

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.264/2017.

Ashok Onkar Palatkar,
Aged about 56 yrs.,
Occ-Service,
R/o Jagat Mandir Road, Umarsarai,
Yavatmal.

Applicant

-Versus-

- 1) The Secretary,
Department of School Education & Sports,
Mantralaya Extension Building, Mumbai-440 032.
- 2) The Dy. Director of Education,
(Secondary and Higher Secondary),
Amravati Division, Amravati.
- 3) The Principal,
District Education and Training Institute,
Yavatmal.
- 4) The State of Maharashtra,
Through its Secretary,
Department of School Education & Sports,
Mantralaya Extension Building, Mumbai-440 032.

Respondents

Shri S.O. Ahmed, Ld. Counsel for the applicant.
Shri M.I. Khan, learned P.O. for the respondents.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 14th day of July 2017.)

Heard Shri S.O. Ahmed, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

2. In this O.A., the applicant Ashok Onkar Palatkar has claimed that the impugned communication dated 17.4.2017 issued by respondent No.1 (Annexure A-20) be quashed and set aside and the respondents be directed to record his correct date of birth in his service book as 20.5.1961 instead of 1.7.1959 and to give all consequential benefits accordingly.

3. From the record, it seems that the applicant was appointed on the post of Stenographer in the Department of Education in District Education and Training Institute under the office of District Education and Training Institute, Parbhani in the year 1996. He joined the service on 9.10.1996. The date of birth of the applicant is 20.5.1961. But the same was wrongly recorded as 1.7.1959. The applicant immediately filed an application for correction of his date of birth. But no cognizance was taken on his application and, therefore, he was constrained to file O.A. No.251/2011 for correction of his date of birth.

4. This Tribunal in O.A. No.251/2011 was pleased to pass an order on 23.1.2015. This Tribunal observed in para Nos. 6,7,8 & 9 as under:-

6. It is the usual practice that the child is named after certain period observing the naming ceremony. In effect if the entry of the birth is taken in the register before the naming ceremony, the column of the name remains blank, i.e., reason that in the extract (P.14) there are seven entries of the birth but no first name or name of the child is written in any entry. Therefore, this provision that name of the child if finds place in the register then only the birth date can be authentic, is not proper and correct. To reject the case on such a sole ground is not proper.

7. Second ground is that entry is taken late i.e. in 1996. Earlier the applicant may not have any occasion for getting the entry corrected. While joining the service, it transpired that his date of birth is wrong. Therefore, it was most natural for him to get the things corrected step by step. Therefore, only because he took the steps late cannot be a ground much less satisfactory ground to throw away his case.

8. It is to be seen whether the applicant has filed the application within time limit, whether the applicant's case fulfils the legal requirement laid down by law or by the orders or by G.R. issued from time to time. The case is not considered from this perspective or angle. Therefore, the rejection of the applicant's case cannot be legal and valid. The matter needs to be considered afresh in the light of the legal provisions. The applicant be given opportunity to produce the material if any and such matter is to be considered from all angles and the reasoned order is necessary.

9. Consequently, the O.A. is allowed. The impugned communications dated 7.1.2011 and 14.3.2013 are quashed. The applicant's case of correction of date of birth be considered afresh in the light of legal provisions and be decided by passing reasoned order, within six months.+

5. In view of the discussion as referred above in para 9, matter was remanded back to the competent authority and the competent authority was to consider the matter afresh in the light of the legal provisions and material, if any, produced by the applicant.

6. According to the applicant, the respondent authorities did not consider the material properly, so also directions given by the Competent Tribunal. In fact, his case was not considered immediately as directed and, therefore, the applicant was required to file contempt proceedings. Thereafter vide impugned communication dated 17.4.2017, applicant's name for correction of date of birth was rejected and, therefore, this O.A.

7. Respondent Nos. 1, 2 and 4 filed their affidavits in reply and admitted almost all the facts and also relevant directions issued by this Tribunal in O.A. No.251/2011. It seems that it is the case of the applicant that his parents were illiterate and, therefore, his date of birth has been wrongly recorded in the school record. The respondents denied this fact for want of knowledge. According to the respondents, the applicant slept over his rights for an unusual period and has filed an application before this Tribunal at the fag end of his service. It is stated that the so-called birth certificate filed by the applicant on record is doubtful. His surname in the certificate has also

been doubtful. His surname is shown as %Rayatkar+ and putting the circle over it, it has been made as %Balatkar+. There is a difference in the handwriting. There is an overwriting and no initials have been made on the changed entries. The copy is not authenticated and, therefore, the validity, legality and genuineness of the document is disputed. The applicant did not produce any evidence except his own affidavit, though liberty was given to him. It is stated that, the documents produced by the applicant are not conclusive and unimpeachable. No additional evidence is produced by the applicant after remand. The respondents also submitted that they have properly applied rules of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (in short %General Conditions of Service Rules+). It is stated that the birth certificate produced by the applicant is manipulated or forged.

8. The learned P.O. has placed on record the note regarding rejection of applicant's claim and minutes as regards decision taken in this regard alongwith a letter dated 23.6.2017 which are marked %X+for identification.

9. Perusal of the directions given by this Tribunal in O.A. No. 251/2011 dated 23.11.2015 clearly shows that the applicant was given an opportunity to produce additional evidence, if any, before the

competent authority so as to prove his correct date of birth. However, the applicant did not file any document before the competent authority except his own affidavit.

10. It is a case of the applicant that, in view of the illiteracy of his parents, wrong entry regarding his date of birth is recorded in the school record. Similarly, his surname had been recorded incorrectly as %Bayatkar+ instead of %Balatkar+. If so was the fact, it was incumbent upon the applicant to produce the evidence in this regard. The applicant, however, has filed his own affidavit only to show that this was wrongly done as stated. This fact cannot be within the knowledge of the applicant and it was necessary for the applicant to produce on record the evidence of his father or any other person having such knowledge to show as to how his date of birth and surname was wrongly recorded. It seems that for want of cogent and reliable evidence, the competent authority came to the conclusion that the documents filed by the applicant was not genuine or might be forged and that document cannot be said to be a conclusive proof. This is an opinion formed by the competent authority from whatever evidence produced before it by the applicant. This Tribunal is not expected to look into merits of such findings, there is nothing on record to show that the said findings are perverse.

11. The impugned communication is placed on record at page Nos. 86 & 87 (both inclusive). It seems that the competent authority has considered the provisions of Rule 38 (2) of the General Conditions of Service Rules and has also considered the merits of the claim of the applicant. It is material to note that, the applicant joined the service in the year 1996 and after taking objection of his date of birth, he never tried to get it verified whether the same was corrected or not and thereafter in the year 2011 for the first time he has filed the O.A. No. 251/2011. In spite of opportunity given to the applicant to produce the evidence, he failed to produce cogent and reliable evidence to show that his father has wrongly recorded his surname and date of birth in the school record due to illiteracy. I, therefore, do not find any illegality in rejection of application for correction of date of birth of the applicant by respondent No.1 vide communication dated 17.4.2017. I, therefore, pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)