

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.797 OF 2017

DISTRICT : KOLHAPUR

Dr. Prakash Maruti Patil.)
Working as Lecturer, Govt. Polytechnic,)
Pune-Banglore Highway, Kolhapur and)
Residing at "Malati Prakash", 577/29,)
E-Ward, Near Star Asaina, Rajendra Nagar,)
Kolhapur – 416 004.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Higher & Technical Education Dept.,)
Mantralaya, Mumbai – 400 032.)
2. The Director.)
Technical Education (M.S.),)
Having office at 3, Mahapalika Marg,)
Post Box No.1967, Mumbai – 1.)...**Respondents**

Mr. M.R. Patil, Advocate for Applicant.

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

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

DATE : 30.01.2020

JUDGMENT

1. The Applicant has challenged the order dated 15.03.2017 whereby his representation for correction in date of birth stands rejected invoking

jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The uncontroverted facts for the decision of the present O.A. can be summarized as follows :-

(i) Applicant joined on 20.06.1992 as Lecturer in Government Polytechnic, Alibaug, District : Raigad.

(ii) At the time of entry in service, his date of birth was recorded as 01.06.1961 on the basis of School Leaving Certificate in Service Book (Page No.170 of Paper Book).

(iii) Applicant made an application on 16.06.1997 for seeking correction of date of birth as 01.03.1963 in place of 01.06.1961 (Page No.32 of P.B.) contending that at the time of entry in service, the date of birth as 01.06.1961 is recorded wrongly.

(iv) Application made by the Applicant dated 16.06.1997 was forwarded to the Government but it was rejected by order dated 16.09.2003 (Page No.59 of P.B.).

(v) Applicant made second application for correction of date of birth on 25.11.2003 (Page No.60 of P.B.) for reconsideration which was forwarded to the Government.

(vi) However, the application dated 25.11.2003 was again rejected by the Government by order dated 21.07.2004 (Page No.64 of P.B.).

(vii) Again, the Applicant has made third application to reconsider the issue on 08.10.2005 (Page No.65 of P.B.) which was again forwarded to the Government.

(viii) The Government rejected the application dated 08.10.2005 by order dated 07.03.2006 (Page No.66 of P.B.).

(ix) Undeterred by the rejections, the Applicant again made fourth application for correction in date of birth on 20.06.2006 (Page No.67 of P.B.) but in that behalf, nothing was communicated to the Applicant within reasonable time.

(x) Applicant, therefore, again made representation to Government on 08.08.2013 (Page No.77 of P.B.).

(xi) As there was no response to the application dated 20.06.2006 and representation dated 08.08.2013, the Applicant had filed O.A.No.964/2012 before this Tribunal for direction to change the date of birth in service record along with M.A.506/2012 for condonation of delay.

(xii) Tribunal disposed of M.A.506/2012 and O.A.964/2012 by order dated 13.01.2014 by passing following order.

“On instruction from the applicant, learned advocate Shri Patil seeks leave to withdraw the Original application as well as Misc Application with liberty to approach the Tribunal if occasion arises.

Learned Presenting Officer stated that the representation dated 8.8.2013 pending with the Respondents will be decided expeditiously. Considering the submissions made by the learned Presenting Officer and keeping all the rights and contentions of both sides open leave to withdraw the Original Application and Misc Application is granted.”

(xiii) In view of aforesaid order, the Government considered the representation dated 08.08.2013 and ultimately rejected it by order dated 15.03.2017 which is challenged by the Applicant in the present O.A.

3. Shri M.R. Patil, learned Advocate for the Applicant has filed written submission as well as made oral submissions. He submits that, admittedly, the Applicant had made an application for correction in date of birth within five years from the date of joining explaining that the

entry in School Leaving Certificate showing date of birth 01.06.1961 was incorrectly recorded, but his real date of birth is 01.03.1963 as per the record of Wadgaon Municipal Council. According to him, in view of Judgment of Hon'ble High Court in ***Vasudha Gorakhnath Vs. City and Industrial Development Corporation of Maharashtra : 2008 Mh.L.J. 147***, the entry in Wadgaon Municipal Council being of higher evidential probative value ought to have been considered that time itself, but it was rejected. As regard consecutive applications, he submits that he has got fresh cause of action by virtue of last order dated 15.03.2017, and therefore, O.A. is within limitation. He submits that the Applicant had made successive applications for change in date of birth and was pursuing the matter with the Government, and therefore, it cannot be said that the Applicant has approached the Tribunal at the fag end of service.

