

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.356 OF 2020

DISTRICT : MUMBAI

Shri Motiram Devu Mire.)
Age : 49 Yrs., Occu.: Van Majoor (Forest)
Labour Group D), Residing at Sanjay)
Gandhi National Park, Nawapada,)
Borivali (East), Mumbai – 400 066.)...**Applicant**

Versus

The Chief Conservator of Forest & Director,)
Sanjay Gandhi National Park,)
Borivali (East), Mumbai – 400 066.)...**Respondent**

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

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

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

DATE : 04.01.2022

JUDGMENT

1. The Applicant has filed this Original Application for declaration that his date of birth be declared as 01.01.1971 or 15.12.1967 with consequent declaration that his date of retirement would be 31.01.2031 or 31.12.2027 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. At the very outset, it needs to be stated that Applicant stands retired w.e.f.29.02.2020 but this O.A. is filed on 11.08.2020 for the declaration that his date of birth be declared as 01.01.1971 or 15.12.1967.

3. The Applicant was initially appointed as Forest Laborer (Van Major) on daily wages and later in terms of G.R. dated 16th October, 2012, his services were regularized by order dated 07.11.2012 having completed 5 years' continuous serviced on daily wages. That time, when service book was prepared, his date of birth was recorded as 01.01.1971. According to this date of birth recorded in service book, he was to retire on 31.01.2031. However, Respondent made him to retire w.e.f. 29.02.2020 considering his date of birth as 15.02.1960 which is recorded in other office record. It is on this background, the Applicant has filed this O.A. after retirement for declaration that his date of birth be declared as 01.01.1071 or 15.12.1967.

4. Shri K.R. Jagdale, learned Advocate for the Applicant sought to contend that the Applicant much being illiterate, he has no official record of showing date of birth as 01.01.1971, but it being recorded in service book, it has to be treated as a true and correct date of birth of a Government servant. In this behalf, he referred to Rule 38(2)(e) of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity). He has further pointed out that in Pan Card (Page No.28 of Paper Book) as well as in Identity Card (Page No.45), his date of birth is recorded as 01.01.1971. On this line of submission, he urged that there was no reason to retire the Applicant w.e.f. 29.02.2020.

5. As regard alternate date of birth 15.12.1967 as claimed in Prayer Clause, he made reference of Medical Certificate at Page No.23 of P.B. in which Medical Superintendent, J.J. Group of Hospitals, Mumbai, his age

is shown 45 years accepting the statement made by the Applicant himself without there being any other medical test.

6. Per contra, learned Presenting Officer submits that though in service book, initially, the date of birth was recorded as 01.01.1971, it was incorrect and Applicant himself admits this fact in the form submitted for taking relevant entries in service record (Sevarth), which is at Page No.38 of P.B. He further pointed out that in pay slips issued by the Department month to month, accordingly, the date of birth of the Applicant is recorded as 15.02.1960 and it is on the basis of said date of birth, the Applicant was rightly made to retire on 29.02.2020.

7. The procedure for writing correct date of birth in service book is governed by Rule 38 of 'Rules of 1981', which is as under :-

“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 by 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 as 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

member 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 deduced 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 the 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 zerox 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 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.”

8. As such, utmost care and caution is required to be taken while taking entry of date of birth of a Government servant in service book. A Government servant is required to produce extract of birth register maintained by public body or School Leaving Certificate in support of his claim of date of birth. The Head of Department is also under obligation to satisfy about the correct date of birth and entry of date of birth has to be recorded as per the documents submitted by a Government servant and specific endorsement to that effect is required to be made in the service book.

9. While in the present case, no such care was taken while recording date of birth as 01.01.1971 in service book. There is absolutely no

endorsement to show as to on what basis, the date of birth as 01.01.1971 is recorded in service book. Thus, apparently, it was recorded only on the oral information given by the Applicant. Indeed, the Respondent – Chief Conservator of Forest and Director, Sanjay Gandhi National Park ought to have taken care to record correct date of birth, but it is recorded in very casual and cavalier manner without observance of Rule 38 of ‘Rules of 1981’.

10. Indeed, where a Government servant is not able to tell date, month and year of birth or it is not known to him, the date of birth has to be recorded on the basis of medical examination as mentioned in Rule 38(2)(e) of ‘Rules of 1981’. Here interestingly, it appears that the Applicant was sent to medical examination and Medical Superintendent, Sir J.J. Group of Hospitals issued Medical Certificate dated 15.12.2012 (Page No.23 of P.B), which is as under :-

“I hereby certify that I have examined Shri Motiram D. Mire a candidate for Employment in the Forest Department as Labour Department and cannot discover that he has any disease constitutional weakness or bodily infirmity except Nil. I do not consider that a disqualification for employment in the same as above his age is according to his own statement is 45 yrs, and by appearance about 45 yrs.

