

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.817 OF 2017

DISTRICT : MUMBAI

Shri Dautkha Bismilla Tadvi.)
Age : 58 Yrs, Occu.: Retired as Officer on)
Special Duty, Audit Board (A.D.F),)
Audit Circle, M.S, Mumbai, having Office)
at Administrative Building, 3rd Floor,)
K.A. Gafar Khan Road, Worli Seaface,)
Mumbai – 400 018 and residing at)
B-117/4, Government Colony, Bandra (E),)
Mumbai – 400 051.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
[Co-operation, Marketing and)
Textile Department, having office at)
353, 3rd Floor, Mantralaya Extension))
Mumbai – 400 032.)
2. The Commissioner for Co-operation)
and Registrar, Co-operative)
Societies, M.S, Pune and having)
Office at Central Building, Pune – 1.)...**Respondents**

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

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 19.12.2019

JUDGMENT

1. The Applicant has challenged the impugned order dated 26.05.2017 issued by Respondent No.1 – State of Maharashtra, thereby rejecting the claim of the Applicant for change of date of birth in service record, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The uncontroverted facts giving rise to this O.A. are as under:-

(i) Initially, the Applicant joined the service as Auditor (Class-II) on 01.06.1989.

(ii) At the time of entry in service, the Applicant's date of birth was recorded as 01.06.1959 and the same was countersigned by the Applicant (Page No.105 of Paper Book).

(iii) Later, the Applicant was selected by nomination through MPSC on the post of Special Auditor (Class-I) and joined the said post on 12.06.1996.

(iv) The Service Book of the Applicant prepared while joining initially on the post of Auditor (Class-II) was continued even after joining the post of Special Auditor (Class-I).

(v) On 28.10.1996, the Applicant made an application addressed to Divisional Commissioner for Co-operation and Registrar of Co-operative Societies, Navi Mumbai for correction of date of birth as 03.08.1959 in place of 01.06.1959 (Page No.41 of P.B.).

(vi) By letter dated 12th February, 1997, the Applicant was informed by Respondent No.2 – Commissioner for Co-operation

and Registrar of Co-operative Societies, Pune that the said Office has not received proposal for correction of date of birth from Divisional Joint Registrar and he was directed to submit necessary documents (Page No.42 of P.B.).

(vii) The Divisional Joint Registrar, Navi Mumbai made communication with Respondent No.2 on 05.03.1997 seeking direction for change of date of birth from the Government.

(viii) By letter dated 05.12.2016, the Special Executive Officer, Audit Board informed the Applicant that earlier proposal for change in date of birth was received in the Office of Commissioner for Co-operation and Registrar of Co-operative Societies, Pune, but there were certain deficiencies therein and Applicant was called upon to comply the same. (Page No.71 of P.B.).

(ix) In pursuance of above, the Applicant made compliance by submitting necessary information and again requested for change in date of birth by letter dated 07.12.2016.

(x) The Additional Registrar, Co-operative Societies, Pune again forwarded proposal to the Government for necessary orders on 11.01.2017.

(xi) Meantime, in seniority list as on 31.12.1999 published by the Government on 10th October, 2001, the date of birth of the Applicant is shown as 03.08.1959 which is sought to be corrected (Page Nos.47 to 52 of P.B.).

(xii) Again in seniority list as on 01.01.2015 published on 15.02.2016, the date of birth of the Applicant is shown as 03.08.1959 (Page Nos.53 to 62 of P.B.).

(xiii) In the list published by Commissioner for Co-operation and Registrar of Co-operative Societies, Pune on 29.11.2016,

the date of birth of Applicant is shown 03.08.1959 and the date of retirement is shown 31.08.2017. This appears list published by the Office as per usual practice showing date of birth and date of retirement, who are retiring in 2017 (Page Nos.66 to 68 of P.B.).

(xiv) The Government issued Corrigendum on 30.05.2017 thereby correcting date of birth from 03.08.1959 to 01.06.1959 in seniority list published on 01.01.2016.

(xv) The Applicant stands retired on attaining the age of superannuation on the basis of date of birth recorded in Service Book on 31.05.2017.

(xvi) The present O.A. is filed on 28.08.2017 after three months from retirement.

3. Now turning to the impugned order dated 26.05.2017, the Government rejected the request for change of date of birth mainly on the following grounds :-

(a) At the time of entry in service on the post of Auditor (Class-II), the Applicant himself recorded his date of birth as 01.06.1959 on the basis of SSC Certificate and the Service Book was signed as an acknowledgment of correctness of the information.

(b) As per Applicant's claim, he got his date of birth changed in Government Gazette dated 26.02.1987 where he declared his date of birth as 03.08.1959. However, despite this position, while making an application for the post of Special Auditor (Class-I), he has mentioned his date of birth as 01.06.1059.

