

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.733 OF 2022

DISTRICT : MUMBAI
Sub.:- Change in DOB

Shri Rajendrakumar H. Arsidh)
Age : 56 Yrs, Working as State Tax Officer,)
Residing at 595, New Guruwar Peth,)
Pune – 411 042.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Finance Department, Mantralaya,)
Mumbai – 400 032.)
2. Special Commissioner of GST.)
State Tax, M.S, GST Bhavan,)
Mazgaon, Mumbai – 400 010.)
3. Additional Commissioner of GST.)
Pune Zone, Pune, Yerawada,)
Off Golf Club, Pune – 411 006.)...**Respondents**

Smt. Purva Pradhan holding for Shri D.B. Khaire, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 24.04.2023

JUDGMENT

1. The Applicant has challenged the communication dated 24.06.2022 issued by Respondent No.1 – Government thereby rejecting

his claim for change of date of birth from 02.07.1964 to 02.07.1965 in service record on the ground that once entry in service book is taken, it cannot be changed unless there was want of care on the part of Department or is an obvious clerical error, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant joined the service initially in Excise Department on the post of Clerk-cum-Typist on 06.11.1992. However, later, he came to be selected on the post of Clerk-cum-Typist in Sales Tax Department through Selection Board and accordingly joined on 06.08.1993. At the time of entry in service, his date of birth was recorded as 02.07.1964 on the basis of School record. The Applicant, however, contends that his real date of birth is 02.07.1965. Therefore, he applied for correction of date of birth on 18.05.1994 supported with the Birth Certificate of Pune Municipal Corporation. However, no cognizance of the same was taken by the Department. At the same time, in Hall Ticket issued by the Department for the post of Sales Tax Inspector in 1995, his date of birth was shown as 02.07.1965. He, therefore, contends that he was under bonafide impression that his date of birth is corrected in service book. However, later, he came to know that it was not corrected in service book. He, therefore, made representation on 27.01.2021 supported with Birth Certificate from Municipal Corporation, Pan Card and Aaddhar Card and requested to correct his date of birth. However, it was not responded by the Respondents. The Applicant, therefore, previously filed O.A.No.561/2022 for correction of date of birth. The Tribunal disposed of O.A.No.561/2022 by order dated 16.06.2022 giving direction to the Respondents to decide his representations dated 27.01.2021 and 08.03.2022 on or before 28.06.2022.

3. It is on the above background, Respondent No.1 – Government decided his representations against the Applicant and by communication

dated 24.06.2022, he was informed that though he had applied for correction of date of birth within five years, there being no mistake of the Department or clerical error, the claim for change of date of birth is unacceptable. On the basis of date of birth recorded in service record, the Applicant was due to retire on 31.07.2022 and accordingly, he stood retired.

4. It is on 27.07.2022, four days before the date of retirement, the Applicant has filed this O.A. challenging the communication dated 24.06.2022 and correction of date of birth as 02.07.1965 in place of 02.07.1964 and reinstatement in service with all consequential service benefits, since in view of correct date of birth, his correct date of retirement would be 31.07.2023.

5. The Respondents resisted the O.A. by filing Affidavit-in-reply on behalf of Respondent Nos.2 and 3 (State Tax Department) *inter-alia* denying the entitlement of the Applicant to the relief claimed. According to Respondents, it is as per information submitted by the Applicant, the date of birth was recorded as 02.07.1964 and there is no such mistake on the part of Department. As regard application dated 18.05.1994 made by the Applicant for correction of date of birth, the Respondents contend that no such record was found. The Respondents, therefore, prayed that correction of date of birth at the fag end of service is not sustainable.

