

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.10331 OF 2017**

Smt. Jyotsna R. Mahadik  
R/a:-5, Gokul Society,  
Near Mhatre Bridge,  
Navi Peth, Pune 411 030

... Petitioner

Vs

1 Union of India  
Through Secretary, Ministry  
of Defence, South Block,  
New Delhi-110 011.

2 Director General of EME (CIV),  
MGO's Branch,  
Integrated HQ of MOD (Army)  
New Delhi-110001

3 The Senior Record Officer-in-Charge  
EME Records Office, Trimulgherry,  
EME Records Post,  
Secunderabad-500 021

4 The Commandant & MD  
512, Army Base Workshop,  
Kirkee, Pune-411 003

... Respondents

...

Mr. P.J.Prasada Rao for the Petitioner.

**CORAM : A.S.OKA &**  
**SANDEEP K. SHINDE JJ.**  
**DATE : DECEMBER 3, 2018**

**JUDGMENT : [Per Sandeep K. Shinde, J.]**

Petitioners' request to change her date of birth in the service record was refused by the Respondents on 12th January, 2012. It was challenged before the Central Administrative Tribunal, Mumbai Bench, Mumbai in Original Application No. 298 of 2013. The Original Application was dismissed by the Tribunal and hence, this Petition under Article 226 and 227 of the Constitution of India.

2 Facts in brief are as under:

. The Petitioner was appointed as Lower Division Clerk with the Respondents on 6<sup>th</sup> May, 1985 and promoted as Upper Division Clerk on 1<sup>st</sup> March, 2001. On the basis of S.S.C. Board Certificate in service record, her date of birth was recorded as 14<sup>th</sup> January, 1961. It is the Petitioner's case that her correct date of birth is 14<sup>th</sup> January, 1964 which she claims on the basis of birth certificate on 15<sup>th</sup> November, 2011 issued by the Pune Municipal Corporation.

3           The Petitioner requested the Respondents to change her date of birth on 25<sup>th</sup> March, 1986, i.e., within a year of entry of service but there was no response. She applied for second time on 3<sup>rd</sup> October, 2011 and again on 15<sup>th</sup> November, 2011 and on 5<sup>th</sup> December, 2011. However, application dated 15<sup>th</sup> November, 2011 and 15<sup>th</sup> December, 2011 were rejected vide order dated 12<sup>th</sup> January, 2012 on the ground that DOPT OM of 1979 read with OM of 1993 does not permit alternation of date of birth if request for such a change is made after five years of entry into the Government service.

4           The order of rejection dated 12<sup>th</sup> January, 2012 was challenged before the Central Administrative Tribunal in O.A.298 of 2013. The Tribunal after hearing the Petitioner and the Respondents dismissed the O.A. by the order dated 4<sup>th</sup> May, 2016 which is impugned in this Petition.

5            Heard the learned counsel appearing for the Petitioner and the learned counsel for the Respondents. Perused the Petition and the impugned order.

6            It appears the first representation for alternation of date of birth was made in March, 1986. A copy of the representation is at Page No.19 of the Petition. It shows the Applicant sought alternation of date of birth from 14<sup>th</sup> January, 1961 to 14<sup>th</sup> January, 1963 on the basis of an endorsement purportedly made by the S.S.C. Board overleaf the Petitioners S.S.C. Certificate. Endorsement is at Exhibit A-7 to the Petitioner. It reads as under:

*“Original record submitted by Head-Master of the concerned school in support of the written declaration made by the head of the school being verified and according to the school record, the correct birth date of the candidate was 14<sup>th</sup> January, 1963.”*

7            We have also perused representation of March, 1986. The endorsement certifies the correct date of birth of the Petitioner is 14<sup>th</sup> January, 1963. It may be stated that the relief sought before the

Administrative Tribunal was alternation of date of birth from 14<sup>th</sup> January, 1961 to 14<sup>th</sup> January, 1964 on the basis of birth certificate issued by the Pune Municipal Corporation. Thus, in our view, the first application for alternation in the date of birth is of no use to the Petitioner and thus it is to be kept out of consideration.

8           It appears on 3<sup>rd</sup> October, 2011, the Petitioner had preferred second application, seeking change of date of birth from 14<sup>th</sup> January, 1961 to 14<sup>th</sup> January, 1963 on the basis of S.S.C. Certificate read with the endorsement as re-produced here-in-above. It may also be stated that the Petitioner sought change of her birth date before the Tribunal from 14<sup>th</sup> January, 1961 to 14<sup>th</sup> January, 1964. Thus, this application is also to be kept out of consideration.

9           Thus, in other words, first two applications which were made in March, 1986 and October, 2011, the Petitioner had claimed her correct date of birth was 14<sup>th</sup> January, 1963; whereas in subsequent two applications preferred on 15<sup>th</sup> November, 2011 and

December, 2011, she had claimed that her date of birth was 14<sup>th</sup> January, 1964. These two application preferred in 2011 were rejected by the Respondents and, therefore, she had filed Original Application before the Tribunal.

