

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.14 OF 2020

DISTRICT : NASHIK

Shri Macchindra Shantaram Kangne,)
Age : 58, Occupation : Retired ASI,)
R/o. Plot No.34, Janata Raja Colony,)
Makhmalabad Road, Panchvati,)
Nashik 422 003.)

...Applicant

Versus

1. State of Maharashtra.)
Through Secretary,)
Home Department, Maharashtra)
State, Mantralaya, Mumbai 32.)
2. The Commissioner of Police,)
Nashik City, Gangapur Road,)
Nashik 422 002.)
3. The Accountant General (A&E)-I)
Maharashtra State,)
101, Maharshi Karve Road,)
Mumbai 400 020.)

...Respondents

Shri C.T. Chandratre, learned Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 31.08.2020.

J U D G M E N T

1. The challenge is to the order dated 02.03.2019 passed by the Respondent No.2 – Commissioner of Police, Nashik, thereby rejecting the application for correction in date of birth written in figures in service book invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act 1985.

2. Briefly stated facts giving rise to the Original Application are as under :

The Applicant joined the service as Police Constable on 19.01.1987 on the establishment of Respondent No.2- Commissioner of Police, Nashik. His date of birth is 25.09.1961. At the time of entry in service while preparing service book his date of birth is wrongly written as 25.01.1961 in figures, but while written it in words it is correctly recorded as “पंचवीस सप्टेंबर एको. एकसष्ट”. The entry of date of birth was recorded on the basis of school leaving certificate, SSC certificate tendered by the applicant showing date of birth as 25.09.1961. However, while writing date of birth in figures it is recorded as 25.01.1961, but correctly recorded in words. On the basis of date of birth recorded in figures as 25.01.1961 the date of superannuation was recorded in service book as 25.01.2019. Accordingly, the applicant stands superannuated on 25.01.2019. The said mistake was not noticed by the Respondent No.2, Commissioner of Police, Nashik though being obvious error on the part of office it ought to have been corrected. After the retirement the Applicant made representation on 21.02.2019 and brought to the notice of Respondent No.2, the obvious error committed by the Department while writing date of birth in figures and requested to correct the same and extend the service benefits. However, Respondent No.2 rejected the claim of the Applicant by the order dated 21.03.2019 solely on the ground that

the application was not made within five years from the entry in service which is challenged in the present O.A.

3. Respondent No.2 resisted the O.A. by filing affidavit-in-reply solely on the ground that the application for correction being not made within five years in terms of Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981 [hereinafter referred as ('Joining Time Rules of 1981' for brevity for brevity) and applicant having slept over his right the correction after retirement is not permissible in law.

4. Shri C.T. Chandratre, learned Advocate for the Applicant submits that this is not the application for change in date of birth attracting rigour of Rules 1981 and the error being only in date of birth written in figures, the Department itself ought to have corrected the same as there is absolutely no dispute that the date of birth of applicant is 25.09.1961. He, therefore, submits that even if the applicant has not made application within five years it would not disentitle the applicant for claiming at least retiral benefits on the basis of correct date of birth. He fairly conceded that the applicant is not claiming pay and allowances of the period for which he was kept out of service due to forced retirement on 31.01.2019 and the applicant's last pay be revised considering his increment which was due on 01.07.2019 and pensionary benefits be accordingly granted.

5. Par contra, Smt. N.G. Gohad, learned Presenting Officer for the Respondents was harping on the aspect of failure of the applicant to apply for correction within five years from the date of service and in terms of 'Joining Time Rules of 1981', the claim of the applicant after retirement is unsustainable.

6. Respondent No.2 while rejecting claim of the Applicant in impugned order dated 02.03.2019 referred the circular of G.A.D. dated

03.03.1998, issued on the basis of the decision of Hon'ble Supreme Court in the matter of **(1993) 2 SCC 162 (Union of India Vs. Harnam Singh)**. In paragraph No.7 of the judgment of Hon'ble Supreme Court held as follows :-

“7. A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, 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. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.”

It was a matter where two dates of birth were forthcoming. At the time of entry in service, the date of birth of Respondent was recorded as 20.05.1934. Initially, the Respondent was appointed as Peon when he had not completed S.S.C. Examination. However, later he passed Matriculation Examination and in the Matriculation Certificate, his date of birth was recorded as 07.04.1938. The entry in service book was taken about his passing of Matriculation Examination but his date of birth was not altered to correspond to the Matriculation Certificate and it continued to be as 20.05.1934. He applied for change in date of birth just before retirement but the claim was rejected on the ground that no application was made within five years from the date of entry in service. As such, the fact of this case

reveals that at the time of entry in service, the Applicant himself has furnished his date of birth as 20.05.1934 and later on the basis of Matriculation Certificate, he sought correction in date of birth. Therefore, in fact situation, his claim at fag end of service is held impermissible.

