

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 984 /2017 (S.B.)

Kundan S/o Vasant Bhagat,
Aged about 39 years,
R/o Untkhana, Plot no.80,
Behind Dr. Babasaheb Ambedkar School,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Public Works,
Mantralaya, Mumbai.
- 2) The Superintendent Engineer,
Public Works Department,
Nagpur.
- 3) The Executive Engineer,
Integrated Unit (Medical),
Public Works, Nagpur.
- 4) The Sub Divisional Engineer,
Public Works Sub Division No.5,
Nagpur.

Respondents.

Shri S.S. Mohod, Advocate for the applicant.

Shri H.K. Pande, P.O. for respondents.

**Coram :- Hon'ble Shri A.D. Karanjkar,
Member (J).**

JUDGMENT

(Delivered on this 26th day of February,2019)

Heard Shri S.S. Mohod, learned counsel for the applicant
and Shri H.K. Pande, learned P.O. for the respondents.

2. I have heard submissions of the applicant and the respondents. The facts of the case are that in year 2006 mother of the applicant Smt. Shankutala Vasant Bhagat was serving as "Reja" on establishment of the respondent No.4. The mother of the applicant had paralysis attack, she was referred by the respondent No.3 to the Medical Board and as it was found that she was unable to discharge her official duty, therefore, vide order dt/2-3-2007 (Anx A1), she was retired from the service on medical ground as per Rule 72 & 80 of the MCS (Pension) Rules 1982.

3. On 8-6-2007 the applicant submitted application (Anx A2) for appointing him in service on compassionate ground as his mother was forced to retire from service on medical grounds. This application came to be rejected and vide letter dt/20-11-2009 the respondent No.4 informed to the applicant that as per G.R. dt/22-8-2005 the previous provision to appoint dependent of the Government servant who retired on medical ground, was cancelled, therefore, the application was rejected. The mother of the applicant died on 17-6-2010. In year year 2017 the applicant learnt that the para 2(1) of the G.R. dt/22-8-2005 was struck down by MAT Bench Mumbai, in application filed by one Amol Devre, thereafter, the applicant submitted fresh application on 31-8-2017 for his appointment on compassionate ground the application was rejected on the basis of the G.R. Dt/ 22-8-2005 & G.R.

Dt/ 21-9-2017. It is submission of the applicant that the action of the respondents is absolutely illegal, as it is based on the provision which is struck down by MAT Bench Mumbai, therefore, this application be allowed in terms of the prayer clause.

4. The application is resisted by the respondents on the ground that the Government has issued G.R. Dt/21-9-2017 and as per this G.R. the applicant is not entitled for any relief. The second contention of the respondents is that the applicant's first application was rejected in year 2009, the applicant did not challenge that order within prescribed time, therefore, this application is barred by limitation and be dismissed with costs.

5. After hearing the rival submissions on behalf of the applicant and the respondents it seems that the first application for the appointment of compassionate ground was rejected in year 2009, the applicant remained silent till 2017. As a matter of fact the first application was rejected on the basis of para 2 (1) of G.R. Dt/22-8-2005, the applicant could have challenged this rejection within time prescribed by law by filing application before this tribunal, but it was not done. It is case of the applicant that he made successive representations when he learnt about the decision in case of Amol Deore, therefore, the bar of limitation would not apply. It is fact that O.A. No.1006/2015 was decided by MAT Division Bench Mumbai on

7-8-2017 and it was held that para 2(1) of G.R. Dt/22-8-2005 was contrary to the statutory provision, it was ultra vires, so it was struck down.

6. The respondents have placed reliance on G.R. Dt/21-9-2017 and submitted that while issuing this G.R. the Government revived all previous G.R. issued in this regard, therefore, G.R. Dt/22-8-2005 was revived as it was, therefore, the order of rejection dt/ 6-11-2017 is perfectly legal and there is no error in this order. Here I would like to point out that in O.A. No.1006/2015 *Amol Gautam Deore and one v/s The Additional Commissioner of Sale Tax and others* decided by MAT Division Bench Mumbai on 7-8-2017 it was held that the para 2(1) of G.R. Dt/ 22-8-2005 was in violation of section 47 of *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*, therefore, it was struck down. This was the position when the Government issued G.R. Dt/21-9-2017. The date on which this G.R. was issued the para 2(1) of in G.R. Dt/ 22-8-2005 was non exist as it was already struck down in case of Amol Deore, in this circumstance, the order passed by the respondents dt/6-11-2017 is absolutely illegal.

7. In view of the above discussed facts I would like to consider whether application is barred by limitation. As per para 3 of G.R. Dt/22-8-2005 the time limit of 5 years to submit application for

appointment on compassionate ground was reduced to 1 year (from the death of the deceased). The application was submitted by the applicant on 8-6-2007, applicant's mother retired on medical ground vide order dt/2-3-2007 and its rejection was informed to the applicant vide letter dt/20-11-2009. It must be remembered that when application Anx.A 2 was rejected para 2(1) of the G.R. Dt/22-8-2005 was in force. On the basis of this para 2(1) many application must have been rejected, therefore, it is necessary to consider whether on the basis of the decision in case of Amol Deore the applicant has right to claim appointment on compassionate ground. It is rule of interpretation that the judgment would operate prospectively and the earlier decisions which has attained finality can not be reopened. In present matter it seems that the applicant remained silent till year 2017, no justification is shown why the applicant did not challenge the order of rejection by approaching this tribunal, therefore, order of rejection of application attained finality.

8. The second aspect is that in view of the time limit of 1 year fixed in G.R. Dt/22-8-2005, the application submitted by the applicant on 31-8-2017 (Anx A 14) was liable to be rejected for the reason that it was not filed within time fixed. As a matter of fact this tribunal has no jurisdiction to extent the time limit of one year fixed by the Government for filing application for appointment on compassionate ground. In this

situation if the applicant who remained silent till 2017 is permitted to claim relief, then it will violate the term in the G.R.Dt/22-8-2005 that the application shall be made within 1 year. The learned counsel for the applicant has placed reliance on the judgment delivered by CAT Hyderabad Bench in O.A. No.527/1787 decided on 14-4-1988, it is necessary to point out that this tribunal is empowered to condone the delay caused in filing the application under the provisions of Administrative Tribunal Act, but this tribunal is not authorised to extent the period of limitation specifically fixed by the G.R. that authority is only with the Government. There is no pleading and prayer to condone the delay caused in challenging the rejection of first application vide letter dt/20-11-2009. In view of these facts in my opinion there is no merit in this application and the applicant is not entitled to any relief. Hence the following order.

ORDER

The O.A. stands dismissed, no order as to cost.

Dated :- 26/02/2019.

dnk.

(A.D. Karanjkar)
Member (J).