

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
HARNAM SINGH

DATE OF JUDGMENT 09/02/1993

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
SHARMA, L.M. (CJ)

CITATION:
1993 AIR 1367 1993 SCR (1) 862
1993 SCC (2) 162 JT 1993 (3) 711
1993 SCALE (1) 478

ACT:
Civil Services
Fundamental Rules:
F.R. 56 Note 5(a) & MH. A. Notification dated November 30,
1979-Government Servant-Date of birth-Alteration in service
record-Request for-When to be made.

HEADNOTE:

The respondent in the appeal joined Government Service in the Ministry of Finance in a Class IV post as Peon on 22nd February, 1956. At the time of entry his service book was prepared and the date of birth was recorded as 20th May, 1934 and since he failed in the matriculation examination against the column of educational qualification 'matric failed' was recorded. The respondent later on again appeared in the matriculation examination, passed the said examination in May, 1956, was appointed as LD.C. in the Ministry of Home Affairs on 9th May, 1957 and in his service book an entry was made showing his educational qualification as 'Matric' underneath the earlier entry 'matric failed' and this changed entry was signed by the Section Officer of the Ministry of Home Affairs on 7th September, 1957. Though the date of birth of the respondent as recorded in the matriculation certificate was 7.4.1938, while amending the entry about his educational qualification, the entry relating to his date of birth was not altered to correspond to the date given in the matriculation certificate and continued to be recorded as 20th May, 1934. The respondent was later transferred to the Ministry of Human Resources Development and on being notified about his date of superannuation as 31.5.1992, he realised that he was being retired on the basis of his date of birth as originally recorded in the service record as 20.5.1934 ignoring the date of birth as reflected in the matriculation certificate. In view tot the aforesaid position the respondent made a representation in September, 1991 for alteration of his date of birth but the

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same was rejected on 4.12.1991. He submitted another representation on 3.1.1992 for correction on the basis of the date of birth as recorded in the matriculation

certificate but this request was also turned down by the appellant in view of the Ministry of Home Affairs O.M. dated 29.1.1992. Yet another representation dated 26th March, 1992 was submitted by the respondent wherein he had drawn the attention of the Department to the order of the Principal Bench of the Central Administrative Tribunal in the case of Darshan Singh v. Union of India, wherein the Tribunal had directed that the date of birth should be corrected on the basis of the matriculation certificate. This representation was also rejected by the appellant on 22A.1992.

Being aggrieved the respondent challenged the aforesaid order by an application before the Central Administrative Tribunal and this was contested by the appellant on various grounds including the plea of limitation. It was also urged that the application was barred by F.R. 56 (Note 5) and the General Financial Rules, 1979 and therefore did not merit and consideration. It was submitted that the respondent knew about the entry of his date of birth as 20.5.1934 since he had signed his service book on various occasions, ever since he joined service, but his representation for correction of the date of birth was made only in September, 1991 much belatedly and even beyond the period of five years from the date of entry into Government Service as envisaged by S.O. 3997 dated 30th November, 1979.

The Tribunal did not agree with any of the aforesaid contentions of the appellant, allowed the application filed by the respondent and directed the appellant to correct the date of birth in the service record as per the date of birth recorded in the matriculation certificate.

In the appeal by the Union of India to this Court it was contented that in view of the law laid down in Amulya Chandrakalita v. Union of India & Ors., [1991] 1 SCC 181 the judgment rendered by only a single member of the Tribunal is invalid and, therefore, the order deserves to be set aside and the case remanded to the Tribunal for fresh disposal. The arguments raised before the Tribunal were also reiterated before this Court.

Allowing the appeal, this Court,
HELD : 1. A Government servant, after entry into service, acquires

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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.

[869G]

2. The date of birth entered in the service records of a civil servant is of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. [869H]

3. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. [869H-870B]

4. A Government servant who makes an application for correction of date of birth beyond the time fixed by the Government, 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.

[870C]

5. Unless altered date of birth as recorded would determine date of superannuation even if it amounts to abridging the right to continue in service on the basis of actual age. [870D]

State of Assam & Anr. v. Daksha Prasad Deka & Ors., [1971] 2 SCR 687, referred to.

