

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.32 OF 2020

DISTRICT : NASHIK

Mrs. Sarla Tulshiram Chaudhari.)
Age : 57 years, Occu. : Working as Police)
Constable, R/at : Manohardeep Hsg. Soc.,)
Wing B, Flat No.6, Nashik Jail Road,)
Nashik.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner of Police.)
Nashik City, District : Nashik.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

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

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

DATE : 23.07.2020

JUDGMENT

1. The Applicant has challenged the order dated 21st December, 2019 passed by Respondent No. 2 – Commissioner of Police, Nashik thereby rejecting the request of the Applicant for change in date of birth in service record.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was appointed as Police Constable on 08.06.1991 and thereafter promoted to the post of Head Constable. At the time of joining service, her date of birth was recorded as 21.04.1962 on the basis of information furnished by the Applicant herself. As per date of birth in service record, the retirement date is 30.04.2020. She contends that her real date of birth is 21.07.1963. For the first time in 2016, when she obtained Birth Certificate from Malegaon Municipal Corporation for submission of the claim of Caste Scrutiny Committee, she came to know that in Municipal Corporation record, her date of birth is 21.07.1963. Therefore, she made an application to Respondent No.2 on 22.10.2019 (Page No.14 of Paper Book) for correction in date of birth in service record. However, her application has been rejected by order dated 21.12.2019 on the ground that the application for correction not being made within five years from the date of joining of service, the same is not maintainable. Therefore, the Applicant has filed the present O.A. challenging the communication dated 21.12.2019.

3. Respondent No.2 resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that the application for correction in date of birth is not being made within five years in terms of Rule 38 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity) and therefore correction in date of birth at the fag end of service is not permissible.

4. Shri K.R. Jagdale, learned Advocate sought to contend that, for the first time, the Applicant came to know that her real date of birth is 21.07.1963 in 2019 when she obtained Birth Certificate from Malegaon Municipal Corporation (Page No.13 of P.B.) and therefore, limitation of five years for application for change in date of birth starts from the date of knowledge. He, therefore, submits that accordingly the Applicant had made representation/application for correction in date of birth on 22.10.2019 within the limitation.

5. Per contra, Ms. N.G. Gohad, learned Presenting Officer submits that, admittedly, no application being made within five years in terms of Rule 38 of 'Rules of 1981', the claim made by the Applicant at the fag end of service is not maintainable. She has further pointed out that as per date of birth mentioned in service record, the Applicant is already retired on 30.04.2020. In this behalf, she placed reliance on the decision of Hon'ble Bombay High Court in ***Writ Petition No.8283/2006 (Parshuram Shinde Vs. Director General and Inspector General of Police and Ors. Decided on 13th December, 2017.***

6. In view of pleadings and submission the following facts are undisputed.

- (i) Applicant joined service on 08.06.1991.
- (ii) At the time of entry in service, her date of birth was recorded as 21.04.1962 on the basis of School Leaving Certificate tendered by the Applicant (Page No.11 of P.B.).
- (iii) For the first time, the Applicant made application dated 22.09.2019 for correction in date of birth on the basis of Birth Certificate issued by Malegaon Municipal Corporation (Page No.13 of P.B.).

7. In view of pleadings and submissions advanced at the Bar, the issue posed for consideration is whether the impugned order dated 21.12.1990 is sustainable in law and the answer is in affirmative.

8. 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.

(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. Indeed, in view of catena of decisions the legal position is well settled that unless steps are taken by the employee for correction in date of birth in terms of Service Rules, the correction at the fag end of service is not at all permissible. In the present case, admittedly, the Applicant did not apply within five years or within reasonable period for correction in date of birth in service record. It is for the first time, the application was made on 22.10.2019 when she was due to retire on 30.04.2020. The submission advanced by the learned Advocate for the Applicant that she got knowledge of correct date of birth for the first time in 2019, and therefore, the limitation of five years for making an application starts from date of knowledge is totally misconceived and fallacious. When Rule 38 of 'Rules of 1981' particularly provides about the manner and limitation in which application is required to be made, the question of making an application from date of knowledge does not survive.

12. Shri Jagdale, learned Advocate for the Applicant could not point out any such provision that limitation starts from date of knowledge when Rule provides for limitation of five years from the date of joining. Rules must prevail otherwise, the very object of Rules would be frustrated and it would result in anomalous situation, if employees are

allowed to make an application at the fag end of career on the special ground that the application is made within five years from the date of knowledge. The concept of limitation from date of knowledge is not at all applicable in view of express provisions of 'Rules of 1981'.

