

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 44 OF 2015

DISTRICT : MUMBAI

Shri Ravikant Hribhau Rupwate,)
Working as Assistant Commissioner of)
Police, Gamdevi Division, Mumbai-7.)
R/o: 2/15 Railway Police Officers)
Quarters, Dadar [E], Mumbai-14.)
Add for service of Notice :)
Shri A.V Bandiwadekar, advocate,)
Office at 9, "Ram Kripa", Lt Dilip Gupte)
Marg, Mahim, Mumbai 400 016.)...**Applicant**

Versus

1. The Commissioner of Police,)
Mumbai, having office at Mumbai)
Police Commissionerate, L.T Marg,)
Opp. Crawford Market, Fort,)
Mumbai 400 001.)
2. The Director General and Inspector)
General of Police, [M.S], Mumbai.)
At Old Council Hall, S.B Marg,)

RA

- Mumbai 400 039.)
 3. The State of Maharashtra,)
 Through Principal Secretary,)
 Home Department, Mantralaya,)
 Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwdekar, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 28.09.2016

ORDER

1. Heard Shri A.V Bandiwdekar, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 21.4.2014 issued by the Respondent no. 1, rejecting his application for recording his correct date of birth in his Service Book.


3. Learned Counsel for the Applicant argued that the Applicant was appointed as Police Sub-Inspector by

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direct recruitment on 1.3.1983. The Applicant was promoted to higher posts and was promoted as Assistant Commissioner of Police in 2009. The Applicant was born on 4.10.1957 at Mumbai. His School Leaving Certificate shows his date of birth as 4.10.1957. In the Service Book of the Applicant his date of birth is entered as 4.1.1957 on the basis of his S.S.C Certificate. However, as S.S.C Certificate of the Applicant shows his date of birth as 4.10.1957, there was an obvious clerical mistake in recording his date of birth in his Service Book. Learned Counsel for the Applicant argued that the Applicant was not aware of this entry in his Service Book till 1998. In all other documents like recommendation of M.P.S.C for appointment to the post of P.S.I, Caste Certificate, Domicile Certificate Appointment-cum-Identity Card, his date of birth was shown as 4.10.1957. On 20.8.1998, the Applicant made a representation to the Commissioner, C.I.D to correct his date of birth. He made various other representations in the year 1998 and 1999 to the Respondents. On 7.6.2012, the Applicant again made representation for correction in his date of birth in his Service Book. He made various representations, thereafter and by communication dated 12.1.2015, the Applicant was informed that his representation has been rejected.

4. Learned Counsel for the Applicant argued that the Applicant's case is not for change in his date of birth.

In fact, a wrong entry was made in his Service Book, and he has been representing for correcting that clerical mistake. There cannot be any limitation period of 5 years for correction of mistake, as provided in Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. Learned Counsel for the Applicant argued that all official documents, without exception, show the date of birth of the Applicant to be 4.10.1957. Even Original S.S.C Certificate issued on 1.8.1974, shows his date of birth as 4.10.1957. His School and College records, domicile Certificate, Caste Certificate, Driving License, PAN Card, Identity Card, also show his date of birth as 4.10.1957. Learned Counsel for the Applicant stated that Rule 36 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 provides that the Head of Office should obtain declaration from an employee every year that he has carefully gone through the entries made in his duplicate Service Book and satisfied himself that all entries are up to date. This has not been done by the Respondents. This Tribunal in the interim order dated 28.1.2015 has commented on this issue. In the case of the Applicant, under Rule 38(3) *ibid*, the matter was required to be referred to the General Administration Department (G.A.D), which was not done. Learned Counsel for the Applicant relied on the judgments of this Tribunal in O.A no 883 of 2009 dated 29.1.2010, O.A no 490 of 2009




dated 9.11.2009, order of Hon'ble Bombay High Court dated 23.12.2013 in W.P no 7963 of 2012 etc.


5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant has signed the first page of his Service Book in acknowledgement of the fact that all the entries, including his date of birth were correctly recorded. The Applicant has, thus, clearly acknowledged that his correct date of birth was 4.1.1957. Learned Presenting Officer argued that there can be no change in the date of birth after 5 years from the date of appointment, as provided in Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. The Applicant joined service on 1.3.1983 and after 1.3.1988 no change in his date of birth was legally permissible. The Applicant as per his own admission applied on 20.8.1998 for the first time for change/alteration in his date of birth. The Applicant claims that he came across his Service Book first time in 1998. However, he has not explained the circumstances in which he came across his Service Book in 1998. Later, he claimed that he received duplicate copy of his Service Book in the office of Special Inspector General of Police, CID (INT), Mumbai in 1999. Learned Presenting Officer contended that from 1999 to 7.6.2012, the Applicant did not take up the issue of his date of birth with the authorities. Learned Presenting Officer stated that Hon'ble Supreme Court has held that there cannot

