

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 827 OF 2016**

**DISTRICT: BEED**

**Shri Syed Asifuddin s/o Syed Mohammed ,**  
Age: 54 years, Occu. : Service,  
(As Assistant Police Inspector)  
R/o : Qazi Nagar, Jalna Road,  
Dist. Beed.

.. **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,**  
Through, the Additional Chief Secretary,  
Home Department,  
Mantralaya, Mumbai -400 032.
- 2) **The Director General of Police,**  
Maharashtra State,  
Mumbai.
- 3) **The Superintendent of Police,**  
Beed.

.. **RESPONDENTS**

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**APPEARANCE** : Ms. Preeti R. Wankhade, learned Advocate for  
the Applicant.

: Shri M.P. Gude, learned Presenting Officer for  
the Respondents.

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**CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)**  
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**O R D E R**

**(Delivered on this 3<sup>rd</sup> day of May, 2017.)**

1. The applicant has challenged the order dated 15.06.2016 issued by the respondent no. 2 rejecting the application for correction of date of birth in the service record.

2. The applicant entered in the service of respondent no. 1 on the post of Police Constable on 12.05.1980. He was promoted as Head Constable in the year 1992 and in the year 2001 he was promoted as Police Sub-Inspector. In the year 2011, he was again promoted as Assistant Police Inspector and since then he is serving in that cadre.

3. It is the contention of the applicant that at the time of entry in the service, he has submitted school leaving certificate in which his date of birth has been recorded as '24.04.1960'. On the basis of that entry, his date of birth has been recorded in his service record. It is his contention that he rendered service sincerely, efficiently and bonafidely. He received 230 rewards for his good work, one Police Medal and 12 certificates in his service tenure. It is his contention that in the year 2009 in a family discussion he came to know that his actual date of birth is 20.04.1962 and not 24.04.1960 as recorded in the service record. In fact, 24.04.1960 is the date of marriage of his parents. Therefore, he made enquiry with the Wakf Board about registration of marriage of his parents and that time he found that the marriage of his parents had been performed on 24.04.1960. He collected the copies of relevant record on 15.12.2009 and thereafter, he immediately submitted an application on

18.12.2015 along with the copy of the marriage certificate of his parents and affidavit of his father stating that the correct date of birth is '20.04.1962' to the respondent no. 3 for correction of date of birth recorded in the service record. The respondent no. 2 had rejected his application on the ground that it was not filed within five years from the date of entry in service and he did not fulfill the criteria laid down in Rules of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 on 18.06.2016. It is contention of the applicant that the said order is against the provisions of Rule 38 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981. In view of the instruction Nos. 1 and 2 to Rule 38, an employee, who has entered in the Government service on or after 16<sup>th</sup> August, 1981, should apply within a period of five years from entry in the service and if he produces the copy of the original birth register such proof 'should' be considered as an unquestionable proof for change of date of birth. It is contention of the applicant that the respondent no. 2 has not considered the said provisions with proper perspective. Said provision is not applicable to the applicant, as he entered in the service in the year 1980 i.e. prior to 16<sup>th</sup> August, 1981. It is his contention that the respondents ought to have allowed the application considering the fact that the date of birth mentioned in the service record as '24.04.1960' is in fact date of marriage of

his parents and his original date of birth is 20.04.1962 as per the affidavit filed by his father but the respondent no. 2 had rejected the application wrongly. Therefore, he approached this Tribunal with a prayer to quash and set aside the impugned order dated 15.06.2016 passed by respondent no. 2.

