

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.188 of 2023 (SB)

Rajlingu S/o Mallayya Dongre,
Aged about 52, Occ: Police Constable,
R/o Police Station Road, Ward No.2,
Sironcha, at Post Sironcha, District Gadchiroli.

Applicant.

Versus

1. The State of Maharashtra,
through its Secretary, Home Department,
Mantralaya, Mumbai-32.
2. Director General of Police,
Police Head Quarters,
Shahid Bhagat Singh Marg, Colaba, Mumbai.
3. The Deputy Inspector General of Police,
Gadchiroli Division, Camp Nagpur.

Respondents.

S/Shri S.S. Dhengale, K.N. Jain, Advs. for applicant.

Shri A.P. Potnis, learned P.O. for respondents.

**Coram :- Hon'ble Shri M.A. Lovekar,
Member (J).**

Date of Reserving for Judgment : 7th March,2024.

Date of Pronouncement of Judgment : 14th March,2024.

JUDGMENT

(Delivered on this 14th day of March,2024)

Heard Shri K.N. Jain, learned counsel for the applicant
and Shri A.P. Potnis, learned P.O. for the respondents.

2. The applicant joined the respondent department on
13/08/1991. On the basis of School Leaving Certificate produced by

him his date of birth was entered as 04/05/1966 in office record. On 19/08/2022 the applicant moved application before respondent no.4 to change his date of birth to 01/07/1968. By the impugned order dated 29/09/2022 (Annex-A-1) respondent no.3 rejected said application. Hence, this O.A.

3. The applicant has relied on extract of Dakhal - Kharij register of the year 1973-74 (Annex-A-2) in which his date of birth is shown to be 01/07/1968. The applicant has further relied on order dated 10/01/2022 (Annex-A-3) passed by learned JMFC, Sironcha in Misc. Criminal Application No.23/2021 by which direction was issued to register date of birth of the applicant as 01/07/1968. The applicant then obtained birth certificate in which his date of birth was entered as 01/07/1968 (Annex-A-4). This Certificate was issued on 03/06/2022. In official gazette (Annex-A-5) too, date of birth of the applicant was entered as 01/07/1968. Annex-A-7 is copy of school leaving certificate issued on 02/08/2021 in which date of birth of the applicant is stated to be 01/07/1968. According to learned counsel for applicant Shri K.N. Jain, these documents fully substantiate case of the applicant and hence the O.A., deserves to be allowed.

4. While rejecting the application for change of date of birth by the impugned order, reliance was placed on Rule 38 (2) of the

Maharashtra Civil Services (General Conditions of Services) Rules, 1981.

Stand of respondent no.4 is as follows –

“While joining Gadchiroli Police Force on 13/09/1991, the applicant had submitted his school leaving certificate of standard 11th of Zilla Parishad (Ex-Govt.) Higher Secondary School, Sironcha, Dist. Gadchiroli. As per the above school leaving certificate, the DOB of the applicant is 04/05/1966. Also, in Sakshankan Form duly signed by the applicant while joining Gadchiroli Police Force, the DOB is mentioned as 04/05/1966. Accordingly, his DOB 04/05/1966 has been recorded by the concerned Clerk with his service record on the basis of above documents not by mistake. Hence, the allegations of recoding of incorrect DOB 04/05/1966 instead of 01/07/1968 made by the applicant does not sustain.”

5. The applicant has relied on Judgment of Aurangabad of this Tribunal dated 25/01/2023 in O.A.No.117/2021 (*Sudhir S/o Ramrao Tambe Vs. State of Maharashtra & 3 Ors.*). In this case facts were as follows –

“Present is not the case where the applicant wanted a change in the date of birth. This is also not a case where the applicant had given a particular date at the time of his initial entry in Government service, which was later on sought to be changed by him. In fact, the office of the applicant itself had convincing material before it showing that the date of birth of the applicant is 17.7.1965. The documents which were produced at the said time were the school leaving certificates and the certificates of passing Secondary and Higher Secondary Examination by the

applicant. In all these documents the date of birth of the applicant is recorded as 17.7.1965, however, in spite of that the wrong date was recorded in the service book of the applicant.”

