

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.541 OF 2018

DISTRICT : PALGHAR

Shri Prakash Narayan Rathod.)
Age : 57 Yrs., Working as Tahasildar)
(Encroachment / Removal), Mulund,)
Mumbai 400 080 and residing at New Prerana)
C.H.S.Ltd., Fatherwadi, Pragati Complex,)
Vasai €, Dist : Palghar – 401 208.)...**Applicant**

Versus

1. The Additional Collector.)
(Encroachment / Removal),)
East Suburban, Mumbai having office)
at Industrial Assurance Building,)
1st Floor, Opp. Churchgate Railway)
Station, Mumbai – 400 020.)
2. The District Collector.)
Mumbai Suburban District, having)
Office at Administrative Building,)
10th Floor, Bandra (E), Mumbai – 51.)
3. The Divisional Commissioner.)
Konkan Division, Having office at)
Konkan Bhawan, 1st Floor,)
Navi Mumbai 400 614.)
4. The State of Maharashtra.)
Through Principal Secretary (Revenue),)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

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

Ms. S.P. Manchekar, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 25.03.2019

JUDGMENT

1. In the present Original Application, the Applicant has challenged the impugned order dated 20.12.2017 whereby the application of the Applicant for correction in date of birth in service record was rejected solely on the ground of non-filing the application within five years from the date of joining of service.

2. Factual matrix is as follows :-

The Applicant joined Government service as Clerk on 27.04.1992 and was posted in the office of District Collector, Mumbai Suburb (Respondent No.2). In service record, his date of birth was recorded as 01.07.1960 on the basis of School Leaving Certificate. However, he contends that his correct date of birth is 19.05.1961 as per the entry in Village record i.e. "Kotwal Book". Therefore, on 01.08.1996 i.e. within five years from the date of joining of service, he made an application to Collector for correction of date of birth as 19.05.1961 in place of 01.07.1960. He had submitted the copies of School Leaving Certificate, Kotwal Book Extract and Extract of Service Book. The Tahasildar, Borivali by letter dated 03.03.1997 asked the Applicant to produce more documents viz. School Leaving Certificate, Birth Certificate as well as Birth Certificates of his brothers and informed that, on receipt of these documents, the matter will be processed. The Applicant contends that, as he had already submitted necessary documents along with application dated 01.08.1996, there was requirement of any additional documents and the decision about correction in date of birth ought to have been

taken. However, no such decision was taken. On 25.05.2017 and 31.03.2018, the Applicant again reminded Collector for necessary orders on his application dated 01.08.1996 soon as he will be retiring within a year. However, Additional Collector by letter dated 20.12.2017 informed the Applicant that his application for correction in date of birth being made after five years, the same cannot be considered. This order is challenged by the Applicant in the present O.A.

3. The Respondent No.1 has filed Affidavit-in-reply (Page Nos.39 to 45 of the Paper Book) as well as Respondent No.2 filed a separate Affidavit-in-reply (Page Nos.48 to 56 of the P.B.). The Applicant has also filed Affidavit-in-Rejoinder (Page Nos.58 to 62 of P.B.).

4. Respondent No.2's Affidavit-in-reply is material for the purposes of this O.A. Respondent No.2 sought to contend that the application submitted by the Applicant on 01.08.1996 was not supported by required documental evidence, and therefore, by letter dated 19.02.1997, he was asked to furnish the required documents. However, the Applicant has failed to submit the required documents. Thereafter, the Applicant remained silent for 20 years. It is only on 25.05.2017 and 31.03.2018, the Applicant belatedly submitted a detailed application along with required documents. The Respondents, therefore, contend that having approached belatedly, the change in date of birth is not permissible at the fag end of service. With this pleading, the Respondents sought to justify the impugned order dated 20.12.2017.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant has pointed out that the Applicant has submitted an application on 01.08.1996 well within in 5 years from the date of joining of service supported by Leaving Certificate, Extract of Kotwal Book and Extract of Service Book. He, therefore, contends that the rejection of request for correction in date of birth on the ground that the application was not filed within 5 years is *ex-facie* erroneous.

6. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer sought to contend that the application submitted by the Applicant on 01.08.1996 was not supported by the required documents, and therefore, the rejection of request by impugned communication dated 20.12.2017 cannot be faulted with.

7. Needless to mention that, as per G.R. dated 3rd March, 1998, the application for correction in date of birth is required to be made within 5 years from the date of joining of service. The procedure to be followed in such matter is governed by Rule 38 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981. In the present matter, there is no denying that the Applicant had submitted an application on 01.08.1996 i.e. well within 5 years from the date of joining of service. This fact is categorically admitted by Respondent No.2 in its Affidavit-in-reply.

8. At this juncture, significant to note that the Applicant along with his application dated 01.08.1996 had annexed Leaving Certificate, Extract of Kotwal Book showing the date of birth of the Applicant as 19.05.1961 and Extract of his Service Book. There is specific endorsement of these enclosures on application dated 01.08.1996. This being the position, the rejection of the request of the Applicant for change in date of birth stating that the application not being made within 5 years from the date of joining the service his request is obviously erroneous. True, by letter dated 03.03.1997, the Applicant was called upon to furnish some additional documents i.e. Birth Certificates of his brothers, which was not complied by the Applicant. It is also equally true that, thereafter, for the first time, by application dated 31.03.2018, the Applicant submitted all requisite documents reiterating his request for change in date of birth. The Applicant has also produced the Extract of Kotwal Book which shows that in Kotwal Book, his date of birth is recorded as 19.05.1961 and the entry seems to have been taken on 12.06.1961 in ordinary course of business. Needless to mention that, in case

of variance of date of birth in School Leaving Certificate and in Birth Certificate maintained by Gram Panchayat or local body, later would prevail, having more evidential probative value. However, so far as this aspect is concerned, it needs to be decided by Respondent No.4 afresh. Therefore, without making any comment on the merit of the matter, it would be appropriate to direct the Respondents to take decision on the application made by the Applicant within stipulated period.

9. This is not a case where the Applicant had approached the Department or Tribunal at the fag end of the service for correction of date of birth. Admittedly, the Applicant had made an application within 5 years from the date of joining of service along with relevant documents, but the same was not considered. Legally speaking, the Respondents ought to have taken decision in this behalf on the basis of report produced by the Applicant, but the Respondents kept in the matter in abeyance and ultimately, rejected the request of the Applicant on the ground that the application was not made within 5 years as the said ground is admittedly incorrect.

10. Suffice to say, the rejection of the application by communication dated 20.12.2017 for the reasons stated therein is totally erroneous and not sustainable in law and fact. The Respondents ought to have considered that Applicant had already made an application within 5 years and should have passed the order on merit. During the pendency of this O.A, the Applicant stands retired on attaining the age of superannuation considering his date of birth as 01.07.1960. However, if his date of birth is corrected as 19.05.1961, then his date of superannuation would be 18.05.2019. His retirement on the basis of date of birth recorded in service record cannot be the ground to dismiss the O.A. and his grievance having raised within stipulated time, needs to be considered on merit by the Competent Authority in appropriate manner.

11. For the reasons stated above, in my considered opinion, it would be appropriate to direct the Respondents to take decision about the request of the Applicant for change in date of birth in accordance with the Rules within stipulated period. During the pendency of this O.A, the Applicant stands retired on attaining the age of superannuation considering his date of birth as 01.07.1960. However, if his date of birth is corrected as 19.05.1961, then his date of superannuation would be 18.05.2019. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 20.12.2017 is hereby quashed and set aside.
- (C) The Respondents are directed to decide the application made by the Applicant on 01.08.1996 in light of his subsequent representations dated 25.05.2017 and 31.03.2018 for correction of date of birth as per Rule 38 of M.C.S.(General Conditions of Service) Rules, 1981 within two months from today.
- (D) The decision, as the case may be, be communicated to the Applicant within two weeks thereafter.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 25.03.2019

Dictation taken by :

S.K. Wamanse.