

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.169 OF 2018**

**DISTRICT : MUMBAI**

Shri Shivaji Bajirao Waje. )

**Since deceased through Legal Heirs** )

1) Smt. Fulan Shivaji Waje. )

Age : 55 Yrs., Occu.: Housewife. )

2) Shri Deepak Shivaji Waje. )

Age : 36 Yrs., Occu.: Service. )

3) Shri Prashant Shivaji Waje. )

Age : 31 Yrs., Occu.: Service. )

All are R/o. A-2/C-16, Panchavati )

C.H.S., Marol-Maroshi Road, )

Opp. Marol Police Camp, Mumbai-59) **...Applicants**

**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 State of Maharashtra. )

Through Principal Secretary, )

Home Department, Mantralaya, )

Mumbai – 400 032. )

3. The Accountant General-I, )

M.S, Mumbai having office at New )

Marine Lines, Mumbai – 400 020. ) **...Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

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

**DATE : 09.12.2019**

**JUDGMENT**

1. The Applicant has challenged the impugned orders dated 13.07.2017 issued by Respondent No.2 and consequent order dated 03.10.2017 passed by Respondent No.3 thereby granting retiral benefits to the Applicant w.e.f.31.05.2013 instead of 31.05.2015 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The original Applicant Viz. Shivaji Bajirao Waje (now deceased) was appointed by Respondent No.1 – Commissioner of Police on the post of Police Constable. At the time of joining of service, his date of birth was recorded as 01.06.1955. During the course of service, he was promoted to the post of Police Naik, Head Constable and then Assistant Sub-Inspector. He retired on 31.05.2015. He contends that at the time of joining service, incorrectly the date of birth was recorded as 01.06.1955 but his real date of birth as per record i.e. School Leaving Certificate, S.S.C. Certificate, etc. is 01.06.1957. Accordingly, in 2004, he made an application to the Commissioner for correction of date of birth on the basis of date of birth recorded in School Leaving Certificate thereon. The Office of Commissioner of Police corrected the date of birth as 01.06.1957 and made endorsement to that effect in Service Book on 16.06.2004. Besides the then Deputy Commissioner of Police had also issued Certificate that on verification of School Leaving Certificate and S.S.C. Certificate, the date of birth is found 01.06.1957 and accordingly, corrected the same as Appointing Authority. Accordingly, the Applicant continued in service on the basis of corrected dated of birth as 01.06.1957 and stands retired on 31.05.2015 on attaining the age of superannuation.

3. However, when the pension papers were processed, the Office of A.G. raised objection in correction of date of birth by authority other than the Government, and therefore, pension papers were remitted back. The Commissioner of Police by letter dated 12.10.2015 requested Respondent No.2 i.e. Principal Secretary, Home Department explaining that the clerical mistake in the date of birth in Service Book of the Applicant was corrected invoking Clause 476(3)(a) of Maharashtra Police Manual read with Rule 38(2)(f) of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as 'General Conditions Rules 1981' for brevity). The Commissioner of Police, therefore, requested the Government to grant ex-post facto sanction to the correction of date of birth already done in Service Book. However, the Respondent No.2 by impugned order dated 13.07.2017 rejected the proposal on the ground that the date of birth was corrected unauthorizedly without jurisdiction. By the said order, the Government further directed that the Applicant be treated as stands retired on 31.05.2013 instead of 31.05.2015 and pension be granted accordingly. As regard pay and allowances paid for two years i.e. from 31.05.2013 to 31.05.2015, the Government informed that it should not be recovered from the Applicant since he has already discharged the duties till 31.05.2015. Consequently, the Respondent No.1 – Commissioner of Police has issued another order dated 03.10.2017 to compute the pension considering the date of retirement as 31.05.2013. On this background, the Applicant has challenged the orders dated 13.07.2017 and 03.10.2017 and prayed for consequential benefits considering his date of retirement 31.05.2015.

4. During the pendency of O.A, the original Applicant Shivaji Bajirao Waje died and his heirs were brought on record who continued the proceeding for grant of retiral benefits of the deceased considering his date of birth as 01.06.1957 and retired on 31.05.2015.

5. Shri Bandiwadekar, learned Advocate for the Applicant assailed the impugned orders contending that there was clerical error in the date of birth in Service Book as 01.06.1955 and the same was rectified by Commissioner of Police in 2004 and corrected date of birth 01.06.1957 was recorded in Service Book. He has pointed out that, on the basis of corrected date of birth, the original Applicant rendered the service and retired on 31.05.2015. However, after his retirement, now the issue of legality of order of Commissioner dated 16.06.2004 is rake-up without there being any substance therein. He submits that, in terms of Clause 476(3)(a) of Maharashtra Police Manual read with Rule 38(2)(f) of M.C.S. (General Conditions of Services) Rules, 1981, the Commissioner was competent to rectify the clerical mistaken and on satisfaction in view of date of birth in School Leaving Certificate as well as S.S.C. Certificate, the date of birth was corrected as 01.06.1957. He, therefore, submits that the impugned orders are not sustainable in law. In this behalf, he sought to place reliance on the decision of Hon'ble High Court in ***Writ Petition No.5759 of 2016 (State of Maharashtra Vs. Krishnaji Kulkarni) decided on 20.12.2017*** arising from similar situation.