4. Per contra, Shri A.J. Chougule, learned P.O. has pointed out that successive applications were made by the Applicant for change of date of birth and the same were rejected by the Government against which the Applicant did not initiate the proceeding, and therefore, the O.A. is barred by limitation. As regard impugned order dated 15.03.2017, he submits that it will not give a fresh cause of action to the Applicant, as the orders passed by the Government earlier rejecting the request of the Applicant has attained finality in absence of challenge to the same by filing appropriate judicial proceedings. Apart, if the date of birth 01.03.1963 which is sought to be corrected is considered, then he would be ineligible for admission in 1st Standard as per Rule 128 of Bombay Primary School Rules, 1949 (hereinafter referred to as 'Primary School Rules 1949' for brevity) which *inter-alia* provides minimum age to be five years for admission in Primary School. As per date of birth sought to be corrected, the Applicant would be four years and three months old at the time of admission in Primary School, and therefore, his case does not fit under Rule 38(2)(f) and 38(2A) of Maharashtra Civil Services (General

Conditions of Services) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity).

5. In view of the submission advanced at the Bar, the following points arise for determination.

(a) Whether the O.A. is within limitation.

(b) Whether the date of birth sought to be corrected would make the Applicant ineligible for admission in School.

6. **As to point No.(a) :-**

True, the Applicant had made an application for correction in date of birth within five years from the date of entry in service but the fact remains that his application dated 16.06.1997 was rejected by order dated 16.09.2003 by the Government. As such, the cause of action accrued to the Applicant on 16.09.2003 and that time itself, he ought to have filed O.A. challenging the order of Government. However, instead of challenging the order before Tribunal, he made an application to the Department on 25.11.2003 for reconsideration which was again rejected by the Government by order dated 21.07.2004. That time also, the Applicant did not challenge the order dated 21.07.2004 by filing judicial proceedings. He again made third application on 08.10.2005 which was also rejected by the Government on 07.03.2006. However, the Applicant did not take any step to challenge the same by filing judicial proceedings. Thus, instead of challenging the orders passed by the Government, he went on making representation again and again. He again made representation on 26.06.2006 and on 08.08.2013. As there was no communication to him, he had filed O.A.No.964/2012 along with application of condonation of delay which was disposed of with direction to consider the representation of the Applicant dated 08.08.2013 which ultimately rejected by impugned order dated 15.03.2017.

7. As such, though the claim of the Applicant for change in date of birth was successively rejected, the Applicant did not avail legal remedy by challenging the same by filing judicial proceedings. This being the position, the impugned order dated 15.03.2017 whereby his representation dated 08.08.2013 was rejected can hardly be considered for the purpose of counting the period of limitation. The limitation starts from when cause of action first accrues. First cause of action accrued to the Applicant on 16.09.2003 when his application dated 16.07.1997 was rejected. However, he did not challenge the order dated 16.09.2003 which ought to have been challenged by judicial proceedings within prescribed period of limitation of one year, as contemplated under Section 21 of Administrative Tribunals Act, 1985. It is thus explicit that despite accrual of cause of action and specific orders of the Government rejecting the claim of the Applicant for change in date of birth, the Applicant did not avail legal remedy and thereby the orders passed by the Government had attained the finality. Suffice to say, even if this O.A. is filed within one year from the date of last order dated 15.03.2017, the O.A. cannot be said to be filed within limitation in view of the rejection of the claim of the Applicant by Government by orders dated 16.09.2003, 21.07.2004 and 07.03.2006.

8. Shri M.R. Patil, learned Advocate for the Applicant sought to place reliance on **(2007) 15 SCC 553 (Gendalal Vs. Union of India & Ors.)**. In that case, the application for correction of date of birth was rejected by the Central Administrative Tribunal (CAT) on the ground that the Applicant had approached the Tribunal at the fag end of his retirement. The Applicant therein had made various representations for correction of date of birth. However, no action was taken by the Department. Ultimately, at the fag end of service, he approached the CAT, but his claim was rejected on the ground that it is belated. It is in this context, the Hon'ble Supreme Court held that where the representation was already made within six years of joining and kept undecided merely because he approached the Tribunal late, he cannot be non-suited. This

decision is of hardly of any assistance to the Applicant, as in the present case, the application made by the Applicant was rejected and thereafter his successive applications were rejected which were not challenged by him and attained finality.

