

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 117 OF 2021

DIST. : BEED

Sudhir s/o Ramrao Tambe,)
 Age : 56 years, Occu.: Service as)
 Circle Officer, R/o Georai,)
 Taluka Georai, Dist. Beed.) .. **APPLICANT**

VERSUS

1. **The State of Maharashtra,)**
 Through the Secretary,)
 Revenue & Forest Department,)
 Mantralaya, Fort,)
 Mumbai - 32.)
2. **The Collector, Beed.)**
3. **The Residential Dy. Collector,)**
 Beed, Collector Officer,)
 Beed.)
4. **The Tahsildar,)**
 Georai, Dist. Beed.) .. **RESPONDENTS**

 APPEARANCE :- Shri Avinash S. Khedkar, learned counsel
 holding for Shri Ajit B. Gaikwad, learned
 Advocate for the applicant.

: Smt. M.S. Patni, learned Presenting
 Officer for the respondents.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
DATE : **25th January, 2023**

ORAL - ORDER

1. Heard Shri Avinash S. Khedkar, learned counsel holding for Shri Ajit B. Gaikwad, learned counsel for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondent authorities.

2. By filing the present Original Application the applicant has prayed for quashment of the order dated 17.8.2020 issued by the then Resident Deputy Collector, Beed whereby he had rejected the application submitted by the applicant for correcting his date of birth in his service book. The applicant has also sought directions against the respondents to treat the applicant in service till 31.7.2022 in the event his date of birth is corrected in the service record as 17.7.1964 in place 21.6.1963 and consequently to pay him full salary of the said period.

3. The applicant entered into Government service as Talathi on 24.6.1985. He was promoted to the post of Circle Officer and

posted at Madalmohi under the jurisdiction of Tahsildar, Georai. It is the case of the applicant that though his correct date of birth is 17.7.1964, the same has been wrongly recorded as 21.6.1963 in the service book. It is the further case of the applicant that he came to know the said fact in the first week of October, 2014, and he immediately applied for correction in his date of birth on 4.10.2014. The applicant has claimed that along with his said application the applicant had enclosed the copies of the school admission extract issued by the Zilla Parishad Kendriya School, Tamba Rajuri and school admission extract issued by the Zilla Parishad Secondary School, Patoda.

4. It is the further case of the applicant that the Tahsildar, Gavrai vide his communication dated 6.4.2015 addressed to the Collector, Beed had stated that the date of birth of the applicant in his service book though is 21.6.1963, the date of birth mentioned in 10th standard certificate and 7th standard certificate is 17.7.1964. It is the further contention of the applicant that incorrect date of birth was recorded in the service book of the applicant because of the mistake committed by the Officer concerned at the relevant time and not because of any mistake on his part. It is the further contention of the applicant that in the school record, in the SSC certificate and in the PAN

card the date of birth of the applicant is recorded as 17.7.1964 and that is the correct date of his birth. It is the further contention of the applicant that his request for correcting his date of birth in his service book has been wrongly rejected by the respondents. The applicant has, therefore, prayed for allowing his present application in terms of the prayers made by him.

5. The respondents have resisted the contentions, as well as, the prayers made in the application. A joint affidavit in reply has been filed on behalf of the respondent nos. 2 to 4, which is sworn in by the then Naib Tahsildar in the office of the Tahsildar, Georai, Dist. Beed. The respondents have contended that the request of the applicant has been rejected mainly on the ground that he failed in filing an application for correction in his date of birth within the period of 5 years from the date of entering in the Government service. In the circumstances, according to the respondents, no error has been committed in rejecting request of the applicant vide order passed by respondent no. 3 on 17.8.2020.

6. Shri Khedkar, learned counsel holding for Shri Ajit B. Gaikwad, learned counsel appearing for the applicant submitted that while rejecting the request of the applicant on the ground

that applicant did not file an application seeking correcting in his date of birth within 5 years of his entering in Government service, the respondents have lost sight of the provision under Rule 38 (2) (f) of the Maharashtra Civil Services (General Conditions of Service) Rules, 2008. The learned counsel submitted that from the record it is apparent that incorrect date of birth has been recorded in the service book of the applicant because of want of due care on part of the officer concern in the Tahsil Office and the then Tahsildar who verified the date of birth and make an endorsement in that regard not because of any fault on part of the applicant.

