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**(2011) 03 GAU CK 0100**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 438 of 2010**

Manik Lal Deb

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

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**Date of Decision :** 31-03-2011

**Acts Referred:**

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 16A  
Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)  
Constitution of India, 1950 — Article 14, 16, 226  
General Financial Rules, 1963 — Rule 79, 80

**Citation :** (2011) 4 GLR 79 : (2011) 4 GLT 79

**Hon'ble Judges :** U.B. Saha, J

**Bench :** Single Bench

**Advocate :** M.S. Talapatra and J. Bhusan, for the Appellant; J. Majumder, for the Respondent

**Final Decision :** Allowed

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## Judgement

U.B. Saha, J.—The Petitioner while serving as Sub-Inspector of Police in the year 2010, all on a sudden was served an order No. 4489 dated 10.9.2010, Annexure 7 to the writ petition, issued by the Superintendent of Police, West Tripura, Agartala in pursuance of the Order No. 3856-57/F.51/ DGP (RSV)/2008 dated 10.9.2010, Annexure 8 to the writ petition, issued by the Director General of Police, Tripura, Agartala informing, inter alia, that his name has been struck off from the strength of West District with effect from the afternoon of 31.5.2009. In the said order, it has also been mentioned that the difference between the salary drawn by SI (UB) Manik Lal Deb w.e.f. 1.6.2009 to 31.8.2010 shall be treated as "non due" to him and the same shall be deducted from the pension benefits of him and deposited to the Treasury under appropriate head of account. Both the orders have been impugned in the writ petition with a prayer for quashing them and to reinstate the Petitioner in service w.e.f. 1.6.2009 till his retirement on the basis of his date of birth as 1.3.1955 with all financial and other benefits.

2. Heard Mr. S. Talapatra, learned senior counsel assisted by Ms. J. Bhusan,

learned Counsel for the Petitioner as well as Mr. J. Mazumder, learned Counsel appearing for the State Respondents.

3. The pleaded case of the Petitioner is as follows:

The Petitioner has entered the service as a Constable on 13.12.1972. Thereafter, he was promoted to the post of Assistant Sub-Inspector of Police on 19.5.1980. Subsequently, on consideration of efficiency and eligibility of the Petitioner, he was further promoted to the post of Sub-Inspector of Police (unarmed Branch) on 16.11.1998. The basic information relating to the service of the Petitioner has been recorded in the provisional gradation/seniority list of the Sub-Inspector of Police (Unarmed Branch) showing seniority as on 1.1.2008 and was published on 28.3.2008 under reference No. 7407-7524/SP/RSV/WD/2008 by the Superintendent of Police, West Tripura.

4. The date of birth of the Petitioner is 1.3.1955 as per his Admit Card issued by the West Bengal Board of Secondary Education and the Citizenship Certificate issued by the District Magistrate and Collector, West Tripura on 1.11.1972, which he had submitted at the time of his entry into service as proof of his age, but while inspecting the Service Book of the Petitioner, he found that the Recording Officer recorded his date of birth as 1.3.1951 inadvertently in the Service Book instead of 1.3.1955 and to rectify the said mistake, he made prayer to the competent authority for correcting the said mistake and on the basis of his age proof document attached to the Attestation Form and as per entry in Column 7 where the exact date of birth has been provided by the Petitioner filed at the time of entry into service, the said clerical mistake relating to his date of birth was corrected as 1.3.1955 by the Superintendent of Police, his appointing authority who is the competent authority. After correction of the date of birth of the Petitioner as per records, the Petitioner was asked by the Superintendent of Police, West Tripura District, Agartala to submit an explanation as to how he entered service at the age of 17 years 9 months vide letter dated 5.3.2010 (Annexure 3 to the writ petition). The Petitioner submitted his explanation on 11.3.2010, Annexure 4 to the writ petition, stating inter alia, that he joined the service as constable in the year-1972 producing age proof certificate along with other documents as per requirement which had been accepted by the authority having done the scrutiny as per Service Rules in force. The Petitioner also learnt that the office of the Respondent No. 3 also enquired into the genuineness of his citizenship certificate dated 1.11.1972 issued from the Office of the District Magistrate and Collector, West Tripura, Agartala as proof of his nationality and by letter dated 2.1.2010, Annexure 5 to the writ petition, the Officer In-Charge, District Record Room, D.M.'s Office, West Tripura, Agartala informed the Additional Superintendent of Police (Urban), West Tripura, Agartala that the citizenship certificate of the Petitioner is genuine as per the office record and he was born on 1.3.1955. Not only that, the Respondent No. 3 has also collected a certificate from the Headmaster of the Mohanpur Class-XII School where the Petitioner was admitted in Class-VI and appeared in the School final examination

