

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.323 OF 2018

DISTRICT : MUMBAI

Shri Popat Balaji Bhalekar)
Age : 54 Years, Working as Divisional Forest Officer,)
Wildlife-1, Sanjay Gandhi National Park, Borivali and)
Residing at Type-IV Quarters, Navapada, Sanjay)
Gandhi National Park, Borivali, Mumbai - 400 066.)...**Applicant**

Versus

1. The Secretary (Forest).)
Revenue and Forest Department,)
Mantralaya, Mumbai 400 032.)
2. The Addl. Chief Secretary.)
G.A.D, Mantralaya, Mumbai 400 032.)
3. The Principal Chief Conservator of Forest.)
(Head of Forest Force), M.S, Nagpur.)
4. Deputy Conservator of Forest.)
Satara Forest Division, Satara.)...**Respondents**

Mr. D.B. Khaire, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 20.11.2018

JUDGMENT

1. This is an application made by the Applicant for correction of date of birth in service record under Section 19 of the Administrative Tribunals Act, 1985.
2. Shortly stated the facts giving rise to this application are as under.
3. The Applicant joined the Government service as Assistant Conservator of Forest (ACF) on 03.01.1989 in Satara Forest Division. At the time of entry in service, his date of birth was recorded as 01.06.1960 on the basis of School Leaving Certificate. According to him, he was born at Village Raitale, Taluka Parner, District Ahmednagar. As his father was illiterate, the entry of the birth could not be taken in Birth and Death Register maintained by Gram Panchayat, Raitale. He was admitted in Ganeshwadi Primary School of Zilla Parishad of Raitale on 01.06.1966. That time, the Applicant and his elder brother viz. Ramdas B. Bhalekar, both were admitted in the same School and the date of birth of both were shown as 01.06.1960. The date of birth of the Applicant as 01.06.1960 continued to exist upto University record. After completion of M.Sc., he cleared the Competitive Examination conducted by MPSC for the post of ACF in the year 1986. After completion of training, he was appointed as Probationary Assistant Conservator of Forest in Satara Forest Division on 03.01.1989. Thereafter, he realized the mistake in date of birth recorded at the time of entry in 1st Standard Primary School. He, therefore, made an application on 25.05.1992 addressed to Principal Chief Conservator of Forest, Nagpur requesting correction in date of birth from 01.06.1960 to 05.06.1963. In the application, he stated that at the time of admission in School, his date of birth as well as the date of birth of his elder brother Ramdas, who is elder by two and half years, mistakenly were recorded as 01.06.1960. They are not twins, and therefore, there is obvious mistake in recording his date of birth. He claims to have been born on 05.06.1963. Thereafter, certain queries were raised by the Department to which he answered by letter dated 20.07.1992. Again certain queries were raised which

were answered to. Then again, he made an application on 09.09.1992 addressed to Deputy Conservator of Forest, Satara reiterating his request for correction in date of birth. In support of his application, he appended copy of Affidavit dated 01.09.1992 sworn by his father before Executive Magistrate, Parner. In Affidavit, his father has stated that the correct date of birth of Applicant is 05.06.1963, but mistakenly, the date of birth of the Applicant and his elder brother Ramdas was recorded same as 01.06.1960 while taking admission in 1st Standard in Primary School. In the application, the Applicant further sought to explain that he realized the mistake in date of birth in 1981-1982, but there being no entry of date of birth in Birth and Death Register of Village, reliance was placed on the Affidavit of his father. Thereafter, he was pursuing the matter for correction of date of birth in service record, but noting was communicated to him. Then again, the Applicant had submitted an application dated 27.08.2014 to Principal Secretary, Revenue and Forest for correction of date of birth. On his application, again certain queries were raised by the Department to which he complied. The Respondent No.1 by order dated 09.09.2016 rejected the request of the Applicant for correction of date of birth and it was communicated to the Applicant. It was informed to the Applicant that there is no clerical error or obvious mistake for recording the date of birth in service record on the part of some persons other than the Applicant. The Applicant then again made representation against it on 11.07.2017.

4. On 14.02.2017, the Applicant filed an application before Learned Judicial Magistrate 1st Class, Parner under Section 13(3) of Birth and Death Registration Act, 1969 for direction to Gram Panchayat, Raitale to record his date of birth as 05.06.1963. Accordingly, public notice was issued inviting objections. As nobody objected, the Learned Judicial Magistrate by order dated 28.06.2017 directed Gram Panchayat, Raitale to register his date of birth in its record as 05.06.1963. In pursuance of it, the entry was taken in Gram Panchayat record on 07.07.2017.

