

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 04/2021(S.B.)

Akram S/o Majid Khan Pathan,
Aged about 55 yrs, Occupation Service,
R/o - Plot No.2/3-A,
Near Chopde Lawn, Awasthi Nagar,
Tirupati Layout, Nagpur

Applicant.

Versus

- 1) State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) Commissioner of Police,
Nagpur City Nagpur.

Respondents

Shri M.R.Khan, Ld. counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).
Dated: - 08th July 2022.

JUDGMENT

Judgment is reserved on 01nd July, 2022.

Judgment is pronounced on 08th July, 2022.

Heard Shri M.R.Khan, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. In this application communication dated 29.09.2020 (Annexure A-1) made by respondent no.2 that request of the applicant for correcting his date of birth could not be considered, is impugned.

3. Case of the applicant is as follows.

The applicant joined Police Department as Police Constable on 12.09.1989. At this point of time his date of birth was incorrectly entered in service book as 25.02.1965 instead of 25.02.1968. He made several representations for correction but to no avail. Birth certificate (Annexure A-2) issued by Mure Memorial Hospital shows his correct date of birth i.e. 25.02.1968. So does birth certificate (Annexure A-3) issued by Nagpur Municipal Corporation. The applicant submitted affidavit (Annexure A-5) dated 25.08.2020 to his School for necessary correction. Aslam Khan, brother of the applicant, was born on 12.07.1964 as per birth certificate (Annexure A-6) issued by Nagpur Municipal Corporation. It is highly improbable

that the applicant was born within about seven months thereafter. In School Leaving Certificate of Aslam Khan (Annexure A-7) his correct date of birth i.e. 12.07.1964 is shown. However, in School Leaving Certificate of the applicant (Annexure A-8) his date of birth was wrongly shown as 25.02.1965 instead of 25.02.1968. On 11.09.2020 the applicant made representations (Annexures A-9 & A-11) to respondent no.2 and Head Master of his School, respectively for correcting his date of birth. Respondent 2 communicated rejection of his representation vide the impugned letter dated 29.09.2020 (Annexure A-1). Hence, this application.

4. Reply of respondent no.2 is at pp.30 to 37. They have contended as follows-

(1) Rule 38 of the MCS (General Conditions of Services) Rules, 1981 mandates making of an application for correction of date of birth within five years from the date on which the (incorrect) date is entered in service book. The applicant submitted application for correction of date of birth 28 years (in fact, 31 years) after his appointment.

(2) Date of birth entered in service book of the applicant on the basis of School Leaving Certificate produced by the applicant himself cannot be directed to be corrected by this

Tribunal because that would amount to entering into disputed questions of fact.

5. With his reply respondent no.2 has placed on record copy of first page of service book of the applicant (Annexure R-2-I) in which date of birth of the applicant is stated to be 25.02.1965. This entry is as per the date of birth mentioned in the applicant's School Leaving Certificate (Annexure A-8). It can be gathered that on the basis of what is mentioned in his School Leaving Certificate date of birth of the applicant was entered in his service book, and the School Leaving Certificate was produced by the applicant himself.

6. Though, the applicant has asserted that he had made several representations for correction of his date of birth, there is absolutely nothing on record to support this assertion. On the contrary, the record shows that for the first time the applicant submitted application (Annexure A-9) before respondent no.2 for correcting his date of birth on 11.09.2020. Respondent no.2 promptly rejected the same vide communication dated 29.09.2020 (Annexure A-1) quoting therein Rule 38 (2) (f) of the MCS (General Conditions of Services) Rules, 1981.

Said Rule reads as under-

38. Procedure for writing the events and recording the date of birth in the service book.

(2) While recording the date of birth, the following procedure should be followed :-

(a) XXX

(b) XXX

(c) XXX

(d) XXX

(e) XXX

(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.

7. It is the contention of the applicant that his elder brother Aslam Khan was born on 12.07.1964 (as shown in Annexures A-6 & A-7) and this will also support case of the applicant that his birth could not have taken place within seven months of birth of his brother. There is no merit in this submission because biological process does not rule out possibility of such birth.

