

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI, BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 284 OF 2013**

**DISTRICT : NANDED**

Shri Anusayabai w/o Poshatti Narod )  
Occ : Nil, R/o: Biloli, Tal-Biloli, )  
Dist-Nanded. ) **APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
(Copy to be served on C.P.O. )  
Maharashtra Administrative Tribunal, )  
Bench at Aurangabad. )  
2. The Deputy Conservator of Forest, )  
Forest Division, Nanded. )  
3. The Range Forest Officer, )  
Degloor, Tal-Degloor, )  
Dist-Nanded. ) **Respondents**

Shri A.S Shelke, learned Advocate for the Applicant.

Shri M.P Gude, learned Presenting Officer for the Respondent

**CORAM : Shri Rajiv Agarwal, (Vice-Chairman)  
Shri B.P Patil (Member) (J)**

**DATE : 08.03. 2017**

**PER : Shri Rajiv Agarwal, (Vice-Chairman)**

**ORDER**

1. Heard Shri A.S Shelke, learned Advocate for the Applicant and Shri M.P. Gude, learned Presenting Officer (P.O) for the Respondents.

2. This Original Application has been filed by the Applicant who was working on daily wages as Forest Labourer and whose services were regularized in terms of G.R dated 16.10.2012 (Exhibit 'E'). She has challenged the date of birth fixed by the Respondents when she was regularized.

3. Learned Counsel for the Applicant argued that the date of birth of the Applicant is 18.5.1954. She is not literate. She was born in Biloli, District-Nanded and in the Municipal records; her date of birth is recorded as 18.5.1954. The Applicant has been working on daily wages since 1987. She had submitted the age proof to the Respondent no. 3 at that time. Accordingly, in the seniority lists of Forest Labourers published on 31.1.1997, her date of birth is recorded as 18.5.1954. Again in the seniority lists published on 31.3.2001 her date of birth is recorded as 18.5.1954. In the seniority list published on 23.7.2004, her date of birth is shown as 5.8.1959. Again in the provisional seniority list as

on 31.3.2007, her date of birth is shown as 18.5.1954. Learned Counsel for the Applicant contended that the Respondents were obliged to treat the date of birth of the Applicant as 18.5.1954, while regularizing her services in terms of G.R dated 16.10.2012. The services of the Applicant were regularized by order dated 31.10.2012 w.e.f 1.6.2012 (Exhibit 'G') and she was retired on 31.8.2012 treating her date of birth as 1.9.1952. Learned Counsel for the Applicant stated that the Applicant had protested on 11.12.2012 against her premature retirement by order dated 19.11.2012 w.e.f 31.8.2012 (Exhibit 'H'). This in fact, amounts to order of compulsory retirement, which has been issued in violation of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, without holding any enquiry. Learned Counsel for the Applicant contended that the Applicant had procured a birth certificate from Biloli Municipal Council, which clearly shows that her date of birth is 18.5.1954. He also cited Rule 38 of the Maharashtra Civil Services (General Condition of Services) Rules, 1981.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant claims that she had submitted age of proof when she was first employed on daily wages in 1987 by the Respondent no. 3. However, the nature of the proof is nowhere mentioned. In fact, the daily wage workers are not required to furnish any proof of age. Learned Presenting Officer stated that various seniority lists show different dates of birth. The Applicant claims that she

has procured a birth certificate from Municipal Council, Biloli showing her date of birth as 18.5.1954. However, that certificate is dated 4.2.2013. The Applicant was sent to Medical Board by the Respondent no. 2 on 13.2.2007. By certificate dated 1.9.2007, the Applicant was held to be 55 years old in the year 2007. Her age was fixed as per Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 as 1.9.1952. Learned Presenting Officer argued that date of birth of the Applicant was correctly fixed as per relevant rules. The Applicant reached age of superannuation even on the basis of her claimed date of birth as 18.5.1954 on 31.5.2014. This Original Application has therefore, become infructuous.

5. We find that the Applicant in para 6.2 of the Original Application has claimed that:

“After the appointment of the applicant on daily wages in the year 1987, the applicant submitted the age proof to the Respondent no. 3. As per the Certificate, the date of birth of the applicant is recorded as 18.5.1954 in the record of the Respondent no. 3.”

It is seen that the Applicant has not mentioned the nature of proof she had submitted to the Respondent no. 3 in 1987, as claimed by her. She has not explained as to why she did not append a copy of that certificate with this Original Application in support of her claim in para 6.2. The

Applicant has placed various seniority lists prepared by the Respondent no. 2. In these lists, her date of birth is shown variously as 18.5.1954 and 5.8.1959. The Respondents in their affidavit in reply dated 15.7.2013 have stated in para 4 that the Applicant and other persons were referred to the Medical Board in Government Medical College and Hospital, Nanded in the year 2007 for determination of age. This was evidently done, as there was no definite proof about their age on record. The Medical Board issued a Certificate on 1.9.2007 stating that after X-ray, examination, the age of the Applicant was found approximately 55 years. If the entry of the birth of the Applicant was registered by Municipal Council, Biloli, as 18.5.1954, the Applicant should have explained the reasons for not producing the birth certificate earlier in 1987, when she was first appointed as daily wages or 2007 when she was sent to the Medical Board or in 2012, when her services were regularized. Her claim lacks credibility.

6. Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 has the following provisions, which is relevant in the present case:-

“38. Procedure for writing the events and recording the date of birth in the Service Book.

(2) while recording the date of birth, the following procedure should be followed:-

(e) when the date, month and year of birth of a Government servant are not known, and he is unable to state his approximate age, the age by appearance as stated in the medical certificate of fitness, in the form prescribed in rule 12 should be taken as correct, he being assumed to have completed the age on the date the certificate is given, and his date of birth deduced accordingly.”

In the present case, the Medical Board has estimated the Applicant's age on 1.9.2007 as 55 years. As per Rule 38(2)(e) *ibid*, her date of birth was taken as 1.9.1952. The action of the Respondent no. 2 is strictly in accordance with the rules. The Date of Birth Certificate dated 4.2.2013 issued by Biloli Municipal Council, is not admissible, as the date of birth, once recorded, can be changed only in accordance with an attested copy of the concerned page of the original birth register, where his name and date of birth has been entered as per the rules for the time being in force regarding the registration of birth. Such proof is considered as unquestionable proof for change of date of birth as per instructions no. (1) below Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. The Applicant has not placed the copy of the concerned page of birth register as mentioned above.

7. We find that the Applicant had failed to place any material on record to show that she had submitted any proof

of age to the Respondent till her retirement on 31.8.2012. She was produced before Medical Board along with other persons, in the year 2007. That time also, she did not submit any proof of age, otherwise there was no need for the Respondents to refer her to the Medical Board. Her services were regularized in 2012 and her date of birth was entered into records as 1.9.1952 as per Medical Board's Certificate dated 1.9.2007. This procedure is strictly in accordance with Rule 38(2)(e) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. This date of birth has become final, unless the Applicant was able to produce certified copy of the page of birth register, which she failed to do. We do not find any reason to interfere in this case.

8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

**B.P. PATIL  
(MEMBER. J)**

**RAJIV AGARWAL  
(VICE-CHAIRMAN)**

**Date : 08.03.2017  
Place : Aurangabad  
Dictation taken by : A.K Nair**