THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.517 OF 2015

DISTRICT: PUNE

Shri Ramesh Balwant More,)
C-5, Unity Complex,)
321, Shaniwar Peth,)
Pune 411 030) .. **Applicant**

Versus

1) The Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 400 032.)

2) Executive Engineer,)
Small Irrigation (Water Conservation) Division,)
Krishnanagar, Near Gopale High School,)
Satara 415 002.) **..Respondents**

Mrs. Punam Mahajan, the learned Advocate for the Applicant.

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

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 15.03.2016.

PRONOUNCED ON : 26.04.2016.

JUDGMENT

1. This case was heard from time to time on various dates. Lastly when the case was called out for hearing, State has tendered affidavit-in-reply to the amended O.A. and it is taken on record. Learned Advocate for the Applicant states that the Applicant does not wish to file any rejoinder.

2. Heard both sides at length. Perused the record annexed and original service book etc.

3. Facts can be narrated in brief as follows :-

(a) The Applicant claims that his date of birth recorded in the School Leaving Certificate is 01.08.1957, while his actual date of birth is 23.04.1958.

(b) The Applicant was appointed as Junior Engineer on 23.10.1979 by the Deputy Executive Engineer.

(c) The entry of birth date, based on the school leaving certificate was made by the Sub-Divisional Officer, Khadakwasla Project Sub-Division No.17, Bhigwan, District Pune on 04.08.1980.

(d) The Applicant submitted an application on 30.05.1984 along with the certified copy of the birth Register, which was procured on 16.02.1984 and requested for correction of date of birth in the Service book from 01.08.1957 to 23.04.1958.

(e) In pursuance of the applicant's application dated 30.05.1984, Applicant's birth date in the service book was corrected by the Deputy Executive Engineer, the head of Bhira Construction Division No.2, Rawalaje, Taluka Mangaon, District Raigad, on 31.07.1984.

(f) In due course, the Applicant was given the promotion to the post of Sectional Engineer, by the order issued by Government of Maharashtra, which is dated 03.08.1987.

(g) The said promotion order dated 3.8.1987 contains a column for mention of the date of birth. The Applicant's date of birth is shown in the said order as 23.04.1958 i.e. the corrected date of birth.

(h) The Provident fund record, for the period from 2008 to 2014 is placed on record of O.A. and it shows the date of birth of the Applicant, as 23.04.1958 i.e. the corrected date.

(i) The seniority list dated 15.10.2010 is prepared by the Government for the period from 01.04.1989 to 20.09.2008. In this seniority list the date of the birth of the Applicant is shown as 01.08.1957.

(j) According to the Applicant, this seniority list was not circulated and therefore the Applicant had no knowledge of incorrect date of birth recorded therein.

(k) The Applicant learnt about the wrong entry of date of birth shown in the seniority list in 2013. Thereafter, the Applicant made a representation on 08.04.2013 to the Respondent No.1, for correction of the date of birth, mentioned in said seniority list. This application was submitted through proper channel. The Applicant claims that he did not receive any reply to his representation. Therefore the Applicant submitted a reminder on 18.11.2013, to the Respondent No.1.

(l) On 20.01.2015 the Applicant submitted a representation to the Hon'ble Minister for Water Resources for correction in date of birth in the seniority list, as per the entry recorded in the service book.

(m) The Applicant had also made representations to the Hon'ble Chief Minister for correction in date of birth mentioned/stated in the seniority list, in conformity with the service book on 02.02.2015.

(n) Applicant also submitted reminders on 24.02.2015 and 24.03.2015.

(o) The Applicant has received in May, 2015 a letter dated 23.03.2015, from Respondent No.2, informing the Applicant that the date of birth of the Applicant is 01.08.1957 and on the basis of this date of birth, the Applicant shall complete 58 years of age and will retire on superannuation on 31.07.2015.

(p) Present O.A. was filed on 8.6.2015, by the Applicant for challenging his superannuation based on an erroneous date of birth.

(q) Though O.A. was filed, any interim relief was not granted. Therefore, applicant was superannuated.

4. O.A. is opposed by the Respondents No.1 and 2 by filing separate affidavits.

5. The 1st affidavit is filed by Shri Vinayak Vishwanath Lawate, Under Secretary, Water Resources Department, Mantralaya, Mumbai, while the 2nd affidavit is filed by Shri Dhondiram Yashwant Kadam, Executive Engineer, Small Scale Irrigation (WC) Division, Satara.

