

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.486 OF 2018

DISTRICT : PUNE

Shri Fattesinh Nanasaheb Patil)
Age : 57 yrs., Working as Sub-Divisional Police)
Officer, Boisar Division, Dist : Palghar,)
R/o. E-11/12, Mantri Kishor Park, Ashok Nagar,)
Pune – 411 007.)...Applicant

Versus

1. The Director General and Inspector General)
of Police, (M.S), Mumbai, Having Office at)
Old Council Hall, Shahid Bhagatsinh Marg,)
Mumbai 400 039.)
2. The State of Maharashtra.)
Through Principal Secretary, Home Dept.,)
Mantralaya, Mumbai 400 032.)...Respondents

Mr.A.V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 01.11.2018

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. Briefly stated the facts giving rise to this application are as under.

3. The Applicant joined as Police Sub-Inspector (direct recruit) on 25.05.1985. At the time of filing this petition, he was functioning as Sub-Divisional Police Officer, Boisar Division, District Palghar. In service record, his date of birth is recorded as 09.10.1960 as per school record. However, in 1989, he came to know that the date of birth recorded in service record is incorrect and it should have been 16.11.1962. He contends that, in 1989, his mother told him that he was born in the house of sister-in-law at Sangli in the year of India-China War which took place in 1962, on the day of Panchami after kartik Pournima day. He made enquiry and got convinced that his correct date of birth is 16.11.1962 and not 09.10.1960 as recorded in school record. There was no entry of his date of birth in Municipal Council, Sangli. He made an application to Sub-Divisional Officer, Sangli on 25.07.1989 for direction to Municipal Council, Sangli to record his date of birth in Municipal Council record as 16.11.1962. On the very next day, i.e. 26.07.1989, the S.D.O. passed an order in favour of the Applicant. Accordingly on the same day, he got his name entered in the record of Sangli Municipal Council showing his date of birth 16.11.1962.

4. Armed with extract of birth registration entry in Sangli Municipal Council, the Applicant made representation to Director General of Police i.e. Respondent No.1 on 18.04.1990 for correction of date of birth in service record under Rule 38 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity). Thereafter, he pursued the matter by sending representation dated 29.10.1997, 20.03.1998 and 02.02.2000. During the course of enquiry, the statement of his mother was recorded to show that he was actually born on 16.11.1962.

5. However, the Respondent No.1 by order dated 30.08.2000 rejected the application of the Applicant for correction of date of birth in service record and it was communicated to him on 11.09.2000. The Applicant preferred an appeal / representation before Respondent No.2 i.e. Principal Secretary, Home Department, State of Maharashtra on 02.07.2002 contending that the rejection of his application is incorrect and it be reconsidered, so as to correct his date of birth as 16.11.1962. Thereafter, he sent reminders from time to time on 29.12.2014, 22.12.2015 and 07.03.2016 and was pursuing the matter in the Department. However, the Respondent

No.2 rejected his representation by order dated 12.02.2018 informing him that his application for correction of date of birth is already rejected by order dated 30.08.2000 and also informed that his request is not acceptable in view of Rule 38 of Rules 1981.

6. The Applicant sought to assail the impugned orders dated 30.08.2000 as well as 12.02.2018 contending that the Respondents misinterpreted Rule 38 of Rules 1981. He further pleads that he was pursuing the Department for correction of date of birth since 1990, and therefore, it cannot be said that he rushed to this Tribunal at the fag end of his service being due for retirement on superannuation on 31st October, 2018. With these pleadings, the Applicant sought direction to Respondents to correct his date of birth as 16.11.1962 in place of 09.10.1960 and orders dated 30.08.2000 as well as 12.02.2018 rejecting his applications, be set aside.

7. The Respondent No.1 filed Affidavit-in-reply at Page 55 and Respondent No.2 also filed Affidavit-in-reply at Page 77 of the Paper Book, *inter-alia*, denying the entitlement of the Applicant to correct his date of birth as 16.11.1962 in place of 09.10.1960. The foremost contention of the Respondents is that the application is barred by limitation in view of his rejection of the application by order dated 30.08.2000 which was communicated to him. On this ground, the Respondents contend that the application is barred by limitation and the application being filed at the fag end of service is not maintainable in law and facts.

