

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.998 OF 2017

DISTRICT : Pune

Shri Manuel John Paulous Montode)
Age : 54 years,)
R/at R.No.17/1-A, Hari Nagar, Ramwadi, opp.)
Bishop School, Pune 411 014, Dist. Pune.)...**Applicant**

Versus

1. The State of Maharashtra, through)
its Principal Secretary, Home Dept.,)
M.S. Mantralaya, Mumbai 400 032.)
2. The Commissioner of Police, Pune City,)
Dist. Pune.)
3. The Deputy Commissioner of Police,)
Special Branch, office of the)
Commissioner of Police, Pune.)...**Respondents**

Shri A. V. Sakolkar, Advocate for Applicant.

Ms S. P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 03.01.2020.

JUDGMENT

1. Present O.A. is filed on 31.10.2017 seeking directions to the Respondents to correct the date of birth of the Applicant as 10.10.1963 in place of 10.10.1959 as recorded in service book. The Applicant joined the post of Police Constable on 21.09.1985. At the time of entry in service book, the date of birth was recorded as 10.10.1959 on the basis of SSC Certificate. However, he claims to have made an application on 06.08.1990 addressed to Commissioner of Police, Pune for correction in date of birth. He contends that in fact

he was born on 10.10.1963 and the same was recorded in Baptism Certificate issued by the Priest. The submission of application dated 06.08.1990 is disputed by the Respondents. However, later again the Applicant had filed another application on 15.04.1996 addressed to Police Commissioner, Pune reiterating the request to correct the date of birth as 10.10.1963 in place of 10.10.1959. He had also annexed Baptism Certificate extracted of birth certificate from Khadki Cantonment Board. It appears that there was no entry in Cantonment Board, and therefore, he had applied to the Court of Judicial Magistrate First Class, the Cantonment Court, Pune. Learned Magistrate directed the Cantonment Board to enter the date of birth of the Applicant as 10.10.1963 in Birth Certificate. Accordingly, the date of birth was recorded in Birth Certificate of Cantonment Board. It is material to note that the submission of application dated 15.04.1996 is not disputed by the Respondents.

2. However, no further action was taken on the application dated 15.04.1996 made by the Applicant. Again he made an application on 06.10.2017 stating that no order is passed on his application dated 15.04.1996 which was received by the department on 18.04.1996, and therefore, requested for correction in date of birth. Despite, no further order was passed. Eventually the Applicant stands retired on 31.10.2017 on attaining the age of superannuation and on the same day filed the present O.A.

3. Heard Shri A. V. Sakolkar, learned Counsel as well as Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents extensively.

4. During the hearing, it was transpired that indeed, no order has been passed on the application made by the applicant on 15.04.1996 which was admittedly received by the office on 18.04.1996. In so far as application dated 06.08.1996 is concerned, the Respondents have

filed Affidavit stating that they have no record to verify as to whether really any such application was made by applicant. As such, there is no specific denial that no such application was made on 06.08.1990. Apart there is no denying that the Applicant later again filed an application on 15.04.1996 which was received by the Respondent No.2 on 18.04.1996 but no order was passed thereon.

5. It was sought to contend by the learned C.P.O. that there being no record with the office to ascertain the filing of application dated 06.08.1990. The Application dated 15.04.1996 has to be treated application first in point of time and it being made beyond five years from the date of joining services. The same is not maintainable.

6. Insofar as limitation of five years for filing application for correction of date of birth is concerned, pertinent to note that by way of amendment in 2008 in Rule 38 of MCS (General Condition of Service) Rule 1981, limitation of five years is introduced and instructions below Rule 38 is inserted w.e.f. 24.12.2008. Whereas prior to amendment dated 24.12.2008 following was the instruction No.1

“(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.”

7. Indeed, this aspect is clarified by the Hon’ble High Court in **2014 (6) MLJ 590 Ashok Meshram V/s Headmaster Zilla Parishad** wherein the Hon’ble High Court considered the provisions of Rule 38 amended on 24.12.2008 and in para no.7 and 8 held as follows:-

“Comparison of old rule and amended rule clearly shows that Rule making authority has after amending in 2008 prohibits the employee from making an application for correction in date of birth after

the period of five years from the date of entry in service but since the amendment is not retrospective, it must be read as prospective.

In this case, however, I find that the application was made for correction of date of birth by the appellant employee on 20.10.2006 and his case would be covered by old Rule.”

8. As such assuming for a moment that applicant made an application for first time on 15.04.1996 still the fact remains that it is not hit by amendment of 2008 and secondly, the said application is not yet decided by the Respondent No.2. It was incumbent on the part of Respondent No.2 to pass appropriate order on the application made by the Applicant on 15.04.1996 in accordance to law. Though the Applicant stands retired on 31.10.2017 on the basis of date of birth recorded in service book if his date of birth is considered as 10.10.1963 then he would due to retire on 31.10.2021.

9. Learned Counsel for the Applicant made fair statement that his client is ready to forgo the pay and allowances of the period onward 31.10.2017 and would claim the pay and allowances only from the date of joining if his date of birth as 10.10.1963 is corrected. He, therefore, sought directions for correction of date of birth.

10. Thus what transpires from the record and submissions made by the learned Counsel that there is no order on the application dated 15.04.1996 and the same is kept pending though the Applicant stands retired on 31.10.2017. Therefore, alternative submission made by the learned C.P.O. that directions be issued to decide the application dated 15.04.1996 deserves to be accepted. It is for the Competent Authority, first to decide the application for correction of date of birth and if the Applicant is aggrieved by the order passed thereon then he can again approach the Tribunal to redress his grievance, if any.

11. In view of above, O.A. deserves to be disposed of with suitable direction.

ORDER

- (A) Respondent No.2 is directed to decide the application made by the Applicant on 15.04.1996 for correction in date of birth, if necessary with approval of Respondent No.1 in accordance to rules within six weeks from today and the order be communicated to the Applicant within two weeks thereafter.
- (B) If the Applicant is aggrieved by the order, he may take recourse of law as permissible to him.
- (C) No order as to costs.

SD/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 03.01.2020
Dictation taken by : VSM
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