6. Note (5) to Fundamental Rule 56(m) governing correction of date of birth in the service record, as amended by Government of India, with effect from 30.11.1979 limits the exercise of the right by the Government servant to seek alteration of his date of birth only within the specified period viz. five years of entry into government service.

[871A-B]

In the instant case, the CAT was of the opinion that the bar of five years could only apply to such Government servants who joined service after 1979, when the amendment came into force and that the said period of limitation would not apply to Government servants who were in service

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for more than five years prior to 1979. The approach of the Tribunal tends to create an invidious discrimination, unsustainable in law, by creating two artificial classes of government servants between those who joined service before and after 1979. It is too simplistic a way of looking at the issue ignoring the ground realities and the intention of the rule making authority to discourage stale claims and non suit such government servants who seek alteration of their recorded date of birth belatedly and mostly on the eve of their superannuation. [872C, 873E]

7. It would be appropriate and in tune with the harmonious construction of the provision if 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. [874C-D]

New India Insurance Co. Ltd. v. Smt. Shanti Misra, [1975] 2 SCC 840 and Vinod Gurudas Raikar v. National Insurance Co., [1991] 4 SCC 333, referred to.

In the instant case, the date of birth recorded at the time of entry into service as 20th May, 1934 had continued to exist, unchallenged between 1956 and September, 1991, for almost three and a half decades. The respondent had the occasion to see his service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of L.D.C. and U.D.C., which the respondent had admittedly seen. He remained silent and did not seek alteration till September, 1991 just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979 when Note 5 to FR 56 was incorporated the earlier delay would not have non suited him. 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 the

service record was not correct. The Tribunal, therefore fell in error in issuing the direction to correct his date of birth. [876C-F, 876H, 877A]
Darshan Singh v. Union of India, decided by Principal Bench of CAT on 9.8.1990, over-ruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 502 of 1993. From the Judgment and Order dated 29.5.92 of the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1252 of 1992.

V.C. Mahajan, C.V.S. Rao and V.B. Misra for the Appellant.
S.K. Mehta, Dhruv Mehta, Aman Vachhar and Arvind Verma for the Respondent.

The Judgment of the Court was delivered by
DR. ANAND, J. Aggrieved by an order passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1252/1992 on 29th of May, 1992, allowing an application filed by the respondent and directing the petitioner herein to correct the date of birth of the respondent in the service-record and not to retire him before 30th of April, 1996, the petitioner-Union of India has filed this special leave petition.
Leave granted.

The respondent joined Government service in the Ministry of Finance (Defence) in class IV post as a peon on 22nd of February, 1956. At the time of entry into the Government service, his service-book was prepared and the date of birth was recorded as 20th of May, 1934 and since he failed in the matriculation examination, against the column of educational qualification 'matric failed' was recorded. It appears that the respondent later on again appeared in the matriculation examination of the Punjab University under Roll No. 21653 and passed the said examination in May, 1956. On passing the matriculation examination, the respondent was appointed as LDC in the Ministry of Home Affairs on 9.5.1957. In the service-book of the respondent, an entry was, accordingly, made showing his educational qualification as matric (Punjab University, Roll No. 21653, year 1956). This entry was made underneath the earlier entry "matric failed" and the changed entry was signed by the SO of the Ministry of Home Affairs on 7.9.1957. Though, the date of birth of the respondent, as

recorded in the matriculation certificate is 7.4.1938 but while amending the entry about his educational qualification, the entry relating to his date of birth was not altered to correspond to the date given in the matriculation certificate and it continued to be recorded as 20th of May, 1934. In 1963, the respondent was transferred to the Ministry of Human Resources Development, Department of Education. On being notified about his date of superannuation as 31.5.1992, the respondent realised that he was being retired on the basis of his date of birth as originally recorded in the service-record as 20.5.1934, ignoring the date of birth as reflected in the matriculation certificate. He made a representation in September 1991 for the alteration of his date of birth but the same was rejected on 4.12.1991. He submitted yet another representation of 3.1.1992, wherein a request was made, to consider his case for the correction of date of birth afresh on the basis of the date of birth as recorded in the matriculation certificate. The request of the respondent