in the year 1971 wherein his date of birth has also been recorded as 1.3.1955 and on that count, the Headmaster of the aforesaid school had issued a Certificate on 24.12.2009, Annexure 6 to the writ petition. Not only that, even in the, Gradation/seniority list of Sub-Inspector of Police (Unarmed Branch) as on 1.1.2008 published by the Respondents authority, the date of birth of the Petitioner has been recorded as 1.3.1955. Therefore, when the date of birth of the Petitioner was almost in all the records is 1.3.1955, even on correction cannot be recorded otherwise, anterior or posterior to that date, and the Respondents, particularly the Respondent No. 2 and 3 are in no way authorized to change and record the date of birth of the Petitioner on any other date, other than the date recorded in his document as 1.3.1955 taking the advantage of an arithmetical mistake in the service record, which is ordinarily filled up by the official not by the Petitioner wherein the date of birth was shown as 1.3.1951. The Petitioner further contended that the Respondents without treating 1.3.1955 as the date of birth of the Petitioner revered the clerical error as appeared in the fly-leaf of the service book wherein two dates of birth appeared as 1.3.1951 and 1.3.1955 and issued the impugned orders taking note of the date 1.3.1951 as the date of birth of the Petitioner, instead of 1.3.1955, which is the actual date of birth of the Petitioner as all the relevant documents which are also available with the Respondents and recorded prior to entry into the service. Therefore, the aforesaid impugned orders are wholly unfair, unjustified, unreasonable and liable to be quashed.

5. The Petitioner also pleaded in his petition that the impugned orders dated 10.9.2010, Annexure 8 to the writ petition, was issued by the Respondent No. 2 without following the principle of natural justice and without resorting to any enquiry or opportunity provided to the Petitioner. Being the impugned orders have been passed on the basis of incomplete records, the said action of the Respondent-authority violates the provisions of articles" 14 and 16 of the Constitution. Hence, those are unsustainable under law and the Petitioner is entitled to be reinstated in service with effect from 1.6.2009 with all financial as well as other service benefits on setting aside of those orders.

6. The State Respondents to resist the contention made in the writ petition filed the counter and contended that the Petitioner is not entitled to any relief as sought for as the date of exit from the Government service is fixed at the time of entry into the service and tenure of service is also fixed on the basis of the date of birth declared by the prospective candidate for employment and in the instant case, at the time of recruitment, when the Petitioner appeared before the Recruitment Board, he declared his date of birth as 1.3.1951 at the time of his physical examination held on 1.11.1972 and taking note of declaration of the Petitioner before the Recruitment Board as correct, the Service Book of the Petitioner was open on 18.6.1973 showing his date of birth as on 1.3.1951 and the said date of birth can only be changed/alterd in accordance with procedure established by law. The Respondents also stated in their counter-affidavit that the Petitioner submitted the Attestation Form on 6.12.1972 showing his date of

birth as 1.3.1955 and he also declared that his age was 18 years as on 6.12.1972, but the Respondent-authority found the Petitioner as minor on 6.12.1972 as he completed only 17 years 9 months and 5 days on 6.12.1972 and was ineligible for service. On that count also, the declaration made by him in the Attestation Form was not considered as correct one. Further the case of the Respondents is that as per the Government policy, after recording the date of birth in the Service Book, the entry cannot be altered except a case of clerical error and no order for alteration of date of birth can be passed by any authority below the level of Secretary to the Government. In the case of non-gazetted officer, the Secretary after scrutiny of the case should obtain the orders of the Departmental Minister and in the case of non-gazetted Officer, the orders of the Chief Minister will be obtained through the Chief Secretary and the Departmental Minister as per the General Financial Rules, 1963 as adopted in the State of Tripura and instructions regarding procedure to be followed in respect of the request for alteration of date of birth as stated in the Memorandum dated 24.2.1983, Annexure R4 to the counter-affidavit.

7. It is also contended by the State Respondents in their counter-affidavit that on 10.1.1991, the then Superintendent of Police, West Tripura made a correction of date of birth in the Service Book of the Petitioner and that was done by penning on 1.3.1951 and rewriting the date of birth as 1.3.1955, though he was not authorized to make such correction of date of birth once recorded in the Service Book as per the Memorandum dated 24.2.1983.

8. While resisting the case of the Petitioner stating the aforesaid contention, the Respondents-authority have admitted that after completion of the enquiry followed by the allegation lodged by one Mati Lal Biswas, a retired Sub-Inspector of Police vide Annexure R5 to the Counter-affidavit, which was addressed to the Deputy Accountant General (A&E), for verification of service book of the Petitioner, the Superintendent of Police, West Tripura has called explanation on the Petitioner and the Petitioner replied to that stating his case reiterating the fact that his date of birth as 1.3.1955. It is also admitted by the Respondents authorities that date of birth of the Petitioner was shown in the gradation list relating to the seniority position on 23.8.2008 as 1.3.1955 and that is the outcome of the correction made by the Superintendent of Police on 10.1.1991., Not only that, in the gradation list of Sub-Inspector (UB) as on 1.1.2008 circulated vide PHQ order No. 2954-717F.13/DGP/RSV/2008 dated 13.8.2008, the date of birth of the Petitioner was shown as 1.3.1955 at Sl. No. 159 of the said list.