Marks of identifications :
Mole on cheek left side

Impression of left hand thumb
Or Signature of candidate :

Sd/-
Medical Superintendent

11. It is thus explicit that Applicant has stated his age before Medical Superintendent as 45 years and on that basis only, Medical Certificate has been issued without undertaking any other medical test viz. bone ossification test or any other scientific medical test.

12. That apart, in Medical Certificate itself, the Applicant was shown 45 years old on 15.12.2012. If it was so, then in terms of Rule 38(2)(e) of ‘Rules of 1981’ itself, his date of birth would be of 1967 and not 01.01.1971. Shockingly, even on receipt of this Medical Certificate,

which would show his year of birth as 1967, the Respondent had entered date of birth in service record as 01.01.1971 which is totally incorrect. This again shows total negligence and casual approach of Respondent in the matter by the concerned for which Respondent is required to take necessary action for dereliction in duties and negligence in performance of public duties by the concerned.

13. Admittedly, no document either in the form of Birth Certificate or any other record is forthcoming showing the date of birth of the Applicant as 01.01.1971. Even as per Medical Certificate, his year of birth would be 1967 and not 1971. This being the position, no reliance can be placed upon date of birth recorded in service book.

14. True, in Identity Card (Page No.45 of P.B.) and in Pan Card (Page No.28 of P.B.), the Applicant's date of birth is shown as 01.01.1971. Here again, in so far as Identity Card is concerned, it is only on the basis of information given by the Applicant, his date of birth is shown as 01.01.1971 without ascertaining or verifying the record. Therefore, no much reliance can be placed upon the Identity Card. In so far as Pan Card is concerned, curiously, in another Pan Card (Page No.35 of P.B.), his date of birth is shown as 15.02.1960. As such, in one Pan Card (Page No.28 of P.B.), his date of birth is shown as 01.01.1971 whereas, in another Pan Card (Page No.35 of P.B.), his date of birth is shown as 15.02.1960. Needless to mention in Pan Card, the date of birth is being recorded as per the information submitted while applying for Pan Card. As such, the entry of date of birth in Pan Card cannot be accepted as a gospel truth.

15. Apart, there are other documents which run counter to the Applicant's contention of having date of birth as 01.01.01971. In this behalf, material to note that in Aadhar Card (Page No.36 of P.B.), Applicant's year of birth is shown 1960. Furthermore, in declaration form submitted by the Applicant himself in the office for Sevarth (Page

No.38 of P.B.), his date of birth is shown 15.02.1960. True, below date mentioned 15.02.1960, there is one more entry showing date of birth 01.01.1971. Since no documentary evidence showing date of birth as 01.01.1971 is forthcoming, no reliance can be placed upon the date 01.01.1971 mentioned in Sevarth form. Here, it would not be out of place to mention that in Affidavit filed by Applicant's wife in the Department, the date of birth of Applicant is shown 15.02.1960 (Page Nos.51 to 54 of P.B.). Curiously, the date of birth of his elder son Pravin is shown 20.01.1985 in the Affidavit of wife. This again belies the claim of Applicant that his date of birth is 01.01.1971 since at the time of birth of child on 20.01.1985, he would be 15 years' old only which is totally unacceptable and unpalatable.

16. As pointed out by learned P.O. the Applicant was issued pay slip month to month showing his date of birth as 15.02.1960. It is on the basis of date of birth recorded in Sevarth, he made to retire on 29.02.2020. The Applicant did not raise any grievance about incorrect date of birth as 15.02.1960 mentioned in pay slip at any point of time during the tenure of his service. He retired on 29.02.2020 and after six months from retirement, filed this O.A. on 11.08.2020.

17. 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.”

18. 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.

19. Thus, it is no more *res-integra* that the grievance of incorrect date of birth in service record or premature retirement cannot be entertained at the fag end of service. In fact, in the present case, the Applicant has approached this Tribunal after six month from retirement.

20. Thus, what transpires from the record that there is absolutely no iota of record in the form of Birth Certificate or Medical Certificate to establish date of birth as 01.01.1971. Therefore, the submission advance by the learned Advocate for the Applicant that since date of birth is recorded as 01.01.1971 in service record, it has to be accepted is totally fallacious and misconceived. The date of birth 01.01.1971 is without any foundation and in fact, contrary to Medical Certificate dated 15.12.2012. True, as per Medical Certificate dated 15.12.12012, the Applicant was shown 45 years' old, but it was certified only on the basis of age mentioned by the Applicant without conducting any medical test. Therefore, no declaration that date of birth be declared as 15.12.1967 as claimed in alternative can be issued by this Tribunal. Only because Applicant is illiterate, that itself is not the criteria to accept his date of birth without there being any such documentary evidence about the date of birth. Indeed, he himself has given contrary dates of birth, as

discussed above. I, therefore, see no merits in O.A. and it 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 : 04.01.2022
Dictation taken by :
S.K. Wamanse.

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