

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1107 OF 2019

DISTRICT : SANGLI

Shri Yogesh Vijay Mane.)
Age : 32 Yrs., Occu.: Nil,)
R/o. At & Post : Takari, Tal. : Valwa,)
District : Sangli 415 313.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner of Police.)
Desk-9(4)/Compassionate)
Appointment (Lower Establishment,)
Naigaum, Mumbai.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

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

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 13.10.2020

JUDGMENT

1. The Applicant has invoked jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for challenging the communication dated 24.05.2019 whereby his claim for appointment on compassionate ground is rejected by Respondent No.2 – Commissioner of Police, Mumbai.

2. Undisputed facts giving rise to this application can be summarized as under :-

(i) Applicant is the son of deceased Vijay Mane, who was serving as Police Head Constable on the establishment of Respondent No.2 – Commissioner of Police.

(ii) He died in harness on 05.10.1996 leaving behind widow and son i.e. present Applicant.

(iii) Applicant was born on 15.01.1987 and had attained 18 years of age on 15.01.2005.

(iv) In terms of G.R. dated 11.09.1996, the application for appointment by minor son ought to have been made within one year from the date of attaining 18 years of age.

(v) After the death of husband, his widow Smt. Mangal made an application for appointment to her son i.e. present Applicant for appointment on compassionate ground on 23.05.2015.

(vi) Respondent No.2 rejected the claim vide communication dated 28.03.2016 on the ground that the application is delayed by 10 years in view of attaining the age of 18 years on 18.01.2005.

(vii) Applicant again made fresh application on 05.03.2019 for appointment on compassionate ground on the ground that Respondent No.2 did not inform about the scheme of compassionate appointment immediately after death of his father in terms of G.R. dated 23.08.1996.

(viii) Respondent No.2 again rejected the application by communication dated 25.05.2019 which is impugned in the present O.A. on the ground of 13 years delay in making the application from attaining the age of 18 years.

3. The Respondents resisted the application by filing Affidavit-in-reply *inter-alia* denying that after the death of deceased Vijay, the information about the scheme of appointment on compassionate ground was not informed to the family of deceased. In this behalf, the Respondents contend that the information about the scheme of compassionate appointment was orally informed to the family of deceased at the time of submission of papers for grant of family pension and other retiral benefits of the deceased. In terms of G.R. dated 11.09.1996, the application ought to have been made within one year from attaining majority but the same is belated by 13 years, and therefore, it is rightly rejected.

4. Shri R.M. Kolge, learned Advocate for the Applicant sought to contend that in terms of G.R. dated 23.08.1996, the Respondent No.2 was under obligation to inform about the details of scheme of appointment on compassionate ground to the family of deceased in writing but the same being not complied with, the family was unaware about the scheme for appointment on compassionate ground, and therefore, the Applicant cannot be blamed for making application late. He has pointed out that the Applicant has sought information under RTI Act but no such record of communication of scheme for compassionate appointment to the family of deceased is available with Respondent No.2. On this line of submission, he submits that the Applicant is in dire need of job and in view of object of the scheme, there being no other earning member in the family, the Applicant is entitled for appointment on compassionate ground.

5. Whereas, Shri A.J. Chougule, learned Presenting Officer submits that there is no proximity in the scheme for appointment on compassionate ground having been made after two decades from the death of employee and secondly, the application not having made within one year from attaining the date of majority in terms of G.R. dated 11.09.1996, the rejection of the claim cannot be questioned.

6. Indisputably, the Applicant has attained age of 18 years on 15.01.2005. First application was made on 23.05.2015 after 10 years from attaining majority. The application dated 23.05.2015 has been rejected by communication dated 28.03.2016 (Page No.16 of Paper Book filed by the Applicant himself) on the ground of delay of 10 years. Interesting to note that this communication dated 28.03.2016 was first in time, but the same has not been challenged by the Applicant by availing judicial remedy. Indeed, there being cause of action accrued in terms of communication dated 28.03.2016, he ought to have challenged the same by availing judicial remedy but he did not challenge the communication dated 28.03.2016. Instead of challenging the same, he made another application on 05.03.2019 which is again rejected by order dated 24.05.2019 which is impugned in the present O.A. Whereas, O.A. is filed on 19.11.2019 challenging the communication dated 24.05.2019. As such, O.A. itself is not within limitation as the Applicant did not challenge the communication dated 28.03.2016. Needless to mention that subsequent representation or application dated 25.03.2019 and its rejection could not extend the period of limitation. The Applicant ought to have filed O.A. within one year from the communication dated 28.03.2016 in terms of Section 21 of Administrative Tribunals Act, 1985. Therefore, in my considered opinion, the O.A. itself is not within limitation.