9. In their pleadings, the Respondents also stated that as per gradation list of ASI of Police (UB) as on 31.3.1986 and as on 1.8.1989 circulated vide No. 2416-35/F.15/GC/IGP/CON/86 dated 20.5.1986 and No. 6214-34/F.15/DGP/CON/88 dated 4.9.1989 respectively to all the officers concerned with direction to file objection, if any, within a month to the authority and the Petitioner was enlisted at Sl. Nos. 139 and 119 respectively and the date of birth of the petition

in both the gradation lists was shown as 1.3.1951, but the Petitioner did not file any objection to the authority regarding his date of birth and later the said gradation list showing the seniority and date of birth was made final.

10. Mr. Talapatra, learned senior counsel in support of contention of the writ petition would contend that the Admit Card as well as Citizenship Certificate of the Petitioner were submitted to the Respondent No. 3 at the time of entry into service and those documents were issued by the concerned authority on a pre-date to the date of appointment letter. He further contended that from the Attestation Form as annexed by the Respondents being Annexure R3 to the counter-affidavit, it would be evident that there are two dates of birth one is 1.3.1951 which has been scored out and another is 1.3.1955 and the Service Book where the irregularity regarding the date of birth was found, was opened by the employer. The document R-1 and R-2 annexed to the counter-affidavit are the documents relating to physical examination which were prepared by the expert and the employer, the Petitioner only put his signature. Therefore, for wrong in those documents, the Petitioner cannot be held liable. He further contended that Annexure R6 to the affidavit is a provisional gradation list of Assistant Sub-Inspector of Police and in Sl. -No. 139, the date of birth of the Petitioner was shown as 1.3.1951 wrongly and the said document cannot be considered as a proof of date of birth of the Petitioner.

11. Mr. Talapatra further contended that in provisional seniority list of Sub-Inspector of Police (UB) as on 1.1.2008, Annexure 1 to the writ petition, the date of birth of the Petitioner was correctly shown as 1.3.1955. Mr. Talapatra while referring to the Annexure 8 of the affidavit filed by the Respondents would contend that the Respondent No. 3 in the writ petition in his verification report specifically stated that one B.K. Nag, the Additional Superintendent of Police (Urban), West Tripura who had visited the office of the District Magistrate and verified the Citizenship Certificate of the Petitioner and on consulting the records available there found that the Citizenship Certificate issued to the Petitioner on 1.11.1972 wherein the date of birth was recorded as 1.3.1955 and as a token of the genuineness of the said Citizenship Certificate, the Officer In-Charge of the District record of DM's office had also issued a letter to the Enquiry Officer, the said Additional S.P. on 2.1.2010. Not only that, the Enquiry Officer also visited the Mohanpur H.S. School on 28.1.2010 and upon consultation of the record found that the Petitioner was admitted to that Institution on 26.3.1996 in Class-VI and appeared in school final examination in the year 1971. According to the Admission Registrar, the date of birth of the Petitioner is 1.3.1955. Therefore, the document which is annexed by the Respondents authorities, they cannot disbelieve the same for depriving the Petitioner. He further submitted that the appointing authority of the Petitioner while admitting the date of birth of the Petitioner as 1.3.1955, the other Respondents cannot downward the same mere on technical ground. He again contended that it is settled by the Apex Court that the date of birth can be altered even at a later stage by the competent authority if that authority satisfied that the bona fide clerical mistake has been committed

and it should be rectified. Even from Annexure R4 of the State Respondents, it appears that the date of birth of the Petitioner was wrongly recorded due to clerical mistake and it can be rectified and in the instant case, the authority taking the benefit of Annexure R4 referred the matter for enquiry, but upon enquiry, it was found that the Petitioner was born on 1.3.1955 and the said enquiry report is binding on the state Respondents. It is not clear why the other Respondents are not accepting such report as well as the school record, he contended. He further contended that the case of the Respondent is mainly that as per General Financial Rules (GFR), the service record cannot be corrected by the Superintendent of Police. It cannot be accepted in view of the notification available at Annexure R4 of the counter-affidavit as it succinctly provides without approval of the authorities as described therein the date of birth as recorded once may not be altered "except for clerical mistake". Even if that is accepted, then also upon verification, the Director General of Police, the Respondent No. 2 herein, could have referred the matter to the appropriate authority if felt so required for correction of date of birth of the Petitioner as occurred due to clerical error after the enquiry report submitted by the Additional S.P. (Urban), West Tripura which was communicated to him by the Respondent No. 3 vide his letter dated 1.2.2010, Annexure 8 to the writ petition. The learned senior counsel finally contended that the whole action of the Respondents are based on one allegation made by one retired S.I. Moti Lal Biswas who entered into service on the same date with the Petitioner. He also submitted that the Respondent-authorities did not properly considered the explanation of the Petitioner and the documents which were placed before them at the time of entry into the service.

