Moreover the Identity Card, Union Election Electoral cannot be taken as authentic document for the purpose of determination of date of birth since in these unilateral documents date of birth has been recorded as per the statements of the person only without any verification.

There are no documentary evidences available on records that his date of birth was later re-determined by a Company's Medical Board in the year 1998, though vide letter no. Plant/Pers/4.32/98/36 dated 24.06.1998



Sri Yadav was directed to appear before the Medical Board for his age assessment. It is also not clear from the available records whether Sri Yadav appeared before the said Medical Board

After having perused the same and having applied my mind there to, I concluded as under :

1. Sri BAL KISHUN YADAV has joined in his service on 01.08.1994 as Jr. Technician (L-1) as per the offer of appointment letter No. PL-1/USW/10.42/272 dated 22.07.1994. Prior to his joining in Durgapur Steel Plant as regular worker, he was a Contract Labour.
2. At the time of joining, Sri Yadav filled up the joining report accepting his date of birth as 11.11.1951 jointly signed by Sri Yadav and the Management representative which is evidently the date of birth declared by the employee at the time of joining and accepted by the Management. He filled up the Service Card where he declared his date of birth as 11.11.1951 only.
3. At the time of his employment, he was medically examined and his date of birth was assessed as 11.11.1951 as per Medical Examination Report.
4. All these dates are same. Moreover in terms of the circular no. PL-Regulation/07/1167 dated 20.06.1987 of SAIL/DSP no employee is permitted to raise any dispute with regard to his date of birth within the last 5 years of his service career.

On examination of the entire matter and taking into consideration the submission/statement/documents made by Sri BAL KISHUN YADAV in the personal hearing, I am of the opinion that the superannuation notice No. RMHP/08(01)/pt./343 dated 30.08.2011 mentioning Sri Yadav's date of birth as 11.11.1951 is in order and Sri Yadav will be justly superannuated from the service of the company w.e.f. 30.11.2011.

As such, there is no merit in the claim made by Sri Bal Kishun Yadav.

DGM (Mech.), RMHP
Durgapur Steel Plant."

9. As per reply at para 1(f) in terms of Policy of Respondent Company circulated on 20.6.1987 no employee of Respondent Company is permitted to raise any dispute as regards his recorded date of birth within the last 5 years of his service career (Annexure R/3), which is set out below :

Steel Authority of India Limited
Durgapur Steel Plant

No. PL-Regulation/07/1167

Dated, 20th June, 1987

Sub : Determination of date of birth

It has been decided that no dispute can henceforth be raised over the date of birth of an employee during the last 5 years of his/her service and such matters will not be entertained.

This supersedes the previous instructions issued in this regard.

This issues with the approval of the Competent Authority.

(S.S.Panja)
Chief Personnel Manager
Durgapur Steel Plant."

10. Regarding change of date of birth the Hon'ble Apex Court has given very clear directions; some of which are given below :

(i) In **Union of India -vs- Harnam Singh [1993 (2) SCC 162] Civil Appeal**

No. 502 of 1993 decided on 9.2.1993, Hon'ble Apex Court held as under :

"The application for correction of date of birth, entered in the service book in 1956, for the first time made in September 1991, was hopelessly belated. It had not been made even within the period of five years from the date of coming into force of Note 5 to FR 56 (m) in 1979. His inaction for all this period of about thirty-five years from the date of joining service, therefore precludes him from showing that the entry of his date of birth in service record was not correct. The Tribunal, therefore, fell in error in issuing the direction to correct his date of birth. (Para 16 and 15)

It is open to a civil servant to claim correction of his date of birth, if he is in possession of the irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. **A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. 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 can not claim to continue in service on the basis of the date of birth claimed by him.** (Para 7)

State of Assam v. Daksha Prasad Deka, (1970) 3 SCC 624: (1971) 2 SCR 687, relied on