7. Even assuming for a moment that O.A. is within limitation, the impugned order rejecting second application dated 05.03.2019 cannot be faulted with for the reasons to follow.

8. True, in terms of Clause No.6 of G.R. dated 23.08.1996, it was necessary on the part of Respondent No.2 to furnish necessary information to the family of deceased in respect of scheme for appointment on compassionate ground so that the family can take necessary steps. Para No.6 of G.R. dated 23.08.1996 is as follows :-

“६. मृत/वेदयकीय कारणास्तव अकाली सेवानिवृत्त होणा-या शासकीय कर्मचा-यांच्या नातेवाईकाला अनुकंपा तत्वावर नियुक्तीच्या योजनेची माहिती देण्याची जबाबदारी संबंधित आस्थापना अधिका-यांची राहिल. आस्थापना अधिका-याने अनुकंपा तत्वावर नियुक्तीच्या योजनेची माहिती शासकीय कर्मचा-यांच्या मृत्यूनंतर १५ दिवसांनंतर किंवा कुटुंबनिवृत्त वेतनाची कागदपत्रे पाठविताना शासकीय कर्मचा-यांच्या कुटुंबियांना त्वरीत उपलब्ध करून द्यावी.”

9. Whereas, the Respondents in Para No.14 of the reply denied that no such information was supplied to the family of deceased and I Para No.14 pleads as under :-

“14. With reference to contents of Ground Nos.6.11 and 6.12, it is respectfully submitted that the contention raised in these paras are denied. According to the office procedure every office establishment and concerned police station provides oral information to the family member of deceased person about compassionate ground scheme at the time of pension documentation. It is further respectfully submitted that the present Applicant filed application by delay of about 13 years. It is inordinate delay without bonafide cause. Therefore rejection order dated 24.05.2019 is just legal and proper.”

10. The Applicant has tried to obtain information under RTI about the communication of the scheme of compassionate appointment to the family of deceased immediately after death of his father. The Applicant was informed that the record being too old, it is not available. The information sought and answer given by Public Information Officer, as seen from page No.27 is as follows :-

अ. क.	अर्जदार यांनी मागणी केलेली माहिती	कार्यालयाचे अभिप्राय
	दि.०५/१०/१९९६ ते दि.३०/१०/१८ या कालावधीत शा.नि.क्र.अकंपा/१०९५/प्र.क्र.३४ अ/आठ/मंत्रालय मुंबई-३०, दिनांक दिनांक २८/०८/१९९६ मधील मुददा क्र.६ दिवगंत कर्मचा-यांच्या कुटुंबास अनुकंपा तत्वावर नियुक्तीची माहिती लेखी कळविलेल्या पत्राची छांयांकित प्रत.	अर्जदार यांनी दि.०५/१०/१९९६ ते दि. ३०/१०/२०१८ सुमारे २४ वर्षे प्रदीर्घ जुन्या कालावधीच्या अभिलेखाची मागणी केलेले आहे. अर्जदाराने मागणी केलेला अभिलेख जुना असल्यामुळे त्या त्या वेळी निर्लेखित होत असल्यामुळे उपलब्ध नाही. याखेरीज अर्जदाराने मागितलेली माहिती व्यापक स्वरूपाची आहे. सदरहु मान्य केलेली माहितीची सार्वजनिक कामकाजाशी अथवा व्यापक जनहिताशी संबंध असल्याचे दिसून येत नाही. अर्जदाराने त्याच्या व्यक्तीची वैयक्तिक माहिती मागितलेली आहे. माहिती अधिकार अधिनियम - २००५ नियम ८ (१) त्र मधील वैयक्तिक माहिती पुरविता येत नाही.

