

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.471 OF 2019

DISTRICT : PALGHAR

Trimbak Rambhau Khairnar,)
Age : 55 years, Occ. Service,)
R/o. 20, Ajinkya, Abhyuday Colony,)
Near S.T. Colony, Gangapur Road,)
Nashik -13, Tq. & Dist. Nashik.) **..... Applicant**

Versus

- 1) The State of Maharashtra,)
Through the Secretary,)
Public Works Department,)
Mantralaya, Mumbai.)
(Copy to be served C.P.O.)
Maharashtra Administrative Tribunal,)
Mumbai.)
- 2) The Superintendent of Engineer,)
Public Works Circle, Nashik.)
- 3) The Executive Engineer,)
Public Works Division,)
Palghar, Tq & Dist. Palghar.) **...Respondents**

**Shri N. L. Choudhari with Ms. S.T. Suryawanshi, Advocate
for Applicant.**

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 20.12.2019

JUDGMENT

1. The Applicant has challenged the impugned order dated 06.05.2019 whereby his application for change in date of birth in service record stands rejected by the Government.

2. Uncontroverted facts giving rise to the present O.A. are as follows:-

(a) The Applicant was born at Pimpalgaon, Dist. Nashik and while taking admission in primary school, his date of birth was recorded as 01.06.1961. He took admission in primary school on 16.06.1968 (Page No.23 of PB).

(b) The Applicant was appointed on the post of Junior Engineer by order dated 22.11.1982 and joined on 08.12.1982 (Page No.16 of PB).

(c) On 16.05.1986, the Applicant made an application addressed to Executive Engineer, Public Health Department, Malegaon where he was serving requesting to change his date of birth from 01.06.1961 to 21.08.1964 (Page 12 of PB).

(d) At the time of entry in service, the date of birth of Applicant was recorded as 01.06.1961 (Page No.15 of PB).

(e) No action was taken on the application made by the Applicant for long period and for the first time, Superintendent of Engineer, Nashik forwarded the proposal on 03.10.2015 to Government for appropriate orders.

(f) Since, no order was passed by the Government on the proposal and as per service record, the date of retirement was approaching fast, the Applicant had filed O.A.No.377/2019 which was disposed of by this Tribunal on 11.04.2019 giving directions to the Government to pass appropriate order on the proposal forwarded by Superintendent of Engineer, Nashik within a month (Page No.57 of PB).

(g) The Government by order dated 06.05.2019 rejected the application made by the Applicant for correction of date of birth on the ground that while taking admission in primary school, the Applicant's age was three years and nine months only, considering his date of birth sought to be corrected as 21.08.1964 and as such, having not completed minimum five years of age at the time of admission as prescribed in Rule 128 of the Bombay Primary Education Rules, 1949 request for correction of date of birth cannot be accepted.

3. Shri N.L. Choudhari, learned Advocate for the Applicant submits that while taking admission in the School, inadvertently, the date of birth was mentioned as 01.06.1961 though in fact, the date of birth of the Applicant is 21.08.1964 as per Birth Register maintained in Tahasildar Office, he has also produced Birth Extract of Village Pimpalgaon (Page No.19 of P.B.) wherein the date of birth is shown 21.08.1964. Adverting to this aspect, he urged that the entries made in Birth Register being maintained in regular course of business has more probative value and it should prevail over the entries made in School Leaving Certificate. He, therefore, urged that the application for correction of date of birth being filed well within five years i.e. on 16.05.1986 is in accordance to Rule 38 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity), and therefore, rejection of the claim by the Government is unsustainable in law. As regard age of Applicant as per corrected date of birth at the time of admission in Primary School being three years and nine months only, he submits that it cannot be the reason for rejection of the claim in view of decision rendered by this Tribunal in **O.A.676/2015 (Bhagwan M. Patil Vs. The Development Commissioner) decided on 19th September, 2016.**

4. Per contra, the learned Presenting Officer supported the impugned order contending that the Applicant though made an

application for correction of date of birth within five years from entry into service, he did not take further steps to pursue the same and only at the fag end of service tried to redress his grievance, and therefore, correction after retirement is not permissible. He further submits that as per date of birth sought to be corrected (21.08.1964), the Applicant at the time of taking admission in 1st Standard was of three years and nine months only, and therefore, ineligible for admission in Primary School in terms of Rule 128 of Bombay Primary Education Rules, 1949 (hereinafter referred to as 'Rules of 1949' for brevity) which *inter-alia* prescribes minimum age five years at the time of admission in Primary School. He, therefore, submits that the rejection of the claim of the Applicant cannot be faulted with.

5. In view of submissions advanced at the Bar, the following points arise for determination :-

(a) Whether this is a case where the date of birth recorded in Service Book was recorded due to want of care on the part of some person other the individual in question or is obvious clerical error as contemplated in Rule 38(2)(f) of 'Rules of 1981'.

