

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 835 OF 2015

DISTRICT : NASIK

Shri Devendra Purshottam Shinde,)
Working as Dy. S.P (Reader),)
Special I.G, Nasik Range, Nasik.)
Dakshata Building, Gadakari Chowk)
Old Agra Road, Nasik 422 002.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Home Department,)
Office at Mantralaya,)
Mumbai 400 032.)
2. The Director General & Inspector)
General of Police, [M.S],)
Mumbai, having office at)
Old Council Hall, S.B Marg,)
Mumbai 400 039.)

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3. Special Inspector General of)
Police, Nasik Range, Nasik,)
Dakshata Building, Gadakari Chowk)
Old Agra Road, Nasik 422 002.)...**Respondents**

Shri D.B Khaire, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 08.01.2016


ORDER

1. Heard Shri D.B Khaire, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents

2. This Original has been filed by the Applicant challenging the order of the Respondent no. 1 informing the Respondent no. 2 by letter dated 11.3.2014 rejecting the request of the Applicant to change his date of birth in his service records.

3. Learned Counsel for the Applicant argued that the Applicant joined service on 1.3.1983 as Police Sub-Inspector. In his Service Book, his date of birth was recorded as 1st January, 1958 on the basis of S.S.C

Certificate. However, the correct date of birth of the Applicant is 1.10.1958 as per his S.S.C Certificate and a wrong entry was made when his Service Book was prepared. Learned Counsel for the Applicant argued that the original of the Applicant's S.S.C Certificate will confirm that his date of birth as per S.S.C Certificate is 1.10.1958. The School Leaving Certificate dated 1.7.1975 issued by Rachna Vidyalaya, Sharanpur, Nasik also shows his date of birth as 1.10.1958, as also copy of the General Register maintained by the said School. In the Identity Card issued to the Applicant by the Police authorities, including the Respondent no. 2, his date of birth is shown as 1.10.1958. In the G.P.F Account maintained by Principal Accountant General (Accounts & Entitlement)-I, Maharashtra, Mumbai also, his date of birth is shown as 1.10.1958. The Applicant has also produced a copy of birth Certificate issued by Trimbakeshwar Municipal Council, which also shows that his date of birth is 1.10.1958. Learned Counsel for the Applicant contended that there is overwhelming evidence to prove that date of birth of the Applicant is 1.10.1958. However, the Respondent no. 1 has rejected the request of correction in the date of birth of the Applicant, which was mistakenly recorded as 1.1.1958 while preparing his Service Book. Learned Counsel for the Applicant argued that the Applicant is not seeking change in his date of birth but correction of a Clerical mistake.



4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the entry in the Service Book of the Applicant was made after he joined service at Maharashtra Police Academy, Nasik. The Applicant has signed the first page of the Service Book in token of acknowledgement that all entries are correctly made. Learned Presenting Officer argued that it is not the case of the Applicant that he is not literate. On the contrary, he is a graduate and has been occupying important posts in the Government. His claim that his date of birth was wrongly recorded lacks credibility, when he has himself acknowledged it to be correct. Learned Presenting Officer argued that Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, does not permit any change in the date of birth after five years of joining service. Even during that five years, change in date of birth can be permitted only on the basis of attested Xerox copy of the concerned page of the original birth register where his name and date of birth has been entered as per the rules for the time being in force regarding the registration of birth. The Applicant has failed to produce original copy of S.S.C Certificate. He is producing a duplicate copy issued in 2014. Similarly, his birth certificate has been issued on 1.10.2015. Learned Presenting Officer relied on the judgment of Hon. Supreme Court in the case of **State of Maharashtra and Another Vs. Gorakhnath Sitaram Kamble & Ors in Civil Appeal No. 9704 of 2010**, where, the Hon'ble

Supreme Court has held that no correction in the date of birth at the fag end of career of a Government servant can be allowed.