5. After obtaining the order under Section 13(3) of Registration of Birth and Death Act, 1969 from the Court of Judicial Magistrate 1st Class, Parner, the Applicant again made an application to Principal Chief Conservator of Forest, Nagpur on -5.10.2017 for correction of date of birth. Thereon, again certain queries were raised by the Department to which he submitted his explanation explaining that there was mistake in recording the date of birth in the School due to illiteracy of parents. However, the Respondent No.1 rejected the application for correction in date of birth and it was communicated to the Applicant by letter dated 09.03.2018. According to the Applicant, the reasons mentioned in the order are incorrect and Respondent No.1 misconstrued the provisions of Maharashtra Civil Services (General Conditions of Service) Rules, 1981. He made an application well within 5 years from the date of joining of the service supported by Affidavit of the father.

6. On above pleadings, the Applicant has filed the present application and sought to assail the order dated 09.03.2018 whereby the demand of the Applicant for correction in date of birth has been rejected. He also prayed for all consequential service benefits correcting his date of birth as 05.06.1963.

7. The Respondents resisted the application by filing Affidavit-in-reply. The Respondents denied the entitlement of the Applicant to any relief sought for. The Respondents denied that there was any mistake in recording the date of birth in service record which can be corrected in view of provisions of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules of 1981'). The Respondents contend that the entry of date of birth as 01.06.1960 has been taken in the service record on the basis of entry of date of birth in School record which continued to exist upto University as well as in MPSC record. As such, in view of provisions of 'Rules 1981' particularly, Rule 3(F), once entry of date of birth has been made in service book, no alteration is permissible unless it is found that the entry was due to

want of care on the part of some persons other than the individual in question or is an obvious clerical error. There was no such error, and therefore, the entry of date of birth in service record cannot be changed. The application dated 25.05.1992 made by the Applicant for correction in date of birth was not supported by any authenticate document and the Applicant was informed to clarify certain things which he did not comply. The Applicant remained silent for almost 22 years and it is only in the year 2017 submitted full-pledged application for correction of date of birth on the basis of order passed by Judicial Magistrate 1st Class, Parner. In this behalf, the Respondents contend that, as per Government Notification, Finance Department dated 24.12.2008 whereby Rules of 1981 came to be amended, the correct date of birth of the Government servant has to be determined on the basis of attested Xerox copy of the concerned page of original Birth Register where his name and date of birth has been entered as per the Rules for the time being in force, recording the registration of birth maintained at the place where the Government servant is born. However, in the present case, there was no such entry of date of birth in the Birth and Death Register of Gram Panchayat, Raitale, and therefore, the date of birth cannot be corrected. The entry of date of birth as 05.06.1963 taken in Gram Panchayat record on 07.07.2017 only on the basis of order of Judicial Magistrate 1st Class, Parner at the fag end of the career cannot be accepted as an unquestionable proof for change of date of birth in service record. The Respondents thus contend that there are laches and negligence on the part of Applicant himself in pursuing the matter with appropriate documents. The Applicant has rushed to the Tribunal at the fag end of his service. The Respondents, therefore, prayed to dismiss the application.

8. I have heard Mr. D.B. Khaire, learned Advocate for the Applicant and Mr. A.J. Chougule, learned Presenting Officer (P.O.) for the Respondents.

9. What emerges from the perusal of record and the submissions advanced at the Bar are as follows.

(a) The date of birth of Applicant was recorded as 01.06.1960 in Ganeshwadi Zilla Parashad Primary School while taking admission on 01.06.1966 in 1st Standard. The date of birth of Applicant's elder brother viz. Ramdas has also been recorded as 01.06.1960 while taking admission on 01.06.1966 in 1st Standard in the same School.

(b) Applicant's date of birth as 01.06.1060 was continuously recorded from Primary School to University and then M.P.S.C.

(c) Applicant joined as Assistant Conservator of Forest on 03.01.1989 in Satara Division and in Service Book, his date of birth was recorded as 01.06.1960 which is attested by the Applicant.

(d) Applicant made application on 25.05.1992 for correction of date of birth simply stating that his correct date of birth is 05.06.1963 and not 01.06.1960. That application was not supported by any document or material whatsoever.

(e) In pursuance of queries raised by the Department, the Applicant submitted his explanation on 09.09.1992 requesting for correction in date of birth on the basis of Affidavit of his father. In the said application, it is clearly mentioned that he realized the mistake in 1981-82 itself. After the gap of about 22 years, the Applicant again submitted an application to Respondent No.1 on 27.08.2014 requesting for correction in date of birth mentioning that his application dated 25.05.1992 is pending without any decision.