6. Crux of the reply of the Respondents to Applicant's O.A. is seen in the affidavit of Respondent No.2 from certain paragraphs thereof which could be referred better by quotation. Those are quoted as below :-

"19. With reference to para 6.13, I say and submit that Applicant's birth date as per service book is considered as 1st August 1957. Further, Applicant has illegally changed it to 23.04.1958 without follawing the pracedure laid down in M.C.S.R. The correction to birth date is made on 31.7.1987 an basis af certificate issued by Tahasildar an 16.02.1984. ***These transmissian seem ta be manipulated.***

22. With reference to para 6.15.1, I say that Applicant's birth date as per service book is cansidered as 1st August, 1957. Further, Applicant has illegally changed it to 23.4.1958 without following the procedure laid dawn in M.C.S.R. The correctian to birth date is made on 31.7.1981 on basis of certificate issued by Tahasildar on 16.2.1984. ***These transmissian seem ta be manipulated.***

28. With reference to para 6.15.7, I say that Applicant's birth date 1st August 1957 initially recorded service book is correct and authentic entry and subsequent therein is invalid ***as the same has nat been recarded by fallawing due pracedure prescribed under the pravisians af relevant service Rules.*** *The date of birth recorded on 1.8.1957 is on the basis of school leaving certificate, submitted by the applicant himself.*

30. With reference to para 7, I say and submit that the applicant ought to have taken necessary steps at the earliest. ***The applicant has submitted representatian far carrectian af his date af birth, first time an 8.4.2013****."*

(Quoted paragraphs from affidavit filed by Respondent No.2 at pages 82 to 84.)

It shall also be useful to refer to the averments contained in the affidavit of Shri Vinayak Vishwanath Lawate, Under Secretary, Water Resources Department, Mantralaya, Mumbai filed on behalf of Respondent No.1, which reads as below :-

"6. With reference to para 5, I say that after joining the department in 1979, ***the applicant was ta file applicatian by carrectian af date af birth by 1985, but the applicant submitted his representatian an 8.4.2013, i.e. an the verge af retirement****. The present O.A. is barred by limitation as the applicant did not challenge the first date recorded in the seniority list date 15.10.2010 which was also published on the Government of Maharashtra website. Further, when his representation dated 8.4.2013 was not decided. Hence, the present O.A. is liable to be dismissed on the ground of delay and not being accompanied with an applicable for condonation of delay explaining the sufficient cause which prevented him from approaching this Hon'ble Tribunal at the earliest and when he was well aware that he was likely to retire from government service in July, 2015.*

(Quoted from paragraph 6 from affidavit of Respondent No.1 from Page No.67.)

7. The gist of Respondents' objection to the O.A. can be summarized as follows :-

(a) The correction in the service book as to Applicant's date of birth, relied upon by the applicant is unauthorized and was got done by the Applicant by way of manipulation.

(b) Said correction in applicant's date of birth carried out in service book is not done in accordance with rules.

(c) The applicant had for the first time moved for correction in the date of birth by his representation dated 08.04.2013 was done belatedly and at the verge of his retirement.

8. After receiving reply, Original Application was taken for hearing.

9. Considering the plea of manipulation the Respondents were directed to produce original service book of the applicant. It was produced. Hearing was done, however case adjourned from time to time.

10. It had transpired on perusal of original service book during the course of hearing, that the date which is mentioned below the signature of Deputy Executive Engineer who had corrected the date of birth which is purportedly 31.07.1981 suggests that the digit "1" appearing in year "1981" is seen to be in different mode of writing.

11. Other entries in the service book reveal that around July, 1984, Shri R.N. Shingte was serving as Deputy Executive Engineer in Bhira Sub-Division No.2, Rawalaji, Taluka : Pali (Sudhagad), District Raigad. It is also evident that Shri R.N. Shingte was not incharge or head of Division in Mira Construction Sub-Division No.2, Rabalje Tq. Mangav, in 1981.

