

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.966 OF 2018

DISTRICT : NANDED

Suman d/o Sidram Kamble,)
Age: 50 years, Occu: Service as Constable,)
R/o. Police Head Quarter, Vazirabad,)
Nanded, Tq. & Dist. Nanded.)...**Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Home Department,)
Maharashtra State,)
Mantralaya, Mumbai -32.)
2. **The Inspector General of Police,**)
Maharashtra State (Mumbai),)
Shahid Bhagatsingh Marg, Colaba,)
Mumbai – 400 001.)
- (3. **The Police Commissioner,**)Deleted as per leave
(Police Commissioner Office,)of the Tribunal on
(Aurangabad.)24-12-2018
4. **The Special DIG, Nanded,**)
Kautha, Nanded.)
5. **The Superintendent of Police,**)
Superintendent of Police Office)
Nanded.)...**Respondents.**

Shri Rajendra M. Lone, Advocate for the Applicant.

Shri D.R.Patil, Presenting Officer for the Respondents.

CORAM : **B. P. PATIL, ACTING CHAIRMAN**
RESERVED ON : **13.11.2019.**
PRONOUNCED ON : **16.11.2019.**

ORDER

1. The Applicant has challenged the order dated 17.04.2018 issued by the Respondent No.5 rejecting her application for correction in date of birth recorded in service record by filing the present O.A.

2. The applicant has joined services of the respondent no.5 on 23-02-1991 when she was 24 years, 11 months and 17 days old. After joining service as Police Constable, her service record has been maintained by the respondent no.5. On the basis of School Leaving Certificate of the applicant her date of birth has been recorded as 01-01-1961. It is her contention that the said date of birth recorded in the service record is not correct and therefore, she informed the department to change her date of birth but the concerned department had not paid heed to her request. Therefore, her date of birth continued in the service book as 01-01-1961.

3. It is her further contention that in the month of May, 2018 she filed an application to the respondent no.1 stating that her

parents had 8 children. Out of those 8 children, 2 daughters have died and now the applicant has 2 brothers and 3 sisters. She has submitted that her parents are also dead. Her parents were illiterate and therefore they did not know exact date of birth of the children. They were not aware of the date of birth of their children recorded by the school authorities while admitting in the school.

4. It is her contention that her brother Suryakant Sidram Kamble is elder to her and his date of birth is 03-05-1962. Though she is younger to her brother Suryakant, her date of birth has been wrongly recorded in the service record as 01-01-1961, which shows that she is elder than Suryakant.

5. It is her contention that as per the provisions of Police Manual, the concerned official should have made endeavor to get evidence regarding her date of birth i.e. extract from the Birth and Death Register, horoscope etc. while recording date of birth of employee in service book but the concerned office has not made any efforts in that regard. It is her contention that she found horoscope prepared by Shri Gunderao s/o. Tulshiram Cherekar, r/o. Holi, Nanded which shows that her date of birth is

19-12-1968. Therefore, she had applied to correct the date of birth in the service record by filing a representation but the respondent no.5 has rejected the same and informed her by the impugned communication. It is her contention that the respondent no.5 has not considered the provisions properly while considering her application and has wrongly rejected the application. Therefore, she has approached this Tribunal for quashing and setting aside the impugned order issued by the respondent no.5 dated 17-04-2018 by filing the present O.A.

6. Respondent nos.4 and 5 have filed their affidavit in reply and resisted the contentions of the applicant. They have denied that at the time of joining the service, applicant was aged about 24 years, 11 months and 17 days. They have admitted the fact that the applicant was selected as Police Constable on the establishment of respondent no.5 and she has joined on 23-02-1991. It is their contention that at the time of joining service she has produced school leaving certificate of Shri Shivaji High School, Nanded as proof of her date of birth, wherein her date of birth has been mentioned as 01-01-1961. On the basis of the said document, her date of birth has been recorded as 01-01-1961 in the service book.

7. They have denied that the applicant had informed to change her date of birth but the concerned department has not paid heed to her request. On 15-03-2018, applicant had filed representation with the respondent no.5 for correction in the date of birth in the service record for the first time. Said application had not been filed within 5 years of joining the service as required in view of the provisions of Rule 38(2)(1) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. Since the applicant has not filed the application within stipulated time, respondent no.5 rejected her request by communication dated 17-04-2018. It is their contention that there was no human error or clerical error while recording the date of birth of the applicant in the service book. Therefore, her application was rejected. It is their contention that as per the service record, the applicant is due for retirement on completion of her age of superannuation w.e.f. 31-12-2018. The applicant was aware about it and therefore she had filed an application for correction of date of birth in the service record when she was on the verge of retirement.

8. I have heard Shri Rajendra M. Lone, learned Advocate for the Applicant and Shri D.R.Patil, learned Presenting Officer for

the Respondents. I have perused the documents placed on record by the parties.

9. Admittedly, the applicant joined the service on the establishment of respondent no.5 on 23-02-1991 as a Police Constable. Admittedly, at the time of joining service, she has produced school leaving issued by Shri Shivaji High School, Nanded as proof of her date of birth. In the said school leaving certificate, her date of birth has been mentioned as 01-01-1961. On the basis of the said document produced by the applicant, her date of birth has been recorded as 01-01-1961 in the service record maintained by the respondent no.5. Admittedly, as per the said date of birth she has retired w.e.f. 31-12-2018 on attaining age of superannuation. Admittedly, the applicant had not raised any grievance regarding her date of birth recorded in the service till filing the representation dated 15-03-2018. For the first time on 15-03-2018, she moved an application for correction of date of birth recorded in the service record. Admittedly, the respondent no.5 rejected the said representation and informed the applicant in that regard by communication dated 17-04-2018.

