

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.359 OF 2021
(Through Video Conferencing)**

DISTRICT: Aurangabad

Shri Subhash S. Nivare,)
Age 56 years, Occ. Service as Rakshak in the office)
Of Inspector General of Prisons Central Division,A'bad)
R/of Aurangabad.) **....Applicant**

Versus

1. The State of Maharashtra, through the)
Secretary, Home Department, Mantralaya,)
Mumbai 32.)
2. The Additional Director General of Police &)
Inspector General of Prisons Admn. Building,)
2nd Floor, Pune -1.)
3. The Deputy Inspector General of Prisons)
Central Division, Harsul, Aurangabad.) **...Respondents**

Shri S. D. Joshi, learned Advocate for the Applicant.

Shri M. S. Mahajan, learned Chief Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER (J)

DATE : 19.03.2021.

J U D G M E N T

Present O.A. is filed at the verge of retirement for correction in date of birth. The Applicant entered Government service as Guard on the establishment of R.No.2 on 29.11.1993. At the time of entry in

service, his date of birth was recorded as 01.04.1963 in service book. Accordingly, on the basis of date of birth in service book, he is retiring at the end of March 2021. Now before 15 days of retirement, he has filed present O.A. for correction in date of birth contending that his real date of birth is 04.01.1965.

2. Shri S.D.Joshi, learned Counsel for the Applicant sought to canvass that considering the date of birth of his brothers, particularly the date of birth of his brother namely Abasaheb Sonaji Nivare, applicant's date of birth as 01.04.1963 is obviously incorrect since Abasaheb Nivare's date of birth is recorded as 12.08.1962 in school registrar. Apart, he submits that representation made by the Applicant on 29.09.2018 is not responded till date. He therefore, prayed for interim relief as well as directions to the Respondents to decide his representation.

3. Per contra, learned C.P.O. opposes the O.A. contending that such relief cannot be granted at the verge of retirement and O.A. is without any merit.

4. When specific query was made to learned Counsel for the Applicant, he fairly concedes that his client did not make any application for correction in date of birth as required under Rule 38 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity). He further fairly concedes that except horoscope which is at page 13 of PB, there is no other official authenticate record to show that Applicant's date of birth is 04.01.1965. All that Applicant sought to place reliance on the order obtained from the court of Judicial Magistrate First class, Paithan dated 16.04.2018 whereby directions were given to Grampanchayat , Kawsan,

Tal. Paithan, District Aurangabad to record Applicant's date of birth as 04.01.1965. Suffice to say, there is no public document in the form of birth certificate from Grampanchayat or any other local body to show that the date of birth of the Applicant was recorded as 04.01.1965. This being so, in absence of any such public document, no importance can be given to the horoscope as well as the date of birth recorded by Grampanchayat specifically on the basis of order passed by the Ld. Judicial Magistrate First Class.

5. As stated above, at the time of entry in service, the Applicant himself has recorded his date of birth as 01.04.1963. Surprisingly, he did not raise any grievances about incorrect date of birth till 2018. For the first time on 29.09.2018, he made representation that his correct date of birth is 04.01.1965 and not 01.04.1963. Suffice to say, he slept over his right and at the verge of retirement only approached this Tribunal.

6. Indeed, as per 'Rules of 1981', it is mandatory to make an application for correction of date of birth within five years from the date of entry in service. However, admittedly the Applicant did nothing till 2018. This being the position, the O.A. filed at the verge of retirement itself is not maintainable.

7. 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.”

8. 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 his information 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 information given by the Applicant himself 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. Suffice to say, 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.

9. 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.”

10. 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 representation was made on 29.09.2018 when he was due to retire on 31.03.2021.

11. 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."

12. In **(2011) 9 SCC 664 (State of M.P. & Ors. Vs. Premlal 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 of 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.”

13. 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.

14. In view of above, O.A. is devoid of merit and deserves to be dismissed summarily. Hence the following order

ORDER

Original Application is dismissed with no order as to costs.

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

Place : Mumbai
Date : 19.03.2021
Dictation taken by : V.S. Mane
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