12. Mr. J. Majumder, learned Counsel while refuting the contention of Mr. S. Talapatra, mainly urges that the Respondent No. 3 is not an authorized officer for correction of the date of birth of the Petitioner. While supporting the contention of the Respondents made in the counter affidavit, Mr. Majumder again urges that the date of birth once recorded in the service book cannot be altered by any authority except authorized person in view of the Memorandum dated 24.2.1983, Annexure R4 to the Counter-affidavit, issued by the Chief Secretary of the Government of Tripura. His another contention before the court is at the time of physical test of the Petitioner held on 1.11.1972, the date of birth of the Petitioner was recorded by the Recruitment Board as 1.3.1951 in the age column. Therefore, subsequent recording of date of birth of the Petitioner as 1.3.1955 by penning the existing date of birth 1.1.1951 cannot be considered as the date of birth of the Petitioner.

13. Mr. J. Majumder, while reminding this Court regarding the power insofar as judicial review in a dispute relating to the date of birth is concerned, would contend that once the date of birth has already been entered into the service book on the basis of information provided by the employee, the same cannot be corrected long after his joining except the procedure prescribed and the court should not interfere with the decision of the employer in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. He referred to a

decision of the Apex Court in *G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and Others*, particularly paragraphs 15 and 16 of the said report. He also placed reliance on a decision of this Court in *Chhabi Debbarma v. State of Tripura and Ors.* (2000) 3 GLR 321.

14. Having heard the learned Counsel of the parties and on perusal of the pleadings and supporting documents, the question arises for consideration in the case is whether the date of birth recorded in the service record maintained by the employer can be corrected subsequently on the basis of the application of the employee by the appointing authority and as to whether the authority is bound to accept the Certificates issued by the competent authority showing the date of birth and produced by the employee at the time of entry into the service which is also supported by the report of the enquiring authority on the basis of his enquiry as ordered by the employer.

15. As Mr. Majumder, learned State Counsel has placed reliance in *G.M., Bharat Coking Coal Ltd.* (supra) particularly, paragraphs 15 and 16 of the said decision, it would be proper for this Court to discuss about that decision.

16. In the aforesaid decision of *G.M., Bharat Coking Coal Ltd.* (supra), the question arose for decision was whether the High Court was right in interfering with the date of birth recorded in the service records maintained by the employer in the proceeding under Article 226 of the Constitution on the basis of the facts as pleaded by the Respondents of that case. The Respondent thereunder was an employee of a private colliery (Chirkunda Coal Company) before being absorbed in the service of the GM., Bharat Coking Coal Ltd., the Appellant therein, on nationalization of colliery under the Nationalization Act. It was specifically asserted by the Appellant that the service records received from the previous employer of the Respondent showed "1932" as the year of birth of the Respondent. The aforesaid assertion of the Appellant was denied neither by pleading nor by contemporaneous materials placed by the Respondent-employee before the Apex Court. Not only that, the Apex Court also took note of the fact that after about 20 years of service under the former employer and under the Appellant-company, the Respondent raised the claim that his date of birth was 9.2.1946 and not 1932. The Appellant, following the procedure for determination of the date of birth/age of an employee in such a case, referred the matter to the Medical Board and instructed the Respondent to appear before the Medical Board. After examination, the Medical Board determined the age of the Respondent therein as 52 years in 1988. On acceptance of the report of the Medical Board, the Appellant held the year of birth of the Respondent as 1936. Thus, the Respondent was given the benefit of superannuation in 1996 instead of 1992. Being dissatisfied with the decision of the Appellant, the Respondent carried the matter to the High Court by way of filing a writ petition. At the first instance, the High Court disposed of the case with a direction to the Appellant to consider the representation which the Respondent would make. The representation of the Respondent was considered accordingly by the authority

concerned and was rejected. Being not satisfied with the action of the employer, the Appellant, the Respondent again carried the matter before the High Court in a writ petition reiterating his claim that his year of birth is 1946 and not 1936 which was considered by the learned Single Judge of the Calcutta High Court and directed the Appellant to correct the date of birth of the Respondent as 9.2.1946 and also ordered that the Respondent was to superannuate from service in the year 2006 holding, inter alia, that the genuineness of the Certificates in which the date of birth of the Respondent was entered as 9.2.1946 could not be questioned. The Appellant company filed an appeal assailing the judgment of the learned Single Judge and the Division Bench of the Calcutta High Court modified the judgment of the Single Judge to the effect that the Respondent is to superannuate in the year 2004 instead of 2006. The reasons as stated in the judgment of the Division Bench are as follows:

It is ordered that the order made by the trial court and dated the twenty-fifth day of September, one thousand nine hundred and ninety-six be and the same is hereby modified to the extent that since the Petitioner joined in the year 1960, he was at that time only 14 (fourteen) years of age and the statutory age limit being 16 (sixteen) years and he should not be allowed to continue up to two thousand and six but he should continue up to two thousand and four and it shall be treated as if he has joined at the age of 16 (sixteen) years. And it is further ordered that in all other respects the order made by the trial court shall remain operative.