(f) Respondent No.1 rejected the request for change in date of birth in service record of the Applicant by letter dated 09.09.2016.

(g) Then Applicant approached the Court of Judicial Magistrate 1st Class, Parner by filing an application on 14.02.2017 under Section 13(3) of Registration of Birth and Death Act, 1969 which was allowed on 28.06.2017.

(h) In pursuance of directions given by the Judicial Magistrate, Parner on 07.07.2017, entry was taken in Gram Panchayat record of Raitale showing the date of birth as 05.06.1963.

(i) Armed with an extract issued by Gram Panchayat, Raitale showing date of birth as 05.06.1963, the Applicant again made an application to Additional Chief Conservator of Forest on 05.10.2017 which was forwarded to Respondent No.1.

(j) Ultimately, the application of the Applicant came to be rejected by Respondent No.1 by order dated 09.03.2018 which has been impugned in the present application.

10. Before advertng to the submissions made by the learned Advocate for the Applicant, it is necessary to mention some admitted facts which are as follows.

(i) There is no entry of date of birth in Birth and Death Register of Gram Panchayat, Raitale in its ordinary course of business showing the date of birth of the Applicant as 05.06.1963.

(ii) For the first time, the entry was taken in Gram Panchayat record in 2017 on the basis of directions issued by Learned Judicial Magistrate 1st Class, Parner.

(iii) At the time of admission in School, the date of birth of Applicant as well as his elder brother Ramdas has been recorded as 01.06.1960. They were admitted in School on same day i.e. on 01.06.1966.

11. Mr. D.B. Khaire, learned Advocate for the Applicant placed heavy reliance on the aspect that the date of birth of the Applicant and his elder brother Ramdas both has been recorded as 01.06.1960 and they being not twins, there is obvious error in recording the date of birth of the Applicant in School Register. The learned Advocate for the Applicant invited my attention to the extract of School Register, which is at Page 41 of the Paper Book, wherein the date of birth of students at Serial Nos.25 to 31 were shown born on 01.06.1960. Adverting to this aspect, the learned Advocate for the Applicant vehemently urged that the date of birth of the Applicant was recorded as 01.06.1960 is obviously incorrect and now it needs to be rectified. He further pointed out that the application for correction of date of birth was made well within 5 years from the date of joining of service, and therefore, a mention in the impugned order that the application was not made within 5 years, is apparently incorrect.

12. In respect of alleged delay and latches on the part of Applicant, the learned Advocate for the Applicant pointed out that first application was made on 25.05.1992 and again on 09.09.1992 full-fledged application with copy of Affidavit of father was made in respect of which no communication was made to him, and therefore, the Applicant cannot be held responsible for delay.

13. According to learned Advocate for the Applicant, the Respondent No.1 ought to have accepted the extract of Birth and Death Register of the Gram Panchayat, Raitale showing the date of birth as 05.06.1963 which was taken on the basis of order of Judicial Magistrate 1st Class, Parner. He has further pointed out that in Aaddhar Card and in Driving License, the date of birth of the Applicant is mentioned as 05.06.1963, and therefore, the claim of the Applicant ought to have been accepted by Respondent No.1.

14. Per contra, Mr. A.J. Chougule, learned P.O. countered that the entry of date of birth as 01.06.1960 has been taken in service record on the basis of School Leaving Certificate wherein the date of birth is continuously shown from Primary School to University and in MPSC as 01.06.1960. He further submitted that the Respondents had examined the application for correction of date of birth in the light of provisions of Rule 38 of Rules of 1981 and found that no case is made out for any alteration. He has urged that, there is no unquestionable proof or evidence for change of date of birth nor there is any obvious clerical error while taking entry in service record, and therefore, the request of the Applicant for change in date of birth has been correctly rejected. According to him, the decision of Respondent No.1 is in consonance with the Rules of 1981. The learned P.O. further canvassed that there are lapses on the part of Applicant and such claim for correction in date of birth now cannot be entertained as the Applicant has already superannuated during the pendency of this application. The present application has been filed on 07.04.2018 whereas the Applicant stands retired on 01.06.2018 considering his date of birth as 01.06.1960.

15. In view of submissions advanced at the Bar and in the facts and circumstances in the matter, the following points arise for determination.

(A) Whether there was want of due care on the part of some persons other than the Applicant or obvious error while taking entry of date of birth in service record of the Applicant.

(B) Whether the Applicant has produced irrefutable or unquestionable evidence to establish that he was born on 05.06.1963.