was turned down vide O.M. dated 29.1.1992. The respondent submitted yet another representation on 26.3.1992, wherein he asserted that he had submitted the matriculation certificate on 4.9.1957, when the entry about his educational qualification was altered and that thereafter since he did not hear anything to the contrary, he presumed that the appellants had also corrected his date of birth in the service book. While making that representation, the respondent had also drawn attention of the Department to an order of the Central Administrative Tribunal in the case of one Darshan Singh, wherein the Department had been directed by the Principal Bench of CAT to correct the date of birth of Darshan Singh on the basis of the date of birth given in the matriculation certificate and it was submitted that his date of birth should also be corrected on the basis of the matriculation certificate. That representation was rejected on 22.4.1992 by an order which reads thus:

Subject: Request for alteration in the Date of Birth of Sh. Harnam Singh, Asstt. in the Service Book.

With reference to his representation dated 26th March, 1992 regarding alteration in his date of birth, Sh. Harnam Singh, Asstt. is informed that his representation has been considered once again and it has not been found possible to accede to his request for changing his date of birth from 20.5.1934 to 7.4.1938. As regards his contention that he had submitted a copy of matriculation certificate

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in 1956, Sh. Harnam Singh, has already been informed vide OM dated 29.1.1992 about DOP & T's ruling that furnishing a copy of matriculation certificate does not automatically imply change in date of birth unless the Govt. servant specifically applies for it within the prescribed time limit and the appointing authority accepts his request.

2. In so far as CAT's judgment in the case of Sh. Darshan Singh, a copy of which has been enclosed by Sh. Harnam Singh with his representation, it may be stated that in the said judgment the CAT's order is based on the fact that Sh. Darshan Singh had not been shown his service book even once during his entire service. Sh. Harnam Singh had seen his service book several times latest being in 1976, and he has signed the Service Book in verification of the correctness of the entries made therein and he had never pointed out the 'incorrectness' in his date of birth. The CAT's Judgment enclosed by Sh. Harnam Singh with his representation is thus distinguishable from the case of Sh. Harnam Singh. Apart from this Sh. Harnam Singh has not furnished any new grounds for reconsideration of his case.

3. Sh. Harnam Singh is also informed that no further representation on the subject will be considered, unless he furnished any new facts/information."

The respondent challenged the above order through OA No. 1252/92 dated 29.5.1992 before the CAT. The application was contested by the appellant on various grounds including the

plea of limitation. It was urged by the appellant that the OA was barred under FR 56 (Note 5) and General Financial Rules 1979 and therefore, did not merit any consideration. The appellant had further asserted that the respondent knew about the entry of his date of birth as 20.5.1934 in his service-record since he had signed his service book on various occasions, ever since he joined the service, but his representation for correction of date of birth was made only in September 1991, much belatedly and even beyond a period of five years from the date of entry into Government service and as envisaged by SO 3997 dated 30th of November, 1979 the same could not therefore be

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entertained. The Tribunal, however, did not agree with the appellant and allowed the application filed by the respondent directing the appellant to correct his date of birth in the service record as per the date of birth recorded in the matriculation certificate.

Mr. V.C. Mahajan, the learned Senior Advocate appearing for the Union of India, has reiterated the arguments raised before the Tribunal and has further submitted that in view of the law laid down in *Amulya Chandrakalita v. Union of India & Ors.*, [1991] 1 SCC 181 the judgment in the present case rendered by only a single member of the Tribunal, is invalid and, therefore, the order deserves to be set aside and the case remanded to the Tribunal for its fresh disposal in accordance with law. Learned counsel for the respondent has, on the other hand argued for dismissal of the appeal and supported the impugned order of the Tribunal.

The fact that the date of birth was recorded on the first sheet of the service book when the respondent joined as a peon as well as in various seniority lists of UDC and LDC issued from time to time as 20.5.1934 is not in dispute. It also is not disputed that the date of birth of the respondent in the matriculation certificate issued by the Punjab University is 7.4.1938. The fact that the matriculation certificate has been produced before the department by the respondent after he had passed the matriculation examination and an alteration of his educational qualification was made in the service book is also beyond controversy. There is also no doubt that while submitting the matriculation certificate, the respondent had not requested for any alteration in the date of birth and that he had filed the representation for correction of his date of birth for the first time only in September, 1991, just a few months before his notified date of superannuation.