17. The said judgment of the Division Bench went to the Apex Court as carried by the Appellant where the question arises for consideration as to whether the High Court was right in interfering with the date of birth recorded as stated supra.

18. While deciding the matter, the Apex Court in para 15 of that judgment stated, inter alia, in a case where the controversy over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by following the procedure prescribed under the service rules or general instructions issued by the employer and it is not the case of the employee that there has been any arithmetical mistake or typographical error patent on the face of the record, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer.

19. In paragraph 16 their lordship after taking note of the facts of the case considered whether the two Certificates subsequently obtained by the Respondent on 9.6.1973 and on 3.11.1983 should be accepted and the date of birth entered therein should be taken as conclusive. As the said question is a matter of fact and determination of the question requires detailed enquiry and without any enquiry on the part of the authority concerned is of little avail when a dispute regarding the date of birth arises for determination. Not only that, there is no material on record before the court to show that when the document relating to the date of birth was issued to the Respondent; though he had

produced a copy of the same when he entered service in the private colliery in support of his age and if so why was the document not sent with the service records when the service of the Respondent was taken over by the Appellant. This question obviously would depend on the evidence either oral or documentary which is to be placed by the parties and the Apex Court very rightly decided that the High Court in writ jurisdiction is not appropriate forum for undertaking such an enquiry into a disputed question of fact. In that case, the Apex Court nowhere stated that a genuine claim of an employee for correction of arithmetical mistake or typographical error if committed by employer cannot be corrected and if such prayer for correction is rejected, the writ court cannot exercise of its power under Article 226 of the Constitution to interfere with such a decision of rejection of the prayer of the employee concerned. More so, in that case, the employee concerned, the Respondent, asked for alteration and/or correction of his date of birth on the basis of certificate which were issued subsequent to his entry into the service, but in the case in hand, the Petitioner's claim is mainly on the basis of his date of birth recorded in his admit card which was issued by the West Bengal Board of Secondary Education prior to his entry into service. Therefore, the facts of both the cases are totally different.

20. There is no dispute that if the prayer for correction of date of birth is not genuine one and the same is allowed by the court merely on the basis of the prayer of the employee concerned without scrutinizing of the fact, then such approach of the court for correction of the date of birth of an employee concerned would create a chain of trouble and in such case, the right of those persons who are waiting for years after years to get promotion to the higher post, would be affected as a result of such unwarranted approach of the court for correction of date of birth. It would be evident from paragraphs 21 and 23 of the aforesaid decision in *G.M., Bharat Coking Coal Ltd. (supra)* the Apex Court has taken note of *Union of India Vs. C. Rama Swamy and others*, wherein interpreting Rule 16A of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, it was held that the date of birth as recorded in the service book and the date as declared by an officer in the application for recruitment has to be accepted as correct by the Central Government and this can be altered only if under Sub-rule (4) it is established that a bona fide clerical mistake had been committed in accepting the date of birth. In view of the above, the case of *G.M., Bharat Coking Coal Ltd. (supra)* is in no way support the case of the Respondent.

21. Therefore, it can be easily held that if the employee can establish while claiming for correction of date of birth that due to bona fide clerical mistake, the date of birth was recorded by the recording officer in the service book contrary to the record produced by him and the correction of date of birth cannot be permitted just immediate before the date of superannuation unless an employee establishes his stand by producing acceptable evidence of clinching nature. In the instant case, the Respondents in their counter-affidavit specifically stated that the Petitioner while submitting the Attestation Form on 6.12.1972 declared his date of birth as 1.3.1955, also mentioned his age as 18 years as on

6.12.1972 on which date the Petitioner was admittedly a minor and he completed only 17 years 9 months and 5 days, not even completed 18 years. In their counter, the Respondents also took a plea that after recording the date of birth of the Petitioner in the service book, the entry cannot be altered except a case of clerical error and no order for alteration of date of birth can be passed by any authority below the level of Secretary to the Government. In the instant case, the Superintendent of Police corrected the date of birth of the Petitioner recorded in the fly leaf of the service book without any authority, as contended by the Respondent.

22. This Court has perused the service book of the Petitioner as placed before it and it appears from the service book that the age of the Petitioner though initially recorded as 1.3.1951, but the same was corrected on 10.1.1991 by the Superintendent of Police while the age of the Petitioner was verified as per the Admit Card of the Petitioner. On perusal, it appears from the Admit Card as available in the Service Book of the Petitioner that such Admit Card was issued on 30.12.1968 wherein the date of birth of the Petitioner was recorded as 1.3.1955. Not only that, in the Citizenship Certificate issued on 1.11.1972 by the District Magistrate and Collector, West Tripura also, the date of birth of the Petitioner was recorded as 1.3.1955.

