

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.742 OF 2017**

**DISTRICT : KOLHAPUR**

Shri Prakash Dattatray Kamble, )  
Assistant Conservator of Forest, in the office of )  
Deputy Conservator of Forest, Working Plan Division, )  
Kolhapur, Above Juna Rajwada Police Station, )  
Bhavani Mandap, Kolhapur )  
R/at R.S. No.592, Pancharatna Colony, E Ward, )  
Kasaba Bawada, Kolhapur 416006 )..Applicant

Versus

1. The State of Maharashtra, )  
Through the Additional Chief Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai 400032 )

2. The Principal Chief Conservator of Forest, )  
(Head of the Forest Force), M.S, )  
Vanbhavan, Ramgiri Road, Civil Lines, )  
Mumbai 440001 )..Respondents

Shri Santosh Jagtap, Advocate holding for  
Ms. Ranjana Todankar – Advocate for the Applicant  
Shri K.B. Bhise – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Member (A)  
DATE : 18<sup>th</sup> July, 2018

**J U D G M E N T**

1. Heard Shri Santosh Jagtap, learned Advocate holding for Ms. Ranjana Todankar, learned Advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

Admitted facts:

2. Applicant joined government service as Range Forest officer on selection as Range Forest Officer on 7/3/1990. He was appointed by the Government on selection by MPSC. As per School Leaving Certificate produced by the Applicant (Exhibit A1, Page 20), the authorities recorded his date of birth correctly as 20/4/60.

Prayer:

3. The applicant has made the following prayers:

*“(a) to call for the record pertaining to the decision of rejecting the request of applicant to change the service record pertaining to date of his date of birth from 20.4.1960 to 20.4.1961 vide communication dated 2.1.2017 from the respondent no.1 received by the applicant on 17.5.2017 and on verification of the same on the basis of submissions made herein above:*

*(i) to quash and set aside the same as being unjust and arbitrary and unreasonable.*

*(ii) to hold and declare on the basis of the documentary proof produced by the applicant that his correct date of birth is 20.4.1961 and not 20.4.1960 as recorded in the service record of the applicant.*

*(b) To hold and declare that the applicant is entitled to continue in service and for other service benefits and retire on superannuation as per the corrected date of birth namely 20.4.1961 and direct the respondent no.1 to grant all consequential service benefits to the applicant as if his date of birth is 20.4.1961.”*

(Quoted from page 17-18 of OA)

4. After joining the service, on 11/1/1991, Applicant claims he found one admit card of Wanless Hospital, Miraj, which states, “Hirabai Dattu Kamble (Applicant's mother) was operated for 'legation of tubes' on 21/4/61, and discharged on 29/4/61”. (Exhibit A3, page 22). He therefore. approached Miraj Municipal Council and pursuant to his application, obtained birth certificate mentioning his date of birth as 20/4/61. It states as per his application dated 11/1/91, his date of birth is 20/4/61. (Exhibit A4 and Exhibit A5, pages no 23 and 24). Equipped with these certificates mentioned above, he claims, he applied to his immediate seniors, at Sholapur, Kolhapur on 21/5/92; 21/1/95; 6/2/95; and 27/1/2000 respectively. On 18/11/2003, Deputy Director, Social Forestry, Kolhapur acknowledged his applications of 6/10/2003 and 6/11/2003 and sent it to Joint Director for necessary action. On 20/2/2016, for the first time, he applied to Principal Chief Conservator of Forest, Nagpur on 20/2/2016 for change of birth date. He was informed on 19/3/2016 to apply in the prescribed format by the Additional Principal Chief Conservator. Accordingly he complied and applied in the format on 30/3/2016.