9. The legal position that once representation made by the applicant is decided, cause of action starts from the date of communication of the order and subsequent representations would not revive the period of limitation, is well settled. In this behalf, it would be apposite to refer to the judgment of Hon'ble Supreme Court in ***State of Tripura & Ors Vs. Arabinda Chakraborty & Ors, (2014) 6 SCC 460***. 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 representations in absence of any statutory provisions, the period of limitation would not get extended. As such, in the present case, applicant got cause of action for the first time in view of rejection of his application by order dated 16.09.2003, and therefore, he ought to have filed the Original Application within period of limitation of one year as contemplated under Section 21 of the Administrative Tribunals Act, 1985. This being the settled position, representations made, which is not provided in the statute would not extend the period of limitation and therefore, the submission advanced by the learned counsel for the applicant that fresh cause of action accrued to him on 15.03.2017 whereby his representation was rejected is misconceived and untenable in view of the ratio laid down by the Hon'ble Supreme Court in ***Arabinda Chakraborty*** case [cited supra]. Suffice to say that Original Application is hopelessly barred by law of limitation.

10. **As to point No.(b) :-**

It appears that the Applicant was born at Wadgaon and entry of his date of birth was taken in Municipal record. However, while taking entry, his name was written as 'Dilip' mistakenly. Therefore, he got it

corrected on the basis of Affidavit sworn before the Executive Magistrate on 15.06.1997. He seems to have applied to Wadgaon Municipal Corporation for correction in Birth Register and accordingly, in place of 'Dilip, the name is corrected as 'Prakash', as seen from extract of birth (Page 46 of P.B.). True, the entries of date of birth taken in Municipal Corporation record in its regular course of business have high evidential probative value and it prevail over the date of birth recorded in School Leaving Certificate in view of the ratio of Judgment of Hon'ble High Court in **Vasudha Gorakhnath** (cited supra). There cannot be dispute about this proposition of law. However, this aspect is of no help to the Applicant in the facts and circumstances of the case, as O.A. itself is not within limitation and secondly, it does not fall within the parameters of Rule 38(2A) of 'Rules of 1981'.

11. 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 will be useful to reproduce Rule 38 which is as follows.

"38. Procedure for writing the events and recording the date of birth in the service book.

- (1) In the service book every step in a Government servant's official life, including temporary and officiating promotions of all kinds, increments and transfers and leave availed of should be regularly and concurrently recorded, each entry being duly verified with reference to departmental orders, pay bills and leave account and attested by the Head of the Office. If the Government servant is himself the Head of an Office, the attestation should be made to his immediate superior.
- (2) While recording the date of birth, the following procedure should be followed:-
 - (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;
 - (b) In the case of a Government servant the year of whose birth is known but not the date, the 1st July should be treated as the date of birth;

- (c) When both the year and the month of birth are known but not the exact date, the 16th of the month should be treated at the date of birth;
- (d) In the case of a Government servant who is only able to state his approximate age and who appears to the attesting authority to be of that age, the date of birth should be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment;
- (e) When the date, month and year of birth of a Government servant are not known, and he is unable to state his approximate age, the age by appearance as stated in the medical certificate of fitness, in the form prescribed in rule 12 should be taken as correct, he being assumed to have completed that age on the date the certificate is given, and his date of birth deducted accordingly;
- (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.

(2) Subject to Instruction (1) above, the correct date of birth of a Government servant may be determined, if he produces the attested Xerox copy of the concerned page of the original birth register where his name and time being in force regarding the registration of birth, and maintained at the place where the Government servant is born, such proof should be considered as an unquestionable proof for change of date of birth in service record.

(2A) At the time of scrutiny of the application, it shall be ensured that.-

(i) no advantage has been gained in school admission, entry into Government servant by representing a date of birth which is different than that which is later sought to be incorporated;

(ii) the date of birth so altered would not make him ineligible for admission in any school or University or for the Maharashtra Public Service Commission examination in which he had appeared; or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered in the 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.”

12. Thus, it is explicit that in terms of Rule 38(2)(f), the date of birth once recorded in Service Book should not be afterwards changed unless it is shown that the entry was taken due to want of care on the part of some person other than the individual in question or is an obvious clerical error.

13. Now, let us see relevant Rule 128 of ‘Rules of 1949’ which is as follows :-

“**128.** Admission of pupils.- (1) No approved school shall admit –

(a) a child who has not completed the 5th year of age on the date of admission.”

