

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.550 OF 2022

DISTRICT : Mumbai

Sub.:- Change in date of birth

Shri Omsing Sundarlal Yadav.)
Age : 53 Yrs, Occu.: Service as Room)
Attendant in the Office of Chief Executive)
Officer, Aarey Milk Colony, Goregaon (E),)
Mumbai – 400 065 and R/o. Unit No.5,)
Wanicha Pada, Aary Milk Colony,)
Goregaon (E), Mumbai – 400 065.)...**Applicant**

Versus

1. The Secretary,)
Agriculture, Animal Husbandry,)
Dairy Development & Fisheries)
Department, Mantralaya,)
Mumbai – 400 032.)
2. Chief Executive Officer.)
Aarey Milk Colony, Goregaon (E),)
Mumbai – 400 065.)
3. Deputy Commissioner)
(Administration), Dairy Development,)
M.S, Worli, Mumbai – 400 018.)...**Respondents**

Mr. V.P. Potbhare, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 11.04.2023

JUDGMENT

1. The Applicant has challenged the communication dated 14.03.2020 issued by Respondent No.3 thereby rejecting his claim for change of date of birth from 24.01.1961 to 24.01.1968 and also challenged the communication dated 17.08.2021 issued by Respondent No.2 whereby his subsequent representations made after retirement for change of date of birth has been rejected.

2. Briefly stated facts giving rise to this application are as under :-

Initially, Applicant was appointed on daily wages on the establishment of Respondent No.2. Later, having completed 240 days' service in a year in terms of G.R. dated 05.07.1996, he was absorbed in service on Group 'D' post by order dated 06.07.1996 (Page No.27 of Paper Book). At the time of entry in service, as per his own information the date of birth was recorded as 24.01.1961. Later, Applicant made an application on 06.01.1999 stating that his correct date of birth is 24.01.1968 and requested to correct date of birth from 24.01.1961 to 24.01.1968 in service book (Page No.36 of P.B.). Notably, while making application dated 06.01.1999, he did not annex any documentary evidence in support of his claim for change of date of birth. He contends that he was under *bonafide* impression that necessary steps will be taken by the Department for correction of date of birth, and therefore, did not avail legal remedy initially. After about two decades, he again made representations on 26.05.1019, 22.06.2020 and 21.08.2020 (Page Nos.47, 49 and 52 of P.B.). On his application, his date of birth as 24.01.1968 was published in weekly gazette issued by Government of Maharashtra and again made representation on 09.09.2020 on the basis of Gazette Notification for change of date of birth in service record (Page Nos.56 to 58). However, his claim for change of date of birth in service record has been rejected by order dated 14.03.2020. On the basis of date of birth recorded in service book, he stands retired on 31.01.2021.

He again made representation on 05.08.2021 for change of date of birth and resumption of duties as well as pay and allowances. However, it is again rejected by communication dated 17.08.2021 (Page No.65 of P.B.). It is on this background, the Applicant has challenged the communication dated 14.03.2020 and 17.08.2021 whereby his request for change of date of birth in service record has been rejected.

3. The Respondents resisted O.A. by filing Affidavit-in-reply *inter-alia* contending that at the time of entry in service, the date of birth was recorded as 24.01.1961 on the information given by the Applicant himself and there was no mistake in recording the date of birth. Though he applied for change of date of birth by application dated 06.01.1999 which was made within five years from the date of entry in service as required under the Rules, he did not annex any documentary evidence in the form of Birth Extract or Leaving Certificate to substantiate that his date of birth is 24.01.1968. On the basis of date of birth recorded in service book, he retired on 31.01.2021 and it is only after retirement, he filed O.A. on 10.06.2022. The Respondents, therefore, contend that correction for date of birth is impermissible and sought to justify the impugned orders dated 14.03.2020 and 17.08.2021.