(C) Whether the entry taken in service record of Gram Panchayat, Raitale on 07.07.2017 recording the date of birth of the Applicant as 05.06.1963 in pursuance of directions of Learned Judicial Magistrate 1st

Class, Parner has probative evidential value and sufficient to correct the date of birth.

(D) Is the Applicant is entitled to the relief sought.

16. **As to Point No.1** :- The procedure for writing and recording date of birth in Service Book and its correction is governed by Rule 38 of Rules of 1981. It will be useful to reproduce the relevant portion as amended on 24.12.2008 as follows.

“38. Procedure for writing the events and recording the date of birth in the service book.

- (1) In the service book every step in a Government servant's official life, including temporary and officiating promotions of all kinds, increments and transfers and leave availed of should be regularly and concurrently recorded, each entry being duly verified with reference to departmental orders, pay bills and leave account and attested by the Head of the Office. If the Government servant is himself the Head of an Office, the attestation should be made to his immediate superior.
- (2) While recording the date of birth, the following procedure should be followed:-
 - (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;
 - (b) In the case of a Government servant the year of whose birth is known but not the date, the 1st July should be treated as the date of birth;
 - (c) When both the year and the month of birth are known but not the exact date, the 16th of the month should be treated at the date of birth;
 - (d) In the case of a Government servant who is only able to state his approximate age and who appears to the attesting authority to be of that age, the date of birth should be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment;

- (e) When the date, month and year of birth of a Government servant are not known, and he is unable to state his approximate age, the age by appearance as stated in the medical certificate of fitness, in the form prescribed in rule 12 should be taken as correct, he being assumed to have completed that age on the date the certificate is given, and his date of birth deducted accordingly;
- (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.
 - (2) Subject to Instruction (1) above, the correct date of birth of a Government servant may be determined, if he produces the attested Xerox copy of the concerned page of the original birth register where his name and time being in force regarding the registration of birth, and maintained at the place where the Government servant is born, such proof should be considered as an unquestionable proof for change of date of birth in service record.
- (2A) At the time of scrutiny of the application, it shall be ensured that.-
- (i) no advantage has been gained in school admission, entry into Government servant by representing a date of birth which is different than that which is later sought to be incorporated;
 - (ii) the date of birth so altered would not make him ineligible for admission in any school or University or for the Maharashtra Public Service Commission examination in which he had appeared; or for entry into Government service on the date

on which he first appeared at such examination or on the date on which he entered in the 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.”

17. Now turning to the facts of the present case. Admittedly, 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 and the Service Book was also signed by him of the acknowledgement of correctness of the entry taken in the Service Book. The extract of Service Book is at Page 46 of the Paper Book which admittedly bears the signature of the Applicant and date of birth is shown as 01.06.1960. As such, there is no denial that in Service Book, the entry was taken on the basis of School Leaving Certificate produced by the Applicant himself.

18. The Applicant appears to have signed during his tenure at Ballarsha and not at the place of initial appointment. Be that as it may, the fact remains that the Applicant has acknowledged that his date of birth is 01.06.1960 while entry in service. The Applicant joined service on 03.01.1989 in Satara Forest Division. At this place, it is material to note that there is a reference in the application dated 09.09.2012 (Page 55 of the Paper Book) that the Applicant realized the mistaken of date of birth in 1981-82 itself while he was taking education in College. However, he did not take any steps within reasonable time though came to know about the alleged mistake in date of birth. Later he appeared for Competitive Examination conducted by MPSC and having selected, joined the service on 03.01.1989. Thus, the fact remains that he did not raise any grievance about the correct date of birth while joining service. As such, it is not the case of the

Applicant that at the time of entry in service, there was due want of care on the part of some persons other than the Applicant while taking entry of date of birth in Service Book. Needless to mention that it was obligatory upon the Applicant to supply correct date of birth while entry in service, as throughout the completion of his education, the date of entry exists as 01.06.1960. The entry was accordingly taken in pursuance of the record produced by the Applicant himself. This being the position, the Applicant's case does not fall for correction under Rule 38(2)(f) of Rules of 1981.

19. **As to Point Nos.2 and 3** :- Now question comes as to whether the Applicant has produced unquestionable evidence to establish that he was born on 05.06.1963 and the entry taken later on i.e. after the gap of 50 years in Gram Panchayat record, Raitale on the basis of order of J.M.F.C, Parner has probative evidential value. Needless to mention that unless a clear case on the basis of material which can be held conclusively in nature is made out by the Applicant, the Tribunal should not issue directions for correction of date of birth in service record on the basis of material which makes such claim only plausible. What is required is unquestionable or irrefutable evidence and the onus is on the Applicant to prove the same.

