

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 433 OF 2022

DISTRICT : HINGOLI

Prakash s/o Bhimrao Kamble,)
Age : 41 Years, Occu. : Service,)
R/o. Plot No. 24, Samrat Ashok Housing)
Society, Near Pethe Nagar, Bhavsingpura,)
Aurangabad, Tq. Dist. Aurangabad.)

.... **APPLICANT**

V E R S U S

01. **The State of Maharashtra,**)
Through Charity Commissioner,)
Maharashtra State, 3rd Floor, 83,)
Dr. Annie Besant Road, Worli, Mumbai-400018)

02. **The Assistant Charity Commissioner,**
Hingoli Division Hingoli, Office at Plot No. 3,)
Naik Nagar, in front of Collector Office,)
Hingoli, Tq. Dist. Hingoli-431513.)

... **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, Counsel for Applicant.

: Shri D.M. Hange, Presenting Officer for
respondent authorities.

CORAM : **Shri A.N. Karmarkar, Member (J)**

RESERVED ON : **19.03.2025**

PRONOUNCED ON : **21.03.2025**

O R D E R

1. By filing present Original Application, this applicant is seeking relief of quashing and setting aside impugned communication dated 10.07.2018, thereby respondent

authorities refused to accept the prayer of change in date of birth of the applicant. The applicant has also prayed for direction to the respondents to reconsider the claim of the applicant for correction of date of birth.

2. The applicant was appointed as Supervisor on 25.06.2014 in the office of respondent No. 2. As per available record, the date of birth of applicant came to be recorded in the service book as 25.06.1976. Immediately after joining the service but within five years of joining, the applicant has submitted application dated 15.04.2015 for correction of his date of birth in the service record as 25.12.1979 instead of 25.06.1976. Birth certificate issued by Gram Panchayat Shendurjana (More) and Government Gazette dated 04.08.2011 were also attached. Subsequently, the applicant has again submitted applications dated 30.05.2016, 21.09.2017 and 31.03.2018 for correction in his date of birth. He has also pointed out that date of birth of his elder brother is 01.08.1975 and date of birth of the applicant is 25.06.1976, which is not possible. On receipt of applicant's application dated 31.03.2018, respondent No. 1 issued impugned communication dated 10.07.2018 and arrived on wrong conclusion. While rejecting the claim of application, the provisions of relevant rules are not considered by the respondent

authorities that the application is filed within five years. Thus the applicant has prayed to allow the present Original Application.

3. Respondent Nos. 1 and 2 have filed affidavit in reply. According to them, the connection about appointment of the applicant as Supervisor on 25.06.2014 is incorrect. He was appointed as Inspector on 09.07.2014. According to the respondents, the applicant has produced all the documents relating to date of birth as 25.06.1976 at the time of his appointment. The applicant had not given any explanation as to why he has not filed application for correction of date of birth for so many days.

4. The applicant has filed rejoinder affidavit. He has submitted that in Original Application he has wrongly mentioned that he was appointed as Supervisor. His date of appointment is 25.06.2014 on the post of Inspector. According to the applicant, he has produced transfer certificate (TC) at the time of his appointment in the year 2014, in which the date of birth is mentioned as 25.06.1976. According to the applicant, he has realized the mistake in his date of birth after one year of joining the service. So immediately as per the provisions under Rule 38 of Maharashtra Civil Services (General Conditions of Services)

Rules, 1981 (for short the Rules of 1981), he moved an application dated 15.04.2015 along with birth certificate dated 19.05.2004 issued by the Gram Panchayat Sendurjana (More), Tq. Mangulpeer, Dist. Washim and Government Gazette dated 04.08.2011 (page Nos. 13 and 14 respectively). Learned counsel for the applicant has submitted that without considering the record, his claim for correction in date of birth is rejected by the respondent authorities. Secondly, the application requesting change in date of birth was filed within one year of joining the service. In support of his submissions, learned counsel has relied on the decision of Hon'ble High Court of Bombay in a case of **Vasudha Gorakhnath Mandvilkar Vs. City and Industrial Development Corporation of Maharashtra Ltd., 2008(5) Mh.L.J. 147**. The said order of Hon'ble High Court was challenged by the CIDCO before the Hon'ble Supreme Court. Said order in a case of **CIDCO Vs. Vasudha Gorakhnath Mandevlekar, (2009) 7 Supreme Court Cases 283** is also referred by learned counsel for the applicant. Learned counsel has also relied on the judgment of Principal Seat of this Tribunal at Mumbai in **O.A. No. 490/2021 (Shri Ghanhasham K. Patil Vs. The State of Maharashtra and Ors.)**.