8. The Respondents contend that, at the time of entry in service, the date of birth was recorded as 09.10.1960 as per school record and it was signed by the Applicant as correct one. As such, there was no error in date of birth. As per Rule 38 of Rules 1981, when once an entry of age for date of birth has been made in the 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. In the present case, the date of birth was correctly recorded on the basis of school record, and therefore, there are no grounds much less legitimate to challenge the same.

9. According to Respondents, the Applicant has now invented the story that he was born on 16.11.1962 which is after thought and nothing but an attempt to get his service

period extended at the fag end of his tenure. The entry taken in Municipal Council record on the basis of order passed by S.D.O. in 1989 has no sanctity in the eye of law. With these pleadings, the Respondents prayed to dismiss the application.

10. The Applicant was also filed Affidavit-in-rejoinder at Page 91 of the Paper Book reiterating his contentions raised in the application adverted to above.

11. The Applicant in support of his application placed reliance on his own Affidavit and also produced a copy of letter issued by Superintendent of Police, Solapur dated 11.09.2000 at Page 25, Copy of order dated 12.02.2018 passed by Government at Page 26, Copy of extract of first page of service book at Page 28, Copy of statement purportedly made by Smt. Sudhatai (mother of Applicant) at Page 30, Copy of order passed by S.D.O. dated 16.07.1989 at Page 31, Extract of Birth Register of Sangli Municipal Council at Page 33, Copies of representations dated 18.04.1990 at Page 35, Copies of reminders dated 29.10.1997, 20.03.1998, 02.02.2000 at Pages 40 to 42, Copy of representation made to Government dated 02.07.2002 at Page 44, Copy of reminders dated 29.12.2014, 22.12.2015 and 07.03.2016 at Pages 47 to 50, Certificate issued by Municipal Council, Ashta showing that there is no entry of date of birth of the Applicant in Municipal record for the period 1960 to 1962 at Page 54.

12. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents. Perused the written notes of arguments submitted by the learned Advocate for the Applicant.

13. Having heard the learned Counsels, in the facts and circumstances of the matter, the following points arise for determination.

- (i) Whether the O.A. made to this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 is within limitation ?
- (ii) 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 book of the Applicant ?

- (iii) Whether the Applicant has produced irrefutable and unquestionable evidence to establish that he was born on 16th November, 1962 ?
- (iv) Whether the entry taken on 26th July, 2018 in Sangli Municipal Council record on the basis of order passed by S.D.O. has probative evidential value and sufficient to correct the date of birth ?
- (v) Is Applicant entitled to relief sought ?

Reasons :

Before adverting to the facts, let me point out that the following facts are undisputed.

- (a) In school record from primary school to University, the date of birth of the Applicant is recorded as 09.10.1960.
- (b) There was no entry of birth of Applicant in Village or Municipal Council record in regular course of business.
- (c) For the first time, the entry of date of birth as 16.11.1962 was taken in Municipal Council record on the basis of order of S.D.O. on 26.07.1989.

As to Point No.(i):- The Applicant has joined the service as Police Sub-Inspector (direct recruit) on 25.05.1985 and he submitted an application for correction of date of birth in service record to Respondent No.1 on 18.04.1990 on the basis of entry recorded in Sangli Municipal Council on 26.07.1989 in pursuance of order of S.D.O, Sangli. As such, there is no dispute that he made an application to the Department within 5 years from the date of joining service as required under Rule 38 of Rules of 1981.

However, serious dispute is about the delay caused in filing the application to this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. As per Section 21 of the said Act, the application was required to be filed within one year from the date of cause of action.

Shri Bandiwadekar, the learned Advocate for the Applicant vehemently urged that there was no communication to the Applicant about the order of

rejection dated 30.08.2000, and therefore, the question of limitation did not arise. According to him, the limitation starts from the order dated 12.05.2018 whereby the Applicant's application was rejected. He further sought to contend that, there is merger of order dated 30.08.2000 in the order dated 12.02.2018. Hence, the limitation would start from 12.05.2018, and therefore, this application under Section 19 of the Administrative Tribunals Act, 1985 being made within one year is within the limitation. He further sought to canvass that there is no specific plea of limitation raised in the reply of Respondents, and therefore, the plea of limitation is not maintainable.