6. Whereas Smt. A.B. Kololgi, learned Presenting Officer urged that the correction in date of birth was required to be made within five years and in the present case, it being made after 23 years, the same is not legal, and therefore, the impugned order treating date of retirement of the Applicant as 31.05.2013 cannot be faulted with.

7. In view of submissions advanced at the Bar, the question posed for consideration is whether the Respondent No.1 – Commissioner of Police was competent to correct the date of birth in the service record of the Applicant.

8. Admittedly, at the time of entry in service, the date of birth was recorded as 01.06.1955 but it was corrected as 01.06.1957 by

Commissioner of Police on 16.06.2004. It may be noted that this is not a case where at the verge of retirement, the employee is seeking correction in date of birth in service record to gain additional service. This is a case where the date of birth is already corrected by Commissioner of Police on his satisfaction. After correction of date of birth in service record, the Applicant continued the service and stood retired on 31.05.2015. It is only after retirement, the question is raised about the competency of Respondent No.1 – Commissioner of Police to correct the date of birth.

9. Pertinent to note that there is no challenge to the Applicant's contention that his date of birth as 01.06.1957 is incorrect. It is nowhere the case of the Respondents that the date 01.06.1957 is manipulated by the Applicant. Indeed, the Leaving Certificate issued by Zilla Parishad, School Leaving Certificate issued by Middle School, S.S.C. Certificate, Identity Card issued by Department and retirement order (Page Nos.18 to 23 of P.B.) bears date of birth as 01.06.1957. It is on the basis of these documents, the Commissioner of Police corrected the date of birth by order dated 16.06.2004 and issued Certificate to that effect which is at Page No.21 of P.B. There is specific mention in Certificate that the Commissioner of Police verified Leaving Certificates of the Applicant and being satisfied about the correct date of birth, he corrected the date of birth as 01.06.1957. He has also certified that the date 01.06.1955 which was initially taken in Service Book was recorded mistakenly.

10. Indeed, the Commissioner of Police by letter dated 12.10.2015 forwarded the proposal to the Government that the date of birth of the Applicant is corrected invoking Clause 476(3)(a) read with Rule 38(2)(f) of M.C.S. (General Conditions of Services) Rules, 1981 and requested for *ex-post facto* sanction. However, the same was turned down by the Government.

11. Here, it would be material to note that the perusal of impugned order dated 13.07.2017 reveals that the Government treated the Applicant as Assistant Police Inspector whereas, in fact, he is Assistant Sub-Inspector at the time of retirement, who falls in Group 'C'. It is, therefore, rightly pointed out by the learned Advocate for the Applicant that the Government misunderstood that the Applicant belongs to Group 'B' category and perhaps that might have prevailed to reject the proposal forwarded by Commissioner of Police.

12. Furthermore, the only ground of rejection mentioned in the impugned order dated 13.07.2017 is regarding competency of Commissioner of Police. Therefore, it is necessary to see whether the Commissioner was competent to correct the date of birth. In this behalf, it is necessary to see the provision of Police Manual invoked by the Commissioner of Police while correcting date of birth, which is as under :-

**“४७६(३)(अ) :** सेवा पुस्तक / शीट / रोल मधील वय अथवा जन्मतारखेच्या संबंधातील चुकांच्या दुरुस्तीची मंजूरी नेमणूक करू शकणा-या अधिका-यांकडून दिली जाईल किंवा दुरुस्ती केली जाईल.

13. Thus, as per Clause 476(3)(a) of Maharashtra Police Manual, the appointing authority is competent to correct the date of birth. The learned P.O. to this extent fairly concedes that, as per Police Manual, the Commissioner of Police is competent to correct the date of birth. However, she hastens to add that the correction is not made within five years, and therefore, the Applicant cannot take retiral benefits of extended period. She, therefore, sought to justify the ground of pension considering retirement date of the Applicant as 31.05.2013 based on earlier date of birth 01.06.1955.

14. In so far as the period of limitation of five years is concerned, as rightly pointed out by the learned Advocate for the Applicant the provision of making application within five years from the date of

service for the first time incorporated in M.C.S. (General Conditions of Services) Rules, 1981 in 2008 by way of amendment. Prior to amendment, the provision was as follows :-

**“38(2)(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) Normally, 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 the date of his entry in Government service.” (Underlined mine).