Though Note 5 to FR 56 (m) was incorporated only in 1979 and it provides for request to be made for correction of date of birth within five years from the date of entry into Service but what is necessary to be examined is the intention of the rule making authority in providing the period of limitation for seeking the correction of the date of birth of the Government Servant viz. to discourage stale claims and belated applications for alteration of date of birth recorded in the service book at the time of initial entry. **It is the duty of the courts and tribunals to promote that intention by an intelligible and harmonious interpretation of the rule rather than choke its operation. The interpretation has to be the one which advances the intention and not the one which frustrates it. It would not be the intention of the rule making authority to give unlimited time to seek correction of**

date of birth, after 1979, to those government servant who had joined the service prior to 1979. but restrict it to the five year period for those who enter service after 1979. If a government servant, already in service for a long time, had applied for correction of date of birth before 1979, it would not be permissible to non-suit him on the ground that he had not applied for correction within five years into service, but the case of government servant who applied for correction of date of birth only after 1979 stands on a different footing. It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those government servants who were already in service before 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979 but in any event not later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule making authority. (Para 12)

(ii) In the case of **State of Tamilnadu -vs- T.V.Venugopalan decided on**

3.8.1994 reported in 1994 SCC (6) 302, Hon'ble Apex Court held as follows :

"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 challenged, the Tribunal, for incorrect reasons, set aside the order and remitted the matter for reconsideration. The Government considered various facts and circumstances in the GOMs No. 271 and rejected the claim on 31-3-1993. The evidence is neither unimpeachable nor 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.

The Supreme 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."

(iii) In the case of **State of Gujarat & Ors. -vs- Vali Mohd. Dosabhai Sindhi**

[(2000) 6 SCC 537] Hon'ble Apex Court has held as under :

"Before any such direction is issued or declaration made, 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 within at least a reasonable time. 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 about 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 date 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 or 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 thereby caused injustice to his immediate junior." (Para 12)

11. Ld. Counsel for the applicant has also mentioned the following cases disposed of by Hon'ble Apex Court in **Manoj Kumar -vs- Govt. of NCT, Delhi & Ors. [2010 (11) SCC 702]**. The Hon'ble Apex Court has held that though the document of Matriculation certificate is a strong proof of the date of birth, it is not the only proof specially when other equally relevant material is also given; particularly when the Matriculation certificate itself is subsequently corrected. Further held that in the case of a new entrants seeking correction of date of birth should not be equated with the cases of existing employees seeking to prolong their retention in service by correction of their date of birth in their service records at the fag end of their service.

Clearly the applicant cannot take the help of this citation at all because though in the course of his service, he came to know that the date of birth given by the respondent authorities is allegedly different from the date of birth he mentioned at the time of his entry into regular service at DSP, he has not given any evidence of protest against such matter. Even when he was served with the retirement notice, without protesting to the respondent authorities he approached the Hon'ble High Court. There is not a single document in his application certifying that at any point of time he has represented against alleged wrong recording of his date of birth.

In addition the Id. Counsel for the applicant has also submitted the following judgments which he thinks will help his case :



In addition the Id. Counsel for the applicant has also submitted the following judgments which he thinks will help his case :

- i) Ld. Counsel has placed reliance on the judgment passed by the Hon'ble Apex Court in the case of **Dilip Kumar Moitra -vs- M/s Burn Standard Co. Ltd. [2007 (2) CLJ (Cal)]** where Calcutta High Court has held as under :

"Standing Order of the M/s Burn Standard Company - Rule 2(v)(b) - Appellant-petitioner an employee of M/s Burn Standard Company - Initially the date of birth of the appellant not recorded in the records of the company - Appellant supplied document regarding his date of birth - School leaving certificate issued by the Headmaster of the concerned school - shows date of birth of the appellant as 1st October, 1934 - such certificate reliable in absence of any other document - Hence notice of superannuation from 30th June, 1992 not sustainable - The said notice is quashed."