23. It also appears from the counter-affidavit of the Respondent that an enquiry was done by the State Respondents regarding the date of birth of the Petitioner upon receipt a complaint from one Motilal Biswas and on completion of the enquiry, it was found that the Petitioner was born on 1.3.1955. Therefore, according to this Court, the said enquiry report is also binding on the State Respondents as that was done at the initiation of the State Respondents. It also appears from the record, particularly, the service book that in the Attestation Form filled up by the Petitioner, the employee, he specifically stated that his date of birth is 1.3.1955. Therefore, it is not a case of correction of date of birth, rather the correction of clerical error of recording date of birth which is permissible even under the provisions of Rule 79 General Financial Rules, which has been referred in Memorandum dated 24.2.1983, Annexure R4 to the counter affidavit and stated, inter alia, that the date of birth, may, however, be altered at a later stage by a competent authority if that authority is satisfied that the bona fide clerical mistake has been committed and it should be rectified. The intention behind the rule is that the date of birth once recorded may not be altered except for clerical mistake and normally, even this should be done within the probation period. The Annexure R4, the Memorandum dated 24.2.1983, on which the Respondents placed reliance is reproduced hereunder as one of the contention of the Respondents that as per General Financial Rules, the service records cannot be corrected by the appointing authority:

No. F.5(8)-ARD/81 Government of Tripura Administrative Reforms Department  
Dated Agartala 24th February, 1983

Subject: Instructions regarding procedure to be followed in respect of request for

alteration of date of birth of Government employees.

It has been observed from time-to-time that the date of birth of Government employees which has been entered in the Service records are sought to be altered subsequently on various grounds and proper procedure is not being followed in this matter by the different departments of Government.

2. Under General Financial Rules 79, every person newly appointed to the service or a post under the Government shall do the date of birth at the time of appointment with, as far as possible, confirmatory documentary evidence, such as Matriculation Certificate, Municipal Birth Certificate and so on. This must be entered in the history of service, service book and or any other record and once recorded, it cannot be altered except in the case clerical error and with the previous orders of the Department or an Administrator.

3. The decision of the Government of India under the mentioned Rule 79 lays down that request for alteration of date of birth should not be entertained after the preparation of service books of the Government servants concerned and in any event not later than the completion of the probation period or declaration quasi-permanent whichever is earlier. The date of birth may, however, be altered at a later stage by a competent authority if that authority is satisfied that the bona fide clerical mistake has been committed and it should be rectified. The intention behind the rule is that the date of birth once recorded may not be altered except for clerical mistake and normally, even this should be done within the probation period.

4. In order to ensure that a proper policy is followed in this regard, it is hereby directed that the following procedure should be adhered to in regard to request for alteration of date of birth by all Departments:

(i) The instructions in the General Financial Rules referred to in paragraphs 2 and 3 above should be properly followed in all cases.

(ii) Any person claiming any alteration in the date of birth, should be required to furnish full reasons and adequate justification for the alteration supported by original documents that he seeks to reply upon. The dates of birth of different members of the family should also be furnished by him with supporting date so as to judge the consistency of the claim.

(iii) Any such request for alteration of date of birth should be referred for enquiry to all concerned authority including District Magistrate of the district in which he was born; School/College/University; and any other agency related to the matter.

(iv) An enquiry should specifically be done in place to which the employee belongs in order to verify the facts. This should be done by a Gazetted Officer of the Government.

(v) After detailed enquires are completed and reports received, the Head of the Office or Head of the Department should analyse the matter in detail and papers

should be submitted to the Secretary of the Department concerned.

(vi) No order for alteration of date of birth can be passed by any authority below the level of Secretary to Government. In the case of non-gazetted Officer, the Secretary after scrutiny of the case should obtain the orders of the Departmental Minister. In the case of Gazetted Officer the orders of Chief Minister will be obtained through Chief Secretary and departmental Minister.

(vii) In case of complicated nature or where there are doubts on the veracity of the claim will be referred to Vigilance Organisation for an investigation.

(viii) Where any person is found guilty of trying mislead or produces false documents, such adverse conduct will be taken note of with suitable entries in Annual Confidential Reports and for departmental proceedings.

5. These instructions should be strictly adhered to by all the Departments.

24. Upon going through the contention made in Annexure R4 of the counter-affidavit, this Court is of opinion that even the said Memorandum also permitted the correction of date of birth, if at the time of recording the date of birth in the service book, there was a clerical/arithmetical error committed.

25. In Chabi Debbarma (supra), the aforesaid Memorandum dated 24.2.1983 was considered and held that the correction of date of birth recorded in the service book has to be done in accordance with the provisions of relevant Service Rules and instructions. But in the same decision, this Court also stated that the correction of bona fide clerical errors may be made generally but the process for correction has to be initiated and correction if necessary has to be made at the earliest.

