

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.279 OF 2017

DISTRICT : MUMBAI

Mr. Bharat Champalal Pardeshi.)
Age : 56 Yrs., Occu.: Retired from the)
Post of Police Inspector on 31.05.2015.)
R/at 104/3568, Nehru Nagar, Kurla (E),)
Mumbai – 400 024.)...**Applicant**

Versus

1. The Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Director General of Police.)
M.S, Shahid Bhagatsingh Marg,)
Near Regal Cinema, Colaba,)
Mumbai.)
3. The Commissioner of Police for)
Greater Mumbai having office at)
Crawford market, Near CST, Mumbai)
4. The State of Maharashtra.)
Through the Secretary,)
Finance Department,)
Mantralaya, Mumbai - 400 032.)
5. The Secretary, General Admn.)

Department, Mantralaya,
Mumbai – 400 032.

)
)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Mrs. A.J. Chougule, Presenting Officer for Respondents.

PER : SHRI J.D. KULKARNI (VICE-CHAIRMAN)(J)

DATE : 30.01.2018

J U D G M E N T

1. Heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

2. This is a third round of litigation whereby the Applicant has claimed suitable direction to the Respondent authorities to correct his date of birth in the service record. It is stated that, his correct date of birth is 22/06/1960, however, the same has been recorded wrongly as 1/06.1957.

3. The Applicant joined services with the Respondents on 27.09.1979. It is the case of the Applicant that duty is casted upon head of the office as per Rule 41 of the Maharashtra Civil Services (General conditions of Service) Rules, 1981 to show the Service Books to the Government servants under his control every year and to obtain their signature in token of having inspected the Service

Book. However, no such inspection was given to the Applicant. The Applicant for the first time came to know about the wrong entry of date of birth in his service record in the month of June, 2011. In fact, in the month of June, 2011, a minor punishment was imposed on the Applicant by Additional Commissioner of Police on three Police Inspectors including the Applicant of stoppage of increments for one year for the alleged misconduct. The Applicant preferred an appeal against the said order with the Respondent No.1. At that time, the Applicant approached the office of the Additional Commissioner of Police, East Region, Chembur for taking entry of fixation of his pay in the original Service Book after completion of one year period of punishment. For the first time, at that time, he came to know that his date of birth was wrongly recorded in his Service Book as 1.06.1957 instead of 22nd June, 1960. The Applicant immediately filed an application for correction of the date of birth on 4.08.2012.

4. The Applicant's request for correction of date of birth was rejected, and therefore, he filed O.A.No.1070/2012 before the Hon'ble Tribunal. In the said O.A, the Tribunal vide order dated 25.04.2014 directed the Respondents to consider the representations of the Applicant and pass suitable order and the decision be communicated to the Applicant within three months from the date of order.

5. The Respondent No.1 vide communication dated 1st December, 2014 (Annexure 'N' of the Paper Book at Page Nos.47 to 50 (both inclusive) rejected the claim of the Applicant.

6. Being aggrieved by the communication dated 1st December, 2014 as referred above, the Applicant filed O.A.No.134/2015. In the said O.A, this Tribunal was pleased to pass an order on 8th October, 2015. In Para No.24 of the Judgment, this Tribunal was pleased to give direction as under.

“24. In the result, Original Application No.134 of 2015 is partly allowed. The impugned order dated 1.12.2014 and consequential order dated 10.12.2014 are quashed and set aside. The case is remanded to the Government in its Home Department for deciding applicant’s claim by recording finding on each point, arising in the case, including the points required to be considered in view of circular dated 24.12.2008 to and quoted in impugned order Exhibit L at page 46 of paper book of OA. ”

7. In view of the directions issued in O.A.134/2015, the Respondent No.1 passed an order on 18.07.2016 whereby the Applicant’s request for correction of date of birth has been rejected once again, and therefore, being aggrieved by the said order of rejection of correction of date of birth in the service record, this application is preferred.