6. Smt. Purva Pradhan, learned Advocate holding for Shri D.B. Khaire sought to assail the impugned communication *inter-alia* contending that even if in School record, the date of birth was recorded as 02.07.1964 which was taken in service book, the real date of birth of the Applicant is 02.07.1965 as recorded in Pune Municipal Corporation record and it being having higher probative evidential value, it prevails over School record. She, therefore, submits that since Applicant had applied for correction of date of birth well within five years in terms of Rule 38(2) of

Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity), the Respondents ought to have corrected the date of birth. She, therefore, submits that it is because of inaction on the part of Respondents, the Applicant was made to retire on 31.07.2022 though he would be completing the age of superannuation on 31.07.2023 on the basis of correct date of birth. She has further pointed out that Applicant's date of birth was shown as 02.07.1965 in Hall Ticket issued by the Department as well as it is also recorded in Pan Card and Aaddhar Card. On this line of submission, she urged that the impugned communication is unsustainable in law and Applicant be reinstated in service with consequential service benefits.

7. Per contra, Shri A.J. Chougule, learned Presenting Officer reiterated the contentions raised in Affidavit-in-reply that there was no mistake on the part of Department while taking entry in service book and any such correction now is impermissible. He further submits that there is doubt about making application on 18.05.1994 as Applicant contends since no such record was found with the Department.

8. In view of pleadings and submissions, the issue posed for consideration is whether Applicant is entitled for declaration of correction of date of birth as 02.07.1965 in place of 02.07.1964 and consequently, whether impugned communication dated 24.06.2022 is legal and valid.

9. 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.”

10. True, as per Rule 38(2)(a)(f) of 'Rules of 1981', once an entry of date of birth is made in service book, no alteration of entry afterwards is permissible unless it is shown that the entry was due to want of care on the part of some person other than individual in question or is obvious clerical error. At the same time, Instruction No.1 provides for alternation in date of birth recorded in service book where application is made within five years from the date of joining service. Thus, harmonious construction of Rule 38(2) is that in certain situation, where entry of date of party recorded in the service book is on account of some error, it can be corrected if conclusive evidence for change of date of birth is forthcoming and the procedure contemplated under Rule 38(2) of 'Rules of 1981' is adhered to. In other words, there is no such express bar or prohibition for change of date of birth in service record where it is found that there is obvious mistake in recording the date of birth and there is cogent and satisfactory evidence to establish the correct date of birth. Needless to mention, the extract of public record i.e. Birth Register maintained by local body in terms of Rules have greater probative evidential value and must prevail over the entry of date of birth recorded in School record. There is presumption of correctness of the entries taken in public record and presumption continues to hold unless it is rebutted.

11. Turning to the facts of the present case, the Applicant has tendered the copy of application dated 18.05.1994 filed in the Department for correction of date of birth on the basis of extract of Birth Register of Pune Municipal Corporation, which is at Page No.31 of P.B.

Insofar as filing of the application within 5 years from the date of joining is concerned, all that Respondents in Affidavit-in-reply stated that no such record was found. Thus, non-availability of record with the Respondents stated to be the ground denying the receipt of application dated 18.05.1994. It is nowhere the case of Respondents that no such application was at all filed. Indeed, the perusal of application dated 18.05.1994 reveals that it bears an acknowledgement of the Clerk of the Office of Assistant Commissioner of Sales Tax, Pune. There is also signature of the Clerk who received the application. In such situation, only because Respondents have not maintained the record properly, that cannot be accepted to hold that the Applicant has not made any such application on 18.05.1994.

12. That apart, by impugned communication, the Government has indeed acknowledged the factum of making an application by the Applicant within 5 years from joining the service. The Government rejected the claim on the ground that there was no error on the part of Department while taking entry of date of birth in service record. Thus, apparently, Government on perusal of record satisfied that the application was made within 5 years. This being the position, now Respondents cannot be allowed to turn around and to deny the fact of making application within 5 years.