It is to be noted that in 2008, instructions below Rule 38(2)(f) is substituted as follows :-

**“38(2)(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 the 16th August, 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.”

15. In the present case, the correction in date of birth was done in 2004 whereas, the amendment in instruction was introduced in 2008 by Notification dated 24.12.2008. In other words, in 2004, there was no such specific bar for making application within five years. All that, the earlier provision shows that normally, it should not be entertained after five years. This being the position, the correction made by the Commissioner of Police in date of birth of the Applicant cannot be said without jurisdiction or in express contravention of Rule 38((2)(f) of M.C.S. (General Conditions of Services, 1981. Indeed, as stated earlier, this is not a case where the Applicant is seeking correction in

date of birth at the fag end of service or after five years of service. Here is the situation where the date of birth is already corrected by the Competent Authority, but after retirement, the question of competency or Competent Authority i.e. Commissioner of Police is raised. Such course of action is hardly permissible after retirement of the original Applicant in view of decision of Hon'ble High Court in Writ Petition No.5759/2016 (cited supra) wherein in similar situation, in Para No.8, the Hon'ble High Court held as follows :-

*“8. We do not find any reason to interfere with the order passed by the Tribunal. The respondent continued to work till 30/06/2014, which is on the basis of the date of birth being 28/06/1956 as per the service record. The respondent having worked on the said post till 30/06/2014 the question of effecting any recovery for the period from 01/07/2013 to 30/06/2014 cannot arise. Moreover, it is the petitioner authorities themselves who had effected the necessary change in the service record, on which basis the respondent continued to work till 30/06/2014. The respondent having retired from service, the action on the part of the petitioners holding that the respondent's date of retirement could have been 30/06/2013 is not only belated, but also unjust. 4 of 5. In this light of the matter, we are not inclined to interfere with the order passed by the Tribunal in the exercise of writ jurisdiction under Article 226 of the Constitution of India.”*

16. The learned Advocate for the Applicant tendered a copy of decision rendered by this Tribunal in O.A.No.118/2015 decided on 27.10.2015 against which Writ Petition No.5759 of 2016 was filed by the Government and which came to be dismissed on 20.12.2017 as referred above. The Hon'ble High Court held Respondents therein having retired from the service, the action on the part of Government holding that the date of retirement could have been earlier is not only belated but also unjust. The Hon'ble High Court further observed that the Petitioner therein was allowed to retire on the basis of corrected date of birth, and therefore, the question of effecting recovery of intervening period also does not survive. In O.A.No.118 of 2015, this Tribunal has granted all consequential benefits considering the date of birth corrected by Commissioner of Police himself and the Judgment was confirmed by Hon'ble High Court. Suffice to say, this



Judgment is squarely attracted to the present situation and the impugned order granting retiral benefits w.e.f.31.05.2013 is unjust and not sustainable in law.

17. Furthermore, in so far as the applicability of provisions of M.C.S. (General Conditions of Services) Rules, 1981 to the Applicant who retired from the post of ASI is concerned, Rule 2 of M.C.S. (General Conditions of Services) Rules, 1981 is material, which is as follows :-

**“2. Extent of application.**- Except where it is otherwise expressed or implied, these rules apply to all members of services and holders of posts whose conditions of service the Government of Maharashtra are competent to prescribe. They shall also apply to.-

- (a) any person for whose appointment and conditions of employment special provision is made by or under any law for the time being in force.
- (b) any person in respect of whose service, pay and allowances and pension or any of them special provision has been made by an agreement made with him, in respect of any matter not covered by the provisions of such law or agreement, and
- (c) Government servants paid from Local Funds administered by Government, except rules relating to the foreign service.”

18. Thus, as per Rule 2, the provisions of M.C.S. (General Conditions of Services) Rules, 1981 are applicable to the Government servant except where it is otherwise provided or implied. Whereas, in the present case, the Commissioner of Police exercised the powers under Clause 476(3)(a) of Police Manual, which expressly empowers Commissioner of Police to correct the clerical error crop-up in date of birth of employee. This being the position, only because Applicant made an application for correction of date after five years, he cannot be denied the retiral benefits in view of correction of date of birth done by Commissioner of Police, who is competent to do so in view of Clause 476(3)(a) of Police Manual.

19. The necessary corollary of aforesaid discussion leads me to sum-up that the impugned orders are unsustainable in law and facts and deserves to be quashed. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned orders dated 13.07.2017 and 03.10.2017 are quashed and set aside.
- (C) The Respondents are directed to grant post retiral benefits to the Applicant considering the date of retirement of the Applicant as 31.05.2015.
- (D) The monetary benefits be accordingly released within two months from today.
- (E) No order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 09.12.2019  
Dictation taken by :  
S.K. Wamanse.

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