(b) Whether the date of birth so altered could make the Applicant ineligible for admission in Primary School in terms of Rule 128 of 'Rules of 1949'.

6. The procedure for writing and recording the date of birth in Service Book and its correction is governed by Rule 38 of Rules of 1981. It will be useful to reproduce the relevant portion as amended on 24.12.2008 as follows.

“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 to his immediate superior.

- (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 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, 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.

Instruction :-

(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 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 produces the attested Xerox copy of the concerned page of the original birth register where his name and 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 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, 2006 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.”

7. Thus, it is explicit that in terms of Rule 38(2)(f), the date of birth once recorded in Service Book should not be afterwards changed unless it is shown that the entry was taken due to want of care on the part of some person other than the individual in question or is an obvious clerical error.

8. Now turning to the facts of the present case, the Applicant contends that his date of birth was inadvertently recorded as 01.06.1961 instead of 21.08.1964. In this behalf, the Applicant sought to place reliance on the Affidavit of his mother (Page No.21 of P.B.). In Affidavit, she stated that due to inadvertence, the date of birth of the Applicant was recorded as 01.06.1961 though his real date of birth is 21.08.1964. She stated that she is illiterate, and therefore, mistake occurred. Insofar as date of birth recorded in Birth Register is concerned, it is recorded as 21.08.1964 as seen from

Extract of Birth Register maintained in Tahasil Office. Material to note that if his correct date of birth is considered, then at the time of admission in the Primary School, he was three years and nine months old. Whereas, as per Rule 128 of 'Rules of 1949', the minimum age for admission in Primary School is five years. As such, this is not a case of any want of care on the part of Department while taking entry into Service Book or is an obvious clerical error. On the contrary, this is a case where knowingly the Applicant's date of birth was recorded as 01.06.1961 on the information submitted by the parents. Such situation does not fall within the ambit of Rule 38(2)(f) of 'Rules of 1981'. There is no obvious clerical error or want of care on the part of Department while taking entry of date of birth in service record. The date of birth as 01.06.1961 was recorded as per the information supplied by the parents, perhaps only to secure the admission in Primary School at an early age than the prescribed minimum age.

9. The Government has rejected the request of the Applicant solely on the ground that at the time of admission in Primary School on the basis of date of birth sought to be corrected, his age was three years and nine months only, which could make ineligible for admission in Primary School as prescribed under Rule 128 of 'Rules of 1949'.

10. Now, let us see relevant Rule 128 of 'Rules of 1949' which is as follows :-

“128. Admission of pupils.- (1) No approved school shall admit –
(a) a child who has not completed the 5th year of age on the date of admission.”

11. Undisputedly, Applicant has taken admission in Primary School on 16.06.1968. This being the position, on the basis of date of birth sought to be corrected, he was three years and nine months only at the time of admission in School, and therefore, was certainly ineligible for admission in Primary School in view of Rule 128 of 'Rules of 1949'.

In other words, the Applicant had taken disadvantage by showing his date of birth as 01.06.1961 only to secure admission in Primary School otherwise he would not have been ineligible for admission in School, had his parents disclosed the correct date of birth 21.08.1964 at the time of admission in School. Suffice to say, the Applicant has gained disadvantage by mentioning earlier date of birth in School record, and therefore, now he cannot be allowed to take benefit seeking correction in date of birth in service record only to have three years period more for retirement. Indeed, the Applicant has already retired during the pendency of O.A. on 31.05.2019. However, he has amended the O.A. seeking declaration of reinstatement in service and consequential benefits. In my considered opinion, such relief can hardly be granted, where it is found that he has already gained disadvantage by securing admission in Primary School showing early date of birth knowingly.

12. Insofar as the decision of this Tribunal in Bhagawan M. Patil's case (cited supra) is concerned, therein the Applicant was of 4 years, 11 months and 26 days at the time of admission in Primary School and the O.A. was allowed on the ground that the Respondents did not place on record any Circular or Rules showing prescribed minimum age to be observed at the time of admission to 1st Standard in Primary School. As such, in that case, there was difference of only four days for completion of five years age for date of admission in School and secondly, no such specific Rule was pointed out to the Tribunal. Whereas, in the present case, the Applicant's age at the time of entry into Primary School was 3 years and 9 months only and the Respondents have also produced the 'Rules of 1949' which inter-alia prescribes minimum five years age at the time of admission in School. Therefore, the Judgment in **Bhagwan M. Patil's** case is of no assistance to the Applicant in the present facts and situation.

