

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.280 OF 2023**

**DISTRICT : MUMBAI**

**Sub.:- Change in date of birth**

Shri Sudhir Bhagwat Kalekar. )  
Age : 58 Yrs, Occu.: Assistant Commissioner )  
of Police [Traffic], South Mumbai and )  
residing at 2/2/3, Police Officers Quarters, )  
Kandivali Police Station Compound, )  
S.V. Road, Kandivali (W), Mumbai – 67. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Director General of Police, )  
Shahid Bhagat Singh Marg, Colaba, )  
Mumbai – 400 001. )
3. The Commissioner of Police, )  
Mumbai, Near CST, Crawford )  
Market, Mumbai. )...**Respondents**

**Shri K.R. Jagdale, Advocate for Applicant.**

**Shri A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 21.04.2023**

**JUDGMENT**

1. The Applicant has challenged the communication dated 14.12.2022 issued by Government and communication dated 01.03.2023 made by Respondent No.2 thereby rejecting his claim for change of date of birth from 23.05.1965 to 23.11.1965 in service book, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. is as under :-

The Applicant joined as Police Sub-Inspector on 17.08.1992. At the time of entry in service, his date of birth in service record was recorded as 23.05.1965 on the basis of School record. The Applicant, however, contends that his real date of birth is 23.11.1965 and it has been recorded in Birth Register maintained by Municipal Corporation of Greater Mumbai. He, therefore, made an application on 22.07.1994 to Respondent No.3 – Commissioner of Police, Mumbai for correction in date of birth from 23.05.1965 to 23.11.1965 and supplied extract of Birth Register of Municipal Corporation of Greater Mumbai. However, no action was taken by the Respondents in pursuance of his application dated 22.07.1994 (Page No.26 of P.B.) though it was made well within five years as contemplated under Rule 38 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity). Thereafter, he made representation on 29.01.2004 and again went on making representations from time to time (Representations are at Page Nos. 27 to 41 and 50 of Paper Book). However, no such timely action was taken by the Respondents in pursuance of application dated 22.07.1994 and the representations made by the Applicants from time to time. It is only after much persuasion, the Respondent No.2 – Director General of Police forwarded proposal on 19.03.2021 to the Government for necessary orders. However, Respondent No.1 – Government by communication dated 14.12.2022 rejected the proposal stating that though Applicant has made

application for correction in date of birth within five years, as required in terms of 'Rules of 1981', there was no clerical error or mistake on the part of Department in recording the date of birth and rejected his claim for change of date of birth as 23.11.1965.

3. It is on the above background, the Applicant has filed this O.A. on 13.03.2023. His Advocate requested to expedite the matter, since Applicant is retiring at the end of May, 2023 on the basis of date of birth recorded in service book. Therefore, matter was expedited and Respondents were directed to file Affidavit-in-reply. Accordingly, Respondent No.3 has filed Affidavit-in-reply.

4. The Respondent No.3 in Affidavit-in-reply resisted the claim of change of date of birth in service record on the ground that while taking entry in service record, there was no mistake or clerical error on the part of Department and it was recorded as per the information submitted by the Applicant himself. The Respondent further contends that such correction in date of birth is not permissible at the fag end of his service.

5. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the impugned communication dated 14.12.2022 and 01.03.2023 *inter-alia* contending that admittedly, the Applicant had made an application for correction in date of birth well within five years as contemplated in 'Rules of 1981', and therefore, Respondents ought to have corrected the date of birth as 23.11.1965, since it was supported with the extract of Birth Register from Municipal Corporation of Greater Mumbai. He contends that in School, due to illiteracy of parents, the date of birth was recorded as 23.05.1965 which was carried forward in School record, and therefore, entry was taken in service book as 23.05.1965. He submits that immediately after coming to know the correct date of birth, the Applicant has applied within five years and the date of birth recorded in Municipal record being high evidential probative value prevails upon the date of birth recorded in School record. He has further pointed out that Applicant also thereafter made various

representations from time to time, but Respondents failed to take appropriate decision, and therefore, Applicant cannot be blamed for delay. In this behalf, he sought to place reliance upon certain decision which will be dealt with during the course of discussion.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer reiterated the contentions raised in Affidavit-in-reply that there was no clerical error or mistake on the part of Department in recording date of birth and sought to justify the impugned orders. He further contends that the correction in date of birth now at the fag end of service is not permissible in law.

7. In view of submissions, the issue posed for consideration is whether in the facts and circumstances of the matter, the Applicant is entitled to declaration of correction of date of birth as 23.11.1965 in place of 23.05.1965 in service book and answer is in emphatic affirmative.

