

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.817 OF 2018

(Subject – Compassionate Appointment)

DISTRICT : JALGAON

Shri Abdul Wasim Abdul Gafur,)
Age:32 years,Occu. :Unemployed,))
R/o. Jingar Galli, Beldarwada,)
In front of Mosque, Amalmer,)
Tq. Amalner, Dist. Jalgaon.)

.. APPLICANT

V E R S U S

1) **State of Maharashtra**)

(Deleted on 23.10.2018)

2) **Addl. Chief Secretary,**)
Home Department,)
Maharashtra State.)
Email : acs_home@maharashtra.gov.in

3) **Inspector General of Police,**)
Maharashtra State, Mumbai,)
Shahid Bhagatsingh Marg,)
Kulaba, Mumbai 400 39.)

4) **Superintendent Of Police,**)
S.P. Office, Jalgaon.)

.. RESPONDENTS

APPEARANCE : Shri Naseem R. Sahikh, Advocate for the
Applicant.

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

CORAM : **B.P. PATIL, MEMBER (J).**

DATE : **01.04.2019.**

ORDER

1. The applicant has challenged the communications dated 15.03.2013 and 06.08.2018 received from the respondents rejecting his claim for appointment on compassionate ground by filing the present Original Application and also prayed to direct them to give him appointment on compassionate ground.

2. Deceased Gafur Gulam Nabi Shaikh was serving as Head Constable on the establishment of respondent No. 3. He was father of the applicant. He died on 03.03.2001, while in service leaving behind his widow Farida, his sons Salim, Abdul Wasim, the applicant and daughters Fahmida, Shamina, Jubedabi, Farzana and Sultanabi as his legal heirs. Salim Gafur Shaikh was gainfully employed during the lifetime of Abdul Gafur. Salim and sisters of the applicant were married. Salim was residing separately at Thane and his married sisters are residing in their matrimonial homes.

3. After death of Abdul Gafur, his widow viz. Faridabi Abdul Gafur had moved an application to the respondent No. 3 on 16.04.2001 for getting appointment to the Applicant on compassionate ground. She has also stated that the applicant was minor at that time, but the said application was neither considered nor decided by the respondent No. 3. The applicant has completed

graduation in Arts in the year 2013 from Yashwantrao Chavan Mukta Vidyapeeth, Nashik. On 25.02.2013, Faridabi Abdul Gafur filed an application with the respondents and requested to give the appointment to the applicant on compassionate ground. The respondent No. 4 without giving any opportunity to the applicant, rejected his claim on the ground that it was not filed within limitation and communicated the decision to the Applicant by the letter dated 15.03.2013. Thereafter, the applicant has filed another application for getting appointment on compassionate ground on 16.12.2016, 26.12.2016, 29.04.2017 & 28.05.2018. The respondent No. 4 had informed the applicant by the communication dated 18.01.2017 that his applications were under consideration. The respondent No. 2 by the communication dated 06.06.2018, which was communicated to the applicant on 06.08.2018 informed that his application was rejected on the point of limitation. The applicant thereafter, approached the Hon'ble High Court of Bombay, Bench at Aurangabad by filing W.P. No. 11059 of 2018. The Hon'ble High Court disposed of the said W.P. No. 11059/2018 with liberty to the applicant to avail an alternate remedy available under law. Therefore, the applicant has approached this Tribunal by filing the present Original Application.

4. It is contention of the applicant that he was minor at the time of death of his father. The respondents were duty bound to inform the legal heirs of deceased employee regarding scheme of appointment on compassionate ground as per the G.R. dated 21.09.2017. But the respondents had not followed the mandatory provisions of G.R. and therefore, the applicant could not able to file an application for getting appointment on compassionate ground within time. It is his contention that the application filed by his mother in the year 2001 was within time but the respondents rejected his applications without considering the provisions of G.R. and therefore, the impugned orders are illegal. Therefore, he prayed to quash and set aside the impugned orders by allowing the present Original Application.