13. At this juncture, it would be apposite to reproduce the contents of impugned communication dated 24.06.2022 (Page No.20 of Paper Book), which are as under :-

“उपरोक्त विषयांकित संदर्भातील पत्राच्या अनुषंगाने कळविण्यात येते की, श्री. राजेंद्रकुमार आरसिद्ध, राज्यकर अधिकारी यांनी त्यांच्या जन्मदिनांकात दुरुस्ती करणेबाबतचा प्रस्ताव जरी शासन सेवेत प्रवेश केल्याच्या तारखेपासून ५ वर्षांच्या कालावधीत सादर केला आहे, तरी त्यांच्या प्रकरणी सेवापुस्तकात वयाची किंवा जन्मतारखेची एकदा नोंद केल्यावर, संबंधित व्यक्ती व्यतिरिक्त दुस-या एखाद्या व्यक्तीने काळजी न घेतल्यामुळे किंवा उघड उघड लेखनदोष म्हणून अशी नोंद झाली आहे. असे कळल्याखेरीज त्या नोंदीत नंतर कोणताही फेरबदल केला जाऊ नये या मुख्य नियमाचीच पूर्तता होत नाही. सबब, महाराष्ट्र नागरी सेवा (सेवेच्या सर्वसाधारण शर्ती) नियम, १९८१ मधील नियम ३८(२)(फ) अन्वये सदर प्रकरणास सहमती दर्शवणे उचित ठरणार नाही. त्यामुळे प्रस्तुत प्रकरणी श्री. राजेंद्रकुमार आरसिद्ध, राज्यकर अधिकारी यांच्या जन्मतारखेच्या नोंदीमध्ये दिनांक ०२.०७.१९६४ ऐवजी ०२.०७.१९६५ असा बदल करता येणार नाही.

सदर अभिप्रायांच्या अनुषंगाने उचित कार्यवाही करण्यात यावी तसेच याबाबत श्री. आरसिद्ध, राज्यकर अधिकारी यांना कळविण्यात यावे, ही विनंती”

14. In view of above, the submission advanced by the learned P.O. that application was not made application within 5 years has to be rejected.

15. Now, material question comes about the correct date of birth of the Applicant. True, in service book, the date of birth was recorded as 02.07.1964 on the basis of School record. However, at the same time, the Applicant has produced the extract of Birth Register of Municipal Corporation, Pune (Page No.18 of P.B.) in which Applicant's date of birth is recorded as 02.07.1965. Apart, in Hall Ticket issued by the Department in 1995 (Page No.32 of P.B.), his date of birth is shown as 02.07.1965. The Applicant was thus appears under the belief that his date of birth is corrected by the Department from 02.07.1964 to 02.07.1965. Later, when he came to know that there was no such correction in date of birth in service record, he made representation, which was not decided for longer time, an therefore, he had to file O.A.No.561/2022, which was disposed of with direction to decide his representation. As such, there was failure on the part of Respondents not to take appropriate action on his application dated 18.05.1994, therefore, the Applicant cannot be blamed for delay caused in the matter. This is not a case where a Government servant raised the claim for correction in date of birth at the fag end of service. The record clearly demonstrates that he made an application well within 5 years and thereafter also made representations after some years while in service itself.

16. The instances of incorrect date of birth in School record are not uncommon. The date of birth mentioned in School record is not conclusive or authentic. The date of birth recorded in public record i.e. in Municipal Corporation being taken in regular course of business have high probative evidential value and there is presumption about it's correctness under Section 79 of Evidence Act. This presumption would continue to hold unless it is rebutted. In the present case, no such attempt is made to revert the said presumption. The Applicant has also

produced Birth Certificates of his siblings to substantiate that his real date of birth is 02.07.1965 and there is nothing to doubt his claim.

17. In this behalf, reference may be made to the decision of Hon'ble High Court in **(2008) 4 AIR [BOM] 695 [Smt. Vasudha G. Mandvilkar Vs. City and Industrial Development Corporation of Maharashtra Ltd.]** wherein Hon'ble High Court held that public document being presumptive value have more probative evidential value and school record cannot override the public record. In Para Nos.13 and 14, Hon'ble High Court held as under :-

“13. It is common knowledge that to secure admission in the school earlier than at the age which the law permits, an incorrect date of birth may be shown. Unless verified from public records such date may remain in the record of the school. This cannot be verified except by production of public records. They, therefore, cannot be authentic dates as would make those documents admissible as evidence with probative value in law.

14. Consequently whenever there is a variance between an unproved private document or its copy and a certified extract of a public record, the latter must prevail as it has more probative value, calling the presumption as it does under Section 79 of the Evidence Act. This presumption would continue to hold until it is rebutted. It can be rebutted only by production of the original public record from which the extract is made out and certified to be true by the relevant authority. Only if it is so rebutted, such certified copy issued by a public authority would strand nullified.”