7. In so far as the decision of **Harnam Singh's case** is concerned in my considered opinion the facts of this case are very peculiar and distinguishable and therefore the decisions in **Harnam Singh's case** is of little assistance to the Respondents in the present scenario.

8. At the very outset it is material to note that the facts of this case are very peculiar and this is not the case for change of date of birth earlier recorded by the employee in service book and later he made belated claim for change in date of birth in service record. Indeed this is the case where the applicant is seeking retiral benefits on the basis of date of birth correctly recorded in words in service book. Suffice to say, this cannot be termed the case of change of date of birth at fag end of service, but it is the case to extend the retiral benefits on the basis of date of birth recorded in words by the Departmental itself.

9. True, it is settled position of law in view of catena of decisions of Hon'ble Supreme Court that the change in date of birth at the fag end of service is not sustainable. However, as stated above, this is not a case of change in date of birth rather it is the case for direction to the Department to implement and accept the date of birth recorded in words correctly in service book.

10. Respondent No.2 in his reply all that reiterated that the applicant having not made an application within five years from entry into service the claim is not untenable in law. Thus, Respondent No.2 tried to pass the buck to the applicant ignoring the material aspect

that there is obvious error on the part of Department while writing the date of birth in figures only.

11. The perusal of extract of service book at page 15 of O.A reveals that the date of birth in figures is written as 25.01.1961 whereas while writing it in words it is correctly written as “पंचवीस सप्टेंबर एको. एकसष्ट”. Admittedly, the date of birth as 25.09.1962 was recorded in service book on the basis of School leaving Certificate, SSC certificate furnished by the applicant (copies of which are at page No.10 and 11 of P.B.), wherein date of birth of the applicant is recorded as 25.09.1961. Respondents have not disputed correct date of birth of the applicant is 25.09.1961. However, though there is obvious error of the concerned Clerk while writing the date of birth in figures, Respondent No.2 sought to blame the applicant and attributed lapse to the applicant for not making application within five years from entry into service.

12. The procedure for writing and recording the date of birth in Service Book and its correction is governed by Rule 38 of Rules of 1981. As per Rules 38(2) of Rules 1981, it was obligatory on the part of Department that the date of birth should be verified and recorded with reference to the documentary evidence namely school leaving certificate etc. Whereas, as per Rule 38(2)(f), when once entry of date of birth is made in 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.

13. Needless to mention that the documentary evidence in the form of birth registration certificate or school leaving certificate shall be considered unsustainable proof of date of birth. True, the applicant did not make any application to correct obvious error occurred while recording the date of birth in figures and it is only after retirement he

made representation. The question would be whether the failure of the applicant to bring error to the notice of the Department would disentitle him to claim the relief and in my considered opinion, the answer is in negative. Indeed it was obligatory on the part of the Department to verify birth certificate and to mention correct date of birth in service book in figures as well as in words. However, in present case mistake occurred while recording the date of birth in figures only though it is correctly mentioned while writing it in words. The date of birth mentioned in words is corresponding to date of birth recorded in birth certificate and school leaving certificate which is not at all in dispute. This being the position the date of birth recorded in words which is corresponding and correct as per date of birth recorded in school leaving certificate ought to be accepted and date of birth of superannuation ought to have been counted on the basis of date of birth as 25.09.1961. However, unfortunately due sheer negligence on the part of concerned employee while writing the date of birth in words it was written as 25.01.1961 and on that basis the date of superannuation was also recorded as 25.01.2019, which is obviously incorrect and indeed the said mistake ought to have been corrected by the Department at their own and the Department ought to have verified the date of retirement before superannuating the Applicant. Alas, Respondent No.2 mechanically superannuated the applicant on the basis of incorrect date of birth as 25.01.1961.