5. I find that the Applicant admits that he had signed and endorsed the first page of his Service Book. He, however, claims that “no importance can be given to the signature made by the Applicant on his first page of the Service Book.” (para 7.4 of the Original Application). This is a very strange submission. The Applicant was initially appointed as Police Sub-Inspector and was working as Deputy Superintendent of Police, when he filed the Original Application. As per records, he is a graduate. He has, as per his own admission, signed and endorsed the first page of his Service Book. This clearly shows that he has fully endorsed the entry in his Service Book about his date of birth. The said entry was based on the entry in his S.S.C Certificate. The Applicant claims to have lost original copy of the S.S.C Certificate issued to him in 1975. He is relying on a duplicate certificate (issued by the Maharashtra State Board of Secondary and Higher Secondary Education, Pune Divisional Board, Pune) which has been issued on 22.8.2014. Original records which were kept in the Maharashtra Police Academy, Nasik, where his Original Service Book was prepared are said to have been destroyed. It is not clear as to how such record of permanent nature came to be destroyed during the service career of a Government

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employee. The other records produced by the Applicant about his date of birth cannot be considered, in view of Instruction (2) below Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, which is reproduced below:-

“(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 date of birth has been entered as per the rules for the 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.”

The Applicant has not produced attested xerox copy of concerned page of original birth register. It is important to note that the Applicant joined service on 1.3.1983, i.e. after 16.8.1981. In his case, instruction (1) below Rule 38 ibid is applicable, which reads:-

“(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 April, 1981, shall be entertained after a period

of five years commencing from the date of his entry in Government service.”

The Applicant did not make any request in alteration of entry regarding his date of birth as recorded in his Service Book within five years of his entry into Government service. From the pleading in this Original Application, it is seen that the Applicant made first request for ‘correction’ in his date of birth on 28.5.2012. He has requested after coming to know that as per seniority list his date of retirement was 1.6.2016. It is a known fact that seniority lists are published from time to time and contain the date of retirement. The Applicant had not only signed and endorsed first page of his Service Book showing his date of birth as 1.1.1958, but must have received copies of seniority lists from time to time. It is not possible to believe that he came to know about wrong entry regarding his date of birth only in 2012, when he requested for ‘correction’ in his date of birth. The Applicant’s claim that he is seeking correction of clerical error cannot be accepted. The Applicant, for all practical purposes, is seeking change in his date of birth trying to give a colour that it was a case of clerical mistake. The Applicant has failed to produce the evidence required under Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 for alteration in his date of birth. Even if, he had produced that proof, no alteration in his date of birth was possible, in view of

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instruction (1) below Rule 38 ibid after 5 years of joining service.

6. The Applicant has relied on interim order of this Tribunal dated 28.1.2015 in O.A no 44/2015. However, that is admittedly an interim order and the issues were not decided finally in that order. On the other hand, the Respondents have relied on the judgment of Hon'ble Supreme Court in Kamble's case (supra). In paras 11 and 12 of the judgment, it is observed by Hon'ble Supreme Court that:-

“11. According to the notification, from 16.08,1981 the date of birth of Government servants cannot be changed after five years from 16.08.1981. Assuming this notification is applicable only for employees who joined after 16.8.1991, even then according to the 'instruction (1)' of the Maharashtra Rules, 1981 that no application for alteration of entry regarding date of birth should be entertained after a period of five years.

The said instructions is reproduced as below:-

“(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

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commencing from the date of his entry in Government service.....”

12. Apart from the notification and the said instructions this Court in a series of cases have categorically laid down that the employees should not be permitted to change the date of birth at the fag end of his service career. In the instant case the application for alteration has been filed at the fag end of his service career after a lapse of twenty eight years.”

7. Further in para 16, Hon'ble Supreme Court has observed that:

“16. Learned Counsel for the respondent has placed reliance on the judgment of this Court in U.P Madhyamik Shiksha Parishad & ors Vs. Raj Kumar Agjihotri, (2005) 11 SCC p.465. In this case, this Court has considered number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.”

In para 18, Hon'ble Supreme Court has observed that any claim for alteration even on the basis of extracts of births and death register was not open after 5 years of joining service. In the present case, such reliance on



births and deaths register could have been permissible for first five years of entry into service and after five years, even that option is not available.

In para 19, Hon'ble Supreme Court has observed:-

"19. These decisions lead to a different dimensions 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 Kirubakaran, (supra) 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

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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 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 makes 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.”

The judgment of Hon'ble Supreme Court has been quoted extensively to emphasize the fact that the facts in present case are strikingly similar and the Applicant cannot be allowed to change his date of birth at the fag end of his career. He had failed to move the authorities within 5 years of entry into service to correct his date of birth. Now that option is not available to him. Even otherwise,



his claim that he came to know that his date of birth is incorrectly entered into his Service Book only in 2012 lacks credibility for the reasons already discussed.

8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 08.01.2016

Dictation taken by : A.K. Nair.