12. Considering the plea recorded in paragraphs No. 19 and 22 of the reply of the Respondent No.2, and after hearing rival submissions, and after perusal of various entries in service book, this Tribunal passed order on 21.08.2015 as follows :-

"1. Heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

2. Heard. In the midst of hearing, it has transpired that the date of correction relied upon by the Applicant as regards his date of birth seen in service book as averred in paragraph no.6.4 is 31.7.1984.

3. The carrectian in the service baok which is authenticated/singed by Deputy Executive Engineer, (Shri R.N. Shingte) shaws the date in Marathi Na. as "३१.७.१९८१."

4. Original recard was called far perusal.

5. Learned P.O. was called far explaining as to whether the officer wha was the incharge of Bhira Construction Division No.2, the subject matter, on the date af correction i.e. on 31.7.1981 ar 31.7.1984.

6. Learned P.O. far the Respondents prays for time ta take instructions.

7. The Respandent No.2 is directed ta file affidavit and to clarify the fact pertaining to the name of the office af the afficers who were holding the charge of the past of Deputy Executive Engineer, Bhira Construction Division Na.2 on 31.7.1981 and 31.7.1984.

8. Affidavit be filed on the next date.

9. Stena copy and Hamdast is allawed to learned P.O..

10. Learned P.O. is directed ta cammunicate this arder ta Respondents.

11. S.O. to 1.09.2015."

(Quoted order dated 21.08.2015.)

13. During the hearing on adjourned dates learned P.O. pointed out that no other collateral record or additional affidavits can be filed, and case needs to be heard only on the basis of record and in particular the entries found in the service book.

14. Thereafter, again the case was heard. It has then transpired that the Respondents had failed to trace / verify from Shri R.N. Shingte or other office record or officers / employees whoever could be traced or contacted, that applicant's plea, that his date of birth was corrected in 1984 is a falsehood, and hence said correction / alternation was done by way of an act of manipulation.

15. At this stage, learned P.O. has conceded to proposition that :-

(a) The digit "1" appearing in 1981 in the service book was in the nature of writing to fill in a blank or overwriting on a faint writing.

(b) That Shri R.N. Shingte, Deputy Executive Engineer was not serving in the said office i.e. Mira Construction Division No.2, Rabalje in Tq. Mangav in 1981, the said entry being made in "1984", appears to be more probable, and Shri R.N. Shingte may have been posted in said Sub-Division in 1984, as is evident from the Rubber Stamp below his signature, and as seen from Shri Shingtes' signatures on various pages of service book of applicant in closer proximity of months to follow.

ANALYSIS OF RECORD RELATING TO DATE OF BIRTH

16. It is evident on perusal of pleadings of respondents that their pleadings of allegations of "manipulation" were suggestive than by way of positive assertion.

17. It had become evident that the Applicant had pleaded and had also shown, that, not only that his date of birth was corrected in 1984 but was entered in all other records, is supported by record i.e. promotion order of the Applicant (copy whereof is at page 16, Annexure –A-4) where, in front of applicant's name, his date of birth is shown as 23.04.1958.

In the provident fund record, from 2008 onwards till 2014 (copies whereof are placed on record) it is shown that applicant's date of birth is entered as 23.04.1958.

18. It has thus become evident during the course of hearing that the Respondents' plea that "the correction of record about date of birth in service book was done in 1981 and was by way of manipulation", was an averment in the nature of "chance pleading" and "chance arguments", was barely argumentative, and could not be sustained.

Moreover, learned P.O. has tacitly conceded to the position that the allegation of manipulation was hard to sustain.

19. The facts and record weighs in favour of Applicant's claim that the correction in his date in service book was carried out on 31.07.1984, and not in 1981.

20. Consequent upon what had transpired during hearing and is recorded hereinbefore. Parties were called to address on other points.

21. The State then proceeded to oppose the O.A. on other grounds. During the course of hearing the learned P.O. urged new ground as follows:-

> The appointing authority of the post of Junior Engineer was Superintending Engineer. Therefore, the service record was liable to be maintained and to be corrected by the Superintending Engineer. Therefore, the correction of date of birth by Deputy Executive Engineer was not legal and authentic.

22. In the premises, that new ground of objection was, raised and emphasized by the Respondents, the Applicant sought leave to amend the Original Application. Leave for amendment was granted and thereafter applicant has amended the Original Application.