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 dispersed 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 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

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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 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 latches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. Indeed, as held by this Court in *State of Assam & Anr. v. Daksha Prasad Deka & Ors.*, [1971] 2 SCR 687 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. This court said:

"The date of compulsory retirement under F.R. 56(a) must in our judgment, be determined on the basis of the service record, and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistent with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record, and may apply for correction of the record. But until the record is corrected, he cannot claim that he has been deprived of the guarantee under Article 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."

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Note (5) to Fundamental Rule 56 governing correction of date of birth in the service record, substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No. 19017/79/Estt-A dated 30th November, 1979 published as SO 3997 in the Government of India Gazette dated 15th of December 1979 limits the exercise of the right by the government servant to seek alteration of his date of birth only within the specified period. The provision reads as under:

"Note 5 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 bonafide mistake has occurred; and

(c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered

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Government service."

According to the 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. The CAT in the instant case was of the opinion that the bar of five years could only apply to such Government servants who joined service after 1979, when the amendment came into force and that the said period of limitation would not apply to Government servants who were in service for more than five years prior to 1979.

The Tribunal while allowing the application filed by the respondent and directing the appellant to correct his date of birth in the service record noticed the objection raised on behalf of the appellant to the effect that the mere filing of the matriculation certificate in 1956 did not imply that the date of birth already recorded in the service record stood altered by the appellants automatically even without the concerned Government servant making a prayer in that behalf or raising the issue at the relevant time after his posting as LDC. CAT held that there was no period of limitation for the correction of date of birth and in so holding relied upon the judgment in the case of Darshan Singh v. Union of India, decided by the Principal Bench of CAT on 9.8.1990 and observed that only on the basis of coming very late for alteration of the date of birth, the State could not oust the claim of the respondent. The Tribunal observed:

"It is trite that at any time during the service, it is open to an employee to make a request for the alteration of the recorded date of birth and that if the request is supported by cogent evidence to establish that the recorded date is wrong, correction has to be made."

The Tribunal also noticed the submission of the learned counsel for the appellant to the effect that the judgment in Darshan Singh's case (supra) was not applicable because unlike in Darshan Singh's case, who had no occasion to see his service book even once during his entire service career,

the respondent herein had not only seen his service book several times but had also signed the same at various places in verification of the correctness of the entries made therein and had never objected to

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the date of birth as contained in the first page of the service book or as given in various seniority lists prepared and published from time to time till September 1991. The Tribunal disposed of the submission by observing:

"A perusal of the service record does show that the pages which the applicant has signed is not the first page where the date of birth is recorded, but subsequent pages where other service particulars like pay fixation etc. are mentioned. As regards the entry of date of birth in the seniority list, that may be within the knowledge of the applicant, but seeing to the nature of the job on which the applicant is engaged, being ministerial, it is not expected that the seniority would have mattered much as the promotion is made only on the basis of seniority-cum-fitness in due course. Moreover, there is no authenticity regarding the date of birth recorded in the seniority list and more emphasis is attached to the position of the person in the list

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vis-a-vis other similarly placed persons in the cadre."

The approach of the Tribunal does not commend to us as it tends to create an invidious discrimination, unsustainable in law, by creating two artificial classes of Government Servants between those who joined service before and after 1979. It is a too simplistic way of looking at the issue, ignoring the ground realities and the intention of the rule making authority to discourage stale claims and non-suit such government servants who seek the alteration of their recorded date of birth belatedly and mostly on the eve of their superannuation. To say that the respondent, even though he signed the service book at a number of places at different times and saw the seniority lists, may not have still come to know as to what his recorded date of birth was, is to ignore human conduct and put premium on negligence. The observations of CAT quoted above are neither logical nor sound. Of course, 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

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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. Indeed, 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.