This case is distinguishable from the OA filed by the applicant as in the case of Dilip Kumar Moitra the certificate regarding date of birth was relied upon in absence of any other document. This however, is not the case in the present OA. In the report regarding the Medical Board held on 11.11.1993 for regularisation of the applicant's service in DSP i.e. while he was working on contract in DSP, he was aware that his date of birth will be taken as 11.11.1951 (he had signed on such medical report as acceptance) why did he not at that point of time represent to the authorities. Also why did he not appear in the Medical Board called on 17.7.1998?

Secondly he has mentioned that Annexure A/6 (supra) which mentions his date of birth as accepted by the authorities as 11.11.1951 has not been made available to him? Then how is this document produced in the record by himself? Also because of the grave contradictions given at para 6 of this order it is not at all right to compare the case of the applicant with the case of Dilip Kumar Moitra.

- ii) Ld. Counsel for the applicant had also given another judgment namely **Civil Appeal No. 1676 of 2016 (Hina -vs Union of India & Ors.)** where the short question which arose was whether the respondents corporation was justified in rejecting the application of the appellant on the ground that the age proof submitted by her was not of the Secondary School as per norms, but of a

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"7. It is seen from the Eligibility Criteria, as extracted above, even an Affidavit was sufficient as proof of age. Be that as it may, in case, the copy of the Secondary School Leaving Certificate meets the requirement of the Eligibility Criteria, we fail to understand as to how does it make a difference in case the School Leaving Certificate is of the Higher Secondary School. The learned counsel for the Corporation was at pains to explain before us that the Secondary School Leaving Certificate is issued by the Board whereas the School Leaving Certificate of the Higher Secondary School is issued by the School. School Leaving Certificate, as the very expression indicates, is issued by the School since the pupil leaves the school. Annexure P1, which was produced by the appellant before the Corporation is captioned as "School Leave Certificate". The requirement of the Corporation is only a proof regarding the age. No doubt, certain documents are specified in the Eligibility Criteria which would be accepted by the Corporation as proof of age. In case, a copy of the Secondary School Leaving Certificate can be accepted as proof of age, it does not even strike to common sense as to why the copy of the Higher Secondary School Leaving Certificate, duly attested, cannot be accepted as proof of age. The High Court, however, is not correct in its approach. The clarification we have made does not in any way amend the criteria.

8. Mr. S. M. Jadhav, learned counsel appearing for Respondent No. 4, apart from supporting the arguments advanced by the learned counsel for the Corporation, also submits that during the pendency of the writ petition in the High Court, the 4th Respondent had already been allotted the outlet. Obviously, that will be subject to the selection to be conducted by the Corporation after allowing the participation of the appellant herein as well.

9. Accordingly, we allow this appeal, set aside the Judgment passed by the High Court and direct the second respondent-Corporation to conduct the selection afresh, allowing the participation of the appellant herein as well along with those who have been considered as eligible by the Corporation. The needful shall be done within a period of two months from today."

It is very clear in this case that the Hon'ble Apex Court has observed that when an affidavit is sufficient as proof of age there is no reason that if a Class X certificate can be accepted why a Class XII certificate cannot be accepted. In this case of Hina there is also another point of difference. Here the applicant is appearing in the selection process for recruitment where the date of birth should satisfy the eligibility condition as per rules. However, in the present OA of Bal Kishun Yadav the case is different as he is already a regular employee of Durgapur Steel Plant and the question in dispute is his date of retirement, where during his whole service not for a single occasion he has represented against his alleged wrong entry of date of birth.

iii) Ld. Counsel for the applicant has submitted another judgment of the Hon'ble Apex Court in **Civil Appeal NO. 4890 of 2014 (s. Bharat Coking Coal**

iii) Ld. Counsel for the applicant has submitted another judgment of the Hon'ble Apex Court in **Civil Appeal NO. 4890 of 2014 (s. Bharat Coking Coal Ltd. & Ors. -vs- Chota Birsa)**. In this case the Hon'ble Apex Court has observed as under :