20. The perusal of impugned order dated 09.03.2018 passed by Respondent No.1 reveals that the demand for change in date of birth was rejected mainly on the following grounds.

As per Rule 38(2)(f) of Rules of 1981, once entry of age or date of birth has been made in Service Book, no alteration is permissible unless it is known that entry was made due to want of care on the part of some persons other than the individual in question or is an obvious clerical error. In the present case, the entry of date of birth has been taken on the basis of School record produced by the Applicant himself and there was no

occasion for any clerical error while taking entry in the record of Department. As per amended Rule 38(2), the entry of date of birth can be corrected, if application is made within 5 years supported by attested Xerox copy of the concerned page of the original Birth Register where his name and date of birth has been entered as per the Rules for the time being in force regarding the registration of birth and such proof only should be considered as unquestionable proof for change of date of birth in Service Book. Whereas in the present matter, no such extract of Birth Register maintained by Gram Panchayat in its regular course of business has been produced showing the date of birth as 05.06.1963.

Thus, it seems that the extract of Birth and Death Register issued by Gram Panchayat, Raitale showing the date of birth as 05.06.1963 on the basis of order passed by J.M.F.C, Parner has not been accepted by Respondent No.1 as an unquestionable proof for change of date of birth in Service Book.

21. As adverted to earlier, the Applicant's claim for correction of date of birth is mainly based on two aspects, namely, alleged obvious goof-up while taking admission in School and order passed by learned JMFC, Parner.

22. The learned Advocate for the Applicant contended that the Applicant and his brother Ramdas are not twins, and therefore, there is obvious error in recording the date of birth of the Applicant as 01.06.1960. Ramdas being two and half year elder, the Applicant's date of birth could not be 01.06.1960. The extract of the relevant page of the Register is at Page 41 of the Paper Book which shows that the date of birth of all 7 students while taking admission in 1st Standard were shown as 01.06.1960.

23. True the entries seem to have been taken in perfunctory manner, as the date of birth of the Applicant as well as his brother Ramdas could not be the same. The submission of the learned Advocate for the Applicant at first sight, therefore, appears attractive, but has no legs to stand to the judicial scrutiny. This could be considered at the most one of the circumstances in favour of the Applicant provided there is some other clinching evidence to show that he was actually born on 05.06.1963. There should be some formidable unquestionable evidence to show that actual date of birth of the Applicant as 05.06.1963. In absence of any such evidence only because the date of birth of both the brothers is shown same, it cannot be the ground to substitute the date of birth as 05.06.1963 in place of 01.06.1960. Except the copy of Affidavit of father (which is at Page 58 of Paper Book), there is no other evidence to believe conclusively that the Applicant was actually born on 05.06.1963. In Affidavit, all that the Applicant's father stated that the Applicant and Ramdas are not twins and the correct date of birth of the Applicant is 05.06.1963 and not 01.06.1960. On what basis, the date 05.06.1963 is forthcoming is not explained. In fact, there is no assurance or guarantee that the date of birth of Applicant's brother Ramdas recorded as 01.06.1960 is correct one. Therefore, the submission of learned Advocate for the Applicant that the date of birth of Ramdas is only correct and date of birth of Applicant ought to have been 05.06.1963 cannot be accepted in absence of formidable evidence. In absence of any public record recording the date of birth as 05.06.1963 in its ordinary course of business, it is difficult to accept the same as gospel truth.

24. Another important aspect is that, if the Applicant's date of birth is considered as 05.06.1963, then on the date of taking admission in School his age would be 2 years, 11 months and 26 days. Admittedly, the Applicant took admission in 1st Standard on 01.06.1966. This being the position, the Applicant was less than three years old while taking admission in 1st Standard. It is difficult to believe that the child of such age could be said capable physically and mentally

for admission in 1st Standard and could have been admitted in School by Authority.

25. In respect of eligibility criteria and minimum age to admission in 1st Standard, a reference can be made to G.R. dated 11th June, 2010 issued by Primary Education and Sports Department, State of Maharashtra. This G.R. has been issued in the wake of implementation of Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'Act 2009') and *inter-alia* provides for minimum age for admission in 1st Standard, proof of age, right of child to change School, period of admission, etc., amongst other things. As per this G.R, no child who has completed six years of age can be deprived of right to free education conferred by 'Act 2009'. However, as per existing and prevalent procedure hereinafter also child who has completed 5 years of age can be admitted in 1st Standard and will be entitled to free and compulsory education.

