

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.161 OF 2023

**DISTRICT : PUNE
SUBJECT : Change in DOB**

Shri Mukesh Shankar Nagupelli,)
Printer, Govt. Photozinco Press, Pune.)
R/at Flat No.12, Kalpesh Society, Shivaji Chowk,)
Talegao Dabhade, Pune 410 507.)... **Applicant**

Versus

Government Photozinco Press, Mudranalaya & Book)
Depot through its Manager having office at GPO Road,)
opp. Samaj Kalyan Office, Pune 411001.)...**Respondents**

Shri M.D. Lonkar, learned Advocate for the Applicant.

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

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

DATE : 28.04.2023

JUDGMENT

1. The Applicant has challenged communication dated 03.07.2019 and 23.11.2019 whereby his request for change in date of birth has been rejected on the ground that he had not made an application for change of date of birth within five years from the date of joining in terms of Rule 38 (2)(f) of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules 1981' for brevity).

2. Shortly stated facts giving rise to Original Application are as under:-

The Applicant joined Government service on 18.01.1993 in Class-IV cadre. At the time of entry in service, his date of birth was recorded as 25.02.1965 as per the information given by him which was based on date of birth recorded in school leaving certificate. He did not raise any grievance for change of date of birth for almost 27-28 years. According

to him, his correct date of birth is 25.12.1967. There is no record of date of birth other than school record. The Applicant made representation to the department on 14.06.2019 for the first time for correction of date of birth which was rejected by the department by order dated 03.07.2019 on the ground that no such application was filed within 5 years as required under the 'Rules 1981'. He, thereafter, filed M.A.271/2019 before Judicial Magistrate First Class, Khadki, Dist. Pune for direction to Cantonment Board to take entry of date of birth as 25.12.1967 in Birth Register. That order was passed on the basis of affidavit filed by mother of the Applicant alone. Be that as it may, the fact remains that there was no public record about his date of birth as 25.12.1967 as he contends. Learned Magistrate by order dated 18.10.2019 allowed application.

3. On the basis of order passed by the learned Magistrate dated 18.10.2019, the Applicant got his name entered in Cantonment Board and again made representation for correction of date of birth on 06.11.2019. It again came to be rejected by communication dated 23.11.2019 on the same ground of non-making application for five years from the date of joining. Initially, the Applicant has filed W.P. No.4478/2021 before the Hon'ble High Court which was withdrawn by him on 03.02.2020 with liberty to approach the Tribunal.

4. It is on the above background, the Applicant has filed this O.A. on 07.02.2023. Admittedly, in terms of date of birth recorded in service book, the Applicant stands retired at the end of February, 2023.

5. Heard Shri M.D. Lonkar, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

6. Shri M. D.Lonkar, learned Counsel for the Applicant fairly concedes that Applicant has not made application for correction in date of birth within five years in terms of 'Rules 1981' but sought to contend that real date of birth is 25.12.1967 and it needs to be corrected in view of the order of learned Magistrate passed in M.A.No.271/2019.

7. Per contra, Shri A. J. Chogule, learned Presenting Officer submits that admittedly no such application was made for correction of date of birth within five years from the date of joining and in terms of Rules, and therefore, such O.A. at the fag end of service is not maintainable.

8. The fact narrated as above are not in dispute. The Applicant joined service on 18.01.1993 and at the time of joining, his date of birth is recorded as 25.02.1965 on the basis of information given by him.

9. The procedure for writing and recording the date of birth in Service Book and it's correction is governed by Rule 38 of 'Rules of 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.”

10. In present case, admittedly, no public record about date of birth as 25.12.1967 taken in regular course of business at the relevant time is forthcoming. It is only after 27 years, the Applicant filed M.A. before the learned Magistrate, Khadki, Pune for direction to record his date of birth as 25.12.1967 in Cantonment Board and accordingly entry was taken.

Indeed, no such evidential value can be attached to date of entry recorded in Cantonment Board on the basis of order passed by the Magistrate. It is only in case, where the date of birth is recorded in public record i.e. Corporation, Grampanchayat etc, there is presumption about its correctness unless it is rebutted. Whereas in present case, learned Magistrate has passed the order on the basis of affidavit filed by mother of the Applicant. Suffice to say, the date of birth as 25.12.1967 as recorded on the basis of order passed by the learned Magistrate cannot be taken as a authentic proof of date of birth and it cannot be accepted as gospel truth. That apart, admittedly, no such application was made by the Applicant for correction in date of birth within five years as mandated in 'Rules, 1981'. This being so, no such change in date of birth could be made after 27-28 years at the fag end of service.

11. It is no more *res-integra* that application for change of date of birth can only be made strictly as per relevant Rules and regulations and where application is made quite belatedly at the fag end of service, no such correction is permissible as a matter of right even if there is cogent evidence. This issue has been examined by Hon'ble Supreme Court in (i) **1994 Supp.(1) SCC 155 [Home Department Vs. R. Kirubakaran]**; (ii) **(2011) 9 SCC 664 [State of M.P. Vs. Premlal Shrivastava]**; (iii) **(2016) 15 SCC 781 [Life Insurance Corporation of India & Ors. Vs. R. Basavaraju]**; (iv) **(2020) 3 SCC 411 [Bharat Coking Coal Ltd. & Ors. Vs. Shyam Kishore Singh]**. Recently, again Hon'ble Supreme Court after considering above decisions reiterated the same principles while deciding **Civil Appeal No.5720/2021 [Karnataka Rural Infrastructure Development Limited Vs. T.P. Nataraja] decided on 21.09.2021**. In Para Nos.10 and 11, Hon'ble Supreme Court summarized the legal principles as under :-

“10. Considering the aforesaid decisions of this Court the law on change of date of birth can be summarized as under :-

(i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;

(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;

(iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag end of service and/or when the employee is about to retire on attaining the age of superannuation.

11. Therefore, applying the law laid down by this court in the aforesaid decisions, the application of the respondent for change of date of birth was liable to be rejected on the ground of delay and laches also and therefore as such respondent employee was not entitled to the decree of declaration and therefore the impugned judgment and order passed by the High Court is unsustainable and not tenable at law.”

12. Thus, it is only in a case, the Tribunal is satisfied that there is irrefutable proof and cogent evidence about the date of birth and such claim is made in accordance to procedure laid down in the Rules, in that event only, the correction in date of birth is permissible. Where Government servant knock the doors of the Tribunal/Court after retirement or at the fag end of career, then he cannot claim correction in date of birth as a matter of right. In the present case, indeed, no such irrefutable proof that Applicant was born on 25.12.1967 is forthcoming.

13. The totality of the aforesaid discussion, leads me to sum up that challenge to impugned communication is devoid of merit and O.A. is liable to be dismissed. Hence, the following order :-

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