(c) The claim of date of change of birth is not in consonance with Rule 38(2) of Maharashtra Civil Services (General

Conditions of Service) Rules, 1981 (hereinafter referred to as 'General Conditions of Service Rules 1981' for brevity) which *inter-alia* provides that no application made after five years from the date of joining of service should be entertained where the concerned employee has entered into service on or after 26th August, 1981.

(d) The Applicant had joined the initial service on 01.06.1989, but the application for correction of date of birth was made on 28.10.1996 i.e. beyond five years, and therefore, the same is not maintainable.

(e) The Applicant for the first time made application for correction of date of birth on 10.09.2016 i.e. after 26 years from entry into service, and therefore, it cannot be accepted at the fag end of the career being impermissible to do so.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the legality of the impugned order dated 26,05.2017. He has pointed out that the Respondents in their reply admits that, initially, the Applicant has made an application for correction of date of birth on 28.10.1996 and it being within five years from the date of joining service as Special Auditor, the reason mentioned in that application is made after 26 years is apparently incorrect and contrary to the factual aspect. He further sought to contend that, in seniority list, the date of birth of the Applicant was shown 03.08.1959 by the Department itself, and therefore, the Applicant assumed that his request is already accepted by the Government. As regard non-compliance of Rule 38(2) of 'General Conditions of Service Rules 1981', he pointed out that it is for the first time, by amendment in 2008, the period of five years as an outer limit is prescribed and prior thereto, there was no such prescribed period except the provision that normally the application should be made within five years. He has further pointed out that the Applicant has produced birth extract

issued by Gram Panchayat, Giravali, Tal.: Yawal, District : Jalgaon (Page No.40 of P.B.) showing the date of birth of the Applicant as 03.08.1959. On this line of submission, he urged that the impugned order is not sustainable in law.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer supports the impugned order on the basis of reasons recorded in impugned order dated 26.05.2017. He has pointed out that the Applicant initially joined on 01.06.1989 on the post of Auditor (Class-II), and therefore, the application, if any, for the correction of date of birth, ought to have been made within five years from 01.06.1989 and the same having made on 28.10.1996, the same is not permissible under 'General Conditions of Service Rules 1981'. As regard, the date of birth recorded in seniority list, he submits that it was an error and the same was rectified by issuing Corrigendum and at any rate, there being no order of charge of date of birth in Service Book from the Government, it has no legal sanctity.

6. The procedure for writing and recording date of birth in Service Book and its correction is governed by Rule 38 of Rules of 1981. It will be useful to reproduce the relevant portion as amended on 24.12.2008, which is as under :-

“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 as 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.”

7. Insofar as one of the reason mentioned in the order that the Applicant has made an application for correction of date after 26 years, it is apparently incorrect. The Applicant has specifically pleaded that he had made an application on 28.10.1996 for correction in date of birth and this fact is not disputed by the Respondents in their reply. Indeed, the fact that the Applicant has made an application for correction in date of birth on 28.10.1996 stands corroborated from further correspondence made in between Divisional Joint Registrar and Divisional Commissioner for Cooperation and Registrar of Co-operative Societies, Navi Mumbai as seen from letters dated 05.03.1997 and 21.02.1997. This being the position, it cannot be said that the Applicant has made an application for correction in date of birth after 26 years.

8. Once it is found that the Applicant has made application for correction in date of birth on 28.10.1996, then the next question comes whether it is made within five years from the date of joining of service. The Applicant initially joined service as Auditor (Class-II) on

01.06.1989 and indisputably, that time itself, the Service Book was prepared. In Service Book, his date of birth was recorded as 01.06.1959 and admittedly, it was countersigned by the Applicant accepting the correctness of the entries made therein. Whereas, he made an application for correction in date of birth on 28.10.1996 i.e. after lapse of five years from joining the service on 01.06.1989.

9. The submission advanced by the learned Advocate for the Applicant that the period of limitation of five years has to be counted from his appointment from the date of joining another post viz. Special Auditor (Class-I) is obviously misconceived. True, the Applicant joined the post of Special Auditor (Class-I) on 12.06.1996 but the limitation of five years cannot be counted from the joining on the post of Special Auditor on 12.06.1996. As stated above, his Service Book was prepared at the time of initial entry in service on 01.06.1989 and there is no denying that he had taken the benefit of continuation of service from 01.06.1989 itself. This being the position, the application for correction in date of birth was required to be filed within five years from the date of joining i.e. 01.06.1989, but having not done so, the application is obviously not maintainable.

10. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to canvass that the limitation of period of five years for correction in date of birth in service record is for the first time introduced by the amendment in 2008 and prior to it, all that, the application was required to be made normally within five years. Prior to amendment in 2008, the provision was as follows :-

“38(2)(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) Normally, no application for alteration of the entry regarding date of birth as recorded in the service book or service roll

of a Government servant should be entertained after a period of five years commencing from the date of his entry in Government service.” (Underlined mine).