26. In the present case, the Applicant was admitted in School in 1st Standard on 01.06.1966. At that time, his age was 2 years, 11 months and 26 days. That means, he was less than three years of age. The Applicant has not produced any document to show, how he was eligible for admission in the School when he was less than three years, if his date of birth is considered as 05.06.1963. Whereas the G.R. referred to above dated 11.06.2010 amply shows that earlier also, the minimum age for admission in 1st Standard was not less than five years. Suffice to say, if his date of birth is considered as 05.06.1963, then he would be ineligible for admission in the 1st Standard.

27. Here, it is pertinent to note that, as per amended Rule 38(2)(a) at the time of scrutiny of the application for correction of date of birth, it can be ensured that the date of birth so altered could not make the Applicant ineligible in any School. This being the position, the altered date of birth would also make the Applicant ineligible for admission in 1st Standard.

28. Now, turning to the order passed by the learned JMFC, Parner for direction to Gram Panchayat, Raitale, the order of learned JMFC, Parner can be accepted to the extent of direction to record the date of birth as 05.06.1963. The extract issued by Gram Panchayat, Raitale can be accepted to the extent only that, such entry of date of birth as 05.06.1963 was taken in the record and nothing more. There is no finding of competent Court that the date of birth of Applicant is 05.06.1963. This being the position, the extract issued by Gram Panchayat, Raitale cannot be accepted as an irrefutable or unquestionable proof to hold that the Applicant was actually born on 05.06.1963. The Applicant has secured extract from Gram Panchayat, Raitale on the basis of order passed by JMFC, Parner which is nothing but creation of evidence as one desire. The basic principle is 'the evidence is to be collected and not created'. Therefore, such created evidence has no legal probative value. It is only the entries taken by local body in its regular course of business can be accepted as evidence. Therefore, no much probative value can be attached to the subsequent entry taken in Gram Panchayat record after 50 years from the date of birth.

29. In fact, the perusal of the application made by the Applicant before JMFC (Page 76 of Paper Book) reveals that the Applicant has shown his occupation as "Agriculturist". In the application, he did not mention that in School record, his date of birth is recorded as 01.06.1960. It seems to have been omitted deliberately. Thus, it seems that while making application in the Court, the Applicant has not disclosed all the facts fairly and suppressed certain aspects. Be that as it may, such created evidence cannot be accepted in law to hold that the Applicant was really born on 05.06.1963.

30. As per Section 13(3) of the Registration of Birth and Death Act, 1969, power is vested with the Judicial Magistrate 1st Class or Residency Magistrate. Section 13(3) reads as follows :

“13(3) : Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.”

31. As such, the perusal of above provision reveals that the learned Magistrate needs to verify the correctness of the birth or death of the Applicant before giving direction. However, in the present case, there is nothing to show that any material was placed before the learned Magistrate to verify the correctness of the date of birth of the Applicant. The application seems to have been allowed only on the basis of Affidavit of the Applicant. On this background, hardly any legal sanctity can be attached to the entry taken in Gram Panchayat record on 07.07.2017.

32. Shri D.B. Khaire, learned Advocate for the Applicant sought to canvass that the Applicant has passed 10th Standard Examination in the year 1979 and if his date of birth is considered as 05.06.1963, then the age at the time of passing S.S.C. Examination comes to 16 years which is normal and acceptable. On this line of submission, he tried to urge that the Applicant's date of birth as 05.06.1963 is quite probable. His submission is misconceived. The Applicant admittedly took admission in 1st Standard in 1966. If he completed education upto 10th standard without gap, then he must have passed 10th Standard in 1976. This shows that there was a gap in education of the Applicant. This is quite clear from Leaving Certificate issued by Primary School, which is at Page 42 of the Paper Book. He left this School from 4th Standard in the year 1972. He was shown admitted in this School on 01.06.1966. This confirms that there was a gap in education of the Applicant. Therefore, it cannot be said that the Applicant has passed 10th Standard at the age of 16 years as sought to be canvassed by the learned Advocate for the Applicant.

33. Learned Advocate for the Applicant also sought to place reliance on the date of birth recorded in Driving License, Aaddhar Card and seniority list issued by the Department. In so far as Aaddhar Card and Driving License are concerned, admittedly, those were issued much later on the basis of date of birth furnished by the Applicant himself. It is self-serving document, and cannot be accepted as evidence of date of birth in legal parameters.