The interpretation which we have placed on the provision with regard to the cases of those government servants who were in service prior to 1979 but had not sought the alteration in the date of birth till after the amendment in 1979 is followed by the view which this court has taken earlier. By way illustration we may refer to the case of *New India Insurance Co. Ltd. v. Smt. Shanti Misra*, [1975] 2 SCC 840 where the husband of the respondent in that case died in an accident in 1966. A period of two years was available to the respondent for instituting a suit for recovery of damages. In March, 1967 the Claims Tribunal under Section 110 of the Motor Vehicles Act, 1939 was constituted, barring the jurisdiction of the civil court and prescribed 60 days as the period of limitation. The respondent filed the application in July 1967. It was held that not having filed a suit before March, 1967 the only remedy of the respondent was by way of an application before the Tribunal. So far the period of limitation was concerned, it was observed that a new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action. In view of the change of the law it was held that the application could be filed within a reasonable time after the constitution of the Tribunal; and, that the time of about four months taken by the respondent in approaching the

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Tribunal after its constitution, could be held to be either reasonable time or the delay of about two months could be condoned under the proviso to Section 110-A(3).

Similarly in *Vinod Gurudas Raikar v. National Insurance Co.*, [1991] 4 SCC 333 the precise question which was considered by the Bench was:

"The period of limitation for filing a claim petition both under the old Act and the new Act is six months from the date of the accident. The difference in the two Acts, which is relevant in the present case, is in regard to the provisions relating to condonation of delay. In view of the proviso to sub-section (3) of Section 166 of the new Act, the maximum period of delay which can be condoned is six months, which expired on January 22, 1990. If the new Act is held to be applicable, the appellant's petition filed in March had to be dismissed. The case of the appellant is that the accident having taken place before the new Act came into force, the proceeding is governed by the old Act, where there was no such restriction as in the new

Act. The question is as to which Act is applicable; the new Act or the old."

The Bench opined:

"If in a given case the accident had taken place more than a year before the new Act coming in force and the claimant had actually filed his petition while the old Act was in force but after a period of one year, the position could be different. Having actually initiated the proceeding when the old Act covered the field a claimant could say that hi

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right which has accrued on filing of the petition could not be taken away. The present case is different. The right or privilege to claim benefit of a provision for condonation of delay can be governed only the law in force at the time of delay. Even the hope or expectation of getting the benefit of an enactment presupposes applicability of the enactment when the need arises to take its benefit. In the present case the occasion to take the benefit of the provision for condonation of delay in filing the claim arose only after repeal of the old law. Obviously the ground for condonation set

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up as 'sufficient cause' also relates to the time after the repeal. The benefit of the repealed law could not, therefore, be available simply because the cause of action for the claim arose before repeal. 'Sufficient causes a ground of condonation of delay in filing the claim is distinct from ,cause of action' for the claim itself. The question of condonation of delay must, therefore, be governed by the new law. We accordingly hold that the High Court was right in its view that the case was covered by the new Act, and delay for a longer period than six months could not be condoned."

In the instant case, the date of birth recorded at the time of entry of the respondent into service as 20th May 1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of note 5 to FR 56 in 1979 either. 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.

In the facts and circumstances of this case, we are not satisfied that the Tribunal was justified in issuing the direction in the manner in which it has been done. 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 and did not merit any consideration. As already noticed, 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. The Tribunal, therefore,

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fell in error in issuing the direction to correct his date of birth and the impugned order of the Tribunal cannot be sustained.

Ordinarily, keeping in view of judgment of this Court in Amulya Chandra Kalita's case (supra), we should have remanded the case to the Tribunal for a fresh disposal because of the fact that the order of the Tribunal was rendered by only one member or to have awaited the decision of some cases pending in this Court in which the validity of the order passed by single member of the tribunal is under consideration but since we have ourselves looked into all the facts and circumstances of the case and given an interpretation to Note 5 to FR 56 (m), we do not consider it expedient to adopt either of these course. In view of the interpretation placed by us, the appeal succeeds and is allowed. The impugned order of the Tribunal is set aside. There shall however, be no order as to costs.

N.V.K.

Appeal allowed.

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