26. In the instant case, it further appears that the Petitioner while inspected his service book, it came to his notice that his date of birth was recorded contrary to the date of birth declared by him in the Attestation Form at the time of entry into the service whereupon he made a representation and the Superintendent of Police, the appointing authority on verification of his Admit Card issued by the West Bengal Secondary Board of Secondary Education prior to entry into the service corrected the arithmetical clerical error, committed while recording the date of birth of the Petitioner in the service book.

27. In Chabi Debbarma (supra), the Petitioner therein, who was a skilled tailor in the Department of Industries joined service in the year 1963 and was subsequently promoted to the post of Instructor and at the time of her entry into the service, her date of birth was recorded as 17.4.1940 and as such at the time of publication of seniority list her date of birth was shown as 17.6.1940. The Petitioner Chabi Debbarma made a representation for correction of her date of birth as 14.6.1942 A.D. and in this regard there were some correspondences between the Petitioner and the authority concerned. According to the Petitioner, she submitted a copy of her School Certificate on 26.8.1993 and in the aforesaid copy of the School Certificate, her date of birth was 14.6.1942. As the facts in

the case of Chabi Debbarma (supra) is different than the case in hand, thus, the decision in Chabi Debbarma (supra) is also in no way help the Respondent.

28. In Union of India Vs. C. Rama Swamy and others, while the Apex Court deciding a question which arose for consideration before it, inter alia, is whether the Respondent was entitled to ask for an alteration of his date of birth as entered in his service record, which entry had been made at the time when he had joined the service. The Apex Court also discussed about what is bona fide clerical error and interpreted the error made by mistake or oversight in making entry in the official record. While discussing the words "bona fide clerical error", the Apex Court stated, inter alia, that "bona fide clerical error" would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded.

29. In the instant case, it appears from the record that the present Petitioner while entering into service, he mentioned his date of birth in the Attestation Form as 1.3.1955. Not only that, in support of that, he also submitted the records relating to his date of birth by way of furnishing relevant documents like the Admit Card issued by the West Bengal Board of Secondary Education and Citizenship Certificate issued by the District Magistrate & Collector but the recording officer wrongly recorded his date of birth in the fly leaf of the service book as 1.3.1951 instead of 1.3.1955. Therefore, it can be held that such recording of date of birth as 1.3.1951 is nothing but bona fide clerical error. According to this Court, a clerical mistake can be corrected even in belated stage, if such date of birth of an employee is a genuine one. What is to be seen by the employer authority while correcting or altering the date of birth is that an employee should not get an undue benefit on the basis of a Certificate which is subsequently obtained from an authority and produced before the employer to get the benefit which he is not entitled to in normal way. There is no doubt that the date of birth of an employee is not only important to the employee concerned, but also to the employer as on the basis of the date of birth, the employer is to finalize the quantum of retrial benefit of the employee.

30. In Sub-rule (1) of Rule 79 of General Financial Rules, it is stated that every person newly appointed to a service or a post under Government shall at the time of the appointment declare the date of birth by the Christian era with as far as possible confirmatory documentary evidence such as a Matriculation Certificate, Municipal Birth Certificate and so on. If the exact date is not known an approximate date shall be given. In Sub-rule (2) of Rule 79, it is also stated that the actual date or the assumed date determined under Rule 80 shall be recorded in the History of Service, Service Book, or any other record that may be kept in respect of the Government servant's service under Government and, once recorded, it cannot be altered, except in the case of a clerical error, without the previous orders of a Department of the Central Government or an Administrator.

31. In Sub-rule (1) of Rule 80 of General Financial Rules (GFR), it is stated that if a Government servant is unable to state his exact date of birth but can state the year or year and month or birth, the 1st July or the 16th of the month, respectively, shall be treated as the date of his birth.

32. In Sub-rule (2) of Rule 80 of GFR, it is stated that if he is only able to state his approximate age, his date of birth shall be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment.

33. A conjoint reading of the aforesaid provisions of GFR, this Court is of further opinion that the date of birth once recorded in the service book can be altered as and when it appears to the authority concerned that there are some clerical error with the previous orders of the departmental head. In the instant case, though the Petitioner-employee declared his date of birth correctly, but the recording officer, appointing authority, the Superintendent of Police, wrongly recorded the same due to oversight/clerical error. This Court is of the opinion that it would not be proper on the part of the Respondent-employer to deprive the Petitioner from serving his employer for the period he is entitled to as per relevant Rules by which the age of superannuation of the employee is determined.