8. The Respondent No.2 tried to justify the order passed by the Government. According to Respondent No.2, the Government in Finance Department has arrived at conclusion that there are no documents available in support of the fact that the date of birth of the Applicant is 22/06/1960. The Applicant was recruited as Police Constable way back on 1.10.1979 and the application for correction

is filed in 2012. There is entry of handing over duplicate copy of service sheet to the Applicant, but the Applicant did not acknowledge the same. It is further stated that, in the gradation list of superannuation, the date of retirement of the Applicant on superannuation is shown as 31.05.2015. The Applicant has not submitted the attested copy of entry of original register showing that his date of birth is 22.06.1960 on the ground that the register has become old. Finally, it is stated that it was the duty of the Applicant to get ensured that all the entries taken in the Service Book were correct.

9. So far as the point raised by the Respondents that the Applicant has not applied for correction of date of birth within five years of joining service is concerned, it will be clear that the said point has been dealt by this Tribunal in O.A.No.134/2015. The Respondents were, therefore, expected to act upon the directions issued by this Tribunal in the said O.A. as per Para No.24 as already stated. The case was remanded to the Government in its Home Department for deciding the Applicant's claim by recording finding on each point arising including the points required to be considered in view of the Circular dated 24.12.2008. It is, therefore, necessary to see as to what is the Circular dated 24th December, 2008 and as to whether the Respondent authority has considered the case as per that Circular as directed by this Tribunal.

10. The Notification dated 24th December, 2008 is placed on record at Exh. 'P' and the same is at Page Nos.69 to 71 (both inclusive). This Notification is in fact known as "Maharashtra Civil

Services (General Conditions of Service) (Amendment) Rules, 2008".
The said relevant amended Rule deals as under :

“2. In rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, (hereinafter referred to as “the principal Rules”), in sub-rule (2), under the heading Instruction,-

(a) for Instruction No.(1) and (2), the following Instructions shall be substituted, namely :-

- (1) 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.
- (2) Subject to Instruction (1) above, the correct date of birth of a Government servant may be determined, if he produced the attested zerox copy of the concerned page of the original birth register where his name and date of birth has been entered as per the rules for the time being in force regarding the registration of birth, 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 in service record.

(2A) At the time of scrutiny of the application, it shall be ensured that, -

- (i) no advantage has been gained in school admission, entry into Government service by the said Government servant by representing a date of birth which is different than that which is later sought to be incorporated;
- (ii) the date of birth so altered would not make him ineligible for admission in any school or University or for the Maharashtra Public Service Commission examination in which he had appeared; or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered in the Government service.

(2B) No application for alteration of entry regarding date of birth of the Government servant pending with the Government on the date of commencement of the Maharashtra Civil Services (General Conditions of Services)(Amendment) Rules, 2008 shall be processed after the date of retirement of such Government servant and such application shall automatically stand disposed of as rejected on the date of retirement. Any such application made by the retired Government servant shall not be entertained.”

11. The aspect of scope of Rule 38 has been considered by this Tribunal in O.A.134/2015 in Para Nos.17 to 20 as under :

“17. Though the respondents have claimed that they have declined to concede the applicant’s request on account of reasons summarized in foregoing para no.11 which are rather based on the guidelines given in the Finance Department circular dated 24.12.2008, in fact the rejection is mainly on two grounds i.e. claim not being made within 5 years and estoppel/or connivance to long standing record in service book.

18. It is seen that the parameters required to be considered while deciding the claim for change in date of birth which are prescribed in the circular dated 24.12.2008 supra, are 5 in number. First parameter out of five, is on the question whether the applicant’s demand for change in the date of birth is made within 5 years of his entry in the employment.

19. In so far as the second aspect is concerned, it relates to the fact of applicant’s signature on the foot of the first page of the service book. Worthiness of this aspect depends on discharge of burden of proof by the respondents. It is not proved by the State by showing any documentary evidence, particularly in the light of the applicant’s contemporary and relevant service record showing applicant’s date of birth to be 22.6.1960. The documentary evidence brought by applicant is

supporting applicant's claim that his date of birth is 22.6.1960. This evidence consists of material which is antecedent to his employment i.e. entry in the police force, as well that in various records of the department applicant's date of birth is recorded as 22.6.1960.