be any change in the date of birth of a Government servant at the fag end of his career. Learned Presenting Officer stated that the Applicant's reliance of Rule 36 of 1981 Rules is misplaced, as the Instruction below the rules are regarding entries made in the Service Book from time to time and declaration each year is regarding the entries made in a particular year. These instructions cannot be stretched to mean that every year each entry has to be verified. Learned Presenting Officer stated that the Applicant is relying on all other documents, except the document, which would have conclusively proved his case, that is the attested xerox copy of the concerned page of the original birth register. The Applicant was born in Mumbai and he has not placed the Birth Certificate issued by the Mumbai Municipal Corporation or the copy of the relevant birth register on record to substantiate his claim.

6. It is seen that the Applicant's date of birth was entered on 4.1.1957 on the first page of his Service Book. There is an endorsement that this entry was based on his S.S.C Certificate. The Applicant has placed on record copy of S.S.C Certificate which shows that his date of birth as 4.10.1957. The Applicant has, accordingly, claimed that his date of birth was 4.10.1957, and by mistake it was recorded as 4.1.1957. The Applicant also claims that a duplicate copy of his Service Book was not provided to him at the time of entry into service or till



1999. He was, therefore, unable to ascertain whether his date of birth was correctly entered in his Service Book. Had he been supplied duplicate copy of the Service Book, as required under Rule 36 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, he would have made a representation within 5 years, as required under instruction (1) below Rule 38 *ibid*. This contention of the Applicant appears to be correct. However, the Respondents claim that the Applicant had signed first page of his Service Book, acknowledging that all entries including his date of birth were correct. Instructions below Rule 36 of Maharashtra Civil Services (General Conditions of Services) Rules 1981, provide that Head of Office shall obtain a declaration each year from each Government servants for whom a Service Book is maintained to the effect that he had carefully gone through the entries made in his duplicate Service Book and has satisfied himself that all the relevant entries are upto date. This clearly shows that entries made every year are required to be checked by the Government servant. If a Government servant has once satisfied himself about correctness of entries in a particular year, it will not be normally open to him to challenge entries made in the past. In the present case, the Respondents did not make the duplicate copy of Service Book available to the Applicant during first five year of his service. However, it is also a fact, that the Applicant has satisfied



himself about the correctness of his date of birth by signing the first page of his Service Book.


7. The Applicant has emphasized that all the official documents with him showed his date of birth as 4.10.1957. However, he is silent about the Birth Certificate and the relevant entry in the Birth Register maintained by Bombay Municipal Corporation. It is admitted by the Applicant that he was born in Mumbai and it is difficult to envisage that his birth was not registered in the records of Bombay Municipal Corporation. Instruction (2) below Rule 38 *ibid* recognizes copy of page of birth register as an unquestionable proof for change of date of birth in service record. The Applicant has claimed that he came to know that his date of birth was incorrectly recorded in his Service Book in the year 1998. He claims to have made representations in the year 1998 and 1999. However, it appears that thereafter, he made representation only on 7.6.2012. All these dates are taken from the synopsis of this Original Application. The Applicant was due to retire in the year 2015. He has not explained as to why he kept quiet from 1999 to 2012.

8. The Applicant has laid much emphasis on the fact that his date of birth was incorrectly entered in his Service Book and he is only seeking correction of a mistake. He claims that such correction of a mistake will

not be covered by Instruction (1) below Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules 1981. This Instruction (1) reads as below:-

“(1) No application for alteration of the entry regarding date of birth as recorded in the Service Book.....”

The word used is “alteration” and not correction. In fact, whenever, a Government servant seeks alteration regarding date of birth, it is a correction of a previous mistake. In my view, the Applicant has not made out a case that his case is not covered by the aforesaid rule. His claim that he was not given a copy of his Service Book and therefore, he could not make representation within time has to be examined in the light of the fact that he had signed the first page of his Service Book acknowledging the correctness of all entries, including his date of birth. Even if, he had represented within first five years, the only authentic document, which would have allowed alteration in the date of birth would have been attested zerox copy of the concerned page of the original birth register maintained by Bombay Municipal Corporation. The Applicant had not produced the same at any time before the Respondents. There is some justification for not making representation for alteration in date of birth within 5 years of entry in Government



service. However, the Applicant was not given any justification for keeping quiet from 1999 to 2012. As a result, it has to be held that he had applied for alteration in his date of birth at the fag end of his career.