7. Learned counsel invited my attention to the very first page of the service book of the applicant and pointed out the remarks endorsed thereon by the then Tahsildar, Patoda to the effect that, "date of birth verified from certificate of Secondary and Higher Secondary Education Board, Aurangabad, Certificate No. 005850 of March-1980". Learned counsel submitted that the applicant has placed on record the copy of said examination certificate, which bears a totally different number thereon and not the number 005850 as mentioned in the service book of the applicant. Learned counsel further brought to my notice that in the certificate of 10th placed on record by the applicant,

certificate No. is mentioned as 197 and in the above portion serial number is mentioned as 230. The learned counsel further submitted that in the said certificate the date of birth of the applicant is recorded as 17.7.1964. The learned counsel brought to my notice some documents also, that is the date of birth in the school record of the applicant, wherein his date of birth is recorded as 17.7.1964 and the date of his entry in school in 1st standard it shown as 27.7.1970. The learned counsel submitted that in the said certificate the applicant has been shown to have passed his 7th standard examination in the year 1977 and accordingly school leaving date is shown as 13.6.1977. The learned counsel also brought to my notice the School Leaving Certificate issued by Zilla Parishad Secondary School Patoda, wherein also date of birth of the applicant is recorded as 17.7.1964. The Xerox copy of the PAN card is also placed on record and in the PAN card also the date of birth of the applicant is recorded as 17.7.1964. The learned counsel submitted that all these documents were produced on record by the applicant before the departmental authorities along with his application for correction in his date of birth, however, without considering the said document the respondents have rejected the request of the applicant. The learned counsel submitted that as because the authorities have rejected the request of the

applicant for wrong reasons the applicant has been deprived from his right to be in service for more than a year and also for the monetary benefits of the said period. The learned counsel therefore, prayed for allowing the present Original Application in terms of the prayers made therein.

8. Learned Presenting Officer reiterate the contentions raised in the affidavit in reply filed on behalf of respondent Nos. 2 to 4. The learned P.O. submitted that the applicant was under an obligation to make an application within the period of 5 years from the date of his entry in to the Government service and since the applicant failed in submitting any such application within the said period and has submitted such an application after the long lapse of about 28-29 years, the respondents have rightly rejected the request of the applicant.

9. I have duly considered the submissions advanced on behalf of the applicant, as well as, the respondents i.e. State authorities. I have also perused the documents filed on record. It is true that instruction No. 1 under sub-rule 2 of rule 38 of M.C.S. (General Conditions of Services) Rules, 1981 provides that, "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.” However, the aforesaid instructions are to be conjointly read with the other instructions. The said instructions read thus :-

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

(1) -- -- -- -- --

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

(a) The date of birth should be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied on;

(b) In the case of a Government servant the year of whose birth is known but not the date, the 1st July should be treated as the date of birth;

(c) When both the year and the month of birth are known, but not the exact date, the 16th of the month should be treated as the date of birth;

(d) In the case of Government servant who is only able to state his approximate age and who appears to the attesting authority to be of that age, the date of birth should be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment;

(e) When the date, month and year of birth of a Government servant are not known, and he is unable to state his approximate age, the age by appearance as stated in the medical certificate of fitness, in the form

prescribed in rule 12 should be taken as correct, he being assumed to have completed that age on the date the certificate is given, and his date of birth deducted accordingly;

(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; ”

10. It is not in dispute that the applicant entered into the Government services in the year 1985. It is also not in dispute that the applicant for the first time made a grievance in the year 2014 that the date of birth as recorded in his service book is incorrect and that his correct date of birth is 17.7.1964. Thus, after about 28 years of his entry into the Government service the applicant made an application seeking correction in his date of birth. The applicant has come out with a case that for the first time in the year 2014 he came to know that his date of birth has been incorrectly recorded as 21.6.1963, whereas his correct date of birth is 17.7.1964. It is somewhat difficult to agree with the contentions of the applicant as aforesaid. However, the respondents also have not raised any such contention demonstrating that from the date of his entry in the Government service the applicant was well aware of the fact that in his service book his date of birth is recorded as

21.6.1963. On the contrary, as has been pointed out by the learned counsel for the applicant, in the order dated 20.10.2014 passed by the Collector, Beed the date of birth of the applicant is shown as 17.7.1965. The said order is in respect of giving exemption to the applicant from passing the Sub-service Departmental Examination, as well as, Revenue Qualifying Examination on completing 45 years of his age.