20. In so far as the first ground of claim not being made within 5 years is concerned, reliance on the said ground cannot be done in isolation i.e. without considering/deciding the factual matters required to be decided on the parameters and issues laid down in circular dated 24.12.2008 supra. It has to be held on facts of present case that the Government has in fact not done the exercise of adjudicating on all points."

Therefore, the Respondents now cannot claim that the application was not filed within five years, and therefore, the same cannot be entertained. The only the scope that has been made available to the Respondent No.1 is to consider the application in view of Notification dated 24th December, 2008 as referred above.

12. The plain reading of amended Rule 2 quoted above clearly shows that, if the Government servant produces the attested Xerox copy of the correct date of birth of the concerned page of original birth register where his name and date of birth has been entered as per Rules, such proof can be considered as unquestionable proof of date of birth. In the present case, admittedly, the Applicant has not produced the extract of original record as regards the date of birth of the Applicant.

13. In view thereof, the amended Rule 2(a) is material and as per said Rule 2(a), the department has to consider some aspects at the time of scrutiny. It has to get assured that no advantage has been gained in School admission, entry into Government service by the Government servant and by representing a date of birth which is different than which is later sought to be incorporated. The Department has also to consider that the date of birth so altered would not make the employee ineligible for admission in School or University and thirdly, that no such application for alteration shall be filed or processed after the date of retirement.

14. In the present case, there is nothing on the record to show that the Applicant has taken disadvantage of his altered date of birth in School admission or in Government service. Admittedly, the application was filed when the Applicant was already in service, though the Applicant has got retired on superannuation during pendency of the adjudication of his application.

15. Coming to the impugned order passed by the Government – Respondent No.1, it is stated that there has been some mistakes in recording the date of birth of the Applicant. That seems to be the reason as to why the opinion of Finance Department was obtained. It is stated in the impugned order dated 18th July, 2016, “त्याचप्रमाणे सामान्य प्रशासन विभागाने “श्री परदेशी यांनी नियुक्तीपासून ५ वर्षांच्या कालावधीत जन्मदिनांक बदलाची विनंती केली नसल्याने त्यांची विनंती मान्य करू नये असे अभिप्राय यापूर्वीच दिलेले असाहेत.” मात्र श्री परदेशी यांच्या जन्मदिनाकांची नोंदी सेवापुस्तकात घेताना

लेखनदोष घडला आहे हि वस्तुस्थिती घेता सदर ५ वर्षांची अट त्यांच्या बाबतीत शिथिल करणे योग्य ठरेल किंवा कसे याबाबतचा निर्णय वित्त विभागाने घेणे आवश्यक आहे.”

16. In the impugned communication dated 18th July, 2016, it is also admitted that there is over-writing in the date of birth of the Applicant in service record and that there is no evidence to prove that his date of birth is 22/06/1957 and this can be seen from the remarks in the said order as under :

“सारांश, श्री. परदेशी यांच्या सेवापुस्तकात दि. १.६.१९५७ अशी नोंद उपरीलेखानाने झाल्याचे पोलीस महासंचालाकानी नमूद केले आहे. यांची जन्मतारीख दि. २२.६.१९५७ असल्यापुढ्यर्थ कोणतीही कागदपत्रे नाहीत.”

17. It seems that, in Para No.4 of the impugned order, the Respondent No.1 has shifted the burden on Applicant saying that, it is the duty of Government servant to get verified the entries in the service record, as after recording such entries, his signature is obtained. Again, the Respondent No.1 came to the conclusion that the Applicant has not taken care and has filed the application after five years, and therefore, his claim was rejected.

18. On perusal of the impugned order/communication dated 18th July, 2016, it will be thus crystal clear that the Respondent authority has not considered as to whether the Applicant has taken disadvantage of his date of birth to be corrected while taking education or while obtaining service. It is material to note that, in

the order passed by this Tribunal in O.A.No.134/2015, this Tribunal has referred all the documents submitted by the Applicant in Para No.5 of the order. In this Para, as many as 13 documents were referred showing the date of birth of the Applicant as 22/06/1960 and these documents includes School Leaving Certificate, S.S.C. Certificate, Identity Cards, Passport, Pan Card, Aadhaar Card and G.P.F. Slip.