5. The respondent No. 2 has filed his affidavit in reply and resisted the contentions of the applicant. He has not disputed the fact that the father of the applicant i.e. Abdul Gafur Nabi Shaikh was serving on the establishment of respondent No. 3 and he died on 03.03.2001 while in service. It is contended by him that the State Government, Home Department had turned down the request of mother of the applicant for seeking appointment on compassionate ground to the applicant by the letter dated 06.06.2018. He has admitted the fact that the mother of the

applicant had filed an application dated 16.04.2001 for getting appointment to the applicant on compassionate ground on the post of Police Constable, when the applicant was 15 years old only. It is his contention that as per the G.R. dated 11.09.1996, the legal heirs of deceased Government employee has to make an application in the prescribed form for seeking appointment on compassionate ground within one year from the date of completion of 18 years. The applicant has not filed an application for getting appointment on compassionate ground within one year after attaining the age of majority i.e. 18 years, but her mother had also filed an application dated 16.04.2001, when he was minor. It is his contention that the mother of the applicant had filed an application dated 25.02.2013 for getting appointment on compassionate ground and at that time the applicant was 27 years old. The application was not filed within one year from the date of attaining the age of majority by the applicant and therefore, her request has been turned down the S.P. Jalgaon by the communication dated 15.03.2013. It is his contention that the applicant has attained his age of majority on 16.04.2004. He ought to have filed an application on or before 16.04.2005, but the applicant has not filed an application in time and therefore, the respondents had rightly rejected his application. Thereafter, also the mother of the applicant has filed an application

with the respondents. After considering her application, the respondent i.e. the State Government, Home Department rejected her application as her request has already been turned down on 15.03.2013 and she was informed accordingly by the communication dated 06.06.2018. It is his contention that the application of the applicant has been rejected as per the provisions of G.R. and there is no illegality in it. Therefore, he justified the impugned orders and prayed to dismiss the present Original Application.

6. The respondent Nos. 3 and 4 have filed their affidavit-in-reply and resisted the contentions of the applicant by raising similar contentions to that of the contentions raised by the respondent No. 2 in his affidavit in reply and prayed to reject the present Original Application.

7. I have heard Shri Naseem R. Sahikh, learned Advocate for the applicant and Shri D.R. Patil, learned Presenting Officer for the respondents. I have perused the document placed on record by both the parties.

8. Admittedly, deceased Gafur Gulam Nabi Shaikh was father of the applicant. He was serving as Head Constable on the establishment of respondent No. 3 i.e. S.P. Jalgaon. He died on

03.03.2001, while in service. The applicant, his mother Farida, his elder brother Salim, and sisters Fahmida, Shamina, Jubedabi, Farzana and Sultanabi are legal heirs of deceased Abdul Gafur. At the time of death of AbdulGafur, his elder son Salim Gafur Shaikh was in service and he was residing at Thane along with his wife and children. Admittedly, the daughters of deceased Abdul Gafur were married and residing in their matrimonial home. The applicant was minor at the time of death of Abdul Gafur. The applicant had attained the age of majority on 16.04.2004. There is no dispute about the fact that the mother of the applicant viz. Faridabi Abdul Gafur filed an application dated 03.03.2001 with the respondents seeking appointment on compassionate ground to the applicant on attaining the age of majority by the applicant. Admittedly, thereafter, neither the applicant nor his mother had filed an application in the prescribed pro-forma as required as per the rules within one year after attaining the age of majority by the applicant. There is no dispute about the fact that the mother of the applicant thereafter, filed another application for getting employment to the Applicant on compassionate ground in the year 2013 i.e. on 25.02.2013. Her application came to be rejected by the S.P. Jalgaon on 15.03.2013 on the ground that it was not filed within limitation. Thereafter, on 16.12.2016, 26.12.2016, 29.04.2017 and

28.05.2018 the applicant had moved applications with a same request and the respondents rejected the same by the communications dated 06.06.2018, which was communicated to the applicant on 06.08.2018. Admittedly, neither mother of the applicant nor the applicant had challenged the communication dated 15.03.2013 immediately.