8. At the very outset, it needs to be stated that indisputably, Applicant has made an application for correction of date of birth within five years from the date of joining, as required in terms of Instruction No.1 to Rule 38(2) of 'Rules of 1981'. It is also not in dispute that at the time of entry in service, his date of birth was recorded as 23.05.1965 on the basis of School record. The Applicant has produced extract of Birth Register from Mumbai Municipal Corporation as well as Certificate issued by Maternity Hospital where he was born, which is at Page Nos.21 and 20 respectively. As per this document, Applicant was born in the Maternity Hospital run by Bombay Mothers and Children Welfare Society [Later known as Mhaskar Hospital] on 23.11.1965 at 9.00 p.m. Accordingly, entry of birth was also taken in the record of Municipal Corporation. The entry in Municipal Corporation record was taken in terms of Maharashtra Registration of Birth and Death Rules, 1976. However, while taking admission in Primary School, the date of birth was

recorded as 23.05.1965 which was later carried further and recorded in service book. Now let us see whether Applicant has made an application for correction of date of birth in accordance to Rule 32 of 'Rules of 1981'.

9. The procedure for writing and recording the date of birth in service book and its 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.”

10. True, as per Rule 38(2)(a)(f) of 'Rules of 1981', once an entry of date of birth is made in service book, no alteration of entry afterwards is permissible unless it is shown that the entry was due to want of care on the part of some person other than individual in question or is obvious clerical error. At the same time, Instruction No.1 provides for alternation in date of birth recorded in service book where application is made within five years from the date of joining service. Thus, harmonious construction of Rule 38(2) is that in certain situation, where entry of date of party recorded in the service book is on account of some error, it can be corrected if conclusive evidence for change of date of birth is forthcoming and the procedure contemplated under Rule 38(2) of 'Rules of 1981' is adhered to. In other words, there is no such express bar or prohibition for change of date of birth in service record where it is found

that there is obvious mistake in recording the date of birth and there is cogent and satisfactory evidence to establish the correct date of birth. Needless to mention, the extract of public record i.e. Birth Register maintained by local body in terms of Rules have greater probative evidential value and must prevail over the entry of date of birth recorded in School record. There is presumption of correctness of the entries taken in public record and presumption continues to hold unless it is rebutted.

11. In the present case, the Applicant has explained that due to illiteracy of parents, the incorrect date of birth as 23.05.1965 was recorded in School record though his correct date of birth as per Municipal record is 23.11.1965. Such mistake in recording date of birth in School record for one or other reason is not uncommon. Therefore, one need to see whether some other authentic public record about the date of birth is available and where such evidence is forthcoming and stands unrebutted, it should prevail over School record.

12. In this behalf, reference may be made to the decision of Hon'ble High Court in **(2008) 4 AIR [BOM] 695 [Smt. Vasudha G. Mandvilkar Vs. City and Industrial Development Corporation of Maharashtra Ltd.]** wherein Hon'ble High Court held that public document being presumptive value have more probative evidential value and school record cannot override the public record. In Para Nos.13 and 14, Hon'ble High Court held as under :-

**13.** *It is common knowledge that to secure admission in the school earlier than at the age which the law permits, an incorrect date of birth may be shown. Unless verified from public records such date may remain in the record of the school. This cannot be verified except by production of public records. They, therefore, cannot be authentic dates as would make those documents admissible as evidence with probative value in law.*

**14.** *Consequently whenever there is a variance between an unproved private document or its copy and a certified extract of a public record, the latter must prevail as it has more probative value, calling the presumption as it does under Section 79 of the Evidence Act. This presumption would continue to hold until it is rebutted. It can be rebutted only by production*

*of the original public record from which the extract is made out and certified to be true by the relevant authority. Only if it is so rebutted, such certified copy issued by a public authority would stand nullified.”*