"9. In the corpus of service law over a period of time, a certain approach towards date of birth disputes has emerged in wake of the decisions of this Court as an impact created by the change in date of birth of an employee is akin to the far reaching ripples created when a single piece of stone is dropped into the water. This Court has succinctly laid down the same in Secretary and Commissioner, Home Department vs. R. Kirubakaran (supra), which is as under:-

"7. 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. 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." The same approach had been followed by this Court while deciding on date of

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birth disputes irrespective of the relief being in favour of the workman or the employer. (See: State of Punjab vs. S.C. Chadha, State of U.P. & Anr. v. Shiv Narain Upadhyay, State of Gujarat & Ors. v. Vali Mohd. Dosabhai Sindhi, State of Maharashtra & Anr. vs. Goraknath Sitaram Kamble)

10. Another practice followed by the courts regarding such disputes is that date of birth of an employee is determined as per the prescribed applicable rules or framework existing in the organization. Even this Court inspite of the extraordinary powers conferred under Article 136 has decided date of birth disputes in accordance with the applicable rules and seldom has the Court determined the date of birth as it is a question of fact fit to be determined by the appropriate forum. (See: State of Maharashtra & Anr. vs. Goraknath Sitaram Kamble & Ors. 7 Registrar General, High Court of Madras vs. M. Manickam & Ors. 8 High Court of Andhra Pradesh vs. N. Sanyasi Rao 9)

11. As stated earlier, this Court needs to decide the manner in which date of birth has to be determined. It is the case of the appellant that as the respondent raised the dispute at the fag end of his career and as there exists a set of records being the Form 'B' register which is a statutory document in which the date of birth has been verified by the respondent himself twice, other non statutory documents should not be given precedence and the orders of the High Court must be set aside. This claim of the appellant does not stand in the present matter. As determined, the dispute was not raised at the fag end of the career; on the contrary, it was raised 1987 almost two decades prior to his superannuation when he first came to know of the discrepancy. It has been held in Mohd. Yunus Khan v. U.P. Power Corporation Ltd. 10, that, "an employee may take action as is permissible in law only after coming to know that a mistake has been committed by the employer." Thus, the case of the respondent should not be barred on account of unreasonable delay.

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13. **We give due regard to the sensitive nature of date of birth disputes and fully agree with the approach laid down in R. Kirubakaran Case (supra)**

14. It is noted by us the respondents in 1987 on coming to know of the wrong recording of his date of birth in his service records from the nomination form sought rectification. Therefore such rectification was not sought at the fag end of service. We have further notice that High Court duly verified the genuineness of the School Leaving Certificate on the basis of his supplementary affidavit filed by Dilip Kumar Mishra, Legal Inspector of the Appellate Company on September 6, 2010 before the High Court. It has been admitted in the said supplementary affidavit that the School Leaving Certificate has been verified and has been found to be genuine....."

In the above case rectification of date of birth was not sought in the fag end of the service by Chhota Birsa. Also genuineness of School Leaving Certificate was proved. In contrast the present applicant i.e. Bal Kishun Yadav has approached the High Court regarding rectification of his date of birth after the notice of superannuation was served on him. No proof of genuineness of School Leaving Certificate was given by Bal Kishun Yadav. That is why the authorities depended on Medical Board report held on 11.11.1993. The

applicant did not appear in the Medical Board called on 17.7.1998. On the other hand he had mentioned different dates of birth i.e. 1.1.1961 and 31.7.1956 at different times.

In the above circumstances the citations submitted by the Id. Counsel for the applicant are all in circumstances which are entirely different from the circumstances as prevailing in the case of Bal Kishun Yadav and therefore come of no help to him.

12. Considering all our discussions above and the grave contradictions appearing in the pleadings of the applicant regarding his date of birth and the stand taken by Hon'ble Apex Court in change of date of birth at the end of service, this is a fit case of dismissal and is hereby dismissed. No costs.

13. The original records are returned to the Id. Counsel for the respondent authorities.

(JAYA DAS GUPTA)
ADMINISTRATIVE MEMBER

(A.K. PATNAIK)
JUDICIAL MEMBER

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