4. The respondent nos. 2 and 3 have filed affidavit in reply and resisted the contention of the applicant. They have contended that the applicant has joined the service as Police Constable on 12.05.1980 and he was promoted as Police Head Constable in the year 1992 and thereafter, he was promoted as Police Sub Inspector on 30.04.2001 and lastly promoted as Assistant Police Inspector in the year 2011. It is their contention that when the applicant was serving as Police Constable, his date of birth has been recorded in the service record as 24.04.1960 on the basis of school leaving certificate produced by the applicant and it was authenticated by the applicant by putting his thumb impression in the service book. As per the said date of birth, the date of superannuation of applicant is 30.04.2018. The applicant made representation on 22.12.2015 to the S.P. Beed, with a request to correct his date of birth in his service record as '20.04.1962' in stated of '24.04.1960'. After due consideration, the respondents took a conscious decision and communicated the

decision to the applicant by letter dated 15.06.2016. It is their contention that in view of Clause (f) of Sub Rule (2) of the Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, “when once entry of age or date of birth has been made in a service book, no alteration of the entry should afterward 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 their contention that the date of birth of applicant has been recorded in the service record as ‘24.4.1960’ on the basis of school leaving certificate produced by the applicant and now the applicant seeks correction in it after rendering 35 years of service and that too at the fag-end of his service and therefore, in view of the various decisions of the Hon’ble Apex Court such correction cannot be allowed. The impugned order passed by the respondent no.2 is just, proper, correct and legal. The present O.A. is devoid of any merits and therefore, they urged to reject the same.

5. It is their contention that the applicant came to know about his original date of birth on 15.12.2009 when he collected marriage certificate of his parents on 15.12.2009 from Wakf Board but he filed the application for correction of date of birth on 18.12.2015 which was barred by limitation. On that ground also

it is liable to be dismissed. It is their contention that even it is presumed that he was born on 20.04.1962 in that case he was 18 years and one month old at the time of entry in the service and therefore, the averments raised by the applicant does not absolve the applicant from the parameters of the ratio laid down by the Hon'ble Supreme Court of India. Therefore, the contention of the applicant are not maintainable. On these grounds they have claimed dismissal of the O.A.

6. Heard Ms. Preeti Wankhade, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have perused the affidavit, affidavit in reply, rejoinder affidavit, citations, Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and various documents placed on record by the respective parties.

7. Learned Advocate for the applicant has submitted that the applicant was born on 20.04.1962, but on the basis of school leaving certificate, his date of birth in the service record has been recorded as '24.04.1960'. She has submitted that in the year 2009 he came to know that the date of birth i.e. 20.04.1962 recorded in the service record is in fact the date of marriage of his parents and therefore, he collected marriage certificate of his parents from

Wakf Board on 15.12.2009, wherein the date of marriage of his parents is shown as 24.04.1960. He has submitted that as the marriage of his parents took place on 24.04.1960, his correct date of birth is 20.04.1962 as informed by his father and therefore, he filed the application dated 18.12.2015 with the respondent no. 2 for correction of his date of birth in his service record as '20.04.1962' in place of '24.4.1960'. He has submitted that respondent no. 2 has rejected the application on the ground that it had not been filed within five years from the date of entry in the service and he had not fulfilled the criteria laid down in the Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. The learned Advocate for the applicant has argued that in view of the instruction nos. 1 & 2 to Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, an employee, who has entered in service on or after the 16<sup>th</sup> August, 1981 should apply within a period of five years commencing from the date of his entry in service and if he produces the copy of the original birth register where his name and date of birth has been entered as per the rules 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. She has also argued that the applicant has entered in the service on 12.05.1980 and therefore, the

instruction (1) to Rule 38 (2) is not applicable to him and therefore, the order under challenge is not legal and proper. She has submitted that the affidavit of applicant's father is sufficient proof of his date of birth and therefore, the respondent no. 2 ought to have relied on the affidavit of his father and corrected the date of birth of the applicant in his service record. But he has not considered the said aspect and has passed the impugned order dated 15.06.2016.

