

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 897 OF 2018**

**DISTRICT : NANDURBAR**

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Shri Ramesh Daga Chaudhari,  
Age : 57/58 years, Occu. : Service,  
R/o. Plot No. 6, Wakharkar Nagar,  
Dhule, Tq. & Dist. Dhule.

**...APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,  
Through The Secretary,  
Public Works Department,  
Mantralaya, Mumbai.
- 2) The Executive Engineer,  
Public Works Department,  
Dhule, Tq. & Dist. Dhule.
- 3) The Executive Engineer,  
Public Works Department,  
Shahada, Dist. Nandurbar.

**...RESPONDENTS**

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**APPEARANCE** : Shri N.L. Chaudhari, Advocate for the  
Applicant.

: Shri M.S. Mahajan, Chief Presenting  
Officer for the Respondents.

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**CORAM** : **JUSTICE A.H. JOSHI, CHAIRMAN.**

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**RESERVED ON** : **02.04.2019.**

**PRONOUNCED ON** : **22.04.2019.**  
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**ORDER:**

1. Heard Shri N.L. Chaudhary learned Advocate for the applicant and Shri M.S. Mahajan learned Chief Presenting Officer for the respondents.

2. By this O.A. the applicant has prayed for quashing and setting aside the communication dated 29-11-2018 issued by the Government through the Executive Engineer, Public Works Department informing the rejection of applicant's request for correction in the date of birth, and also for consequent relief for mandatory direction to correct applicant's date of birth in applicant's service records.

3. Summary of applicant's claim is as follows:-

- (a) Applicant's date of birth recorded in the service record on the basis of school leaving certificate of the applicant is 25.11.1960.
- (b) According to the applicant, applicant's date of birth as recorded in the Municipal record is 10-12-1961.
- (c) Applicant requested for correction in the date of birth by application dated 31-12-1986 and pursued it by applications dated 19-10-1990, 05-03-1991, 02-03-1994, 02-08-1994, 17-05-1995, 12-01-1996, 06-06-1996, 05-05-1997, 01-02-1999, 05-05-1997, 01-02-1999, 05-12-2000, 16-05-2001, 13-11-2001, 06-09-2002, 03-02-2002, 09-05-2003, 27-05-2003, 30-08-2003, 10-12-2004, 05-07-2005, 03-06-2006 etc.

- (d) Applicant has averred in the Original Application that the dates of birth of two of his brothers are 20-06-1955 and 19-01-1959 whereas his date of birth is 10-12-1961.
- (e) He states that he is claiming correction in the date of birth on the basis of public record.
- (f) His application for correction in date of birth is filed within 5 years from the date of his entry in the Government service.
- (g) According to the applicant, the correction in the date of birth is permissible as per the rules and also in view of the judgments of Hon'ble the Supreme Court and this Tribunal.

4. Respondent's pleading as contained in paragraph no.9 of the affidavit in reply reads as follows:

*"09. I further say and submit that, the General Administration Department remarked that Maharashtra Civil Service (General Conditions of Services Rules, 1981) are made in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and the provisions regarding alteration of date of birth recorded in the service book, of a Government servant, exist in sub rule 2(f), of Rule No. 38 of these Rules as under:*

*"(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."*

*It is further submitted that, the provisions in sub rule 2(f) are very clear and the alteration of date of birth already recorded in service book of a Government Servant is allowed only when the above condition of the Rule is fulfilled. But if the entry of date of birth in the service book is*

*correctly taken as per the document made available by the Government Servant himself, it cannot be said that the said is taken wrongfully by some other person nor such entry can be termed as a clerical error. Therefore, no change in such entry is allowed by the Rule. General Administration Department also quoted Hon'ble Supreme Court Judgments regarding the above said Rule in the matters of Shri Ramaswami and Others Vis Union of India, dated 09.04.1997, Shri Premal Shrivastav Vis Government of Madhya Pradesh, dated 19.09.2018, Shri Bhagwan Lahane Vs. Commissioner of Police, Mumbai, dated 26.11.1996, Shri Brahmamarbar Senapathi Vis Government of Orissa, dated 03.01.1994."*

(Quoted from paper book page 63-64)

5. It is necessary to have a look at instruction No. 1 below Rule 38(2), strongly relied upon by the State. Said instruction no.1 below Rule 2 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 reads as follows:

*"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 16<sup>th</sup> August 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service."*

6. This instruction presupposes as its corollary that application for correction in date of birth can be entertained if requested within 5 years from the date of entry in Government service. Instruction no.1 has to be read as proviso to the general rules of prohibition for correction in the date of birth once it is recorded.

7. As per the judgment of the Hon'ble the Supreme Court in Case No.502/1993 in the case of **Union of India V/s. Harnam Singh** [1993 AIR (SC) 1367] decided on 09-02-1993 relied upon by the applicant, the date of birth once recorded can be corrected if supported by cogent evidence.

8. Judgments relied upon by the State do not tend to exclude legality of claim for correction in the date of birth in the event there is evidence in the contrary, which in fact supports applicants claim.

9. State has not shown that the applicant wants to rely on the date of birth to be corrected in the background that he has once taken benefit of his date of birth already entered in service record for any eligibility or for qualifying examination or for the purpose of entry in the Government service.

10. Moreover, reason due to which the correction in the date birth is objected to is because of the fact that General Administration Department (GAD) has opposed the same, by relying on clause (f) of Sub Rule 2 of Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981.

11. Respondents have committed grave error in failing to read exact object and the effect of instruction no.1 contained in Sub Rule 2 of Rule 38. The instruction no.1 is in the nature of a proviso which carves out an enabling provision entitling a Government servant to make application for correction in date of birth, which is an enabling provision and for empowering the Government to correct the date of birth. It further implies and mandates that the claim must be based on genuine facts and legitimate evidence.

12. It is thus evident that impugned rejection of applicant's claim for correction in date of birth by the respondents is done in an autocratic manner than an administrative action based on reason.

13. Moreover, for rejection of applicant's request, the reason assigned by the Respondents is that no such correction is permissible relying on clause (f) of Rule 38(2), is the product of incomplete and half-hearted reading of the rule rather omission of neglect towards reading the instruction no.1 stated below Sub Rule 2 of Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981.

14. In the result, O.A. succeeds. The impugned communication dated 29-11-2019 is quashed and set aside

with further direction to the respondents to cause necessary correction in the applicant's date of birth from 25-11-1960 to corrected 10-12-1961.

15. In the facts and circumstances of the case, parties are directed to bear their own costs.

**(A.H.JOSHI)**  
**CHAIRMAN**

**Place : Aurangabad**

**Date : 22.04.2019.**