5. The application was examined by Revenue and Forest Department and he was informed on 2/1/2017 (Exhibit A 14, page 50) as follows (para 3 and Para 4, page 50 and 51 respectively):

३. उपरोक्त प्रकरणी सामान्य प्रशासन विभागाने खालीलप्रमाणे अभिप्राय नोंदविले आहेत:-

(१) “म.ना.से. (सेवेच्या सर्वसाधारण शर्ती), नियम, १९८१ च्या नियम ३८ मधील पोटनियम (२) च्या (एफ) मधील श्री. कांबळे यांच्या प्रकरणांची तपासणी केली असता सदर नियमातील मुख्य नियमाचीच म्हणजेच श्री. कांबळे यांच्या सेवापुस्तकात त्यांच्या दि.२०/०४/१९६० चा जन्मदिनांकाची नोंद ही शासन सेवेत नियुक्तीचेवेळेस श्री. कांबळे यांनी त्यांच्या कार्यालास सादर केलेल्या शाळा सोडल्याच्या दाखल्याप्रमाणे घेण्यात आलेली असल्याचे श्री. कांबळे यांनी त्यांच्या अर्जात नमूद केले आहे. तसचे सदर नोंदीखाली श्री. कांबळे यांची स्वाक्षरीही आहे. म्हणजेच घेतलेली सदर नोंद श्री. कांबळे यांना ज्ञात होती व मान्यही होती. त्यामुळे सेवापुस्तकात जन्मदिनांकाची नोंद घेताना सदर नोंद घेणाऱ्या कर्मचाऱ्याकडून निष्काळजीपणा झाला अथवा लेखनदोष घडला अशी परिस्थिती नाही.

(२) जन्म दिनांकाची नोंद सेवापुस्तकात घेण्यात कर्मचाऱ्याकडून लेखनदोष/त्रुटी झालेली नसल्यास जन्मदिनांक बदलणे अनुज्ञेय ठरत नाही. या नियमाच्या संदर्भात मा. सर्वोच्च न्यायालयाने श्री. सी. रामास्वामी व इतर (अर्जदार) विरुद्ध युनियन ऑफ इंडिया (प्रतिवादी) दि.१४.१९९७ (४ SCC६४७) श्री. प्रेमलाल श्रीवास विरुद्ध मध्यप्रदेश सरकार (दि.१९/९/२०११), श्री भगवान

ओरिसा राज्य (दि.०३/१/१९९४) इत्यादी विविध प्रकरणी वरील नियमाचे समर्थन करणारे निरीक्षणे नोंदविली आहेत.

४. या प्रकरणी वित्त विभागाने खालीलप्रमाणे अभिप्राय दिलेली आहेत.

अ) म.ना.से. (सेवेच्या सर्वसाधारण शर्ती) नियम १९८१ नियम ३८ (२) (एफ) नुसार जन्मतारीख लिहिताना लेखनदोष झाला असल्यास व नियुक्तीपासून पाच वर्षांचे आत अर्ज केल्यास शासन अधिसूचना वित्त विभाग दि.२४.१२.२००८ अन्वये नमूद केलेल्या अटींची पूर्तता होत असल्यास शासकीय कर्मचाऱ्याच्या सेवापुस्तकात नोंदविलेल्या जन्मदिनांकात बदल/दुरुस्ती करण्याची तरतूद आहे. सामान्य प्रशासन विभागाने परि.४ व ५ मध्ये दिलेले अभिप्राय स्वयंस्पष्ट आहेत. श्री. कांबळे, सहा वनसंरक्षक यांच्या सेवापुस्तकातील जन्मतारीख लिहिताना लेखनदोष झालेला नसल्यास अन्य मुद्दे तपासण्याचा प्रश्न उदभवत नाही तरी श्री.पी.डी.कांबळे, सहा. वरसंरक्षक यांनी त्यांच्या सेवापुस्तकेत नोंदविलेल्या दिनांक २०.४.१९६० या जन्म दिनांकात २०.४.१९६१ असा बदल करता येत नाही.

५. तसेच, उपरोक्त परिच्छेद ३ व ४ मध्ये नमूद केल्याप्रमाणे सामान्य प्रशासन विभागाच्या व वित्त विभागाच्या अभिप्रायानुसार श्री.पी.डी.कांबळे, सहा. वनसंरक्षक (कार्य आयोजना-२) कार्य आयोजना-पूर्व नागपूर यांच्या सेवा पुस्तकातील जन्मतारखेत दुरुस्ती करता येणार नाही. याची कृपया नोंद घेण्यात यावी तसेच, याबाबत श्री. कांबळे यांना आपले स्तरावरून कळविण्यात यावे.”