It is to be noted that in 2008, instructions below Rule 38(2)(f) is substituted as follows :-

“38(2)(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 the 16th August, 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.”

11. As such, though there is word ‘normally’ in instruction below Rule 38(2)(f), there is requirement of filing an application for change in date of birth within five years from his entry in Government service. Suffice to say, the rejection of the claim of the Applicant by the Government on the ground that the application was made after five years from the date of joining, cannot be faulted with.

12. Besides, after making an application for change in date of birth, there was complete inaction on the part of Applicant to pursue the said application. It is only at the fag end of career, he had submitted all necessary details by his letter dated 07.12.2016. He stands retired on 31.05.2017. As such, there was inaction on the part of Applicant for a long period and only at the fag end of career, he seems to have woke up. It is well settled that the correction in date of birth at the fag end of trial, is not permissible and such practice or method is deprecated in law. In this behalf, material to note that, though the Applicant stands retired on 31.05.2017, he has filed the present O.A. on 28.08.2017. Whereas, the Government has passed final order rejecting his claim for change in date of birth by order dated

26.05.2017. As such, it is explicit that the Applicant failed to take necessary step in the matter at the earliest opportunity and filed O.A. only after retirement seeking the relief of change in date of birth in service record.

13. The submission advanced by the learned Advocate for the Applicant that, in the seniority list, the date of birth of the Applicant is shown as 03.08.1959 [date he sought to be corrected], and therefore, the Applicant was under belief that the Department has already accepted his request for change in date of birth is misconceived and fallacious. Needless to mention that for correction in date of birth, there has to be order of competent authority i.e. Government and in absence of any such order, mere reference of date of birth as 03.08.1059 in seniority list *ipso-facto* does not have effect of change in date of birth in Service Book. Indeed, the mistake in mentioning date of birth as 03.08.1959 in seniority list was rectified by the Department by issuance of Corrigendum on 30.05.2017 and his date of birth was shown as 01.06.1959. Be that as it may, mere reference of date of birth as 03.08.1959 which seems to be inadvertent cannot be termed as acceptance of the claim of Applicant for correction in date of birth. In absence of any such specific order of the competent authority viz. Government, such assumption perceived by the Applicant has no legal basis.

14. Apart, significantly, as mentioned in impugned order dated 26.05.2017, the Applicant got his date of birth corrected as 03.08.21959 by issuance of Gazette on 26.02.1987. However, strangely, while making an application to the post of Special Auditor (Class-I), he has mentioned his date of birth as 01.06.1959 and not as 03.08.1959. As such, there is no consistency in the claim of the Applicant regarding the real date of birth.

15. At the cost of repetition, it is necessary to point out that it is only after retirement, the Applicant is trying to get the date of birth changed so that he can get the benefit of extended period of two-three months. His claim was rejected by the Government by order dated 26.05.2017 and the Applicant superannuated on 31.05.2017. Whereas, the O.A. is filed on 28.08.2017 after three months for retirement. As such, this is nothing to attempt to get the date of birth corrected at the fag end of service, which is not permissible in law.

16. It would be also apposite to refer 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**. In this Judgment, 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.

“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. Furthermore, it would be advantageous to refer the decision of Hon'ble Supreme Court in State of ***M.P. Vs. Premal Shrivastava (Civil Appeal No.2331/2004) decided on 19th September, 2011*** where in Para Nos.9, 10 and 11, the Hon'ble Supreme Court held as follows :-

9. *It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the 1 (2010) 6 SCC 482 Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court*

or the Tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to the aid of those who sleep over their rights (See: *Union of India Vs. Harnam Singh*2).

10. In *Secretary And Commissioner, Home Department & Ors. Vs. R. Kirubakaran*3, indicating the factors relevant in disposal of an 2 (1993) 2 SCC 162 3 1994 Supp (1) SCC 155 application for correction of date of birth just before the superannuation and highlighting the scope of interference by the Courts or the Tribunals in such matters, this Court has observed thus : "An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. 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 their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. 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. Before any such direction is issued, the court or 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 has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie

evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior."

(Emphasis supplied)

11. *In State of U.P. & Anr. Vs. Shiv Narain Upadhyaya⁴, while reiterating the aforesaid position of law, this Court has castigated the practice of raising dispute by the public servants about incorrect recording of date of birth in their service book on the eve of their retirement."*

18. The legal principles laid down in above authorities are squarely attracted to the present case and application being not made within five years from the date of joining and secondly, after the end of service tenure is not permissible in law. Therefore, the rejection of the claim for change in date of birth by the Government cannot be faulted with. I see no legal infirmity in the impugned order. The O.A. thus 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 : 19.12.2019
Dictation taken by :
S.K. Wamanse.

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