23. By virtue of amendment Applicant has incorporated certain paragraphs pleadings whereof which is as follows :-

"6.14.A) The Petitioner submits that the Petitioner was oppointed on the post of Junior Engineer, which was a Class III, non-gozetted post, in 1979. Both the Superintending Engineer as well os the Executive Engineer hove the concurrent power to appoint Junior Engineers. This contention is supported by the Public Works Department ond Irrigotion Department Monuol. The Petitioner craves the leave of this Hon'ble Tribunal to refer to the relevont extract from the Manual, wherein it hos been cleorly stated thot the Executive Engineer hos the right to make the permanent, temporary oppointments, as well os appointments on work chonge. The Petitioner submits thot the Petitioner's initial appointment wos on regular temporary basis and therefore it folls in the cotegory of temporary appointment. Copy of the relevant extroct from the Monual is onnexed and marked as Annexure A12.

6.14.B) The oppointment order of the Petitioner is issued by the Superintending Engineer, but even the Executive Engineer hos the power to issue the appointment orders of the Junior Engineer, os per the Monual. Therefore, the Executive Engineer olso hos the power to make correction in Date of Birth of non-gazetted Government servants, in the service book.

6.14C) In every Division there is o post of Deputy Executive Engineer. The Petitioner is relying on the Government Resolution dated 15/3/2012, to demonstrate thot there is o post of Deputy Executive Engineer in all the Divisions, under Pune Circle viz. Pune, Solapur, Satora, Kolhopur ond Songali Division. Copy of the Government Resolution doted 15/3/2012 is annexed and marked os Annexure A13.

6.14D) The Petitioner submits thot, it wos o regulor proctice in the department that the powers to moke all the necessary entries in the service book of non-gazetted Government Servonts is delegoted by the Executive Engineer, to the Deputy Executive Engineer, working in the office of the Executive Engineer. The original date of birth of the Petitioner is recorded in the service book, by the Sub-Divisional officer, Khadakwoslo Project Sub-Division, Bhigvon and it is corrected by the Deputy Executive Engineer, Bhiro Construction Division No.1 Rowalaje, Taluka Mangoon. Therefore, both the originol entry of date of birth in the service book, as well as the corrected date of birth in the service book, is done by the officer of the some rank, in the office of the Executive Engineer.

6.14E) The Petitioner submits that the Respondents have acted on the corrected date of birth from 1984 onwards, till today and therefore, by their conduct, they have ratified the correction of date of birth in the service book, if at all the correction in the original service book is to be treated as irregular or without authority. The Respondent No.1, during the pendency of this Original Application had issued the promotion order of the Petitioner to the post of Executive Engineer on 5/11/2015 and also the posting of the Petitioner, as Executive Engineer, Takari Pump House Division No.1, Islampur Peth Vasahat, District Sangali. This promotion order was cancelled by the Respondent No.1 on 22.01.2016. Copy of the cancellation of the promotion order dated 5/11/2015, to the post of Executive Engineer, dated 22/1/2016 is annexed and marked as Annexure A14."

(Quoted from amended pages of the O.A. i.e. page 6-A and 6-B.)

24. The amended O.A. has been replied by filing affidavit which is tendered today i.e. 15.03.2016.

25. Learned Advocate for the Applicant submitted that the reply to the amended portion is in the nature of bare denial and clarification by way of rejoinder is not necessary and hearing can proceed and requested for hearing of the O.A.. This O.A. was heard once again.

26. The Applicant had pleaded that the Deputy Executive Engineer was the head of the Divisional Office and he had maintained the record is borne on record i.e. from the entries made/authenticated by Deputy Executive Engineer in the service book.

27. The applicant's pleading that the Dy. Executive Engineer was head of the concerned Division. Moreover, this fact is not denied or disputed by the Respondents.

28. Applicant's claim in this O.A. is contested by the Respondents purely on legal grounds, by taking support of Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred as M.C.S. (General Conditions of Services) Rules, 1981 and a letter received from the Superintending Engineer dated 15.12.2014. The context of the letter dated 15.12.2014 reads as follows:-

"संदर्भीय पत्रान्वये, श्री. रमेश बळवंत मोरे, उपविभागीय अधिकारी यांचा मुळ सेवा पुस्तकामधील प्रथम पानावरील जन्मदिनांक नोंदीबाबत मार्गदर्शन व आदेशाबाबत कळविण्यात आलेले होते.