(Quoted from page 50-51 of OA)

6. Aggrieved by the same, Applicant challenges the above mentioned impugned order (Exhibit A 14, page 52) and prays to quash and set aside the same.

Grounds of challenge:

7. The Applicant challenges this order on the ground that the Respondent has taken this decision in a casual and cursory manner. His application remained unexamined till 2016 due to apathy. Decision is based on narrow interpretation of Rule 38 (2) (f) of MCS (General Conditions of Service) Rules 1981, which reads as follows:

*“38(2)(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.”*

8. He contends that the judgments by Apex Court are not relevant as mentioned in State of Orissa Vs. Brahamarbar Senapathi (1994) 2 SCC 491; Union of India Vs. C. Rama Swamy (1997) 4 SCC 647; Commissioner of Police, Bombay Vs. Bhagwan Lahane (1997) 1 SCC 247; and State of Madhya Pradesh Vs. Premal Shrivastava (2011) 9 SCC 664. According to these judgments, the date of birth can be corrected if the applicant proves there was an *error on the part of the accepting authority in writing the date correctly* when he provided it while joining the service. (Italics added). He further contends that he had requested for change of birth date from 1992 and within five years of joining.

Refutation by Respondents:

9. Respondents 1 and 2 in their affidavit point out that the birth date namely 20/4/1960 was recorded in the service book as per the school leaving certificate submitted by the applicant and under his signature.

Secondly, the applicant did not write to the Appointing Authority, namely the government, till last but submitted the applications to Dy. Conservator of Forest, even though he is gazetted officer. There was no *error on the part of the accepting authority in writing the date correctly*. Respondents rely on the judgments by Apex Court in State of Orissa Vs. Brahamarbar Senapathi (1994) 2 SCC 491; Union of India Vs. C. Rama Swamy (1997) 4 SCC 647; Commissioner of Police, Bombay Vs. Bhagwan Lahane (1997) 1 SCC 247; and State of Madhya Pradesh Vs. Premlal Shrivastava (2011) 9 SCC 664 which state that the date of birth can be corrected if the applicant proves there was an error on the part of the accepting authority in writing the date correctly when he provided it while joining the service.

10. Issues for consideration:

- (1) Was the date of birth as recorded in his school leaving certificate and submitted by him, without his knowledge or erroneous?
- (2) Whether the Respondents have issued the impugned order without applying their mind?
- (3) Whether there was apathy on the part of the Respondents?

Findings and discussion:

11. My findings regarding the same are negative for following reasons:

As per the claim of the applicant, after joining the service, he finds 'admit card' of his mother at Wanless Hospital stating she was operated for 'ligation of tubes' on 21/4/61 and discharged on 29/4/61. On the basis of the same he applies to Miraj Municipal Council to obtain birth

certificate stating his date of birth is 21/4/61. Perusal of the admit card does not prove beyond doubt that he was born on 20/4/61 as claimed by him. Certificate obtained by him after more than thirty years appears to be afterthought and the documents furnished by him do not help in concluding that the date of birth as recorded in his school leaving certificate and submitted by him was without his knowledge or erroneous. The Respondents have issued the impugned order after careful application of mind and as per the directives in the judgments by the Apex court. Being an officer appointed by the Government, the Applicant should have approached the same as soon as he obtained the fresh certificate. Submitting one application to his departmental senior and remaining quiet about the same for years cannot be considered as serious effort to correct the wrong if any in the record so vital for him. Respondents have examined his case expeditiously and there is nothing to conclude that there was apathy on the part of the Respondents.

11. Hence there is no merit in the application and the O.A. is dismissed without costs.

Sd/-  
**(P.N. Dixit)**  
**Member (A)**  
**18.7.2018**

Dictation taken by: S.G. Jawalkar.