These facts are clearly distinguishable.

6. The applicant has further relied on Judgment of Aurangabad Bench of this Tribunal dated 08/02/2024 in O.A.No.1031/2022 (*Dr. Bharat Bansi Kadlaskar Vs. State of Maharashtra & 3 Ors.*). In this case, while allowing the O.A. reliance was placed on Judgment of Principal Bench dated 21/04/2023 in O.A.No.280/2023 (*Sudhir B. Kalekar Vs. State of Maharashtra & 3 Ors.*). This Bench in Judgment dated 22/02/2024 in O.A.No.22/2024 (*Vidya w/o Subhash Pawar Vs. State of Maharashtra & others*) observed –

*“12. The learned counsel for the applicant has pointed out the decision of M.A.T., Bench at Aurangabad in O.A.No.1031/2022, decided on 08/02/2024. From the perusal of this decision, it appears that the Judgment of the Hon’ble Bombay High Court in Writ Petition No.6976/2023 was not pointed out. The Tribunal has relied on the Judgment in the case of **Sudhir Bhagwat Kalekar Vs. State of Maharashtra and Ors.**, decided by the Principal Bench of M.A.T., Mumbai on 21/04/2023. Relying on this decision, the M.A.T., Bench at Aurangabad allowed the O.A. Decision in the case of **Sudhir Bhagwat Kalekar Vs. State of Maharashtra and Ors.**, was challenged by the State of Maharashtra in Writ Petition No.6976/2023. The said Writ Petition was decided on 23/06/2023. It is held that the date of birth in the service record was correctly recorded as per the School Leaving Certificate and allowed the Writ*

Petition by quashing the Judgment of M.A.T., Principal Bench, Mumbai. This Judgment was not cited before the M.A.T., Bench at Aurangabad. Therefore, this Judgment is not applicable. In the said Writ Petition, it is observed by the Hon'ble High Court as under –

“(18) The Tribunal ought not to have entertained the O.A. filed by Respondent two months before his retirement. The objective behind formulating rule/administrative instructions to bar correction of date of birth after five years of entry into service is to give finality and achieve certainty with regard to the rights of the Government Servants. The issue of correction of date of birth cannot be kept pending till the fag end of an employees' retirement. This would create uncertainty, as has happened in the present case. The Tribunal has allowed the O.A. of the Respondent a month before his date of retirement thereby creating confusion and uncertainty. The pension papers of the Government Servant are processed well before his retirement with a view to ensure timely payment of retirement benefits to him. The anticipated vacancy created due to retirement is taken into consideration for various purposes like effecting promotions, effecting transfers, etc. Sometimes date of birth becomes a relevant factor for determining seniority of officers appointed/promoted on same day. In such circumstances, entertaining litigation filed couple of months before the date of retirement, with the sole objective of seeking extension of tenure of service, would lead to uncertainty and chaos in the administration. An officer may casually make application for change of date of birth within 5 years of his entry in service (so as to meet technical requirement of the rules/administrative instructions) and not pursue the same for years together. He cannot then knock the doors of courts/tribunals at the fag end of service for correction of date of birth. The objective behind prescribing time limit for seeking correction of date of birth is required to be kept in mind. The objective is to achieve clarity and prevent uncertainty not only about the officer's career but also in the area of administrative management. If an application for correction of date of birth is made

within 5 years of entry into service and if the same is not acted upon, remedy in respect of such inaction must be exercised in a timely manner and filing of litigation at the fag end of service is required to be discouraged. Mere rejection of request for change of date of birth by the employer before date of retirement would not revive the cause which got time barred by officer's failure to exercise remedies in a timely manner. Entertaining Respondent's application for correction of date of birth OA instituted at the fag end of service on specious plea of rejection of request on 1 March 2023 would completely frustrate the objective behind prescribing time limit for seeking correction in date of birth under Rule 38. The Tribunal therefore ought to have avoided entertaining Respondent's application for correction of date of birth filed in March 2023 when he was slated to retire on 21st May 2023.”