13. Indeed, Rule (2A)(ii) of Rules 38 of 'Rules of 1981' mandates that at the time of scrutiny of application for correction of date of birth, it should be ensured that no advantage has been gained in the School admission by representing date of birth which is different than the date sought to be incorporated and secondly, the date of birth so altered would not make the Applicant ineligible for admission in School. In the present case, it is explicit that the Applicant was ineligible for admission in School on the basis of date of birth sought to be corrected and secondly, he had already gained disadvantage by showing incorrect date of birth while taking admission in School. This being the position, the rejection of application made by the Applicant for change in date of birth being not in consonance with Rule 38(2)(f) and (2A)(i)(ii) of 'Rules of 1981' cannot be faulted with.

14. In this behalf, it would be apposite to refer the Judgment of Hon'ble Supreme Court delivered in **Civil Appeal No.9704/2010 (State of Maharashtra Vs. Gorakhnath S. Kamble and Ors.) decided on 16th November, 2010**. In this Judgment, the Hon'ble Apex Court reiterated that the grievance as to the date of birth in service record should not be permitted at the fag end of service of the employee. It would be useful to reproduce Para Nos. 17 to 21.

“17. In another judgment in State of Uttaranchal & Ors. Vs. Pitamber Dutt Semwal, (2005) 11 SCC p.477, the relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

18. Two decades ago this Court in Government of A.P. & Anr. Vs. M. Hayagreev Sarma, (1990) 2 SCC p.682, has held that subsequent claim for alteration after commencement of the rules even on the basis of extracts of entry contained in births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886, was not open. Reliance was also placed on State of Uttar Pradesh & Ors. Vs. Gulaichi (Smt.), (2003) 6 SCC p.483, State of Tamil Nadu Vs. T.V. Venugopalan, (supra), Executive Engineer, Bhadrak (R & B) Division, Orissa & Ors. Vs. Rangadhar Mallik, (1993) Suppl.1 SCC p.763, Union

of India Vs. Harnam Singh, (supra) and Secretary and Commissioner, Home Department & Ors. Vs. R.Kribakaran, (surpa).

19. *These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The relevant portion of the judgment in Secretary and Commissioner, Home Department & Ors. Vs. R. Kribakaran (surpa) reads as under:*

"An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. 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 the promotion forever. 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 and before any such direction is issued, the court 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 time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service-book."

20. *In view of the consistent legal position, the impugned judgment cannot be sustained and even on a plain reading of the Notification and the instructions set out in the preceding paragraphs leads to the conclusion that no application for alteration of date of birth after five years should have been entertained.*

21. *The approach of the High Court in re-writing the rules cannot be approved or sustained. Consequently, the appeal filed by the State of Maharashtra is allowed and the impugned judgment is set aside, leaving the parties to bear their own costs."*

15. Furthermore, it would be advantageous to refer the decision of Hon'ble Supreme Court in State of **M.P. Vs. Premlal Shrivastava (Civil Appeal No.2331/2004) decided on 19th September, 2011** where in Para Nos.9, 10 and 11, the Hon'ble Supreme Court held as follows :-

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 1 (2010)*

6 SCC 482 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 Singh²).

10. In Secretary And Commissioner, Home Department & Ors. Vs. R. Kirubakaran³, indicating the factors relevant in disposal of an 2 (1993) 2 SCC 162 3 1994 Supp (1) SCC 155 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)

11. *In State of U.P. & Anr. Vs. Shiv Narain Upadhyaya⁴, while reiterating the aforesaid position of law, this Court has castigated the practice of raising dispute by the public servants about incorrect recording of date of birth in their service book on the eve of their retirement."*

16. Shri Choudhari, learned Advocate for the Applicant sought to place reliance on **(2007) 15 SCC 553 (Gendalal Vs. Union of India & Ors.)**. In that case, the application for correction of date of birth was rejected by the Central Administrative Tribunal (CAT) on the ground that the Applicant had approached the Tribunal at the fag end of his retirement. The Applicant therein had made various representations for correction of date of birth. However, no action was taken by the Department. Ultimately, at the fag end of service, he approached the CAT, but his claim was rejected on the ground that it is belated. It is in this context, the Hon'ble Supreme Court held that where the representation was already made within six years of joining and kept undecided merely because he approached the Tribunal late, he cannot be non-suited. This decision is of hardly of any assistance to the Applicant, as in the present case, the rejection is on the ground that he was ineligible for admission in Primary School on the basis of date of birth sought to be corrected.

17. Indeed, the present situation is squarely covered by Rule 38(2A)(f) and (ii) of 'Rules of 1981', which makes the Applicant disentitled for correction of date of birth.

18. The necessary corollary of aforesaid discussion leads me to conclude that the principles of law enunciated in **Gorakhnath Kamble's** case and **Premal Shrivastava's** case are squarely attracted to the present situation. The impugned order rejecting the claim of the Applicant for correction in date of birth does not suffer from any illegality and challenge to the same is without any substance. The O.A. thus holds no water and deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 20.12.2019
Dictation taken by :
S.K. Wamanse.