10 In our view, the request of the Petitioner for alternation of her date of birth since preferred 28 years after entering service were clearly barred in view of the provisions of OM which are re-produced herein:

*“As per Govt. of India Notification No.19017/7/79-Estts(A) dated 30 Nov 1979 as published in SO 3997 in the Gazette of India dated 15 Dec 1979 effective from the date of issue, and DOP&T OM No.19017/2/92-Est(A) dated 19 May 1993, stipulates as under :-*

*“An alternation of date of birth of Govt. servant can be made with the sanction of Ministry of Deptt of a Govt. Servant provided a request in this regard is made within five years of entry into Govt. service.*

*The applicant had not made request for alternation of date of birth within five years after entry into Govt. service.”*

11 There are three different years of birth, available on record i.e., 14<sup>th</sup> January, 1961 (as recorded in the S.S.C. Certificate

dated 15<sup>th</sup> February, 1980), 14<sup>th</sup> January, 1963 (endorsement made on the backside of the S.S.C. Certificate by the said Board of Secondary and Higher Secondary Education) and 14<sup>th</sup> January, 1964 (on the basis of birth certificate issued by the Pune Municipal Corporation on 15<sup>th</sup> November, 2011) on the basis of which Petitioner sought change of birth date in service records. It may be stated that there is one more document in the form of certificate issued by the Head-Master of Laxmibai Rajaram Shinde High School, Pune-9 in 1979 certifying a date of birth of the Petitioner was 14<sup>th</sup> January, 1964. The Petitioner's contention is that her date of birth, although based on certificate obtained in 2011 from the Pune Municipal Corporation, has presumptive value over the other service records submitted by her earlier in respect of 1961 and 1963.

12           It is clear that before entering a service, the Petitioner had both the certificates; one the certificate issued by her school showing her date of birth as 14<sup>th</sup> January, 1964 and S.S.C. certificate showing date of birth on 14<sup>th</sup> January, 1961 which were issued in 1979 and

1980 respectively. The Petitioner did not explain why she chose to enter service on the basis of S.S.C. certificate showing year of birth as 14<sup>th</sup> January, 1961 and made false entry in the service records and knowingly by signing the declaration form, which as per Rules is in violation of the Code of Conduct since two different years of birth was known to the Petitioner. Presumption is that having knowledge of different years of birth, she chose to use S.S.C. certificate and not the school certificate showing the year of 1964, which she is now claiming to be her year of birth based on Municipal records. Thus, it is to be inferred that while entering the service, she had chosen a date convenient to her by suppressing the certificate issued by the school which shows her date of birth was 14<sup>th</sup> January, 1964. This circumstance has not been explained as to why she did not enter the service on the basis of certificate issued by the school showing she was born on 14<sup>th</sup> January, 1964 which was her claim before the Tribunal.

13           It is to be stated that when she made her representation in

March, 1986, she sought alternation of date of birth from 1961 to 14<sup>th</sup> January, 1963. Even at this point of time, she did not disclose certificate issued by her school showing her date of birth as 14<sup>th</sup> January, 1964.

14            One more circumstance needs to be recorded is that even as late as on February, 2003, the Petitioner had submitted form no.3 for obtaining family pension. It appears this document was available in the file records showing that she had accepted the date of 14<sup>th</sup> January, 1961 even in 2003. The Tribunal in the fact situation has rightly observed that this casts a shadow of doubt on her claim for alternation in date of birth. Further even as late as in October, 2011 when she preferred third application after the gap of 11 years, she still claimed her year of birth to be 1963 and not 1964.

15            In any case, it is to be inferred that having shown 1961 as year of birth, was with intention to gain early entry into the school, which suited the Petitioner or her parents. The fact remains while

entering the service the Petitioner had preferred to enter her date of birth as 14<sup>th</sup> January, 1961 but after passage of years, attempt was made to gain longer years in service by claiming that she was born on 14<sup>th</sup> January, 1964. The Tribunal in the given set of facts has rightly observed that if her year of birth is treated as 1964, she would have been only 19 years when she entered service. But for alternation sought in the date of birth and if it is allowed, she would naturally have longer period of service and it would amount to permitting Petitioner to enter the service, when she was below the prescribed age.

16           Thus, considering the facts of the case and the manner in which applications were filed seeking alternation in date of birth by suppressing the documents and without explaining as to how and under what circumstances the date of birth on the S.S.C. board was changed, we are of the considered view that the Petitioner's claim for change of date of birth in service records was not genuine. It cannot be said that it was mistake on the part of the Petitioner while

recording her date of birth as 14<sup>th</sup> January, 1961 while entering the service. We, therefore, hold that the Petitioner cannot take advantage of her own wrong. In the circumstances, the Petition deserves no consideration and is rejected with no order as to costs.

***(SANDEEP K. SHINDE, J.)***

***(A.S.OKA, J.)***