11. It appears that the Applicant is trying to take advantage of the absence of record of communication of the scheme of appointment on compassionate ground to the family of deceased after the death of employee. The father of the Applicant died on 05.10.1996. The information under RTI was sought by application dated 15.11.2018. It being pertaining to 24 years old record, he was informed that the old record being destroyed is not available. As such, it cannot be said conclusively that there was no such communication of the scheme of appointment on compassionate ground to the family of deceased after the death of employee. Admittedly, the mother of widow had submitted necessary documents for family pension immediately after the death of her husband and family pension was accordingly granted. This being the position, apparently, the Applicant is taking advantage of the absence of record of communication of the scheme to the family, but fact remains that he even after attaining majority in 2005 did not make any effort for the same and applied for the first time on 23.05.2015 and again applied second time on 05.03.2019. As such, there is total inaction on the part of Applicant for 13 years even after attaining majority. Whereas, in terms of G.R. dated 11.09.1996, the application ought to have been made within one year from the date of attaining majority.

12. As stated above, the Applicant attained the age of 18 years on 15.01.2005. However, he made first application on 23.05.2015 i.e after more than 10 years and it was rejected by order dated 28.03.2016 which had attained finality and thereafter again filed second application on 05.03.2019 which was after 14 years from the date of attaining majority. Whereas, as per stipulation in G.R. dated 11.09.1996, the application ought to have been made within one year from the date of attaining 18 years' of age. This being the position, the application made by the Applicant was not in consonance of G.R. dated 11.09.1996 which stipulates pre-requisite or grant of appointment under the scheme of compassionate appointment. It may be noted that Applicant's father died on 05.10.1996. As such, now the period of near about 24 years is

over. In other words, there is no proximity in the claim of the Applicant for grant of appointment on compassionate ground and death of employee. The very concept of compassionate appointment is to tide over the financial difficulties during the period of distress so that immediate requirement of financial hardship can be taken care of. As such, the need of financial assistance seems to have overcome and there was no such immediate financial need in the form of appointment on compassionate ground. The request for appointment on compassionate ground should be reasonable and proximate to the time of death of the employee. Whereas, in the present case, the period of 24 years is already lapsed. It leads to suggest that there was no such financial crises or need so as to provide appointment on compassionate ground. The contention raised by the Applicant that the family was not aware of the scheme of compassionate appointment, and therefore, did not make an application within stipulated period does not inspire any confidence. Apart, fact remains that the period of more than two decades is over which in my considered opinion eclipses the necessity of appointment on compassionate ground.

13. Needless to mention that the appointment on compassionate ground cannot be claimed as of right or by way of succession. The compassionate appointment has to be granted in terms of condition laid down in the scheme and there could be no right whatsoever outside such scheme.

14. In this behalf, reference may be made to the decision of Hon'ble Supreme Court in the matter of **(2010) 11 SCC 661 (State Bank of India & Anr. Vs. Raj Kumar)** is as follows :

“The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules of by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.”

15. It would be also apposite to refer **(2009) 6 SCC 481 (Santosh Kumar Dubey Vs. State of Uttar Pradesh & Ors.)** wherein in Para Nos.11 and 12, the Hon'ble Supreme Court held as follows :

“11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that is faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in Government service.”

16. The reliance placed by the learned Advocate for the Applicant on the decision rendered by this Tribunal in **O.A.No.636/2016 (Sagar B. Raikar Vs. Superintending Engineer) decided on 21.03.2017** and **O.A.No.645/2017 (Manoj A. Damale Vs. Superintending Engineer & Administrator) decided on 02.04.2019** is misplaced. These decisions pertain to the substitution of heir whose name is taken in waiting list which subsequently deleted on account of age bar in terms of Government policy. Whereas, in the present case, there is no such issue, and therefore, these decisions are not of any help to the Applicant.

17. The learned Advocate for the Applicant also placed reliance on the decision of Hon'ble Supreme Court in **2011(8) SCALE 627 (Supriya S. Patil Vs. State of Maharashtra)**. In that case also, the name of the Applicant was empanelled in waiting list for appointment on compassionate ground but was declined on account of crossing the age limit. It is in that context, the Hon'ble Supreme Court issued direction for appointment on compassionate ground in exercise of its jurisdiction under Section 142 of the Constitution of India. The Hon'ble Supreme Court make it clear that the order is passed in exercise of jurisdiction

under Article 142 of Constitution of India for doing complete justice and it may not be treated as precedent. This being the position, this Judgment cannot be used in favour of Applicant as a precedent.

18. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned order is devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

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

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 13.10.2020

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2020\October, 2020\O.A.1107.19.w.10.2020.Compassionate Appointment.doc

Uploaded on