18. Reliance placed by learned P.O. on **(2010) 14 SCC 423 [State of Maharashtra & Anr. Vs. Gorakhnath Kamble & Ors.]** is totally misplaced. Notably, in that case, though Gorakhnath Kamble was appointed as Assistant Teacher on 13.02.1978, he made application for correction of date of birth quite belatedly on 23.05.2004 though it was required to be made within five years from the date of entry in service. It is because of it, his claim for correction in date of birth was rejected by Hon'ble Supreme Court with the observation that it is not permissible at the fag end of service. As such, the facts are totally distinguishable. Indeed, in the said decision itself Hon'ble Supreme Court held that unless clear case on the basis of material which can be held to be conclusive in nature is made out by the Government servant, the Court

or Tribunal should not issue direction on the basis of material which make such claim only legible. It has been further held that the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth is made in accordance with the Rules prescribed in this behalf. This being so, the said authority rather supports Applicant's claim. Therefore, one need to see the facts and circumstances of the case to find out whether the claim for correction of date of birth is raised in accordance to Rules prescribed in this behalf and strong and cogent evidence about correct date of birth is forthcoming. In the present case, as stated above, there is cogent and strong evidence of correct date of birth as 23.11.1965 in the form of public record i.e. Birth Register maintained by Pune Municipal Corporation. Suffice to say, the denial of claim of correction of date of birth would be injustice to the Applicant.

19. Similarly reliance placed by learned P.O. on the decision of Hon'ble Supreme Court in ***Civil Appeal No.1009/2020 [Bharat Coking Coal Ltd. & Ors. Vs. Shyam Kishore Singh] decided on 05.02.2000*** is also of no assistance to the Respondents. In that case, Respondent made representation for change of date of birth just prior to his retirement i.e. in the year 2009 though he was due to retire in 2010. Therefore, in fact situation, Hon'ble Supreme Court held that the correction of date of birth in service record at the fag end of service is impermissible. Whereas in the present case, the Applicant has raised the claim for correction of date of birth within five years, as required under Rules supported with documentary evidence.

20. Only because Applicant stands retired on attaining the age of superannuation on the basis of date of birth recorded in service book, that hardly matters in view of forthcoming cogent and satisfactory evidence about his correct date of birth as 02.07.1965. All that, he may not be entitled for pay and allowances of the previous period i.e. the period from retirement till he reinstated in service. But he is certainly

entitled to the consequential service benefits after reinstatement in service till retirement on the basis of corrected date of birth as 02.07.1965 and to get consequential pensionary benefits. The learned Advocate for the Applicant in this behalf placed reliance on the decision rendered by this Tribunal in **O.A.No.108/2015 [D.S. Rajput Vs. Chief Secretary, State of Maharashtra] decided on 07.05.2015** in which in view of declaration of corrected date of birth, directions were issued to repost the Applicant in service with all consequential service benefits.

21. The totality of aforesaid discussion leads me to sum-up that the impugned communication dated 24.06.2022 rejecting Applicant's request for correction of date of birth is totally arbitrary, unsustainable in law and deserves to be quashed and set aside. The Applicant is entitled to correction in date of birth in service record as 02.07.1965 in place of 02.07.1964. He is also entitled for reposting/reinstatement in service with further consequential benefits except pay and allowances of out of service period. Hence, I pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) Impugned communication dated 24.06.2022 is quashed and set aside.
- (C) Respondents are directed to correct the date of birth of the Applicant as 02.06.1965 in place of 02.07.1964 and shall accord consequential service benefits.
- (D) The Applicant be reposted within two weeks as State Tax Officer and shall be continued in service till his retirement on the basis of corrected date of birth as 02.07.1965. However, it is clarified that he will not be entitled to pay and allowances from 31.07.2022 till he is reinstated in service. But, this period shall be counted for pensionary purposes.

(E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 24.04.2023

Dictation taken by :

S.K. Wamanse.

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