14. Admittedly, the applicant has not made application within five years from the date of entry in service. However, as stated above, and at the costs of repetition it is necessary to highlight this is not the case of change in date of birth. This is not the case where initially the applicant has furnished one particular date of birth which is recorded in service book on the basis of document furnished by him and later he came with another set of document showing different date of birth and the seek change in date of birth of service record. It is the case of rather implementation of the date of birth recorded by Respondent

No.2 own in service book which is corresponding to the date of birth recorded in school leaving certificate and SCC certificate. Therefore, lapse on the part of applicant for not filing application within five years should not come in the way where there is obvious, small error and discrepancy while recording date of birth in figures only. As such in my considered opinion, where there is obvious mistake and there is negligence on the part of the concerned official while recording the date of birth the Rule of limitation of five years should not come in the way of applicant and applicant should not suffer for it. He cannot be blamed for the goof up committed by the Department. Procedural Rules are for advancement of justice and not to obstruct justice where no fault can be attributed to the applicant. The Tribunal is therefore required to take holistic approach so as to administer justice where there is small obvious error while writing date of birth in figures only.

15. Needless to mention, while seeking declaration regarding the claim the date of birth there should be unquestionable and irrefutable evidence of date of birth. In present case there is absolutely no dispute that the date of birth of applicant is 25.09.1961 and record clearly spells that there was obvious inadvertent small error and discrepancy while recording the date of birth of applicant in figures only. This being the position in my considered opinion even if the applicant has not made application within five years it is not fatal in the facts and circumstances of the case and the applicant is entitled to revised pension considering his last increment which due on 01.07.2019 and for revised pension. Learned Advocate has fairly conceded that the applicant is not claiming pay and allowances for the said period.

16. As stated above, at the cost of repetition, it is again necessary to point out that this is not a case of change in date of birth. Indeed, it is a case of direction to implement date of birth written in words. Thus where there is obvious grave error on the part of Department while

recording date of birth, the question of limitation perhaps may not arise. The limitation of five years in the present case, in fact, does not arise, as the Applicant joined in 1987 and the limitation of period of five years for making application is introduced for the first time by amendment in 2008. In this behalf, a reference may be made to the decision of Hon'ble Bombay High Court in **2014(6) M.L.J. (Ashok P. Meshram Vs. Head Master, Z.P. High Court)**. The issue before Hon'ble High Court was regarding applicability of amended Rule of 2008. The Hon'ble High Court on comparison of old Rule and amended Rule held that Rule making authority has after amendment in 2008 prohibited the employees from making application for correction in date of birth after a period of five years from the date of entry in service, but since the amendment is not retrospective, it must be read as prospective. In that case also, no application was made within five years from the date of entry in service but it being governed by old Rules, it was held that the mistake on the part of Applicant of not making an application within five years held cannot be utilized to punish him for all time to come when there is clear error in date of birth recorded in service book. Suffice to say, even if the application is not made within five years or within a reasonable period, it should not come in the way of Applicant where there is obvious error on the part of Department in recording the date of birth. Earlier there was no such fix period of limitation and application was required to be made normally within five years. In the present situation, in my considered opinion, when there is obvious mistake and sheer negligence on the part of concerned official of the Department while recording date of birth, the Rule of limitation should not come in the way of Applicant and the Applicant should not suffer for it. Therefore, the Tribunal is required to adopt holistic approach so as to administer the justice where gross error of the Department is writ at large and no fault can be attributed to the Applicant.

17. This view is reinforced by the decision rendered by this Tribunal in **O.A.892/2014 (Ganpat Salunkhe Vs. Deputy Commissioner of Police) decided on 06.08.2015** and confirmed by Hon'ble High Court in Writ Petition No.5518/2016 decided on 21.07.2017. In that case, Mr. Ganpat Salunkhe joined as Police Constable on 26.09.1981 and his date of birth was wrongly recorded as 26.09.1976. That would mean that he joined the Primary School at the age of 5 years. Thereafter, the entry was changed to 26.09.1956 and he was to retire at the end of September, 2014 on the basis of date of birth as 26.09.1956. He filed O.A.No.892/2014, but no interim relief was granted and consequently, he got superannuated on 30.09.2014. It was his case that he never represented that his date of birth was 26.09.1956. There was no material whatsoever with the Department to show that his date of birth was 26.09.1956. The O.A. was contested on the point of delay and the Department contended that at the fag end of service, alteration in date of birth is not permissible. The O.A. was heard on merit and allowed with the finding that there was no mistake on the part of Applicant and mistake was on the part of Department while recording date of birth. As the Applicant was already retired on attaining the age of superannuation, the directions were given to extend service benefits considering his date of birth as 26.09.1956. The matter was taken up before the Hon'ble High Court and the decision of Tribunal was confirmed. Para Nos.7 and 8 of the Judgment of Hon'ble High Court are material, which are as follows:-

“7. This is not a case where the respondent wanted a change in the date of birth. This is not a case where the respondent had given a particular date at the time of initial entry which was later on sought to be changed by him. In fact, the office of the petitioner itself had convincing material before them to show that the date of birth of the respondent was 26th September, 1960 yet wrong date was noted in the service book. The Learned Counsel for the petitioners, submitted that, after a period of 5 years from entry in Government Service, no change can be carried out in date of birth. To support this submission, reliance is placed on Instruction (1) to Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 which states as under :-

“(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 should be entertained after a period of five years commencing from his entry in Government Service.”