On the other hand, learned Presenting Officer has submitted that documents showing date of birth of the applicant

as 25.06.1976 at the time of joining service. The applicant has not placed on record SSC Board certificate along with the present Original Application. She has also submitted that birth certificate from Gram Panchayat seems to have been obtained on 19.05.2004 i.e. after 28 years. Learned P.O. thus prayed for rejection of present Original Application.

5. I have heard Shri K.B. Jadhav, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities. Both the parties have submitted as per their respective contentions.

6. The applicant has come with a case that within one year from the date of joining the service he has filed application to his office for change in his date of birth in the service book as 25.12.1979 instead of 25.06.1976. Secondly he has come with a case that subsequently he has forwarded some representations for allowing his earlier request. The respondent No. 1 has come with an erroneous conclusion while passing the impugned order dated 10.07.2018 that there is delay in filing application for correction in date of birth.

On the other hand, respondents have come with a case that the date of birth of the applicant as 25.06.1976 was

recorded on the basis of documents showing his date of birth as 25.06.1976 at the time of joining the service by applicant.

7. It is undisputed fact that the applicant was appointed as Inspector on 09.07.2014. It is also undisputed that the applicant has filed application for correction in date of birth subsequent to joining his duties. On perusal of the applications dated 15.04.2015 and 21.09.2017, the contentions were raised by the applicant that his date of birth as 25.06.1976 was wrongly recorded in the school record due to illiteracy of his parents. He has also contended in his application that his date of birth as 25.12.1979 was recorded in Government Gazette. The present applicant has not mentioned about birth certificate obtained from Gram Panchayat in his applications dated 15.04.2015 and 21.09.2017. Subsequently, the applicant seems to have mentioned about having birth certificate from Gram Panchayat in another application dated 31.03.2018. The applicant seems have conveniently avoided to mention in the present Original Application as to on what basis his date of birth as 25.06.1976 was recorded in the service book. The respondent Nos. 1 and 2 have contended that while joining the service, the applicant had produced documents showing his date of birth as 25.06.1976. The applicant has also not filed his school record or SSC Board

Certificate in the present Original Application for the reasons best known to him. Therefore, the original service book of the applicant was called. It appears from the first page of service book that the date of birth as 25.06.1976 was recorded on the basis of SSC passing certificate. This page bear signature of present applicant and Assistant Charity Commissioner, Hingoli. So it is clear that on the basis of school record, the date of birth of the applicant was recorded in the service book. The main contention of the applicant is that he has filed application for correction in his date of birth in the service book as required by relevant Rule 38 (2) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981.

8. The applicant has mentioned in his representation dated 31.03.2018 that he has obtained birth certificate from Gram Panchayat Shendurjana (More), Tq. Manglurpir, Dist. Washim and on that basis, he got corrected his date of birth in the Government Gazette dated 04.08.2011. It appears that the alleged entry of birth i.e. 25.12.1979 was taken on 19.05.2004 as per the birth extract issued by the Gram Panchayat (Annexure A-2 coll., page No. 13 of paper book). The applicant has not explained as to why this birth date was recorded after more than 28 years and which documents were produced before the Gram

Panchayat while taking entry. If birth extract which was obtained in May, 2004 and Government Gazette copy dated 04.08.2011 were available with the applicant much before joining his service, but he has not brought it to the notice of concerned department at the time of joining. On this basis itself, the claim of the applicant does not appear to be *bona-fide*.

9. So far as claim of the present applicant is concerned, the provisions of Rule 38(2) of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 need to be reproduced :-

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

(1)

(2) *After the commencement of Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 1981 while recording the date of birth, the following procedure should be followed :*

(a)

(b) *After an entry of date of birth is recorded in a service book no alteration of the entry shall be allowed, unless it is known, that the entry was due to want of care on the part of some person other than the person in question or is an obvious clerical error :*

Provided that, for the contingencies specified in this clause, the application shall not be entertained after a period of one year commencing from the date of his entry in the Government service.