14. Per contra, Ms. Gohad, the learned Presenting Officer adverted my attention to the pleading on Page Nos.55, 78 and 84 of the Affidavit-in-reply filed by the Respondents to point out that the plea of limitation is sufficiently raised in the pleadings. She further canvassed that the first application made by the Applicant on 18.04.2000 and it was communicated to the Applicant by letter dated 11.09.2000. As regards alleged non-communication of order, she has pointed out that the representation made by the Applicant at belated stage dated 02.07.2002 which is at Page No.44 itself shows that the Applicant had received the order dated 30.08.2000. With this submission, she urged that the application for correction of date of birth to this Tribunal should have been filed within one year from the date of communication of order dated 30.08.2000 and it being not so, the application filed belatedly at the fag end of career is not maintainable and liable to be dismissed on the point of limitation itself.

15. Now, I turn to the pleadings at Page Nos.55, 78 and 84 of the reply to find out whether the plea of limitation is sufficiently raised. In Page No.78, Para No.6 of the reply filed by Respondent No.2, it is stated that the application filed by the Applicant is within time. Obviously, this is in relation to the order dated 12.02.2018. Whereas in Para No.3 at Page No.55 of the reply of Respondent No.1, there is a specific plea raised by the Respondents that the application made to this Tribunal is hopelessly barred by limitation as there is delay of more than 17 years in filing the application and the application is made at the verge of retirement. Then again, there is a specific reference of plea of limitation in reply filed by Respondent No.2 at Page 84. Then at Page 84, Page

25, the Respondent has specifically pleaded that the Applicant's request for change in date of birth was rejected on 30.08.2000, but it was not challenged at that time by the Applicant and now, the present application is made at the verge of retirement is barred by limitation.

16. As such, if one read the reply as a whole, it cannot be said that the point of limitation is not raised or challenged by the Respondents. Furthermore, it being the question of law, it needs to be entertained and decided by the Tribunal. Suffice to say, the submission advanced by the learned Advocate for the Applicant that there is no specific pleading on the point of limitation is misconceived.

17. Now, let us see whether the doctrine of merger as propounded by the learned P.O. is acceptable and the application made under Section 19 of the Administrative Tribunals Act, 1985 is within limitation.

18. As stated earlier, the Applicant's first application dated 18.04.1990 for correction of date of birth was rejected by order dated 30.08.2000 and it was communicated to the Applicant. The Applicant's application dated 18.04.1990 is at Page No.35 of the Paper Book. The letter of Superintendent of Police, Solapur dated 11.09.2000 informing the Applicant that his request for change in date of birth has been rejected by Director General of Police by order dated 30.08.2000 which is at Page 25 of the Paper Book. The perusal of Page 25 reveals that the Applicant's application for change in date of birth was rejected by Director General of Police. The Applicant himself has referred this letter in his representation made to Respondent No.2 on 02.07.2002 which is at Page 44 of the Paper Book. In that representation, there is a reference that he has received the order that his application for change in date of birth has been rejected and requested to re-consider his request for change in date of birth. This being the position, the cause of action accrued to the Applicant in 2000 when he received the order of rejection. However, admittedly, he had not approached the Tribunal within one year from the date of order of rejection and filed this application at the fag end of service. He was due for retirement on 31.10.2018 and the application was made on 30.05.2018.

19. Now, the question comes whether filing of representation to correct the date of birth can extend the limitation and principle of merger can be invoked. In my considered opinion, the answer is in emphatic negative.

20. Shri Bandiwadekar, 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 30.08.2000 and it was communicated to the Applicant by letter dated 11.09.2000.

21. As such, in view of communication of rejection of application by letter dated 11.09.2000, the cause of action accrued on receipt of letter dated 11.09.2000. Admittedly, the letter was received by the Applicant. This being the position, the Applicant ought to have approached the Tribunal within one year as per Section 21 of Administrative Tribunals Act, 1985.

22. On the point of limitation, the learned P.O. rightly relied on the Judgments of Hon'ble Supreme Court in ***S.S. Rathore Vs. State of Madhya Pradesh, reported in (1989) 4 SCC 582*** and ***Civil Appeal No.2351 of 1993 Secretary to Govt. of India & Ors. Vs. Shivram M. Gaikwad, reported in (1989) 4 SCC 582, decided on 12.01.1994***. In ***S.S. Rathore's*** case (cited supra), 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 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.