34. Now turning to the date of birth recorded in seniority list at Page Nos.60 and 61 of the Paper Book. The date of birth of the Applicant is shown as 04.04.1964, whereas in another seniority list at Page Nos. 63 and 64, the date of birth of Applicant is shown as 01.04.1964. As such the dates mentioned in these seniority lists also differs. In fact, it run counter to the date of birth recorded in Service Book. There is nothing to show on what basis these dates of birth were recorded in the seniority list of the years 2004 and 2010. Thus, the dates of birth cannot be accepted as a genuine date of fact which are in fact differs from the date of birth now sought to be corrected by the Applicant.

35. Learned Advocate for the Applicant sought to place reliance on the Judgment of Hon'ble Bombay High Court Bench at Aurangabad in ***Writ Petition No.2345/2015 (Shrinivas P. Karve Vs. The State of Maharashtra & 4 Ors.) delivered on 22nd April, 2016*** and on the Judgment of this Tribunal passed in ***O.A.676/2015 (Bhagawan M. Patil Vs. The Development Commissioner (Industries), Directorate of Industries & 2 Ors.) decided on 19th September, 2016*** which was confirmed by Hon'ble Bombay High Court in ***Writ Petition No.6229/2017 decided on 10.07.2018***. I have gone through these Judgments. In both cases, there was evidence of correct record of date of birth in the form of public record i.e. extract of Municipal Corporation and Gram Panchayat. As the date of birth recorded in public record prevails, the directions for change of date of birth were issued. However, in the present case, no such reliable evidence from public local body showing the record of date of birth as 05.06.1963 in its

regular course of business is forthcoming. Therefore, with due respect, these Judgments being on different facts is of no assistance to the Applicant.

36. The reliance was also placed on the Judgment of Hon'ble High Court in **2008 (5) Mh.L.J. 147 (Vasudha Gorakhnath Mandvilkar Vs. City and Industrial Development Corporation of Maharashtra Ltd.)**. This authority reiterates the principle that in case of variance between private document and public record, the later must prevail as it has more probative value carrying the presumption under Section 79 of the Evidence Act. There is no dispute about the legal principle enunciated in this authority being settled position of law. However, in the present case, no such public record showing the date of birth as 05.06.1963 taken in its regular course of business is forthcoming. As I concluded above, the entry taken in Gram Panchayat record on the basis of order passed by the learned JMFC, Parner can hardly be accepted as an unquestionable proof for change of date of birth. In fact, it is created record and no presumption can be attached to it.

37. On the other hand, Shri A.J. Chougule, learned P.O. rightly placed reliance on the Judgment of Hon'ble Supreme Court delivered in **Civil Appeal No.9704/2010 (State of Maharashtra Vs. Gorakhnath S. Kamble and Ors.) decided on 16th November, 2010**. In this Judgment, the Hon'ble Apex Court reiterated that the grievance as to the date of birth in service record should not be permitted at the fag end of service of the employee. It would be useful to reproduce Para Nos. 17 to 21.

"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.*

21. The approach of the High Court in re-writing the rules cannot be approved or sustained. Consequently, the appeal filed by the State of Maharashtra is allowed and the impugned judgment is set aside, leaving the parties to bear their own costs.”

38. In view of above discussion, I have no hesitation to conclude that there is no irrefutable or unquestionable evidence to establish that the Applicant was born on 05.06.1963 and the entry taken in the Birth and Death Register of Gram Panchayat, Raitale on the basis of order passed by the learned JMFC, parner in 2017 i.e. after the gap of 50 years does not have probative evidential value to conclusively establish that the Applicant was born on 05.06.1963. As stated above, if his date of birth is considered as 05.06.1963 then he would be ineligible for admission in 1st Standard in the year 1966. I, therefore, record negative finding on point numbers 2 and 3.

39. Before concluding the order, the point of limitation also needs to be considered as canvassed by the learned P.O. during the course of oral submission.

40. So far as factual position is concerned, there is no denying that the Applicant made first application for correction in date of birth on 25.05.1992. It was simple application without any supporting documents. Therefore, some clarification was asked for. The Applicant again submitted the clarification by letter dated 09.09.1992 along with copy of Affidavit of his father. True thereafter, he did not seem to have taken further steps in that behalf for a long period. However, at the same time, there is nothing to point out that, in this behalf any decision was communicated to him by his Department or Government. The Applicant again submitted an application to Respondent No.1 on 27.08.2014. However, it came to be rejected by letter dated 09.09.2016 (Page 73 of the Paper Book). Thus, there is no denial that the rejection was communicated to the Applicant. This being the position, the limitation would

start from the receipt of communication dated 09.09.2016. The application, therefore, ought to have been made to the Tribunal within one year as contemplated under Section 21 of the Administrative Tribunals Act, 1985. However, instead of approaching the Tribunal, the Applicant made application before the learned JMFC, Parner and secured the order of direction to record his date of birth and then again, he submitted fresh application/representation on 05.10.2017. Ultimately, it came to be rejected by impugned order dated 09.03.2018, which is challenged in the present O.A. On this background, the question is posed whether the application made to this Tribunal is within time.