श्री. रमेश बळवंत मोरे, उपविभागीय अधिकारी यांच्या मुळ सेवापुस्ताच्या पहिल्या पानाची तपासणी केली असता त्यांचा जन्मदिनांक हा ०१.०८.१९५७ असा दिसून येतो व सदरची तारीख ही तत्कालीन संबंधित अधिका-यांनी प्रमाणित केलेली आहे.

त्यानंतर श्री. रमेश बळवंत मोरे, उपविभागीय अधिकारी यांचा तहसीलदार, महाड यांचे जन्म-मृत्यू दाखल्यावरुन दि.२३.०४.१९९८ नमूद केलेला आहे. तथापि सदरचा दिनांक प्रमाणित केल्याचे दिसून येत नाही.

तसेच महाराष्ट्र शासन, वि-त विभाग, अधिसूचना क्र.मनासे १००७/प्र.क्र.७/०७ /सेवा-६, दि.२४.१२.२००८ अन्वये, जन्मतारखेतील बदलासाठी जन्मनोंदवहीतील साक्षांकित प्रत सबंधितांनी सादर करणे आवश्यक आहे.

अपरोक्त विवेचनावरुन व शासन अधिसूचनेच्या अनुषंगाने श्री. रमेश बळवंत मोरे, उपविभागीय अधिकारी, यांचा सध्यातरी जन्मदिनांक हा ०१.०८.१९५७ गृहित धरण्यात यावा."

(Quoted from copy of letter dated 15.12.2014.)

29. The Tribunal had then called the copy of G.R. dated 24.12.2008. It was produced for perusal. It is seen that by G.R. dated 24.12.2008, the Government of Maharashtra has substituted Instruction No.1 & Instruction No.2 and added Rule 2(a) and 2(b) in Rule 38(2) of the aforesaid M.C.S. (General Conditions of Services) Rules, 1981 and said amendment is seen incorporated in recent publication.

30. Learned Advocate for the Applicant has placed reliance on the two judgments in support of her submissions, namely :-

(a) The judgment of this Tribunal referred in O.A.No.407 of 2011 filed by Shri Ravindra Dattatraya Vaidya Versus The Joint Director of Health Services & Ors dated 08.11.2011.

(b) The judgment of the Hon'ble Supreme Court in the case of State of Maharashtra Versus Gorakhnath Sitaram Kamble (S.C.), Civil Appeal No.9704 of 2010, decided on 16.11.2010 reported as 2011(7) SLR 510 (SC).

These judgments are relied upon by learned Advocate for the Applicant on the following ratio:-

(a) The case of correction in the record stands on different footing than seeking change in the date of birth.

(b) The change in the date of birth which can be justified on facts and circumstances can be allowed.

1. Respondents-State has in support of opposition placed reliance on following judgments :-

Sr.No.	Judgments
1.	State of Maharashtra & Anr. Versus Gorakhnath Sitaram Kamble & Ors. Civil Appeal No.9704 of 2010, decided on 16.11.2010.
2.	State of Assam V. D.P. Deka (Shah J.), reported in AIR 1971 Supreme Court 173 (V 58 C 44)
3.	D.D. Suri V. A.K. Barren, Civil Appeal No.679 of 1970, D/- 22.10.1970.
4.	Government of Andhra Pradesh and Another Versus M Gayagreev Sarma, Civil Appeal No.915 of 1987, decided on April 6, 1990).
5.	State of U.P. Versus Lalla Singh and Other, Criminal Appeal No.70 of 1977, decided on March 13, 1990, reported in (1990) 2 Supreme Court Cases 687.
6.	Dr. A.S. Anand and M.K. Mukherjee, JJ. Civil Appeal No.1733 of 1995 (arising out of S.L.P. (Civil) No.12181 of 1994, D./- 14-2-1995, reported in AIR 1995 Supreme Court 1349.
7.	S.C. Agarwal and Mrs. Sujata V. Manohar, JJ. Civil Appeal No.1213 of 1977, D/-31-1-1995, reported in AIR 1995 Supreme Court 1352.
8.	State of Orissa and other Versus Brahamarbar Senapathi, Civil Appeal No.... of 1994 decided on January 3, 1994, reported in (1994) 2 Supreme Court Cases 491.
9.	Dhan Singh Versus Nagina and Another, Civil Appeal No.1962 of 1987, decided on February 16, 1984, reported in (1994) 2 Supreme Court Cases 493.
10.	State of Punjab and Others Versus S.C. Chadha, Civil Appeal No.854 of 2004, decided on February 9, 2004, reported in (2004) 3 Supreme Court Cases 394.
11.	K. Ramaswamy and B.L. Hansaria, J.) Civil Appeal No.12073 of 1995 (arising out of S.L.P. (C) No.5317 of 1992), D/- 13-12-1995, reported in AIR 1996 Supreme Court 1000).
12.	K. Ramaswamy and B.L. Hansaria, J.) Civil Appeal No.12056 of 1995 (arising out of S.L.P. (C) No.21351 of 1994), D/- 14-12-1995, reported in AIR 1996 Supreme Court 1001).
13.	Original Application No.534 of 2011 (Stamp No.1227 of 2010) with Misc. Application No.500 of 2010 in Original Application No.534 of 2011, by Mr. Shankar Karbhari Bhusnar Versus The State of Maharashtra & Ors dated 23.06.2011.

