

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**MISCELLANEOUS APPLICATION NO.126 OF 2020
IN
ORIGINAL APPLICATION ST. NO.381 OF 2020**

DISTRICT : BEED

Vishwambar S/o. Vithalrao Tidke,
Age : 56 years, Occu. : Service,
R/o. Bhagyanagar, House No.1-3-963,
Near Ganpati Mandir Tq. & Dist. Beed.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
- 2) The Director of Town Planning,
Ground Floor, Administrative Building,
Agarkar Nagar, Pune 411001.
- 3) The Deputy Director of Town Planning,
Aurangabad Division, Aurangabad.
4. The Town Planning Department,
Basher Ganj, Beed,
Tq. & Dist. Beed.

...RESPONDENTS

APPEARANCE : Shri S.R.Sapkal, Advocate for the
Applicant.

: Smt. M.S.Patni, Presenting Officer for
the Respondents.

CORAM : **SHRI V.D.DONGRE, MEMBER (J)**

DECIDED ON : 28.06.2021.

ORDER

1. This application is made seeking condonation of delay for filing the O.A. for the relief of correction in date of birth of the applicant.

2. The applicant was initially appointed as Assistant Town Planner on 06-06-2000. When he entered into service, his date of birth was recorded as 17-07-1962. In fact the correct date of birth of the applicant is 02-04-1963. The applicant had made an application on 04-06-2005 to the respondent no.2 for making correction in date of birth accordingly. However, respondent did not decide the said application. Hence the applicant made another application dated 17-11-2015 to the respondent no.2 for correction of date of birth. The respondent authority decided the said application on 06-09-2016 thereby the applicant's application dated 17-11-2015 was rejected. The applicant seeks to challenge the said order.

3. It is the contention of the applicant that initially in school record his date of birth was wrongly mentioned as 17-07-1962. Upon noticing this, the applicant made application for correction in his date of birth. The applicant is having the

school record showing his correct date of birth as 02-04-1963. The applicant was required to make second application on 17-11-2015 as the respondents had failed to decide his earlier application dated 04-06-2005.

4. It is further contended that the delay caused in filing the present O.A. is not deliberate or intentional. Earlier, the applicant had approached this tribunal by filing M.A.No.501/2019 in O.A.St.No.2020/2019. In the said application order dated 16-09-2016 was not challenged. Hence, the applicant withdrew the earlier proceedings with permission to file fresh O.A. The delay is caused as respondents failed to decide his earlier application dated 04-06-2005. Hence, this application.

5. The affidavit in reply is filed on behalf of respondent nos.1 to 4. It is denied that earlier application dated 04-06-2005 was not attended by the respondents. In fact, after receipt of the said application, the respondents wrote a letter dated 09-08-2005 and asked the applicant to produce the proof of correct date of birth as there is discrepancy in his date of birth in school records. Moreover, the applicant had also not produced the first page copy of the service book. The applicant was directed to produce the requisite documents. The applicant,

however, did not respond to it and thereafter made an application only on 17-11-2015 i.e. after lapse of so many years for correction of date of birth. Said application is not within the prescribed period of limitation as contemplated in service rules. Therefore, the said application was rightly rejected by the respondents. There is delay of about 13 years and it is not at all properly explained. The applicant has slept over his rights for considerable period. Therefore, the respondents have submitted that the application is liable to be rejected.

6. Heard Shri S.R.Sapkal learned Advocate for the applicant and Smt. M.S.Patni learned Presenting Officer for the respondents.

7. Shri S.R.Sapkal learned Advocate for the applicant submitted that there would be delay of 13 years if the date of his first application dated 04-06-2005 is taken into consideration. However, in the present proceedings, the applicant is also challenging the order dated 06-09-2016 passed on his subsequent application dated 17-11-2015. If the said date is taken into consideration, there is delay of about 3 and $\frac{1}{2}$ years.

8. Perusal of accompanied O.A.St.No.381/2020 would show that the applicant is challenging the order dated 06-09-2016,

moreover, in the body of application he has pleaded about his earlier application dated 04-06-2005. Even from the reply and documents produced by the respondents it can be seen that the applicant was directed to comply with certain requirements producing some documents. However, thereafter what happened to the said application of the applicant dated 04-06-2005 is not revealed. In view of the same, no doubt, some negligence can be attributed to the applicant in not approaching the Tribunal in time. However, the said negligence cannot be said to be gross and deliberate as thereby the applicant is nothing to gain.

9. In the facts and circumstances of the case in my opinion, the applicant should be granted an opportunity to agitate his claim as regards the date of birth which will have consequence of extension of service benefits if considered. By condoning the delay what highest can happen is that the matter will be decided on merit and thereby no irretrievable prejudice would be caused to the respondents. Refusing to condone delay is likely to result into defeating cause of justice at the threshold.

10. In view of the same, in my opinion, this is a fit case to condone the delay by imposing costs of Rs.2000/- on the applicant to be deposited by the applicant with Registry of the

Tribunal within a month from the date of this order. After depositing the amount of costs as above by the applicant, the office to register the O.A. in accordance with rules and procedure, after removal of office objections, if any. M.A. stands disposed of accordingly with no order as to costs.

(V.D.DONGRE)
MEMBER (J)

Place : Aurangabad
Date : 28.06.2021.

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