23. In ***Secretary to Govt. of India*** (cited supra), the matter was pertaining to Industrial Dispute Act. The dismissal of the employee was challenged in Tribunal after about four years from the date of discharge. The Hon’ble Supreme Court held that the application was clearly barred by Section 21 of the Administrative Tribunals Act and the application came to be rejected.

24. 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.

25. In view of above, I have no hesitation to sum-up that the O.A. is made to this Tribunal is not within the limitation as contemplated under Section 21 of Administrative Tribunals Act, 1985. Point No.1 accordingly answered in negative.

26. In view of finding that the application is barred by limitation, the O.A. is liable to be dismissed on this ground alone. However, I proceed to deal with the evidence and to record the findings on all points so that the Judgment is complete in all respect for the consideration of higher forum.

27. **As to Point No.(ii)** :- 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.”

28. 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. The service book was also signed by him as an acknowledgment of the correctness of the entry taken in service book. As per Rule 38(2)(f) reproduced above, once an entry of age and date of birth is made in the service book, it 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 and this being the position, it cannot be said that there was any error for 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. 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.”

In view of above, the ratio laid down by the Hon'ble Bombay High Court, the conclusion is that the Applicant's claim does not fit under Rule 38(2)(f) for interference. Point No.2, therefore, answered in negative.

29. **As to Point Nos. (iii) & (iv)** :- Now question comes, as to whether the Applicant has produced unquestionable evidence to establish that he was born on 16.11.1962 and the entry taken in Sangli Municipal Council on 26.07.2018 on the basis of order passed by S.D. O. has probative evidential value.

30. Needless to mention that, unless a clear case on the basis of material which can be held conclusive 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 and irrefutable evidence which is missing in the present case. The onus is on the Applicant to prove the same.

31. Now, turning to the facts of the present case. Admittedly, there was no entry in the record of Village Panchayat of Municipal Council in ordinary course of business about date of birth of the Applicant. At the time of entry in service book, the date of

birth was written on the basis of school record furnished by none other than the Applicant. Now, he comes with a case that later his mother told him that he was born in the year of India-China War which took place in 1962 on the day of Panchmi after Kartik Pournima day. Therefore, in 1989, he filed a representation before S.D.O. and obtained the order for direction to Sangli Municipal Council for recording his date of birth as 16.11.1962. The entry was accordingly taken in Sangli Municipal Council on 26.07.1989. Exh. 'C-2' (Page 31 of the P.B.) is the order of SDO dated 26.07.1989 and Exh. 'D' (Page 33) is the extract of Birth and Death Register of Sangli Municipal Council. There is a specific mention in that extract that the entry of date of birth as 16.11.1962 was taken as per the order of SDO dated 16.07.1989. Here important to note that the perusal of order of SDO reveals that the application for direction to Municipal Council was made by Amul N. Patil (brother of Applicant) with a request to record the date of birth as 16.11.1962. The application was made on 25.07.1989 and on the very next day, the order came to be passed. There is absolutely nothing in the order to show that the required procedure was adopted before issuing the order. All that it shows that, simply relying on the Affidavit of the Applicant, directions were issued.

32. The material question is as to whether it has any probative evidential value. In my considered opinion, it has no legal sanctity and cannot be accepted as irrefutable evidence of proof of date of birth as 16.11.1962. The extract issued by Sangli Municipal Council at Page 33, can be accepted to the extent only that such entry of date of birth as 16.11.1962 was taken in the record and nothing more. In other words, it only shows that the record of date of birth as 16.11.1962 and it cannot be accepted as a proof of birth on 16.11.1962. It 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 public body in its regular course of business can be accepted as evidence. Therefore, the story propounded by the Applicant that his date of birth is 16.11.1962 cannot be accepted as a gospel truth.

33. Furthermore, the question of jurisdiction of the SDO, Sangli to pass such order for direction to Sangli Municipal Council needs to be dealt with.

34. As per Section 13(3) of 'The Registration of Births and Deaths Act, 1969', the power is vested in the Magistrate, First Class or a Presidency Magistrate and not with SDO. 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.”

35. Hence, in such judicial proceedings, Judicial Magistrate is expected to verify the correctness of date of birth before allowing the application filed before him and he must hear the persons who will be interested in disputing or supporting the said application. The perusal of order of SDO does not reveal that any such procedure was followed, no proclamation was issued calling objections, the application was allowed mechanically on the very next day.