- 8.** *In the first place, the respondent had not given his date of birth as 26th September, 1956, nor had he preferred an application for alteration of the entry. There was no tangible material before the petitioners to record the date of birth as 26th September, 1956. On the other hand, as far as, the date 26th September, 1960 is concerned, there was ample convincing documentary material before the petitioners who were the custodians of his service book to show that the date of birth of the respondent is 26th September, 1960.”*

The petitioners themselves have written an erroneous date of birth in the service book of the respondent without any material to support the same. On the other hand, there was ample material to show that the date of birth of the respondent was 26th September, 1960. In such case, the petitioners cannot be allowed to take advantage of their own wrong and the respondent cannot be made to suffer for something for which he was not responsible or accountable. The Tribunal took into consideration all the above facts and thereafter directed to enter in the relevant record, the respondent's date of birth as 26th September, 1960 instead of 26th September, 1956 and allowed the respondent to rejoin the duties with continuity of service and all service benefits including backwages from 1st October, 2014 till resumption of duties. Looking to the above facts, as discussed by us in detail, no error can be found in the order of the Tribunal. Hence, Rule is discharged.”

18. The conclusion of mine is further strengthened in view of decision of Hon'ble High Court reported in **2017(2) ALL MR 328 (Shriniwas Karve Vs. State of Maharashtra)** where in similar situation, having found that there was obvious error on the part of Department while recording the date of birth of the Applicant Shriniwas, directions were issued to correct the date of birth despite of non-making an application for correction in date of birth within five years or within reasonable time from entering into service. In that matter, the Petitioner joined as Lecturer in 1984 and in service book, the date of birth was recorded as 01.03.1957 instead of 16th January, 1958. The Petitioner realized the mistake in service book in 1993 for the first time, and therefore, made representation on 4th February, 1993. It was brought to the notice of Department that the concerned official had mistakenly reported the date of another officer viz. John

Gaikwad, who was selected and appointed along with the Applicant on the same day. The date of birth of John Gaikwad was 1st March, 1957 and mistakenly, same date was recorded in service book of the Petitioner. The claim of the Petitioner was strongly resisted on the ground of not making an application within five years. However, the Hon'ble High Court on examination of record found the date of birth as 01.03.1957 was recorded by the Department without verifying documentary evidence and it was due to want of care on the part of Department, it was found inadvertent clerical error made by concerned official. Accordingly, the Writ Petition was allowed subject to cost of Rs.25,000/- and pensionary benefits were granted. The Hon'ble High Court heavily came down on the Respondents with observation that the Petitioner was unnecessarily harassed and his date of birth ought to have been corrected by the Department itself in view of sheer mistake on the part of Department.

19. Now turning to the facts of the present case, it is on for better and strong footing as the mistake on the part of Department was occurred while writing the same in figures only. When there is discrepancy in the figures and words, it is the words which shall prevail if it is corresponding to other record. While writing date of birth of applicant in words it is correctly mentioned as 25.09.1961. Suffice to say, discrepancy was inadvertent and error bring on the part of concerned official of the Respondent No.2 it ought to be corrected to render justice to the Applicant. The decisions of Hon'ble Bombay High Court referred to above are squarely attracted to the present situation.

20. The totality of the aforesaid discussion of law and facts leads me to conclude that the impugned order dated 02.03.2019 is totally indefensible and liable to be quashed.

21. Applicant is not entitled for pay and allowance, but he is definitely entitled for grant of revised pension considering his last increment which was due on 01.07.2019.

ORDER

- (A) Original Application is allowed partly.
- (B) Impugned order dated 02.03.2019 is quashed and set aside.
- (C) Respondents are directed to correct the date of birth of applicant in figures as 25.09.1961 and considering the same he should be treated in service till 30.09.2019. He be granted next increment which was due on 01.07.2019 and accordingly pension be refixed and released on the basis of last drawn pay within two month from today.
- (D) Applicant is not entitled for pay and allowances from 25.01.2019 to 25.09.2019.
- (E) No order as to costs.

SD/-

(A.P. KURHEKAR)
MEMBER-J

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