

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.546 OF 2018
IN
ORIGINAL APPLICATION NO.796 OF 2018**

Shri Sunil Vishwanath Mohite.)...Applicant

Versus

1. The Deputy Director of Land Records,)
Kolkán Division, Mumbai & Anr.)...Respondents

Smt. Sangita Dongre holding for Shri D.S. Pagare, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 20.06.2019

ORDER

1. Heard Smt. Sangita Dongre holding for Shri D.S. Pagare, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.

2. This is an application for condonation of delay caused in filing O.A.No.796/2018 for direction in the matter of appointment on compassionate ground.

3. The father of the Applicant viz. Vishwanath Mohite, who was in the employment with Respondents died in harness on 04.04.2007 leaving behind him three sons viz. Kishor, Rakesh, Sunil i.e. Applicant and widow. After the death of Vishwanath, his elder son Kishor applied for appointment on compassionate ground on 19.10.2007. Unfortunately, he died on 18.06.2012 and till his death, he did not receive the appointment. Thereafter, the Applicant's elder brother Rakesh died on 13th July, 2014. In the meantime, the Respondents being not aware about the death of Kishor, issued appointment order of Kishor on compassionate ground on 02.04.2013, which was not communicated to the family. It is on this background, the Applicant had made an application for grant of appointment on compassionate ground on 08.01.2014. However, it came to be rejected by order dated 19.03.2014 which is challenged in the O.A.

4. In O.A, the Office raised objection on the ground of limitation since the impugned order under challenge is being questioned after the period of limitation of one year is over. The Applicant has, therefore, filed the present M.A. contending that in fact, the order dated 19.03.2014 was not at all served upon any of the member of the family and for the first time, they came to know about the order in view of filing of the copy of order during the pendency of this O.A. The Applicant, therefore, contends that in fact, there is no question of limitation as the impugned order dated 19.03.2014 was not at all served on any of the member of the family.

5. Whereas, the learned P.O. sought to contend that the order dated 19.03.2014 was sent to the mother of the Applicant through Post and she must have received the same. The learned P.O. has shown Outward Register wherein there is entry of dispatch of the letter.

6. However, there is nothing in Dispatch Register to show about the mode of communication of the impugned order as to whether it is by Registered Post or

by other mode. The Applicant has categorically stated that no such order was served upon his mother. Admittedly, it was not sent by Registered Post. As such, it cannot be said with certainty that the said communication was really received by the mother of the Applicant or by any other member of the family. As such, in absence of service of impugned order, the question of starting of limitation does not survive.

7. Apart, this is a matter relating to appointment on compassionate ground. After the death of Vishwanath, the family had undergone trauma and tragedy of death of two younger sons of Vishwanath. His elder son Kishor, who had applied for appointment on compassionate ground on 18.06.2012, but the Department was not aware about his death and in ignorance of it, issued appointment order on 02.04.2013 which in fact was not communicated to the family. Thereafter, the Applicant's elder brother Rakesh also expired on 30.07.2014 following heart attack. As such, the Applicant and his widowed mother are the surviving members and except Applicant, there seems to be no other earning member in the family. It is in this context, one needs to adopt justice oriented approach while deciding the application for condonation of delay and O.A. should not be rejected on hyper-technical ground. Needless to mention, the sufficiency of explanation or cause for delay is material and not the length of delay. Here, having considered the tragedy in the family of Applicant even assuming for a moment that the impugned order was served upon family, in my considered opinion, the delay deserves to be condoned.

8. There is another angle of the matter. The application made by the Applicant was rejected by impugned order dated 19.03.2014 on the ground that there is no provision in G.R. dated 03.01.2011 for substitution of heir in waiting list for the appointment on compassionate ground. Whereas, the facts of present case are very peculiar in the sense that the elder son Kishor who applied for compassionate appointment died on 18.06.2012 and till death, he did not receive

appointment order. After his death, the Department being not aware about his death, issued order of appointment on 02.04.2013. Here, it may be noted that by G.R. dated 20.05.2015, the provision is made for substitution of heir in waiting list in case of his death. True, the impugned order was passed before issuance of G.R. dated 20.05.2015. However, fact remains that by G.R. dated 20.05.2015, the provision is made by the Government for substitution of heir in case of his death. This being so, if the matter is examined in the light of G.R. dated 20.05.2015, the rejection on the ground that there is no provision of substitution of heir may not be sustainable in law. I, therefore, think it just and appropriate to allow the application for condonation of delay and to decide the matter on merit. The Misc. Application No.546/2018 is accordingly allowed. No order as to costs.

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

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