13. Indeed, the decision of Hon'ble High Court in **Writ Petition No.8283/2006** (cited supra) is the clear answer to the submission advanced by the learned Advocate for the Applicant. In that case, the Applicant – Police Constable joined service on 06.12.1971 and date of birth was recorded as 16.09.1948 on the basis of School Leaving Certificate. He made an application for correction in date of birth for the first time in 1981, on which no specific order was passed. In that case, in gradation list prepared by the Department, the date of retirement of the Applicant was shown 30.09.2007, and therefore, he believed that necessary change as regard his date of birth is effected in service record. However, the Hon'ble High Court rejected the contention raised by the Applicant and dismissed the Writ Petition confirming the decision of this Tribunal. Para Nos.8 and 9 of Writ Petition No.8283/2006 are important, which are as follows :-

“8. We have considered the submissions advanced by the learned Counsel and have gone through the relevant documents and the order impugned with the assistance of the learned Counsel. In our opinion, the order passed by the Tribunal is a well reasoned order upon considering all the materials on record. We find that the applicant entered the service in 1971 and the entry as regards his date of birth was made in the service book on the basis of the school leaving certificate produced by the petitioner himself. Any change in the date of birth has to be made b making an application within a reasonable time from the date of entry in service. The Apex Court in the case of State of Punjab & others Vs. S.C. Chadha, (2004) 3 SCC 394, has stated the importance of the entry of the date of birth in the relevant register or service book. The Apex Court has categorically held that the rules which prescribe a procedure to be followed for changing the date of birth are with the sole object that request for change in date of birth should be made within a reasonable time and not on the eve of superannuation of such public servant.

9. Learned Counsel for the petitioner vehemently contended that he came across the relevant birth extract only in the year 1978 where after he made an application in 1981. It is not in dispute that the application as contended to be made by the petitioner in the year 1981 is not on record.

In our opinion, it was incumbent on the part of the petitioner to have made an appropriate application for the change in date of birth in the service book within a period of five years from the date of entry into the service or at least within reasonable time as at relevant point of time the Maharashtra Civil Services (General Conditions of Services, Rules 1981 were not in force. The Tribunal was justified in holding that the petitioner cannot take undue advantage of wrong entry of the date of retirement in the gradation list. It is only when the petitioner's date of retirement was notified in the Gazette on the basis of the entry made in the service book that the petitioner approached the respondents for getting his date of birth corrected. We, therefore, do not find any merit in this petition."

14. 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."*

15. In **(2011) 9 SCC 664 (State of M.P. & Ors. Vs. Premal Shrivastava)**, 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."*

16. 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.

17. Now turning to the facts of the present case, admittedly, at the time of entry in service, the date of birth of the Applicant was recorded as 21.04.1962 on the basis of School Leaving Certificate, which is at Page No.11 of P.B. Thereafter, no steps were taken by the Applicant to correct the same and for the first time, she made an application on 22.10.2019 when she was due to retire. True, in School Leaving Certificate issued by Malegaon Municipal Corporation (Page No.13), the date of birth of the Applicant was shown 21.07.1963. However, there is nothing to substantiate that date of birth 21.07.1963 is correct one and the date of birth mentioned in School Leaving Certificate as 21.04.1962 is incorrect. The onus was upon the application to prove it but he miserably failed. The Applicant seems taking advantage of the Certificate issued by Malegaon Municipal Corporation. Needless to mention, unless irrefutable and unquestionable evidence of date of birth sought be replaced is tendered and the application is made within limitation or within reasonable time prescribed under Service Rules, no importance can be given to the date of birth recorded in Malegaon Municipal Corporation. What is required is unquestionable and irrefutable evidence that the date of birth 21.07.1963 as reflected in Malegaon Municipal Corporation is correct and making it applicable within 5 years in terms of Rules, which is completely missing in the present case. Suffice to say, at the fag end of service, such application for change in date of birth cannot be entertained, particularly when it is not in

conformity with Rule 38 of 'Rules of 1981' in view of catena of decisions referred to above.

18. The totality of aforesaid discussion leads me to sum up that the impugned order dated 21.12.2019 needs no interference and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

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

Mumbai
Date : 23.07.2020
Dictation taken by :
S.K. Wamanse.

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