

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.279 OF 2022

**DISTRICT: MUMBAI
SUBJECT: CHANGE IN DATE
OF BIRTH**

Smt. Suchita Dagdu Mohite,)
Aged: 55 years, Occ.: Service,)
R/o: Near Small Buddha Vihar, Mohite Chawl,)
Samrat Ashok Nagar, Borla, Govandi, VTC: T.F. Donar,))
S.O., District: Mumbai – 400088.)... **Applicant**

Versus

- 1) The Chief Secretary,)
State of Maharashtra, Mantralaya, Mumbai-32.)
- 2) The Secretary,)
Medical Education and Drugs Department)
9th Floor, G.T. Hospital Compound,)
Mumbai-400 001.)
- 3) The Director,)
Medical Education and Research,)
Government Dental College Building,)
4th Floor, St. George Hospital Campus,)
Mumbai – 400 001.)
- 4) The Superintendent,)
Cama and Albless Hospital, Mumbai – 400001.)
- 5) The Dean,)
J.J. Hospital, Byculla, Mumbai.)...**Respondents**

Shri Vajuvendra S. Singh, learned Advocate for the Applicant.

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

CORAM : A.P. Kurhekar, Member (J)

DATE : 28.03.2022.

JUDGMENT

1. The Applicant has filed present O.A. for direction to the Respondents to consider her Date of Birth as 10.11.1966 in place of 05.03.1962, as recorded in service book and to extend date of retirement from 31.03.2022 to 30.11.2026.

2. Heard finally at the stage of admission.

3. The Applicant was appointed in Government service as Class 'IV' employee by order dated 26.11.1996 on the establishment of Respondent No.4 – The Superintendent, Cama and Albless Hospital, Mumbai. Admittedly, at the time of entry in service her Date of Birth is recorded as 05.03.1962 on the basis of information supplied by her i.e. school leaving certificate issued by Swami Muktanand High School, Chembur, Mumbai (page 10 of P.B.). As per this Date of Birth recorded in service book as 05.03.1962, she would be completing 60 years of age and due to retire on 31.03.2022. The Applicant contends that subsequently she got leaving certificate of New English School, Pahur, District Raigad (page 13 of P.B.) in which her Date of Birth is shown as 10.11.1966. Therefore, at the fag end of service i.e. on 17.02.2022 before about 45 days for retirement she made representation to the Respondent No.4 to correct her Date of Birth in service book. Since, no action was taken by Respondent No.4, the Applicant has filed this O.A. on 22.03.2022 which is taken up today for admission.

4. Learned Advocate for the Applicant sought to contend that the Applicant's correct Date of Birth is 10.11.1966 as reflected in school leaving certificate issued by New English School, Pahur and considering this Date of Birth, she would be retiring on 30.11.2026. However, in view of Date of Birth recorded in service book as 05.03.1962, Respondent would retire her on 31.03.2022 i.e. after three days, and therefore prayed for interim relief for continuing in service. On merit he

fairly concede that the Applicant did not raise grievance for correction in Date of Birth except representation made on 17.02.2022.

5. Learned P.O. opposed the interim relief as well as submitted that O.A. itself is not maintainable and liable to be dismissed since, no steps were taken for correction of Date of Birth in terms of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and no such correction of Date of Birth is permissible at the fag end of service, as repeatedly held by Hon'ble Supreme Court in various decisions.

6. Undisputedly, in service record the Applicant's Date of Birth was recorded as 05.03.1962 on the basis of school leaving certificate produced by her. The Applicant herself has produced school leaving certificate issued by Swami Muktanand High School, Chembur, Mumbai, wherein Date of Birth is shown as 05.03.1962 (page 10 of P.B.). It is not made clear how Date of Birth recorded in Swami Muktanand High School, Chembur, Mumbai is subsequently changed while issuing school leaving certificate by New English School, Pahur in which Date of Birth is recorded as 10.11.1966. There is absolutely no pleading as to how and in what manner the Date of Birth is changed from 05.03.1962 to 10.11.1966. Be that as it may, fact remains that entry in service book was taken on the information supplied by herself and Date of Birth was recorded as 05.03.1962.

7. Importantly, the Applicant during the entire service did not raise dispute and for the first time belatedly made an Application on 17.02.2022 for correction of Date of Birth. The Application is at page 16 of P.B. which is also lacking material particulars except stating her Date of Birth be corrected. Thus, fact remains that the Application for correction for Date of Birth is made 45 days before retirement.

8. The procedure for writing and recording the date of birth in service book and it's correction is governed by Rule 38 of M.C.S. (General

Conditions of Service) Rules, 1981. It would be useful to reproduce Rule 38(2)(a) and (f) and the instructions as amended on 24.12.2008 which are as follows :

“38(2)(a): The date of birth should be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied on;

(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 known, 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.

Instruction :- (1) No application for alteration of the entry regarding date of birth as recorded in the service book or service roll of a Government servant, who has entered into the Government service on or after 16th August 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.

(2B) No application for alteration of entry regarding date of birth of the Government servant pending with the Government on the date of commencement of the Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 2006 shall be processed after the date of retirement of such Government servant and such application shall automatically stand disposed of as rejected on the date of retirement. Any such application made by the retired Government servant shall not be entertained.”