34. The Respondent-authority while issuing the impugned orders did not consider the facts that the Petitioner at no time had suppressed his date of birth or furnished a date of birth which is contrary to the record and even it is not a case that the Petitioner is asking for altering/ correcting the date of birth on the basis of a Certificate issued subsequent to his entry into the service. Therefore, the action of the Respondent-authority is totally unreasonable, unfair and arbitrary and as such violative of articles 14 and 16 of the Constitution. This Court is of further opinion that as in the instant case, there was clerical error committed by the recording officer, the said recording officer, Superintendent of Police, who is also the appointing authority, has a power to correct the bona fide clerical error committed by him, even in Memorandum dated 24.2.1983, Annexure R4 to the counter-affidavit, issued regarding alteration of the date of birth of the Government employee, the authority concerned also referred to Rule 79 of the GFR which has already been discussed by this Court earlier.

35. In *Manoj Kumar Vs. Govt. of NCT of Delhi and Others*, while the Apex Court deciding the claims of the Appellant-Monoj, inter alia, that his date of birth is 8.9.1988 and he passed the matriculation examination in the year 2004 and the Certificate of matriculation was issued on 12.5.2005 by the Haryana Board of School Education wherein his date of birth was shown as 8.11.1989 thereby making him one year and two months younger and as that was not the correct date of birth, he approached the school authorities for correction of his date of birth and when such request was pending, vacancies in respect of the post of Constables (Executive) in Delhi Police were advertised in May 2007 and the Appellant applied for the said post mentioning the correct date of birth, that is 8.9.1988 in the application hoping that by the time he would be appointed, the

date of birth in the matriculation Certificate could be got amended. Consequent to his application, he was selected and appointed on 21.5.2008 and sent for training. Before his training, on 17.12.2007, the Appellant therein also made an application to the Haryana Board of School Education for correction of his date of birth and in the said application, he gave the particulars of the schools where he studied and the date of birth entered in the school records. More so, he also stated in his application that when he was admitted to MAGSS School in 1999 for 6th standard, his date of birth was rightly shown as 8.9.1988, but when he was shifted to another school, the date of birth was wrongly entered as 8.11.1989 which was reflected in the matriculation Certificate. As there was no response from the Board on his representation, he filed a suit on 26.5.2008 for correcting his date of birth. While the suit was pending, the Respondent employer issued a notice to the Appellant dated 20.8.2008 calling upon him to show cause why his services should not be terminated under Rule 5(1) of the CCS (Temporary Service) Rules, 1965 for showing his date of birth wrongly as 8.9.1988 instead of 8.11.1989 in his application for employment. The Appellant submitted his reply stating his correct date of birth and the matriculation certificate contained a wrong date; and that he had already approached the authorities for correction and that he had also filed a suit in that behalf. However, the third Respondent did not accept the explanation and terminated the Appellant's service by order dated 5.12.2008.

36. Against the said termination order, the Appellant also made representations which were rejected by the 4th Respondent therein. Being aggrieved by the said order of rejection, the Appellant approached Central Administrative Tribunal challenging the termination and the tribunal dismissed his application against which he filed a review application which was also dismissed. The Appellant thereafter filed a writ petition challenging the order of the tribunal and the High Court dismissed the writ petition by order dated 20.10.2009 and the said order was carried to the Apex Court in an appeal by special leave, wherein the Apex Court taking note of the entire facts held that if all the facts and circumstances are taken note of, it is evident that the Appellant's date of birth was 8.9.1988 and not 8.11.1989, the Appellant was all along making efforts to get the date of birth corrected and in fact, got it corrected. This is not a case where a wrong date was given to have a longer period of service and thereafter an attempt to justify it. There was obviously a mistake in the date of birth and the Haryana School Education Board corrected it.

37. With the aforesaid observations, the Apex Court ultimately allowed the appeal setting aside the order of the High Court as well as Central Administrative Tribunal and the order of termination of the Appellant though did not allow the Appellant any back wages.

38. According to this Court, in the instant case also, the Petitioner did not furnish any wrong date before the employer authority at the time of his entry into the service to get a longer period of service and justified his claim on a wrong date,

rather his entire grievance was that his date of birth was wrongly recorded and it was ultimately corrected and such wrong recording was due to clerical error by his appointing authority. Therefore, the impugned order dated 10.9.2010, Annexure 7 to the writ petition, issued by the Superintendent of Police, West Tripura, Respondent No. 3 herein in pursuance of the order dated 10.9.2010, Annexure 8 to the writ petition, issued by the Director General of Police, Tripura, the Respondent No. 2 herein, striking off the name of the Petitioner from the strength of West Tripura District with effect from the afternoon of 31.5.2009 should not be sustained as that would not only deprive the Petitioner from serving the Respondent employer after a particular date which he is entitled to in law, but also deprived him from his pension and pensionary benefits.

39. In view of the above, the impugned orders dated 10.9.2010 are hereby set aside. As a consequence, the Petitioner shall be taken back into service within two months with continuity of service and he shall be provided all the benefits for the period he could not work due to wrong recording of his date of birth by the authority concerned.

In the result, the writ petition is allowed. No order as to costs.