These judgments are relied upon by the learned P.O. to urge that the effort to seek change in the service record relating to date of birth at the fag end of service is impermissible. The change sought at earliest possible opportunity and could be done strictly in conformity with Rules.

QUESTIONS FOR CONSIDERATION

32. In view of the rival submissions, the questions which fall for consideration are formulated as follows :-

1) Whether the Applicant proves that his date of birth which was initially recorded in service book as 01.08.1957, was corrected to 23.04.1958 by the Deputy Executive Engineer on 31.07.1984 ?

2) Is the correction in applicant's date of birth in service book carried out by Deputy Executive Engineer, legal and authentic ?

3) Does the Applicant prove that his date of birth was acted upon by the Government to be 23.04.1958 until impugned order was passed ?

4) Is the Applicant's case covered by notification dated 24.12.2008 and is his claim for correction in the date of birth within the purview of Rule 38(2) of Instructions No.1 and 2 of the M.C.S. (General Conditions of Services) Rules, 1981 ?

5) Did the applicant make the request for correction of date of birth at the fag end of service ?

DISCUSSION

33. Discussions as to question no.1.

Question No.1 : Whether the Applicant proves that his date of birth which was initially recorded in service book as 01.08.1957, was corrected to 23.04.1958 by the Deputy Executive Engineer on 31.07.1984 ?

As it has transpired from perusal of service book, what is evident is as follows :-

(a) The entry of correction of date of birth made on page 1 of service book is authenticated by the signature of Shri R.N. Shingte, the Deputy Executive Engineer.

(b) The genuineness of the signature of Shri R.N. Shingte is not disputed by the Respondents.

(c) Perusal of service book reveals that signature of Shri R.N. Shingte authenticating the correction in date of birth matches with other signature of Shri R.N. Shingte found at different pages and entries authenticated by Shri R.N. Shingte in the service book of the Applicant.

(d) Shri R.N. Shingte's signature is seen at many places in service book, at page Nos.27 (signatures are dated 17.10.1984, 18.01.1985, & 02.02.1985), at page 47 (signature is of October, 1987) and at page 48 (signature is of the year 1988.)

(e) Service book also shows that Shri R.N. Shingte was not the Deputy Executive Engineer in 1981 and some other officer was incharge as Executive Engineer or Deputy Executive Engineer in said Khadakwasla Division.

(f) The signature and rubber stamp below the signature authenticating the correction is pertaining to Bhira Construction Division No.2 at Rabalje Tq. Mangav, where Shri R.N. Shingte was the Deputy Executive Engineer in July, 1984 and following period.

(g) Act of manipulation is a serious charge. It has to be made with responsibility and same degree of seriousness is necessary in proving it. No efforts are made by the Respondents to substantiate said plea of "manipulation".

(h) It was quite easy for the Respondents to lay hands, exert and find out as to whether office staff who was serving at relevant time was available for filing an affidavit / furnishing information.

(i) No efforts are made to find out as to whether Shri R.N. Shingte, Deputy Executive Engineer who had authenticated the said entry is available, whether he owns or disowns authenticity of entries made by him etc.