19. Admittedly, there is no evidence to show that the correct date of birth of the Applicant is 1/06/1957. The entry of the Service Book has been placed on record by the learned Presenting Officer, which is marked 'X' for identification. This entry shows that there is over-writing as regards the year of the birth i.e. 1957 though in the bracket in the words, the year is shown as 1957. There is nothing on the record to show that, this date of birth i.e. 1.06.1957 was ever got verified by the competent authority.

20. The learned Advocate for the Applicant has invited my attention to Rule 38 of the M.C.S.(General Conditions of Service) Rules, 1981 which states about the procedure for writing the events and recording the date of birth in the Service Book. Rule 38(1) and (2) gives details as to what procedure to be followed while recording the date of birth and these two Rules are material, which read as under :

“38. Procedure for writing the events and recording the date of birth in the service book.- **(1)** In the service book every step in a Government servant's official life, including temporary and officiating promotions of all

kinds, increments and transfers and leave availed of should be regularly and concurrently recorded, each entry being duly verified with reference to departmental orders, pay bills and leave account and attested by the Head of the Office. If the Government servant is himself the Head of an Office, the attestation should be made by his immediate superior.

(2) While recoding 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 a 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, 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 as used to have completed that age on the date of certificate is given, and his date of birth deduced 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 question or is an obvious clerical error.

Instruction – (1) No application for alternation of the entry regarding date of birth as recorded in the service book or service roll of a Government servant, who has entered in the Government service on or after 16th August 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.”

21. There is nothing on record to show that the date of birth recorded in the Service Book i.e. 1/06/1956 was ever got verified by the Department. There is nothing on record to show that the Department ever mentioned as from which document, the date of birth was verified. In short, the Respondent authority has not followed the procedure stated in Clause (1) and (2) of Rule 38.

22. In the impugned order dated 18th July, 2016, it is specifically admitted by the Respondent No.1 that though it is mentioned in the submission made by Home Department in its note

that the Applicant was handed over the second copy of the Service Book, there is no acknowledgement in that regard from the Applicant. In short, there is no evidence on record to show that the Applicant was ever granted the copy of the service record as regards note taken in respect of his date of birth. There is no entry to show that the date of birth of the Applicant as mentioned in the Service Book was ever verified as required under Rule 38 of the M.C.S. (Conditions of Services) Rules, 1981.

23. The Applicant in this O.A. has pleaded that he was appointed as a Constable in Nashik District at the age of 20 years. He has also stated specifically that his date of birth was correctly recorded in all Schools record and service record other than in Service Book from which it seems that the Applicant wanted to state that he has not taken disadvantage of his correct date of birth i.e. 22/06/1960. This aspect is not considered by the Respondent No.1. All the documents submitted by the Applicant before the Tribunal as well as before the authority clearly shows that in entire record, his date of birth is recorded as 22/06/1960 except that in the service record and though in the service record, his date of birth is stated as 1/06/1957, there is over-writing in the year and the said date of birth was never got verified by the competent authority. It is admittedly the duty of competent appointing authority to get verified such date of birth at the time of entry or subsequently, on the basis of documents such as original date of birth register, School Leaving Certificate, etc. Having failed in such duty, the Respondent No.1 cannot blame the Applicant.

24. As already stated, the Applicant is prosecuting for his cause from 2012 i.e. for last 5/6 years and in the meantime, he has got retired on superannuation.

25. The Respondent No.1 has not properly complied with the directions issued by this Tribunal in O.A.No.134/2015 nor it has considered the purpose of the Judgment delivered in the said O.A. as well as the Notification dated 24th December, 2008 i.e. the Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 2008.

26. From the impugned communication, it is clear that the Respondent No.1 has admitted that there was mistake in recording the correct date of birth of the Applicant in service record and that there is no document to show that the correct date of birth of the Applicant was 1/06/1957 as recorded in his Service Book.

