

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.480 OF 2018**

DISTRICT : KOLHAPUR

Shri Namdeo Nivrutti Rewadekar,)
Age 58 years, Naib Tahsildar, Office of Collector,)
Kolhapur R/At & Post Ponori, Taluka Radhanagari,)
District Kolhapur 416012)..Applicant

Versus

1. Government of Maharashtra,)
Through Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400032)
2. Divisional Commissioner,)
Pune Revenue Division, Vidhan Bhavan, Pune-1)
3. Collector, Kolhapur)..Respondents

Shri M.D. Lonkar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Member (A)
RESERVED ON : 17th July, 2018
PRONOUNCED ON : 20th July, 2018

J U D G M E N T

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The Applicant has filed the above OA challenging the order dated 15.5.2018 (Exhibit E page 30) passed by Respondent no.3 rejecting his representation dated 17.4.2018 (Exhibit C page 25-26) seeking alteration of the date of birth in his service book.

Brief facts:

3. The Applicant joined the Government service as Talathi w.e.f. 14.5.1983. He came to be promoted as Circle Officer on 12.12.2005 and as Naib Tahsildar on 12.12.2012. The date of birth mentioned in the Secondary School Certificate (Exhibit A page 10) is 1.6.1960. While entering into Government service on the basis of SSC certificate his date of birth in the service book is recorded correctly as 1.6.1960.

4. In the second week of April 2018 Applicant applied for copy of birth extract from the competent authority and the same was furnished on 13.4.2018. In the birth extract the date of birth of the Applicant is mentioned as 17.3.1961 (Exhibit B page 11-24). Equipped with this, Applicant submitted representation dated 17.4.2018 to respondent no.2 (Exhibit C page 25-26) and requested to change the date of birth recorded in service book from 1.9.1960 to 17.3.1961 as per the birth extract.

Impugned order:

5. The Respondent no.3 by his order dated 15.5.2018 rejected the said representation of the Applicant on the ground that the Applicant has

failed to apply for alteration in date of birth in his service book within a period of 5 years from the date of entry into Government service as per Rule 38 of MCS (General Conditions of Service) Rules, 1981. Para 2 and 3 of the said order dated 15.5.2018 reads as under:

“महाराष्ट्र नागरी सेवा (सेवेच्या सर्वसाधारण शर्ती) नियम १९८१ मधील नियम ३८ मध्ये नमूद तरतूदी त्याचप्रमाणे महाराष्ट्र शासन राजपत्र, २९/०१/२००९ मधील परिच्छेद क्र.१ अन्वये, दिनांक १६.०८.१९८१ रोजी किंवा त्यानंतर ज्याने शासकीय सेवेत प्रवेश केला आहे, त्या शासकीय कर्मचार्याने शासकीय सेवेत प्रवेश केल्याच्या तारखेपासून पाच वर्षांच्या कालावधीनंतर आपल्या सेवापुस्तकात किंवा सेवापटात नोंदलेल्या जन्मतारखेमध्ये फेरबदल करण्यासाठी दिलेल्या अर्जावर सामान्यतः विचार केला जाऊ नये असे नमूद आहे.

वरील नियमातील तरतूदी विचारात घेता, आपण दिनांक १३/५/१९८३ रोजी शासकीय सेवेत तलाठी या पदावर रुजू झालेले आहात. सबब महाराष्ट्र नागरी सेवा (सेवेच्या सर्वसाधारण शर्ती) नियम १९८१ मधील नियम ३८ मध्ये नमूद तरतूदी त्याचप्रमाणे महाराष्ट्र शासन राजपत्र, दिनांक २९/०१/२००९ मधील नमूद तरतूदीनुसार सेवेत रुजू झालेपासून ५ वर्षांच्या आत आपण जन्मतारीख दुरुस्तीबाबत अर्ज सादर न केलेने आपला संदर्भाधीन विनंती अर्ज निकाली ठेवणे आलेला आहे.”

(Quoted from page 30 of OA)

Prayers:

6. The Applicant has challenged the said impugned order dated 15.5.2018 in this OA and made the following prayers:

“15 (a) This Hon’ble Tribunal be pleased to hold and declare that the impugned order dated 15.5.2018 issued by respondent no.3 as illegal and bad in law and the same be quashed and set aside with further directions directing the respondents to refer the representation submitted by the petitioner seeking alteration in the date of birth to

General Administration Department and Finance Department of Government of Maharashtra for final decision.