(j) Respondents' plea to the effect that correction in service book is by manipulation as is evident from text of paragraph nos. 19 & 22 of the Respondent No.2's reply which is quoted ad verbatim in foregoing paragraph no.6, is thus proved to be a bald plea based sheerly on surmises, and speculation and hence it is erroneous and is not proved to be based on truth.

(k) Moreover, the fact that entry was made punctually within very few years of entry in Government service is duly demonstrated.

34. Discussions as to question no.2 :-

Question No.2 : Is the correction in applicant's date of birth in service book carried out by Deputy Executive Engineer legal and authentic or it is a product of manipulation ?

(a) Next point to be dealt with is as to authenticity of correction in law.

(b) It is seen that the applicant has pleaded and that the correction in the service book as to applicant's date of birth was done by the Deputy Executive Engineer by amendment now carried out.

(c) In order to prove that the act of Deputy Executive Engineer was competent, the Applicant has relied on schedule 42 which is referred to in paragraph 433 of the P.W.D. manual.

(d) It transpires from reading of paragraph no.433 aforesaid that the powers referred to in schedule 42 are vested with the officer named therein. In 42nd schedule it is seen that power to appoint are vested with the Executive Engineer.

(e) In the amended O.A. in paragraph No.6.14.D applicant pleaded that the powers of Executive Engineer are delegated to the Deputy Executive Engineer who is the head of the Division. However, this aspect pleaded / averred in paragraph No.6.14.D is not answered by the Respondents.

(f) Moreover, it was conceded by learned P.O. during submissions that qua a Division of which Deputy Executive Engineer is head, he exercises the powers of Executive Engineer.

35. Discussions as to question no.3 :-

Question No.3 Does the Applicant prove that his date of birth was acted upon by the Government to be 13.04.1958 until impugned order was passed ?

(a) The averments of the Applicant as regards corroborative evidence to that effect contained in Original Application in paragraphs 6.5 and 6.6 are dealt with by the Government in its reply by Respondent No.1, in most evasive manner, rather those averments tacitly suggest that his corrected date of birth "may have appeared in Government record because the record was furnished by the field staff". The relevant paragraphs i.e. 6.5 and 6.6 of the O.A. reply thereto are quoted for ready reference as follows:-

"6.5 The Petitioner submits that, the Petitioner was given the status of Sectional Engineer, by the order dated 3/8/1987 and the date of birth of the Petitioner is shown as ***23rd April, 1958 i.e. the corrected date of birth****. Copy of the order dated 3/8/1987 is annexed and marked as Annexure A4.*

6.6 The Petitioner craves the leave of this Hon'ble Tribunal to refer to the extract from the Provident fund record, for the period from 2008 to 2014, which shows the date of birth of the Applicant, as 23rd April, 1958. Copy of the extract from the Provident Fund record, for the period from 2008 to 2014 are collectively annexed and marked as Annexure A5."

(Quoted from page 4 of the paper book)

(b) In so far as applicant's plea of mention of date of birth in provident fund is concerned Respondents' answer is similar, suggesting that the correction which was got done by the Applicant is unauthorized.

(c) Corroborative evidence is brought by the Applicant to prove that in his promotion order issued by the Government in 1981, applicant's date of birth as was corrected i.e. 23.04.1958 was reflected in the record of the Government. This fact is not disputed.

36. Discussions as to question no.4 and 5.

Question No.4 Is the Applicant's case covered by notification dated 24.12.2008 and is his claim for correction in the date of birth within the purview of Rule 38(2) of Instructions No.1 and 2 of the M.C.S. (General Conditions of Services) Rules, 1981 ?

Question No.5 Is the applicant's case that of request for correction of date of birth at the fag end of service ?

(a) As next point of defence, reliance is placed by the Respondents on Rule 38 of M.C.S. (General Conditions of Services) Rules, 1981.

(b) Thus the authority of the Deputy Executive Engineer to correct the date of birth is challenged on the ground of Rule 38 of the M.C.S. (General Conditions of Services) Rules, 1981. Relevant averment contained in Government's reply reads as follows :-

"5. With reference ta para 6.14(D), I say and Submit that initially the Birth Date of Applicant was recorded by Sub Divisional Officer in the service baak and thereafter correction thereta had been made by the Deputy Executive Engineer. I say and submit that officers are of same rank, hence, birth date ance recorded in service recorded in service book cannot be corrected by the same rank afficer unless being an autharity as Head of Department. The procedure far correction and recarding of birth date is laid down in rule 38 by the MCSR 1981 (vide Exh. R2 hereto). As such, the carrection in the date af birth is to be done by the Superintending Engineer af concern Circle. Hence, all adverse contentions are in this para denied."