41. On the point of limitation, the learned P.O. placed reliance on the Judgment of Hon'ble Supreme Court in ***S.S. Rathore Vs. State of Madhya Pradesh, reported in (1989) 4 SCC 582***. In this Judgment, the Hon'ble Supreme Court (Judgment of Hon'ble 7 Judge Bench) considered the point of limitation in filing suit or declaration against the order of dismissal from service vis-à-vis the provisions of Administrative Tribunals Act. It has been held that, repeated unsuccessful representations not provided by law will not extend the period of limitation. The principle laid down is that right to sue accrues not when the original order was passed by the authority, but when that order was finally disposed of by higher authority on appeal or representation made by the aggrieved employee in exhaustion of statutory remedy and where such final order was made on expiry of six months from the date of appeal or representation and time spent on representations cannot be considered and such representations are not contemplated by law. In that case, Appellant was dismissed from service by Collector. Thereafter, his appeal to the Divisional Commissioner was also dismissed. The Appellant served notice under Section 80 of CPC and then filed Civil Suit for setting aside the dismissal. It is in that context, it has been held that the order of dismissal given by Collector did merge in the order of Divisional Commissioner, and therefore, the limitation would start from

the date of final order. It would be useful to reproduce Para Nos.20, 21 and 22 are as follows :

“20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been available of, a six months’ period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court’s jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation.”

Thus, the ratio laid down in this authority is in case of statutory appeal only, the limitation would start from the date of order passed in appeal finally and mere filing of representations to the Department will not extend the period of limitation. The present case is fully governed by this principle.

42. Shri Khaire, the learned Advocate for the Applicant sought to place reliance on the Judgment of Hon’ble Supreme ***Court in Gendalal Vs. Union of India & Ors., reported in (2007) 15 SCC 553***. Needless to mention that the ratio of any decision must be understood in the background of the facts of that case

and little difference in the facts or additional facts may make a lot of difference in the precedential value of a decision. In that case, the application for change of date of birth was pending with the Department and the representations / reminders were sent. However, nothing was heard from the Department and ultimately, he was informed that his request for change in date of birth, 32 years after appointment and 6 months prior to retirement is not tenable. Thus, it is obvious that in that case, no specific order of rejection was passed by the Department despite various representations / reminders made by the Applicant. Therefore, in fact situation, the Hon'ble Apex Court held that the Applicant cannot be non-suited on the ground of delay. With due respect, the factual position being different, this authority is of no assistance to the Applicant, as in the present case, the Respondent No.1 had rejected the application of the Applicant for change in date of birth by order dated 09.09.2016 and it was communicated to the Applicant.

43. At this juncture, it would be apposite to refer the Judgment of the Hon'ble Supreme Court in ***State of Tripura & Ors. Vs. Arabinda Chakraborty & Ors. reported in (2014) 6 SCC 460*** wherein again, the same principle as regards law of limitation has been reiterated. The Hon'ble Supreme Court held that the period of limitation commences from the date on which cause of action arises for the first time and simply making of representations in absence of any statutory provision, the period of limitation would not get extended. It is further held that, in absence of any provision with regard to statutory appeal simply making of representations, the period of limitation would not get extended. This authority holds the field and clearly attracted to the present case.

44. In view of above, I have no hesitation to sum-up that the O.A. made to this Tribunal is not within the limitation as contemplated under Section 21 of Administrative Tribunals Act, 1985.

45. Even assuming for a moment that the Applicant got a fresh cause of action on receipt of impugned order dated 09.03.2018 and the application made to this Tribunal is within limitation, in that event, on merit also, there is no irrefutable or unquestionable evidence to change the date of birth recorded in the Service Book. The Applicant stands retired on attaining the age of superannuation on 01.06.2018 during the pendency of this application. Irrespective of his retirement, even if the claim made by the Applicant is considered on merit, it is without substance and date of birth cannot be changed at the fag end of career.

46. The upshot of above discussion leads me to sum-up that the application is devoid of any merit and deserves to be dismissed.

47. The Original Application is hereby dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 20.11.2018

Dictation taken by :

S.K. Wamanse.

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