(b) Pending the hearing and final disposal of the present Original Application, this Hon'ble Tribunal further be pleased to pass an order directing the Respondents to permit the Petitioner to discharge his duties as Government servant on the footing that the actual and real date of birth of the petitioner is 17.3.1961, with all consequential service benefits, on such terms and conditions as this Hon'ble Tribunal may deem fit and proper.

(Quoted from page 8 of OA)

Grounds of challenge:

7. The applicant has challenged the impugned order inter alia on the following grounds:

“7.1 The Petitioner submits that the order impugned dated 15.5.2018 is liable to be quashed and set aside, in as much as, the same has been decided at the level of Respondent no.3, when in fact, the representation submitted by the Petitioner dated 17.4.2018 ought to have been send to General Administration Department through Respondent No.1 for appropriate decision in the matter, albeit in accordance with law.

7.2 The Petitioner submits that the date of birth of the Petitioner recorded in the birth extract amounts to unimpeachable evidence and therefore it was incumbent on the part of the Respondents to consider the said piece of evidence with a view to alter the date of birth of the Petitioner recorded in his service book from 1.6.1960 to 17.3.1961.

7.3 The Petitioner submits that the School Leaving Certificate amounts secondary piece of evidence and between the two viz. School Leaving Certificate and Birth Extract, latter shall prevail, in view whereof, the Petitioner has made out a strong and prima facie case for alteration in his date of birth in the service book from 1.6.1960 to 17.3.1961.”

(Quoted from page 5-6 of OA)

Refutation by the Respondents:

8. Respondents in their affidavit in reply have pointed out as follows:

“3. It is true that the applicant has submitted representation on 17.4.2018 for seeking alteration/change in date of birth before the Respondent no.3. Further, the respondent no.3 has given the reply to applicant on 15.5.2018 and disposed the application.

As per the Maharashtra Civil Services Rules 1981 Rule 38(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; Instruction.—(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.”

8. The entry into service book came to be recorded by SSC certificate examination. So, as per the record applicant birth date is 1.6.1960.

16. The present applicant submitted his representation for change of birth date after a long time (near about 35 years), when one month remained for retirement. The applicant has retired from the post of gazetted officer (Nayab Tahasildar). The applicant has kept mum for last 35 years for his date of birth.

16.1 The delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order,

framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the applicant 35 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time limit within which an application is to be filed, the appellants were duty bound to correct the clerical error in recording of his date of birth in the service book.

20. The applicant is not entitled to any relief, as prayed for in the application and the application filed by the applicant is without any foundation and devoid of any merits and the same deserves to be dismissed with costs.”

(Quoted from page 32-36 of OA)

9. The Learned Presenting Officer for the respondents has relied on the judgment of the Hon'ble Supreme Court in Civil Appeal No.9704 of 2010 State of Maharashtra & Anr. Vs. Gorakhnath Sitaram Kamble & Ors. decided on 16.11.2010 and contended that no application for alteration of date of birth after five years should be entertained.

10. Issue for consideration:

Whether the order issued by Respondent No.3 is illegal and bad in law?

Discussion and findings:

11. The applicant joined the Government service on the basis of SSC certificate which mentions his date of birth as 1.6.1960. He joined the service on 14.5.1983. Thereafter he had enough time at his disposal to submit extract of the birth register. But he furnished it on 13.4.2018.

This was just at the fag end of his retirement. In this connection the Hon'ble Supreme Court in Civil Appeal No.9704 of 2010 State of Maharashtra & Anr. Vs. Gorakhnath Sitaram Kamble & Ors. decided on 16.11.2010 observed as under:

“19. These decisions lead to a different dimension 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. Kribakaran (1994) Suppl.(1) SCC155, (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 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 correction 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 make 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.”

20. In view of the consistent legal position, the impugned judgment cannot be sustained and even on a plain reading of the Notification and the instructions set out in the preceding paragraphs leads to the

conclusion that no application for alteration of date of birth after five years should have been entertained.”

12. In the instant case the Applicant has submitted his representation on 17.4.2018 which is at the fag end of his service. In view of the foregoing, I find that the impugned order issued by Respondent No.3 is legal, valid and as per the directions of the Hon'ble Supreme Court.

13. Hence, there is no merit in the OA and the same is dismissed without costs.

Sd/-
(P.N. Dixit)
Member (A)
20.7.2018

Dictation taken by: S.G. Jawalkar.