11. The respondents have also not denied the objections raised on behalf of the applicant that the endorsement made on the first page of his service book refers to the Secondary School Certificate pertaining to some other candidate and not of the applicant. There is reason to believe that at the relevant time the date of birth of the applicant recorded as 21.6.1963 would be of some other appointee, whose Secondary School Certificate was bearing number as 005850. The then Tahsildar, Patoda seems to have verified the date of birth as recorded in the service book of the applicant on the basis of the said certificate. In the circumstances, it appears to me that no much weightage can be attached to the fact whether the applicant came to know about the mistake occurred in recording his date of birth in the year 2014 or even prior to that.

12. Present is not the case where the applicant wanted a change in the date of birth. This is also not a case where the applicant had given a particular date at the time of his initial entry in Government service, which was later on sought to be changed by him. In fact, the office of the applicant itself had convincing material before it showing that the date of birth of the applicant is 17.7.1065. The documents which were produced at the said time were the school leaving certificates and the certificates of passing Secondary and Higher Secondary Examination by the applicant. In all these documents the date of birth of the applicant is recorded as 17.7.1965, however, in spite of that the wrong date was recorded in the service book of the applicant. At the relevant time the employee concerned has written an erroneous date of birth in the service book of the applicant without any material to support the same. The then learned Tahsildar made an endorsement on the first page of the service book towards verification of the date of birth of the applicant on the basis of the certificate of 10th standard of the number as is mentioned in the service book. Sufficient material has come on record showing that the certificate on the basis of which the then Tahsildar seems to have verified date of birth of the applicant and accordingly said date of birth has been recorded in the service book was the certificate of some other

employee and not of the applicant. In the circumstances, the respondents cannot raise an objection that the applicant had not given any application for correction in his date of birth within the period of 5 years after entering into Government service. Where it has been sufficiently proved that the office itself has recorded a wrong date of birth without any supporting material therefor the respondents cannot be permitted to take advantage of their own wrong and the applicant cannot be made to suffer for something for which he was not responsible or accountable.

13. For the reasons elaborated as above, I am inclined to allow the present Original Application. It is the fact that the applicant was subjected to retire on 30.6.2021 assuming to have attained the age of superannuation on the basis of the date of birth recorded in his service book as 21.6.1963. Had his date of birth corrected by the respondents on the basis of the representation submitted by the applicant supported by all relevant documents and instead of rejecting the said representation vide order 17.8.2020 had allowed his said representation, the applicant would have continued in service till 31.7.2022. The applicant has been admittedly deprived of the salary and allowances of the said period. The applicant has prayed for remittance of the

monetary benefits of the said period. However, while in the arguments advanced on behalf of the applicant the learned counsel for the applicant has submitted for passing appropriate order as the Tribunal may deem fit. Having regard to the fact that admittedly the applicant did not discharge any duty of the said post, I am not holding the applicant entitled for pay and allowances of the said period. However, the said period i.e. from 30.6.2021 to 31.7.2022 has to be considered for the purposes of pension and the applicant is definitely entitled for the increment, which fell due in the aforesaid period and consequently the revision in the amount of pension on the basis of increment so earned by the applicant. In the result, I pass the following order :-

ORDER

- (i) Impugned order dated 17.8.2020 is quashed and set aside.
- (ii) Respondents are directed to correct the date of birth of the applicant as 17.7.1964 in place of 21.6.1963 in the service book, as well as, in the related other service record.
- (iii) Consequently the applicant shall be notionally held in service till 31.7.2022 and is held entitled for the notional increments, which fell due during the said period.

(iv) The respondents are directed to revise the pension of the applicant on the basis of his last drawn pay and release the payable arrears in favour of the applicant within 3 months from the date of this order.

(v) The applicant is not entitled for pay and allowances of the period from 1.7.2021 to 31.7.2022.

(vi) The Original application stands allowed in the aforesaid terms, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 25.1.2023