8. The applicant has relied on the following Rulings.

(1) *Prabhat Kumar Titus Versus Western Coalfields Limited and two Others Judgment of Bombay High Court in W.P.No.1315 of 2021*

delivered on 30-06-2021 in this case, on the basis of following facts it was held that the date of birth of the applicant was required to be corrected.

15. In this matter, it is an undisputed fact that the respondents called objections vide notice dated 15th September, 2011 and in pursuance thereof, the petitioner had submitted his objection on 7th October, 2011 i.e. 10 years before his date of retirement. Thereupon the genuineness of Matriculation Certificate was examined by the respondents and on satisfaction that the certificate is valid one, the Sub-Area Level Committee and the Area Committee recommended the case of the petitioner for correction of date of birth.

16. However, for long period of 9 years and 4 months, no decision was communicated to the petitioner, though the reminder letter was issued by the petitioner on 1st July, 2019. In the above facts and circumstances, we are at a loss to understand as to how the petitioner could be non-suited on the ground of delay and laches.

17. On the contrary, if there is any delay, it is on the part on the respondents in deciding such representation or objection of the petitioner for correction of his date of birth, for such a long period of nine years and four months. Thus, for the fault on the part of the respondents in not deciding the application for such a long period, the petitioner cannot be asked to suffer.

(2) **Bharat Coking Coal Limited And Others Versus Chhota Birsa Uranw (2014) 12 Supreme Court Cases 570** in this case it was observed –

As noted by us, the respondent in 1987 on coming to know of the wrong recording of his date of birth in his service records from the nomination form sought rectification. Therefore, such rectification was not sought at the fag end of his service.

(3) **Janabai d/o Himmatrao Thakur Versus State of Maharashtra and Others 2019(6) Mh.L.J. page 769 (Full Bench)** in this case the Full Bench was considering *inter alia* clause 26.3 of Secondary School Code, and it was held-

No application for alteration in the figure of date of birth is permissible, after the student has left secondary school, except correction in the nature of 'obvious mistakes' as indicated in Clause 26.3 i.e. of a nature where the date of a particular month which does not exist in the calendar and likewise.

In the instant case this Tribunal is called upon to consider merits of the matter in the light of Rule 38 (2)(f) of the MCS (General Conditions of Services) Rule, 1981.

9. Learned P.O. on the other hand, has relied on the following Rulings-

(1) *Life Insurance Corporation of India And Others Versus R.Basavaraju Alis Basappa (2016) 15 Supreme Court Cases 781* in this case it is observed-

8. In Home Deptt. v. R. Kirubakaran, this Court again observed : (SCC p.157, para 5)

"4. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement and for calculating the date of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their dates of birth recorded in the service records, by either invoking the jurisdiction of the High Courts under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, for adjudication as to whether the dates of birth recorded were correct or not."

(2) *State of Maharashtra and Another Versus Gorakhnath Sitaram Kamble And Others (2010) 14 Supreme Court Cases 423* in this case it is observed-

2. In rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, (hereinafter referred to as "the principal Rules"), in sub-rule (2), under the heading Instruction,-

(a) for Instruction No.(1) and (2), the following Instructions shall be substituted, namely:-

"(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.

(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....." (emphasis supplied)

It is further held –

12. Apart from the notification and the said instruction this Court in a series of cases has 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 of alteration has been filed at the fag end of his service career after a lapse of twenty -eight years.

It is also held-

These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the Court.

10. All three rulings relied upon by the applicant are distinguishable on facts. In this case the applicant moved application for correction of date of birth 31 years after entry was taken in his service book on the basis of School Leaving Certificate produced by him. Respondent no.2 promptly decided the same and communicated rejection to the applicant. Consequently, bar under Rule 38 would be attracted. Rulings cited by the P.O., considered in the light of the facts of case, also lead to the conclusion that the prayer made by the applicant cannot be considered. Application is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 08/07/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 08/07/2022.
and pronounced on
Uploaded on : 08/07/2022.