4. Shri U.P. Potbhare, learned Advocate for the Applicant sought to assail the legality of impugned communications dated 14.03.2020 and 17.08.2021 *inter-alia* contending that Applicant being Group 'D' employee, he had no documentary evidence about his date of birth at the time of entry in service, but he made an application for correction of date of birth well within five years in terms of Rules, and therefore, it ought to have been corrected. According to him, his client was under *bonafide* impression that the date of birth is corrected in service record, and therefore, he did not avail legal remedy nor made any representation in the form of reminder after making application dated 06.01.1999. However, later he made representations on 26.05.2019, 22.06.2020 and 21.08.2020 since he was to retire on 31.01.2021 on the basis of date of

birth recorded in service book. As regard correct date of birth, he sought to place reliance on Leaving Certificate issued by Primary School (Page No.68 of P.B.) and Certificate of Birth issued by Gram Panchayat, Ahmedpur, Pawan, District Allahabad (Page No.103 of P.B.) in which date of birth is recorded as 24.01.1968. In addition to it, he also placed reliance on the Gazette Notification issued by Government of Maharashtra (Page No.56 of P.B.). On this line of submission, he tried to contend that the date of birth mentioned in Leaving Certificate as well as in Birth Certificate issued by Gram Panchayat, Ahmedpur, Pawan, District Allahabad being primary document ought to have been accepted by the Respondents to correct the date of birth, but Respondents wrongly rejected the claim.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned communication and pointed out that at the time of entry in service book, the date of birth was recorded as 24.01.1961 on the basis of information given by the Applicant himself and later, though he made application on 06.01.1999 for correction of date of birth, it was not supported by any documentary evidence either in the form of Leaving Certificate or Birth Register. She has further pointed out that as per Applicant's own case, he was born at Goregaon, Mumbai Centre Veterinary Hospital, Room No.11 (Page No.69 of P.B.), but no documentary evidence of registration of his date of birth in Municipal Corporation of Mumbai is forthcoming. The Birth Certificate issued by Ahmedpur Gram Panchayat showing date of birth as 24.01.1968, therefore, does not have any evidential value and it cannot be accepted as a gospel truth. She, therefore, submits that the challenge to the impugned communication holds no water and now change of date of birth after retirement in the facts and circumstances of the present case is totally impermissible.

6. In view of pleadings and submissions, the issue posed for consideration whether Applicant's claim for change of date of birth from

24.01.1961 to 24.01.1968 is acceptable and impugned communications dated 14.03.2020 and 17.08.2021 suffers from any legal infirmity. In my considered opinion, the answer is in emphatic negative.

7. The procedure for writing and recording the date of birth in Service Book and its correction is governed by Rule 38 of 'Rules of 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, at the time of entry in service, the Applicant did not tender any document showing his date of birth. However, it is as per his information, the date of birth is recorded as 24.01.1961 in service book (Page No.43 is the extract of service book). True, he made representation on 06.01.1999, but notably except his bear contention for change of date of birth from 24.01.1961 to 24.01.1968, he has not annexed any document in the form of Leaving Certificate or extract of Birth Register from local authority/Municipal Corporation to substantiate that in public record or

in School record, his date of birth is recorded as 24.01.1968. He simply made representation without any document in support of his claim. As such, even if he made an application well within five years from the date of absorption in service there being no documentary evidence produced in support of it, obviously no further step was taken by the Department in this behalf. Needless to mention, for any such change of date of birth in service record, a Government servant was required to make an application along with documentary evidence, but in the present case, no such documentary evidence was tendered.

9. Apart, though he made representation quite belatedly on 26.05.2019, that time also, he did not annex any documentary evidence showing his date of birth as 24.01.1968. It appears that for the first time with representation dated 22.06.2020, he annexed some documents showing his date of birth as 24.01.1968. Now in O.A, the Applicant sought to place reliance on the Leaving Certificate issued by Primary School (Page No.68 of P.B.) and Certificate of birth issued by Gram Panchayat, Ahmedpur, Pawan, District Allahabad. The perusal of Leaving Certificate reveals that in Primary School, Devakalpur, Muftiganj, District Jaunpur, his date of birth was recorded as 24.01.1968. Needless to mention, the date of birth recorded in his School record cannot be accepted as a gospel truth in absence of corroboratory evidence in the form of extract of Birth Register from local body or Hospital. Surprisingly, though Applicant was admittedly born at Goregaon Mumbai, no documentary evidence of recording his date of birth in the said Hospital or Municipal Corporation, Mumbai is forthcoming. What Applicant did is something surprising. He got his name recorded in the Gram Panchayat record of Ahmedpur, Pawan, District Allahabad on 25.06.2001 as clearly seen from Birth Certificate (Page No.103 of P.B.). Thus, this is a case where though Applicant was born in Mumbai, no such date of birth was recorded in Hospital or Municipal Corporation, Mumbai, but after 50 years, the Applicant went to Gram Panchayat, Ahmedpur, Pawan, District Allahabad and there got