8. Learned Advocate for the applicant has further submitted that the applicant approached the concerned authorities for correction of date of birth as soon as he receives the information in that regard and therefore, the respondent no. 2 ought to have considered the delay sympathetically and allowed the application. In support of her submission, she has relied on the judgment of Hon'ble Supreme Court in the case of **Mohd. Yunus Khan Vs. U.P. Power Corporation Ltd. and Ors.** reported in **(2009) 1 SCC 80**. She has also placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in case of Rajendrasingh Tarasingh Dodi Vs. The State of Maharashtra and others in W.P. No. 5372/2014 decided on 20.12.2014 wherein judgments in case of **M/s. Bharat Coking Coal Ltd. and Ors. Vs. Chhota Birsa**



**Uranu**, reported in 2014 **SIR SCW 2634** has been relied on. She has also relied on judgment in the case of **Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran**, reported in **(1994) Suppl. (1) SCC 155** and **State of Punjab Vs. S.C. Chadha** reported in **2004(3) S.C.C. 394**. She has submitted that in view of the said decisions, the claim of the applicant for correction of date of birth cannot be rejected on technical ground and therefore, she prayed to allow the present O.A. and prayed to quash and set aside the impugned order dated 15.06.2016 and also prayed to direct the respondent no. 2 to record the correct date of birth as '20.04.1962' of the applicant in his service record on the basis of his representation.

9. Learned Presenting Officer has submitted that the applicant has joined the service in the year 1980 stating that his age was 18 years. He submitted the school leaving certificate as a proof of his date of birth. After verification of the school leaving certificate, his date of birth has been recorded as '24.04.1960' in his service record and his thumb impression has been obtained in the service record. The applicant worked for about 35 years and he never challenged the date of birth recorded in his service record. But he filed the representation on 18.12.2015 after more than 35 years after entry in service for correction of his date of

birth. He has submitted the applicant submitted the application at belated stage and that too at the fag-end of his service. No documentary evidence to support his contention that his actual date of birth is '20.04.1962' has been produced by the applicant along with his representation. He has relied on the marriage certificate issued by the Wakf Board regarding marriage of his parents showing that their marriage has been performed on 24.04.1960. He has submitted that the Hon'ble Apex Court time and again has held that in the matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of date of birth in the service book. In support of his submission he has placed reliance on the judgment delivered in

the case of State of M.P. and Ors. Vs. Premlal Shivas reported in 2011-(SC1)-GJX-0872-SC wherein it is observed as under:-

*“9. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to the aid of those who sleep over their rights (See: Union of India Vs. Harnam Singh).”*

In the above said decision, it is further observed as follows:-

*“10. In Secretary And Commissioner, Home Department & Ors. Vs. R. Kirubakaran, indicating the factors relevant in disposal of an application for correction of date of birth just before the superannuation and highlighting the scope of interference by the Courts or the Tribunals in such matters, this Court has observed thus :*

*"An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public*

*servant concerned. 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 their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. 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. Before any such direction is issued, the court or the tribunal 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 the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question*

*arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior." (Emphasis supplied)*

It has been further observed in the said decision as follows:-

*"15. In Commissioner of Police, Bombay and Anr. Vs. Bhagwan V. Lahane, this Court has held that for an employee seeking the correction of his date of birth, it is a condition precedent that he must show, that the incorrect recording of the date of birth was made due to negligence of some other person, or that the same was an obvious clerical error failing which the relief should not be granted to him. Again, in Union of India Vs. C. Rama Swamy & Ors., it has been observed that a bonafide error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded."*

10. Learned Presenting Officer has attracted my attention towards the provisions of Rule 38 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981, wherein the procedure for writing the events and recording the date of birth in the service book has been laid down. He has drawn my attention to the Clause (f) of Sub Rule (2) of Rule 38, wherein it has been mentioned that “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.” He has submitted that no evidence has been placed on record by the applicant to show that the entry regarding his date of birth was wrongly recorded in the service record due to negligence of other persons. Therefore, correction as prayed for in the service record more particularly regarding the date of birth of the applicant cannot be allowed. He has argued that the respondent no. 2 has rightly rejected the representation of the applicant and therefore, no interference is called for in the said order.