13. As stated above, within five years of joining, the Applicant has made an application for correction of date of birth supported with extract of Birth Register of Mumbai Municipal Corporation. However, Respondents failed to take its cognizance. Thereafter also, he made various representations on 22.07.2004, 08.12.2005, 27.02.2007, 08.11.2011, 28.02.2013, 04.05.2017, 29.09.2020 and 22.07.2022 (Page Nos.27, 29, 30, 32, 34, 36, 38, 41, 46 and 56 of P.B.). The Respondents have not disputed this aspect. As such, he made representations repeatedly from time to time, but Respondents failed to take appropriate action on it. Ultimately, it is only on 18.03.2021 DGP, Mumbai forwarded proposal to the Government for appropriate orders (Page Nos.53 to 55 of P.B.). Along with proposal, he forwarded necessary documents tendered by the Applicant from time to time. In such situation, it cannot be said that the Applicant approached the Tribunal at the fag end of service, which is one of the contention raised by learned P.O. to oppose the O.A. The Applicant has raised the issue of correction of date of birth within five years as required under Rules, and thereafter also, persuaded the authorities by making various representations. Therefore, it is the Respondents who are to be blamed for not passing appropriate orders within reasonable time. Had Respondents declined the request of the Applicant at earlier, he would have filed O.A. to redress his grievance, but Respondents were sitting over the matter and it is only by communication dated 14.12.2022 and 01.03.2023 rejected the request of the Applicant. Being aggrieved by it, the Applicant immediately filed this O.A. in view of his impending retirement on the basis of date of birth in service book. Suffice to say, this is not a case where Applicant approached the Tribunal at the fag end of service, so as to defeat his claim. This being the position, the submission advanced by learned P.O. that Applicant had come to the Tribunal at the fag end of service is totally misconceived and fallacious.

14. Reliance placed by learned P.O. on **(2010) 14 SCC 423 [State of Maharashtra & Anr. Vs. Gorakhnath Kamble & Ors.]** is totally misplaced. Notably, in that case, though Gorakhnath Kamble was appointed as Assistant Teacher on 13.02.1978, he made application for correction of date of birth quite belatedly on 23.05.2004 though it was required to be made within five years from the date of entry in service. It is because of it, his claim for correction in date of birth was rejected by Hon'ble Supreme Court with the observation that it is not permissible at the fag end of service. As such, the facts are totally distinguishable. Indeed, in the said decision itself Hon'ble Supreme Court held that unless clear case on the basis of material which can be held to be conclusive in nature is made out by the Government servant, the Court or Tribunal should not issue direction on the basis of material which make such claim only legible. It has been further held that the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth is made in accordance with the Rules prescribed in this behalf. This being so, the said authority rather supports Applicant's claim. Therefore, one need to see the facts and circumstances of the case to find out whether the claim for correction of date of birth is raised in accordance to Rules prescribed in this behalf and strong and cogent evidence about correct date of birth is forthcoming. In the present case, as stated above, there is cogent and strong evidence of correct date of birth as 23.11.1965 in the form of public record i.e. Birth Register maintained by Mumbai Municipal Corporation and it is supported by the Certificate issued by Maternity Hospital where Applicant was born.

15. Similarly reliance placed by learned P.O. on the decision of Hon'ble Supreme Court in **Civil Appeal No.1009/2020 [Bharat Coking Coal Ltd. & Ors. Vs. Shyam Kishore Singh] decided on 05.02.2000** is also of no assistance to the Respondents. In that case, Respondent made representation for change of date of birth just prior to his retirement i.e. in the year 2009 though he was due to retire in 2010. Therefore, in fact



situation, Hon'ble Supreme Court held that the correction of date of birth in service record at the fag end of service is impermissible. Whereas in the present case, the Applicant has raised the claim for correction of date of birth within five years, as required under Rules supported with documentary evidence.

16. Reverting back to the facts of the present case, as stated above, strong and cogent evidence with presumption of its correctness is forthcoming in the form of public record i.e. extract of Birth Register maintained by Mumbai Municipal Corporation which is supported by the Certificate issued by Maternity Hospital where Applicant was born. Thus, these documents have higher probative evidential value and it is not rebutted by the Respondents. It is well settled principle of law that entry in public record prevails over the entry taken in School record. Suffice to say, it is a clear case where denial to correct date of birth would result in injustice to the Applicant.

17. The totality of aforesaid discussion leads me to sum-up that the impugned communication dated 14.12.2022 and 01.03.2023 declining to correct date of birth of the Applicant is totally arbitrary and unsustainable in law and it is liable to be quashed and set aside. The Applicant is entitled to correction of date of birth in service record as 23.11.1965 in place of 23.05.1965. The Original Application, therefore, deserves to be allowed. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) Impugned communication dated 14.12.2012 and 01.03.2023 are quashed and set aside.
- (C) The Respondents are directed to correct the date of birth of the Applicant as 23.11.1965 in place of 23.05.1965 in service

record and shall accord consequential service benefits to him.

(D) No order as to costs.

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

Mumbai

Date : 21.04.2023

Dictation taken by :

S.K. Wamanse.

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