36. As such, the order passed by SDO is without jurisdiction, and therefore, such order and the entry taken in record on the basis of that order have no legal sanctity.

37. The Applicant has produced a copy of statement of Smt. Sudhatai N. Patil (mother of the Applicant) at page 30. It purports to show that the statement was recorded before Assistant Engineer Shri J.V Patil. It does not bear the date of recording of statement. In the said statement, the mother of the Applicant stated that the Applicant was born in Sangli at the house of her sister-in-law on 16.11.1962, but the entry of date of birth could not be recorded. This copy of statement purportedly given by the mother of the Applicant in absence of evidence of its authenticity can hardly be accepted. There is nothing to show that Shri J.V. Patil had actually recorded the statement. It is not a part of record of any judicial proceeding. Even there is no reference of any such statement in the order of SDO dated 26.07.1989.

38. Shri Bandiwadekar, the learned Advocate for the Applicant sought to place reliance on the Judgment passed by this Tribunal in O.A.676/2015 decided on 19th September, 2016 which was confirmed by Hon'ble High Court in Writ Petition No.6229/2017 by order date 10th July, 2018. The perusal of order in O.A.676/2015 reveals that, in that case, there was evidence of extract of Birth and Death Register

maintained by the Village Officer. There was difference in date of birth recorded in school certificate and Birth Register maintained by the local public body.

39. It was further found that the date of birth recorded in school register as 02.06.1957 was taken randomly on tentative basis. It is in that fact situation, it was held that the extract of Birth Register maintained by public body will prevail because of its probative evidential value. As such, the facts of the present case being totally different, the Judgment relied by the Applicant's Advocate is of no assistance to him.

40. The learned Advocate for the Applicant was also placed reliance on the Judgment in ***Ishwarlal Mohanlal Thakkar Vs. Paschim Gujrat Vij Company Limited, reported in (2014) 6 SCC 434, decided on 16th April, 2014.*** In that case, there was evidence of Birth Certificate issued by Municipal Corporation coupled with other evidence of date of birth in I-Card, LIC Policy, etc. and the date of birth was corrected. It is a case arising from Industrial Dispute Act. The employee was retired on the basis of date of birth recorded in service book on the basis of School Leaving Certificate. However, the date of birth was corrected in pursuance of order passed by Judicial Magistrate 1st Class under Section 13(3) of Registration of Birth and Death Act, 1969. Whereas in the present case, the situation is governed by Rule 38 of Rules of 1981, which requires unquestionable or irrefutable proof of date of birth or correction in service book. Therefore, in my opinion, with due respect, this authority is of no help to the Applicant.

41. The learned Advocate for the Applicant also sought to place reliance on the Judgment in ***Mohinder Singhi Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors., reported in (1989) 4 SCC 582, decided on 02.12.1977.*** This authority is for the proposition that when a statutory functionary makes order passed on certain grounds, its validity must be judged for the reasons so mentioned and cannot be supplemented in a fresh shape of affidavit or otherwise. This authority is pressed into service to contend that the Respondents cannot supplement reasons beyond mention in the order dated 12.05.2018. It is clearly stated in the said order that the petition of the Applicant was already rejected by order dated 30.08.2000 which was communicated to him and secondly, the application for correction of date of birth does not comply the

provisions of Rule 38 of Rules of 1981. This being the position, there is no question of supplementing the reasons, as the order itself is self-speaking.

42. 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 16.11.1962. The story invented by him that later he came to know that he was born in 1962 on the day of Panchami is nothing but afterthought and does not inspire confidence. It is not supported by irrefutable or unquestionable evidence. The entry recorded in Sangli Municipal Council on the basis of order passed by SDO was without jurisdiction and nothing but a creation of evidence. Point Nos. 3 and 4 are, therefore, answered in negative.

43. As concluded above while deciding Point No.1, the application is barred by limitation and it being made at the fag end of service is not maintainable. However, assuming for a moment that the application is within time, then also on merit, there is no irrefutable or unquestionable evidence to change the date of birth recorded in the service book. Therefore, the application is liable to be dismissed.

44. The upshot of above discussion leads me to sum-up that the application is without merit and deserves to be dismissed.

45. The O.A.No.486 of 2018 is, therefore, dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 01.11.2018

Dictation taken by :

S.K. Wamanse.