

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.488 OF 2021 IN
ORIGINAL APPLICATION NO.893 OF 2021**

DISTRICT : Satara

Shri Kisan N. Kumbhar)
Age : 66 years, Occ. Retired,)
R/at Flat No.201, Om Sai Residency,)
Kolhapur Naka Karad (Malkapur), Tal. Karad,)
Dist. Satara.)...**Applicant**

Versus

1. The State of Maharashtra, through)
its Secretary, Command Area Devlp.)
Dept., M.S. Mantralaya, Mumbai.)
2. The Secretary, Water Resources Dept.)
Madam Kama Road, Hutatma Rajguru)
Chowk, Mumbai 32.)
3. The Secretary, General Admn. Dept.)
Madam Kama Rd., Hutatma Rajguru)
Chowk, Mumbai 32.)
4. The Secretary, Finance Department,)
Mantralaya, Mumbai 32.)
5. The Executive Director, Maharashtra)
Krishna Khore Development)
Corporation, Pune 411 011.)...**Respondents**

Shri Kisan Kumbhar , Applicant in person.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 16.12.2021.

JUDGMENT

The matter is taken up for admission.

2. The Applicant was appointed as Junior Engineer on 03.03.1977. At the time of appointment, in service book, his date of birth was recorded as 15.06.1955 on the basis of School Leaving

Certificate. On the basis of date of birth recorded in service book, the Applicant stands retired on 30.06.2013.

3. Strangely, the Applicant made an application on 06.05.2013 (few days before retirement) for correction in date of birth in service record stating that his real date of birth is 21.12.1956. However, no decision was taken for long time, and therefore, the Applicant has filed O.A.No.403/2013 before this Tribunal which was disposed of by order dated 13.06.2013 directing Respondents to take decision on his application. Accordingly, the Government by order dated 29.06.2013 passed an order rejecting Applicant's claim for correction in date of birth stating that application for correction was not made within permissible limit provided in Maharashtra Civil Services (General Condition) Rules, 1981 (hereinafter referred to as 'Rules 1981'). The Applicant contends that the order dated 29.06.2013 was not served upon him. According to him, he obtained information under RTI and that time only, he was provided the order dated 29.06.2013 along with letter dated 12.08.2018.

4. It is on the above background, the Applicant has filed O.A. challenging order dated 29.06.2013 and for declaration that his date of birth be declared as 21.12.1956. According to Applicant in village record his date of birth is recorded as 12.12.1956. Along with O.A. he has also filed M.A. for condonation of delay for 2646 days caused in filing O.A. *inter-alia* contending that due to pandemic situation he could not file O.A. earlier. Thus, he has counted limitation from date of order dated 29.06.2013 excluding one year period of limitation.

5. Thus, admittedly at the time of entry in service book, the Applicant's date of birth was recorded as 15.06.1955 on the basis of school record. Curiously, he did not raise any grievance about incorrect record of date of birth in service book till his retirement in 2013. It is only on 06.05.2013, he made an application for correction in date of birth since he was due to retire on 30.06.2013. It is thus

explicit that at the fag end of service only, the Applicant raised grievance of incorrect date of birth. Needless to mention that legal position is fairly settled and it is no more *res-integra* that grievance of correction in date of birth has to be raised within permissible limit under Rules and where it is made on the fag end of the service, it has to be rejected. In this behalf, reference may be made to following decisions:-

- (A) *Ranjana Salakar Vs. State of Maharashtra reported in 2007(4) Maharashtra Law Journal 857.***
- (B) *(2010) 14 SCC 423 (State of Maharashtra Vs. Gorakhnath S. Kamble).***
- (C) *(2011) 9 SCC 664 (State of M.P. & Ors. Vs. Premlal Shrivastava)***
- (D) *2020(3) SLR 639 (SC) Bharat Coking Coal Limited and Ors. Vs. Shyam Kishor Singh.***

6. Indeed, the procedure for correction of date of birth in service record is governed by Rule 38 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as 'Rules 1981' for brevity). Earlier, Instruction No.1 to Rule 38 (2) of 'Rules 1981' was as under:-

"Instruction (1) Normally, no application for alternation 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."

Later, Instruction No.1 was amended and substituted by following:-

"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."

7. Apart by way of amendment of 2008, Rule 38(2) (2-B) is inserted which is as under:-

“(2-B) 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, 2008 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. Whereas, in present case admittedly, the Applicant did not make an application for correction of date of birth within permissible period as stipulated in ‘Rules 1981’. It is only after the fag end of service, he applied for the same which came to be rejected. In view of the decisions of the Hon’ble Supreme Court (cited supra) where application is made at the fag end of service, it is not maintainable and has to be rejected.

9. Even assuming for a moment that applicant was not served with the order dated 29.06.2013 and for the first time he got information under RTI Act in 2018 in that event also in view of the admitted position that he did not apply for change of date of birth within limitation, his grievance raised at the fag end of service is liable to be rejected. This O.A. is nothing but abuse of process of law and attempt to revive old and dead claim.

10. In view of above, M.A. as well as O.A. are dismissed summarily with no order as to costs.

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