(Quoted paragraph 5, pages 101 & 102 of affidavit on amended portion filed by R-1 & R-2)

(c) Though Rule 38 of the M.C.S. (General Conditions of Services) Rules, 1981 is relied upon, the text of the said Rule is totally silent on the aspect pleaded in paragraph 5, of the reply to the O.A., which is quoted hereinbefore. On perusal of pleads it is evidence that in unambiguous term the applicant has pleaded in paragraph 6.13 as follows :-

"The Petitioner is seeking a direction that the Respondents adhered ta the corrected date of birth in the service in this regard and to retire him an the basis of pre-corrected date of birth entry of 1st of August, 1957."

(Quoted from page 6 of the O.A. paper book.)

(d) Averments contained in the O.A. in paragraphs no. 6.8, 6.9 and 6.10 are in nature of demand for correction of date of birth reflected in the seniority list prepared in 2010, with a plea that said list was not circulated and not in the original service record as to date of birth.

(e) It is not the Respondents case that at any point of time the corrected service book was re-corrected, an intimation / notice of such re-correction was given to the Applicant any time earlier in past, and that now applicant was seeking a correction afresh.

37. **POINT-WISE AND CONCLUSION**

(A) AS TO QUESTION NOS.1 AND 2 AFORESAID CONCLUSION & FINDING IS AS FOLLOWS : -

(a) It is proved by the Applicant from record that his date of birth was corrected in service record by Deputy Executive Engineer on 31.07.1984. Respondents though pleaded, have failed to prove their positive assertion that the said correction is an act of manipulation. Manipulation is serious charge. It ought to have been proved by the positive evidence. Respondents have failed to bring evidence which was well within their power and to refute and rebut. Hence, from whatever record produced, and facts, it is proved that applicant's date of birth recorded in service book was corrected on 31.04.1984.

(b) The correction was done by Deputy Executive Engineer, who was head of the Divisional Office, and he was exercising the powers of Executive Engineer and he was competent to act according to paragraph 433 of Public Works Department manual.

(B) AS TO QUESTION NO.3 AFORESAID CONCLUSION & FINDING IS AS FOLLOWS :-

Applicant has proved that his date of birth to be 23.04.1958 was not only corrected on 31.07.1984, but was reflected in all other records as regards proposing applicant's name for promotion and was acted upon by all concerned.

(C) AS TO QUESTION NOS.4 AND 5 AFORESAID DISCUSSION & CONCLUSION ARE AS FOLLOWS :-

(a) As it has transpired from the pleading of the Applicant contained in paragraph 6.13 which explicitly make it clear that applicant's request is not for correction in service record about date of birth. Moreover, the correction which was done in 1984 cannot be governed by the amendment made in MCS (General Conditions of Services) Rules 1981, by the notification issued by Government on 24.12.2008.

(b) By no means it can be said that the said notification dated 24.12.2008 is retrospective. It is not retrospective other by any expressed provision contained therein or by implication whatsoever.

(c) In the result, Respondents' objection to Applicant's claim raised before this Tribunal based on plea that the applicant is demanding a change in the record about date of birth at the fag end of service, and that his request is not in conformity with Rule 38 of M.C.S. (General Conditions of Services) Rules, 1981 is wholly unsustainable.

38. Considering the answer to the questions framed by this Tribunal and its findings, the O.A. has to succeed. Original Application is allowed. Impugned order retiring applicant from the Government employment w.e.f. 31.07.2015 is quashed and set aside.

39. It is declared that the Applicant shall be deemed to be in service till completion of 58 years of service based on 23.04.1958 as his date of birth.

40. In view that applicant has already retired he shall be entitled to difference of pay and allowance and pension, if any, paid to him along with by other consequential benefits, had he not been superannuated and had impugned order not being passed. Implementation of this order be done within three months from the date of receipt of this order.

41. Parties are directed to bear their own costs.

Sd/-
(A.H. Joshi,J)
Chairman

prk