9. Now, turning to the facts of the present case, admittedly, the Applicant's date of birth has been recorded in service book on the basis of school record produced by him at the time of entry in service. As per Rule 38(2)(f) reproduced above, once an entry of age and date of birth is made in the service book, correction is not permissible unless it is known 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. In the present case, the entry was taken on the basis of school record produced by the Applicant herself and this being the position, it cannot be said that there was any error or want of care on the part of some person other than the Applicant. This being the position, no case is made out to change the date of birth in terms of Rule 38 of M.C.S. (General Conditions of Service), Rules, 1981.

10. The provisions of Rule 38 2(f) is considered by the Hon'ble Bombay High Court in ***Ranjana Salakar Vs. State of Maharashtra reported in 2007(4) Maharashtra Law Journal 857***. Para No.5 of the Judgment is as follows :

“5. It is obligatory upon the department to correctly record the date of birth of an employee in the service book. While recording the date of birth, they have to follow the prescribed procedure. The entry made in the service record is treated as final. In terms of Clause (f) of Rule 38(2), when once an entry of age or date of birth has been made in a service book, no alteration of the entry should thereafter be allowed, unless the conditions stated therein are satisfied. In the present case, there was neither any clerical error nor mistake on the part of a person other than the individual in question. The instructions further postulate that normally no application for alteration of the entry regarding date of birth as recorded in the service shall be entertained after a period of five years commencing from the date of which entry is made in the service records. The petitioner did not take any steps for correction of her date of birth despite the fact that the entry in the service record was made by the petitioner in her own handwriting and signatures. The story put forward that the petitioner came to know of her correct date of birth during a discussion which took place in the year 2004 does not inspire confidence in the mind of the Court. The general rule is that entry once recorded in the service record has to be treated as final and any alteration thereto is an exception to the Rule. To meet the exception, the petitioner should strictly satisfy the ingredients of the provisions.”

11. In (2010) **14 SCC 423 (State of Maharashtra Vs. Gorakhnath S. Kamble)**, the Hon'ble Supreme Court considered series of its earlier decisions and held as under :-

“17. In another judgment in State of Uttaranchal & Ors. Vs. Pitamber Dutt Semwal, (2005) 11 SCC p.477, the relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

18. Two decades ago this Court in Government of A.P. & Anr. Vs. M. Hayagreev Sarma, (1990) 2 SCC p.682, has held that subsequent claim for alteration after commencement of the rules even on the basis of extracts of

entry contained in births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886, was not open. Reliance was also placed on State of Uttar Pradesh & Ors. Vs. Gulaichi (Smt.), (2003) 6 SCC p.483, State of Tamil Nadu Vs. T.V. Venugopalan, (supra), Executive Engineer, Bhadrak (R & B) Division, Orissa & Ors. Vs. Rangadhar Mallik, (1993) Suppl.1 SCC p.763, Union of India Vs. Harnam Singh, (supra) and Secretary and Commissioner, Home Department & Ors. Vs. R.Kribakaran, (surpa).

19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The relevant portion of the judgment in **Secretary and Commissioner, Home Department & Ors. Vs. R. Kribakaran** (surpa) reads as under:

"An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible and before any such direction is issued, the court must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service-book."

20. In view of the consistent legal position, the impugned judgment cannot be sustained and even on a plain reading of the Notification and the instructions set out in the preceding paragraphs leads to the conclusion

that no application for alteration of date of birth after five years should have been entertained.”

12. In **(2011) 9 SCC 664 (State of M.P. & Ors. Vs. Premlal Shrivias)**, the Hon'ble Supreme Court again reiterated as under :-

“9. It needs to be emphasized that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal come to the aid of those who sleep over their rights.”

13. Recently again, the Hon'ble Supreme Court in **2020(3) SLR 639 (SC) Bharat Coking Coal Limited and Ors. Vs. Shyam Kishor Singh**, reiterated well settled position that correction in date of birth at the fag end of service is not sustainable. In that case, the employee sought change in date of birth mentioned in service record on the basis of some verification of date of birth from Bihar School Examination Board. However, the Hon'ble Supreme Court turned down the contention for change in date of birth being at the fag end of service.

14. As such, the Applicant was required to make an application for correction in Date of Birth within 5 years from date of entry but admittedly the Applicant did not take any such steps within 5 years from entry in service or within reasonable time and slept over her rights. For the first time she made an application for correction of Date of Birth on

17.02.2022 when she was due to retire in 45 days.

15. The submission advanced by learned Advocate for the Applicant that in I.D. card and Aadhar Card, Date of Birth of the Applicant was recorded as 10.11.1966 and it supports the Applicant's claim for change in Date of Birth is hardly of any assistance to him since, admittedly the Applicant did not make any such application for correction of Date of Birth within stipulated period as required under Maharashtra Civil Services (General Conditions of Services) Rules, 1981 or within reasonable period.

16. As such, in view of various decisions of Hon'ble Supreme Court referred to above it is no more *res-integra* that correction in Date of Birth at the end of service is not permissible.

17. In view of aforesaid discussion, I have no hesitation to sum up that O.A. itself is not maintainable and liable to be dismissed summarily.

18. O.A. is dismissed with no order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 28.03.2022
Dictation taken by: N.M. Naik.

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