11. I have gone through the provisions of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 of Sub Rule (2) of Rule 38 which provides procedure for writing the

events and recording the date of birth in the service book. Clause (f) of Sub Rule (2) of Rule 38 is material and that has to be taken into consideration while making correction and change of date of birth and which is reproduced as under:-

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

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*(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.”*

No doubt, the Sub Rule (2) is not applicable in this case, as the applicant has joined service on 12.05.1980 i.e. much before 16<sup>th</sup> August, 1981, as mentioned in the instruction no. (1). Therefore, there is no bar to entertain the application i.e. representation dated 18.12.2015.

12. The date of birth of the applicant has been recorded in the service record on the basis of school leaving certificate produced by him and necessary entry has been made in the service record of the applicant on the information supplied by the

applicant himself and that has been attested by him by putting his thumb impression on it. Provisions of Rule 38(2)(f) provides that 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. In the instant case, the applicant has not produced concrete evidence to show that his date of birth recorded in the service record i.e. '24.04.1960' was due to negligence of other persons. He has failed to produce birth record showing that he was born on 20.4.1962 as contended by him. No birth record or copy of original birth register has been produced by him to substantiate his contention. In the absence of documentary evidence, it cannot be said that his incorrect date of birth has been recorded in the service record that too on the information given by other person. Therefore, the date of birth recorded in the service record cannot be corrected in view of the provisions of Rule 38 of Maharashtra Civil Service (General Conditions of Services) Rules, 1981.

13. The applicant has relied on the affidavit of his father stating that 24.04.1960 was the date of his parents' marriage and he produced the marriage certificate issued by the Wakf Board in



that regard. According to his father's affidavit, his actual date of birth is 20.4.1962 but no sufficient evidence has been placed on record to substantiate the contention of the applicant and therefore, contention of the applicant in that regard is not acceptable. The respondent no. 2 has rightly rejected the application of the applicant for correction of his date of birth in the service record and there is no illegality in the impugned order.

14. I have gone through the decisions referred by the learned Advocate for the applicant as well as respondents. I have no dispute regarding settled legal principles laid down therein. It is settled principle that the Court or the Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of the service book.

15. Principles laid down in the decision relied by the learned Presenting Officer are most appropriately applicable in this case. The applicant has not established that his date of birth has been wrongly recorded in the service record and therefore, he is not entitled to correct it after serving for 35 years. On the contrary, the date of birth of the applicant i.e. 24.04.1960 has been recorded in his service record on the basis of school leaving certificate and therefore, it cannot be corrected unless the applicant establishes that it has been wrongly recorded due to want of care on the part of other person than him.

16. It is also material to note that the applicant has joined service on 18.05.1980. Even if it is accepted for the sake of arguments that he was born on 20.04.1962 in the case he was 18 years and 22 days old on the date of his joining. Prior to that, recruitment process for the post of Police Constable might have been completed. Definitely it might have been completed before 2 and 3 months prior to joining to post by the applicant. The applicant had admitted at bar that at the relevant time the minimum age for the post of Police Constable was 18 years. In order to file application for appointment on the post of Police Constable, the concerned ought to have completed 18 years, at the time of applying the post. In these circumstances, the

applicant might not have completed 18 years at the time of filing the application if his date of birth is considered as 20.04.1962. Therefore, in that circumstance also the applicant's claim must fail as the applicant had not completed 18 years of his age at the time of filing his application. On that ground also I do not find any merit in the contentions raised by the applicant.

17. There is no illegality in the impugned order dated 15.06.2016 passed by the respondent no. 2 rejecting the application of the applicant for correction of date of birth in the service record. The respondent no. 2 had rightly rejected the application as the applicant has not produced the satisfactory evidence in support of his contention. Therefore, no interference is called for in the impugned order. There is no merit in the present O.A. Consequently, it deserves to be dismissed.

18. In view of the above said facts and circumstances, the O.A. stands dismissed with no order as to costs.

**(B.P. PATIL)**  
**MEMBER (J)**