his date of birth recorded as 24.01.1968. What is significant to note that the said entry was taken on 25.06.2001 i.e. after more than 50 years as specifically mentioned in the Certificate. In other words, the date of entry being not taken at appropriate place nor taken in regular course of business, such entry recorded in Gram Panchayat recording after 50 years can hardly be accepted as a gospel truth. It is only in case where entry of date of birth is recorded in Gram Panchayat record or Hospital immediately after birth in regular course of business, in that event only, such extract of birth from Hospital or local body carries greater probative evidential value. However, in the present case, the entry of date of birth is recorded at totally different place and secondly, it being taken after 50 years, no such importance can be attached to the Birth Certificate issued by Gram Panchayat, Ahmedpur, District Allahabad. It cannot be accepted as conclusive evidence.

10. Mere publication of date of birth as 24.01.1968 in the Gadget of September, 2020 cannot be taken as a gospel truth for authenticity of the date of birth as 24.01.1968. Indeed, the said Gadget are being published on the information submitted by the person concerned and there is specific note in the Gadget that Government do not take any responsibility as to the authenticity of the contents of notice, since they are based entirely on the application of the concerned person without verification of documents. Suffice to say, the publication of change in date of birth in the Gadget *ipso-facto* cannot be taken as a proof of authenticate record of date of birth.

11. As per entry of date of birth recorded in service book, the Applicant retired on 31.01.2021. It is only after retirement, he filed O.A. on 10.06.2022. True, he filed the O.A. on the basis of communication dated 14.03.2020 and 17.08.2021 whereby his claim for change of date of birth was rejected. However, the fact remains that before retirement, he did not avail any legal remedy. This being so, such claim for change in date of birth after retirement is hardly maintainable.

12. It is no more *res-integra* that application for change of date of birth can only be made strictly as per relevant Rules and regulations and where application is made quite belatedly at the fag end of service, no such correction is permissible as a matter of right even if there is cogent evidence. This issue has been examined by Hon'ble Supreme Court in (i) **1994 Supp.(1) SCC 155 [Home Department Vs. R. Kirubakaran]**; (ii) **(2011) 9 SCC 664 [State of M.P. Vs. Premlal Shrivastava]**; (iii) **(2016) 15 SCC 781 [Life Insurance Corporation of India & Ors. Vs. R. Basavaraju]**; (iv) **(2020) 3 SCC 411 [Bharat Coking Coal Ltd. & Ors. Vs. Shyam Kishore Singh]**. Recently, again Hon'ble Supreme Court after considering above decisions reiterated the same principles while deciding **Civil Appeal No.5720/2021 [Karnataka Rural Infrastructure Development Limited Vs. T.P. Nataraja] decided on 21.09.2021**. In Para Nos.10 and 11, Hon'ble Supreme Court summarized the legal principles as under :-

“10. Considering the aforesaid decisions of this Court the law on change of date of birth can be summarized as under :-

(i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;

(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;

(iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag end of service and/or when the employee is about to retire on attaining the age of superannuation.

11. Therefore, applying the law laid down by this court in the aforesaid decisions, the application of the respondent for change of date of birth was liable to be rejected on the ground of delay and laches also and therefore as such respondent employee was not entitled to the decree of declaration and therefore the impugned judgment and order passed by the High Court is unsustainable and not tenable at law.”

13. Thus, it is only in a case, the Tribunal is satisfied that there is irrefutable proof and cogent evidence about the date of birth and such claim is made in accordance to procedure laid down in the Rules, in that event only, the correction in date of birth is permissible. Where

Government servant knock the doors of the Tribunal/Court after retirement or at the fag end of career, then he cannot claim correction in date of birth as a matter of right. In the present case, indeed, no such irrefutable proof that Applicant was born on 24.01.1968 is forthcoming.

14. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned communications dated 14.03.2020 and 17.08.2021 holds no water and O.A. is liable to be dismissed. Hence, the order.

ORDER

The Original Application stands dismissed with no order as to costs.

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

Mumbai
Date : 11.04.2023
Dictation taken by :
S.K. Wamanse.

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