10. Learned Advocate for the applicant has submitted that the parents of the applicant were illiterate. They had 8 children. Out of those 8 children, 2 daughters have died and at present the applicant has 2 brothers and 3 sisters. He has submitted that the parents of the applicant were illiterate and therefore they did not know the exact dates of birth of their children. He has argued that the date of birth of the applicant has been recorded in the service record by the school authorities and it was not the correct date of birth of the applicant. He has submitted that at the time of joining the service, the applicant was not possessing any record regarding her date of birth except school leaving certificate. Therefore, her date of birth has been recorded as 01-01-1961 on the basis of school leaving certificate. He has submitted that, in fact, the parents of the applicant had got prepared a horoscope of the applicant from Shri Gunderao s/o. Tulshiram Cherekar, r/o. Holi, Nanded which shows that her date of birth is 19-12-1968. But the said document was misplaced and the applicant found it in the year 2018. In the said horoscope (which is at paper book page 40), the date of birth of the applicant has been mentioned as 19-12-1968. He has submitted that on the basis of the same, the applicant moved an application to the respondent no.5 and prayed to correct her date

of birth in school record but the respondent has not considered the said aspect and rejected the application by the impugned communication. He has submitted that the impugned order is illegal and is in contravention of the provisions of Rule 38(2)(1) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981.

11. Learned Advocate for the applicant has further submitted that in fact the date of birth of the Government employee has to be recorded on the basis of Birth and Death Register maintained by the Government authorities. The Respondent no.5 has not insisted the applicant to produce the same and relied on the school leaving certificate. Therefore, the date of birth of the applicant has been wrongly recorded as 01-01-1961. He has submitted that the respondent no.5 has not considered the said aspect, and therefore, he has prayed to quash and set aside the impugned order and correct the date of birth of the applicant as 19-12-1968 instead of 01-01-1962 in the service record.

12. Learned P.O. has submitted that the date of birth of the applicant has been recorded in the service record when the applicant joined on 23-02-1991 on the basis of documents

furnished by the applicant i.e. School Leaving Certificate of Shri Shivaji High School, Nanded as proof of her date of birth, wherein her date of birth has been mentioned as 01-01-1961. He has submitted that the applicant was aware about the said fact but she has not made any representation or request for correction of the date of birth in service record within 5 years from the date of her joining service as provided under Rule 38(2)(1) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. He has submitted that there was no human or clerical error while recording the date of birth of the applicant and therefore the same cannot be corrected. The applicant moved an application in the year 2018 when she was on the verge of retirement for correction of date of birth. Said application is time barred, and therefore, respondent no.5 has rightly rejected the application and informed the applicant by the impugned communication. He has further argued that the applicant had not filed extract of Birth and Death Register or any other reliable document in support of her contention in the representation. Therefore, the respondents rejected her representation. He has submitted that there is no illegality in the impugned communication and therefore, prayed to reject the O.A.

13. On perusal of the record, it reveals that the applicant joined service as Police Constable on the establishment of the respondent no.3 on 23-02-1991. At the time of joining service, she produced School Leaving Certificate of Shri Shivaji High School, Nanded as proof of her date of birth. In the said School Leaving Certificate, her date of birth has been mentioned as 01-01-1961. On the basis of the said document, her date of birth has been recorded as 01-01-1961 in the service book. There was no clerical mistake or error while recording the date of birth of the applicant in her service record. Moreover, the applicant has not made any representation or application with the respondent no.5 for correction of date of birth recorded in the service record within 5 years of her joining service as provided under Rule 38(2)(1) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981.

14. Applicant has moved a representation for the first time on 15-03-2018 for correction of date of birth recorded in the service record. A copy of the application is at paper book page 56. In that representation also there is no mention regarding the horoscope prepared by one Shri Gunderao s/o. Tulshiram Cherekar, r/o. Holi, Nanded. Had it been a fact that she was in

possession of the said horoscope at the relevant time then definitely she would have mentioned the said fact in the representation dated 15-03-2018 but the fact is different. As the application dated 15-03-2018 was not filed within the stipulated period in view of the provisions of Rule 38(2)(1) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, the respondent no.5 has rightly rejected her representation and informed the applicant by the impugned communication dated 17-04-2018. The applicant had not filed reliable and admissible evidence like extract of Birth and Death Register in support of contention. Therefore, respondent no.5 has rightly rejected her application.

15. Now, the applicant has placed reliance on the horoscope, copy of which is at paper book page 40. On perusal of the same, it reveals that it has been prepared at the time of death of the applicant wherein the year as per the Hindu calendar has been mentioned as Shake 1980. In fact as per the Hindu calendar, presently Shake 1941 is running. Therefore, it reveals that the document i.e. horoscope has been prepared subsequently and it is concocted one. Therefore, said document is not much useful to the applicant to establish her correct date of birth. Therefore,

the said document also cannot be relied upon. The applicant has not moved an application within stipulated period. She moved the application for correction of date of birth in service record when she was on the verge of retirement. Therefore, respondent no.5 has rightly rejected her application for correction in date of birth.

16. Considering the above facts, in my view there is no illegality in the impugned communication. Hence, no interference is called for in the same. There is no merit in the O.A. Consequently, it deserves to be dismissed.

17. In view of the discussion in the foregoing paragraphs O.A. stands dismissed without any order as to costs.

PLACE :- AURANGABAD.

DATE :- 16.11.2019

**(B.P. PATIL)
ACTING CHAIRMAN**

YUK SB O.A.NO.966 of 2018 date of birth