9. The Applicant has relied upon the following judgments viz:-

(i) O.A no 490 of 2009 dated 9.11.2009.


In this case the year of birth of the Applicant was changed by the Tahsildar from 1955 to 1951. The S.S.C Certificate showed the date of birth of the Applicant as 10.3.1955 and there was no basis of the date 10.3.1951 as entered by Tahsildar. Based on the dates in seniority list and S.S.C Certificate, the Original Application was allowed. No record in the birth register existed in this case.

(ii) O.A no 883 of 2009, dated 29.1.2010.

In this case also, date of birth in S.S.C Certificate was accepted in absence of proof as to registration of the date of birth. Procedure of Rule 36 was not followed.

(iii) O.A no 39 of 2008 dated 2.6.2008.

In this case, decision of the authorities to change the date of birth of the Applicant, without notice to him was not upheld.




(iv) O.A no 407 of 2011 dated 8.11.2011.

In this case, the date of birth was initially recorded as 23.5.1953 on the basis of School Leaving Certificate. Later, on the basis of the affidavit filed by his father, it was changed to 25.7.1954 in his Service Book. There was a Birth Certificate issued by Municipal Council, Bhusawal, showing date of birth of a male child of Applicant's father as 25.7.1954. It was held that the date of birth was already altered by the authorities, which could not be changed.

(v) O.A no 892 of 2014, dated 6.8.2015.

In this case, the Applicant was appointed in Government service on 26.9.1981 and his date of birth was recorded as 26.9.1976, i.e. he entered Government service at the age of 5. The date of birth was changed to 26.9.1956. The Applicant claimed that his date of birth was 26.9.1960. This Tribunal held that when authorities changed the date of birth of the Applicant from 26.9.1976 to 26.9.1956, there was some evidence before them that the Applicant's date of birth was 26.9.1960 and there was no evidence to put his date of birth as 26.9.1956. It was held that the Applicant's date of birth should be corrected to 26.9.1960.


10. From perusal of aforesaid judgments, it is clear that facts in O.A nos 407/2011 and O.A no 892/2014 are quite different. In both these cases, the dates of birth



were altered by authorities themselves. In O.A no 892/2014, while altering the date of birth, an arbitrary date of birth was put, ignoring some evidence in support of the date of birth claimed by the Applicant. Facts in both the cases are quite different and cannot be made applicable to the present case. As regards, other three O.As, decisions were given without considering the judgment of Hon'ble Supreme Court in **STATE OF MAHARASHTRA & ANR Vs. GORAKHNATH SITARAM KAMBLE & ORS : 2010(11) CPSC 770**, which was delivered later. It will be instructive to quote relevant extracts from the aforesaid judgment. In para 12, Hon'ble Supreme Court has held that:-

“12. Apart from the notification and the said instructions, this Court in a services of cases have categorically laid down that the employees should not be permitted to change the date of birth at the fag end of his service career.”

In the present case, the Applicant did not raise this issue of date of birth from 1999 to 2012. He cannot be allowed to raise the issue at the fag end of his career. Hon'ble Supreme Court has upheld the validity of notification dated 24.12.2008, which has substituted Instructions No (1) and (2) below Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. As has been noted, Instruction (2) below Rule 38 provides



that only unquestionable proof for allowing alteration in date of birth is attested Xerox copy of birth Register. The Applicant, even if he had applied within 5 years of his appointment, would not have been eligible for alteration of his date of birth as he had not produced this document.

11. In my view, the Applicant not only did not apply for correction of his date of birth within five years of joining service, but also acquiesced in his age recorded in Service Book by remaining silent from 1999 to 2012. He cannot be allowed to raise the issue of his date of birth at the fag end of his career.

12. In the present case, the Applicant was allowed to continue in service beyond the age of his retirement on the basis of entry of date of birth in the Service Book (4.1.1957 date of birth, date of retirement 31.1.2015) by interim order dated 28.1.2015 of this Tribunal. By way of interim relief, the date of birth of the Applicant for purpose of his superannuation was treated as 4.10.1957. The Applicant has since retired from service on 31.10.2015. The question is about his salary for the period from 1.2.2015 to 31.10.2015. As the Applicant actually performed his duties during this period, by virtue of an order of this Tribunal, he is eligible to be given salary for this period. The Respondents are directed to pay full salary to the Applicant for the



aforsaid period within three months from the date of this order. This Original Application is disposed of accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 28.09.2016

Dictation taken by : A.K. Nair.

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