9. Learned Advocate for the applicant has submitted that in view of the G.Rs. issued by the Government from time to time, it is mandatory on the part of the employer to inform the LRs of deceased Government employee regarding the scheme to get appointment on compassionate ground. But the respondent No. 4 had not informed the applicant or his mother about it immediately after death of father of the Applicant and therefore, the applicant could not be able to file an application in time. He has submitted that as the respondent No. 4 has not complied the mandatory provisions of the G.Rs., the applicant was not aware about the scheme and therefore, he had not filed an application in time, but the respondents had not considered the said aspect while rejecting the claim of the Applicant. Therefore, he approached this Tribunal. Therefore, he prayed to allow the present Original Application and also prayed to direct the respondents to consider the case of the Applicant afresh.

10. Learned Presenting Officer has submitted that in the year 2001, the mother of the applicant had filed an application for getting appointment on compassionate ground to the applicant on attaining the age of majority. He has submitted that the very fact itself shows that the mother of the applicant, as well as, the applicant were informed about the scheme for getting appointment on compassionate ground to the LRs. of deceased employee by the respondents and after knowing fully well about the scheme, she moved an application for appointment on compassionate ground. He has submitted that the application dated 16.04.2001(Exhibit 'C', page No. 37) has been filed by the mother of the applicant, when the applicant was minor i.e. 15 years old. As the applicant was minor, he was not entitled to get employment that time and he ought to have filed an application on attaining the age of majority within one year, but he had not filed the application within time. He has submitted that in the year 2013, the mother of the applicant had moved an application, but the same was not filed within time and therefore, it was rejected by the respondent No. 4. He has submitted that at that time also the applicant had not moved an application. Thereafter, in the year 2016, the applicant had moved an application for the first time, but it was not in time and therefore, the respondent No. 1 has rejected the same by order

dated 06.08.2018, which was communicated to the applicant on 06.08.2018. He has submitted that there is no illegality in the impugned orders and therefore, he supported the same.

11. On perusal of the record, it reveals that on 16.04.2001, the mother of the applicant had filed an application for getting appointment on compassionate ground to the applicant. The applicant was 15 years old at that time. As per the provisions of G.Rs. issued by the Government from time to time, under the said scheme in case of the minor legal heirs of the deceased Government employee, he or she has to file an application for getting appointment on compassionate ground in prescribed format within one year after attaining the age of majority. The applicant has attained the age of majority on 16.04.2004. He ought to have filed an application for appointment on compassionate ground on or before 16.04.2005. But the applicant had not filed an application to get employment under the said scheme within stipulated time. In the year 2013, i.e. on 25.02.2013, the mother of the applicant has filed another application for getting appointment to the applicant, but it was also beyond the stipulated time and therefore, it was rejected by the respondent No. 4 by the communication dated 15.03.2013. Neither the mother of the applicant nor the applicant had challenged the said order before

appropriate forum. The applicant thereafter moved applications dated 16.12.2016, 26.12.2016, 29.04.2017 & 28.05.2018 and claimed appointment on compassionate ground. He filed the application for the first time in the year 2016. The applications moved by the Applicant were rejected by the respondent No. 1 by the communication dated 06.06.2018, which was communicated to the applicant by the communication dated 06.08.2018 on the ground that his earlier claim was rejected in the year 2013, as it was barred by limitation. All these facts are sufficient to show that the applicant himself had not moved an application for getting appointment on compassionate ground within one year on attaining the age of majority. He moved an application in the year 2016 for the first time after 12 years on attaining the age of majority. His mother moved an application in the year 2013 i.e. 9 years after attaining the age of majority of the applicant. All these applications were not within limitation as provided under G.R. and therefore, the respondent No. 4, as well as, respondent No. 1 rightly rejected the applications. There is no illegality in the impugned communications and therefore, no interference is called for in it. There is no merit in the present Original Application. Consequently, the O.A. deserves to be dismissed.

12. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD.

(B.P. PATIL)

DATE : 01.04.2019

MEMBER (J)

KPBS.B. O.A. No. 817 of 2018 BPP 2019 Compassionate appointment