27. In such circumstances, it was incumbent upon the Respondent No.1 to consider the relevant documents which were produced by the Applicant and ought not to have rejected the application merely on the ground that the application for correction was filed after five years of joining service and that the Applicant did not produce the extract of original service record of his date of birth.

28. In view of the discussion in the foregoing paras, it will thus be crystal clear that the Applicant has placed on record number of documents to show that his date of birth was 22/06/1960 but said documents were not considered with the proper perspective and the Respondent No.1 has not strictly

followed the directions issued by this Tribunal in O.A.No.134/2015. The impugned order rejecting the Applicant's claim for correction of date of birth, is therefore, not legal and proper.

29. The learned Advocate for the Applicant has placed reliance on the Judgment reported in ***Writ Petition No.1696/1990 decided by the Hon'ble High Court of Bombay on 22/06/2000 in case of Sitaram K. Jawale Vs. MHADA and others.*** In the said case, it has been held that, there is no embargo in entertainment of application for correction of date of birth after five years, if it is merely a clerical error. In the present case, the documents on record shows that the correct date of birth of the Applicant seems to be 22/06/1960 and there is no evidence to show that it was 1/06/1957, and therefore, the recorded date of birth in the service record as 1/06/1957 might be a clerical error.

30. The learned Advocate for the Applicant also placed reliance on the Judgments reported in ***(a) Civil Appeal No.6191 of 2008 (Arising out of SLP (Civil) No.5232 of 2006) dated 22.10.2008 in the matter of Mohd. Yunus Khan Vs. U.P. Power Corporation Ltd. And Ors., (b) Civil Appeal No.4558 of 2014 (Arising out of SLP (Civil) No.22798 of 2013) dated 16.04.2014 in the matter of Iswarlal M. Thakkar Vs. Paschim Gujarat Vij.Co.Ltd. and Anr, (c) Writ Petition No.6962 of 2006, dated 17.04.2008 in the matter of Smt. Vasudha Gorakhnath Mandvilkar Vs. The City and Industrial Development Corporation of Maharashtra Ltd.*** I have carefully gone through the said Judgments. The issues involved in the present case have

already been discussed in details in earlier Paras and hence, need not be discussed again.

31. The learned P.O. submitted that the Department has published temporary gradation list of Police Inspectors as on 1/01/2006 and on 1/01/2016 and in this list, it was specifically stated that the Applicant will stand retired on 31/05/2015. There is nothing on record to show that the Applicant never received such gradation list and that itself will not debar the Applicant from making an application for correction of date of birth.

32. The learned P.O. also placed reliance on the Judgment in Writ Petition No.8283/2006 by the Hon'ble High Court Bench at Mumbai on 13th December, 2017 whereby the Hon'ble High Court has maintained the order passed by this Tribunal in rejecting the application for correction of date of birth. The facts of the said case are not analogous to the present set of facts.

33. From the discussion in foregoing Paras, it will be thus crystal clear that the impugned order dated 18th July, 2016 is not legal and proper. Since the same has not been passed in view of the directions issued by this Tribunal in O.A.No.134/2015 on 8th October, 2015, it will not be proper in the circumstances to again direct the Respondent authorities to make further enquiry in this matter, particularly considering the fact that this is the third round of litigation for the same relief and also considering the fact that the Applicant had already got retired on superannuation. I, therefore, pass the following order.

ORDER

The Original Application is allowed in terms of prayer clause 10(a), (b) and (c).

It is hereby declared that the correct date of birth of the Applicant is 22nd June, 1960.

The impugned communication dated 18th July, 2016 issued by Respondent No.1 stands quashed and set aside.

The Respondents are directed to pass order reinstating the Applicant on the post of Police Inspector immediately considering his date of birth as 22nd June, 1960.

No order as to costs.

**Sd/-
(J.D. Kulkarni)
Vice-Chairman
30.01.2018**

Mumbai
Date : 30.01.2018
Dictation taken by :
S.K. Wamanse.