Instructions. (1) If the Government servant applies to change the date of birth, the Head of Office shall verify that the date of birth mentioned in the documents submitted as per the clause (a) of sub-rule (2) of this rule, by the concerned Government employee at the time of appointment to the office, for recording date of birth and the actual entry of date of Birth recorded in the service book are different.

(2) If a discrepancy is noticed in record as per the instruction (1), the Head of department shall record the correct date of birth as per the provisions of clause (a) of sub-rule (2) of this rule.]”

So it is clear from the aforesaid provisions that any alteration of entry of date of birth is not permitted, 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. Learned Presenting Officer has also submitted that entry of date of birth of the applicant was taken in his service book on the basis of school record submitted by the present applicant at the time of joining the service. So his claim cannot be allowed. In support of his submissions, learned Presenting Officer has placed reliance on the judgment of the Hon'ble High Court of Bombay in **W.P. No. 6847/2024 (Shri Dnyaneshwar Baban Katkar Vs. The Director General and Inspector General of Police, Mumbai and Anr.)**, delivered on 22.01.2025.

Learned counsel for the applicant has submitted that this citation is not helpful to the applicant, as the petitioner in that matter has sought correction in date of birth after spending considerable time of service or close to his retirement.

It cannot be ignored that there is a specific provision pertaining to correction in date of birth in service record as per Rule 38 of the Rules of 1981. It is apparent that the date of birth of the present applicant as 25.06.1976 was recorded in the service book on the basis of school record/ T.C. furnished by the applicant at the time of joining his services and therefore, it is not the case that entry was due to want of care on the part of some person other than the present applicant. The Hon'ble High Court also held in a case of **Shri Dnyaneshwar Baban Katkar** (Cited supra) that if a government employee seeks change of date of birth to mean that he was younger than what he claimed at the time of entry in service, it can have bearing on the issue of eligibility itself. The Hon'ble High Court in para No. 17 has held as under :-

“17. In such cases, where a government employee seeks to change his/her date of birth in the service record after spending considerable time of service or close to his retirement, where postponement of the date of birth is asked, it is obvious that it has far reaching effect, if permitted. If a government employee seeks change of date of birth to mean that he was born on a later date, compared to the date of birth recorded in his service book, it

means that on the date of his appointment he was not of a particular age and was younger than what he claimed at the time of entry in service. In a given case, this can have bearing on the issue of eligibility itself. Also, when a government employee claims that he was born on a later date, it obviously has an effect on seniority at the time of appointment. In a given case, where a batch of employees is appointed on the same date, the seniority may change and such change in service book can adversely affect seniority of other co-employees. Also, the aspect of the concerned government having to pay him salary for longer period than what was expected at the time of entry in service, also needs serious consideration. If a government employee was younger during his tenure, he might not be considered for certain benefits, which, in a given case, might have been already availed and enjoyed. These are some of the situations and effects that are relevant in our opinion, when a government employee says that he was born later than the date of birth recorded in his service book. Needless to mention that this is not an exhaustive list of possible situations. In our opinion, such situations must be avoided and therefore requests for change in date of birth beyond reasonable time should not be permitted. In the present case, it is 5 years under the applicable rule.”

11. The applicant has also contended in his rejoinder affidavit that at the time of his appointment in the year 2014 he produced a copy of TC wherein the date of birth as 25.06.1976 was recorded. In this connection, para 4 of G.R. dated 03.03.1998 needs to be reproduced :-