7. The applicant has also relied on Judgment of Hon'ble Bombay High Court dated 30/06/2021 in Writ Petition No.1315/2021 (*Prabhat Kumar Titus Vs. Western Coalfields Limited & 2 Ors.*). The facts of the case were stated as follows –

“(26) In the present matter, it has come on record and not disputed by the respondents that the Umrer Sub Area Committee and the Area Committee recommended the case of the petitioner for change of the date of birth from 1st July 1961 to 6th December, 1961 as per the II No.76 in all official record. It has further come on record and not disputed by the respondents that after joining on the post of 'Sirdar', 'Overman' and lastly 'Senior Overman', the date of birth of the petitioner was recorded as 6th December, 1961 in the official record. Moreover, record shows that the petitioner was called through Employment Exchange and Registration Card of the Employment Exchange issued to the petitioner contains the

date of birth of the petitioner as 6th December 1961. It is also not disputed by the respondents that the said Employment Registration Card was asked to be submitted by the petitioner at the time of interview. Furthermore no dispute is raised by the respondents about the genuineness of the Matriculation Certificate which shows the date of birth of the petitioner as 6th December, 1961. Further, the fact pleaded by the petitioner that wrong date of birth was recorded due to negligence of a clerk in the office of Mine Manager, has not been disputed by the respondent. Thus, the said mistake was an obvious clerical error. Hence, there is ample material available on record in support of the claim of the petitioner that his date of birth was wrongly recorded as 1st July, 1961 in place of 6th December, 1961. The petitioner has successfully produced evidence of unrefutable nature in support of his case. Hence, we find that the petitioner has discharged his onus to prove the recording of wrong date of birth.”

These facts are also clearly distinguishable.

8. Rule 38 (2) (f) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 reads as under –

“ 38. Procedure for writing the events and recording the date of birth in the service book.

(1) XXX

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

(a) X XX

(b) X XX

(c) X XX

(d) X XX

(e) X XX

(f) *When once an entry of age or date of birth has been made in a service book no alteration of the entry should afterwards be allowed, unless it is shown that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error."*

9. I have extracted the observations made by the Bombay High Court in the case of Sudhir B. Kalekar (supra). On the basis of documents furnished by the applicant himself his date of birth was entered in service book. It was neither error of someone else nor was it an obvious clerical mistake. Hence bar under Rule 38 (2) (f) was attracted. The applicant applied for change in date of birth more than 30 years after joining the service.

10. The impugned order states –

"उपरोक्त सुधारीत नियम क्र. ३८ पोटनियम (२) (बी) अन्वये "जेव्हा सेवापुस्तकात जन्मतारखेची नोंद केली असेल तेव्हा संबंधित व्यक्तिव्यतिरिक्त दुसऱ्या एखाद्या व्यक्तित्ने काळजी न घेतल्यामुळे किंवा उघड उघड लेखनदोष म्हणून तशी नोंद झाली होती, असे माहीत झाल्याशिवाय त्या नोंदीत कोणताही फेरबदल केला जाणार नाही." "परंतु, खंड (बी) मध्ये विनिर्दिष्ट केलेल्या आकस्मिक प्रसंगासाठी शासकीय सेवेत प्रवेश केल्याच्या दिनांकापासून सुरु होणाऱ्या एक वर्षाच्या कालावधीनंतर अर्ज स्वीकारण्यात येणार नाही" अशी तरतुद दिलेली आहे."

While passing the impugned order reliance was placed on Rule 38 (2) (b) as amended by the Maharashtra Civil Services {General Conditions of Services (amended) } Rules, 2021. In fact, fate

of the matter would be determined by Rule 38 as it was before the amendment. As mentioned earlier, bar under Rule 38 (2) (f) of the old Rules was attracted.

11. In these facts, the O.A. shall fail. It is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J).

Dated :- 14/03/2024.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 14/03/2024.