14. Material to note that Rule 38 of ‘Rules of 1981’, particularly clause [2A] specifically provides that while scrutinizing the application made for correction of date of birth, it shall be ensured that the concerned Government servant has not gained advantage while taking admission in School by representing date of birth which is different than the date of birth sought to be incorporated and further provides that it shall be ensured that the date of birth so altered could not make the concerned Government ineligible for admission in school. In the present case, it is explicit that only to get admission in school, the date of birth of the applicant is recorded as 01.06.1961. In other words, applicant had already gained disadvantage by incorporating date of birth as 01.06.1961 in School record. If his date of birth is considered as 01.03.1963, which is sought to be corrected, then obviously he was below 5 years of age and ineligible for admission in school. Once applicant gained disadvantage by misrepresentation then he cannot be allowed to turn around and seek correction in date of birth else it would be amounting to double

disadvantage. This being the position, there is no escape from the conclusion that the application made by the applicant does not fit in Rule 38[2A] of 'Rules of 1981'. Thus even assuming for a moment that Original Application is within limitation, in that event also, impugned order can hardly be faulted with.

15. Insofar as the decision of this Tribunal in **O.A.676/2015 (Bhagwan M. Patil Vs. The Development Commissioner) decided on 19th September, 2016** relied by the learned Advocate for the Applicant is concerned, therein the Applicant was of 4 years, 11 months and 26 days at the time of admission in Primary School and the O.A. was allowed on the ground that the Respondents did not place on record any Circular or Rules showing prescribed minimum age to be observed at the time of admission to 1st Standard in Primary School. As such, in that case, there was difference of only four days for completion of five years age for date of admission in School and secondly, no such specific Rule was pointed out to the Tribunal. Whereas, in the present case, the Applicant's age at the time of entry into Primary School was 4 years and 3 months only and the Respondents have pointed out the 'Rules of 1949' which inter-alia prescribes minimum five years age at the time of admission in School. Therefore, the Judgment in **Bhagwan M. Patil's** case [cited supra] is of no assistance to the Applicant in the present facts and situation.

16. At this juncture, it would be apposite to note that though the claim of the Applicant for change in date of birth was rejected from time to time, he did not challenge it by filing appropriate judicial proceedings and now at the verge of retirement, he is again seeking correction in date of birth. In this behalf, it is no more *res-integra* that the correction in date of birth at the fag end of service is not permissible. In this behalf, a reference may be made to the Judgment of Hon'ble Supreme Court delivered in **Civil Appeal No.9704/2010 (State of Maharashtra Vs. Gorakhnath S. Kamble and Ors.) decided on 16th November, 2010**

where the Hon'ble Apex Court reiterated that the grievance as to the date of birth in service record should not be permitted at the fag end of service of the employee. It would be useful to reproduce Para Nos.17 to 21 of the Judgment, which are as follows :-

"17. In another judgment in State of Uttaranchal & Ors. Vs. Pitamber Dutt Semwal, (2005) 11 SCC p.477, the relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

18. Two decades ago this Court in Government of A.P. & Anr. Vs. M. Hayagreev Sarma, (1990) 2 SCC p.682, has held that subsequent claim for alteration after commencement of the rules even on the basis of extracts of entry contained in births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886, was not open. Reliance was also placed on State of Uttar Pradesh & Ors. Vs. Gulaichi (Smt.), (2003) 6 SCC p.483, State of Tamil Nadu Vs. T.V. Venugopalan, (supra), Executive Engineer, Bhadrak (R & B) Division, Orissa & Ors. Vs. Rangadhar Mallik, (1993) Suppl.1 SCC p.763, Union of India Vs. Harnam Singh, (supra) and Secretary and Commissioner, Home Department & Ors. Vs. R.Kribakaran, (surpa).

*19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The relevant portion of the judgment in **Secretary and Commissioner, Home Department & Ors. Vs. R. Kribakaran** (surpa) reads as under:*

"An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible and before any such direction is issued, the court must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service-book."

20. *In view of the consistent legal position, the impugned judgment cannot be sustained and even on a plain reading of the Notification and the instructions set out in the preceding paragraphs leads to the conclusion that no application for alteration of date of birth after five years should have been entertained.*

21. *The approach of the High Court in re-writing the rules cannot be approved or sustained. Consequently, the appeal filed by the State of Maharashtra is allowed and the impugned judgment is set aside, leaving the parties to bear their own costs.”*

17. The necessary corollary of the aforesaid discussion of law and facts leads me to conclude that the challenge to the impugned order dated 15.03.2017 holds no water and O.A. is devoid of merit and deserves to be dismissed. Hence, the following order.

ORDER

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

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 30.01.2020
Dictation taken by :
S.K. Wamanse.