“4. नियम 38(2) नुसार सेवापुस्तकात जन्मतारीख नोंदविताना सूचना क्रमांक २ मध्ये उल्लेख केलेले कागदोपत्री पुरावे तपासून जन्मतारीख निश्चित न करता शाळा सोडल्याच्या प्रमाणपत्रात किंवा शालांत परीक्षा प्रमाणपत्रामध्ये नोंदविलेली जन्मतारीख सेवापुस्तकात नोंदविण्यात येते व नंतर जन्मतारीख बदलण्याचे प्रस्ताव ७ येतात असे निदर्शनास आले आहे. शासन आता असे आदेश देत आहे की, ज्यावेळी शाळा सोडल्याच्या प्रमाणपत्रात किंवा शालांत परीक्षा प्रमाणपत्रात दिलेली जन्मतारीख व जन्म-मृत्यू नोंदवहीत नोंदविलेली जन्मतारीख भिन्न असेल त्यावेळी जन्म-मृत्यू नोंदवहीत नोंदविलेली जन्मतारीख नियमानुसार स्वीकारून तिची सेवा पुस्तिकेत नोंद घेणे आवश्यक आहे. परंतु हा पुरावा ज्या

कर्मचा-यांचे मूळ जन्म.मृत्यू नोंदवहीत नाव असेल व ही नोंद जन्माच्यावेळी घेतली असेल त्यांच्या बाबतीत ग्राह्य मानावा अन्यथा उपरोक्त नियम ३८ मधील सूचना क्रमांक (2) (एक) नुसार जन्म दिनांकाची नोंद घेण्याबाबत कार्यवाही करण्यात यावी. जन्म-मृत्यू नोंदवहीतील उतारा तपासताना ही नोंद मूलतःच घेण्यात आली आहे, याची खात्री करून घेण्यात यावी. ही जन्मतारीख सेवापुस्तिकेत नोंदविल्यावर त्यामध्ये दुरुस्ती करता येणार नाही याची स्पष्ट कल्पना कर्मचा-यांस देऊन त्यावर त्याची सही घ्यावी. ”

It says that if date of birth in ‘School Leaving Certificate’ and date of birth in birth extract are different, then entry in birth extract is to be considered for taking its entry in the record. It is also clarified in the said clause that if entry of birth is taken in the Birth Register at the time of birth, then and then only the said entry of birth needs to be considered for recording in the service record.

In view of the discussion in the forgoing paras, it would be difficult to accept the contention of the applicant regarding change in date of birth in service record.

12. The applicant has also tried to raise contention that the date of birth of his elder brother is 01.08.1975. So the date of birth of the applicant as 25.06.1976 is not possible. But this contention has no relevance. So far as the issue involved in the present matter is concerned, the applicant has also relied on the decision of Hon’ble High Court of Bombay in a case of **Vasudha**

Gorakhnath Mandvilkar Vs. City and Industrial Development Corporation of Maharashtra Ltd., 2008(5) Mh.L.J. 147. It seems that the said judgment of Hon'ble High Court was assailed before the Hon'ble Supreme Court and its citation **CIDCO Vs. Vasudha Gorakhnath Mandevlekar, (2009) 7 Supreme Court Cases 283** is also referred by learned counsel for the applicant. In that matter the contention of petitioner was that she informed Respondent No.1 at the time of joining her service that she was born on 2nd October, 1950. She has filled up a form which is a part of her service record. That form shows her date of birth as 2nd October 1948 corrected to 2nd October 1950. The form is typewritten, correction is handwritten. It is by way of interpolation in the year, due to which, the first Respondents called upon the Petitioner to furnish true copies of the documents to show her date of birth. So the facts in that matter appear to be different and cannot be made applicable to the case of the applicant. The applicant has also relied on the judgment of Principal Seat of this Tribunal at Mumbai in **O.A. No. 490/2021 (Shri Ghanhasham K. Patil Vs. The State of Maharashtra and Ors.)**. In that matter the department had initially made correction in date of birth and subsequently it was cancelled. Even in that matter the enquiry about authenticity of entry of birth was made and Tahsildar has

informed to Senior Police Inspector. So the facts in this matter are also different and it is not helpful to the applicant.

13. The discussions in foregoing paragraphs lead me to say that there is no reason to interfere with the impugned order dated 10.07.2018. Therefore, the present Original Application deserves to be dismissed. Hence, the following order :-

ORDER

- (i) The Original Application stands dismissed. There shall be no order as to costs.
- (ii) The original service book shall be returned to the learned Presenting Officer forthwith for forwarding to concern department.

(A.N. Karmarkar)
Member (J)

PLACE : Aurangabad
DATE : 21.03.2025

KPB S.B. O.A. No. 433 of 2022 ANK Correction in date of birth