

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1128 OF 2018**

**DISTRICT : PUNE**

Shri Avinash Madan Kamble. )  
Occu.: NIL, Residing at Vital Nagar, )  
Nandkhile Vasti, Daund, District : Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Director General of Police. )  
Shahid Bhagat Singh Marg, Colaba, )  
Mumbai – 400 001. )
3. The Commandant. )  
SRPF, Group 5, Daund, District : Pune. )...**Respondents**

**Mr. K.R. Jagdale, Advocate for Applicant.**

**Ms. N.G. Gohad, Presenting Officer for Respondents.**

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

**DATE : 11.07.2019**

**JUDGMENT**

1. The Applicant has challenged the impugned order dated 07.05.2018 whereby his claim for appointment on compassionate ground is rejected by the Government.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant's father viz. Madan Rajaram Kamble was serving in State Reserve Police Force and was deputed for Naxalite Bandobast in Gadchiroli District. On 10.11.1991 while he along with his force was travelling in the bus in Naxalite affected areas, in bomb explosion planted by Naxalite, 10 SRPF Constables succumbed to the injuries and 8 Constables including the Applicant's father suffered injuries. His father suffered 46% disability due to loss of hearing. As such, there was hearing loss and disability was assessed 46%. After incident, he was assigned light duty. On 01.12.2003, he submitted application for voluntary retirement and stood retired w.e.f.29.02.2004. Thereafter, he made an application on 21.11.2016 for appointment of his son i.e. the Applicant in Police Force on the post of Police Constable on compassionate ground. However, the Respondent No.1 rejected the application by impugned order dated 07.05.2018. The Applicant has challenged this order in the present O.A.

3. The Respondents resisted the entitlement of the Applicant contending that there was no proximity in the incident occurred on 10.11.1991 and the resignation submitted by the Applicant's father on 01.12.2003. The Respondents denied that the Applicant's father took voluntary retirement because of injuries suffered in the incident. The Respondents further contend that the G.R. dated 17.07.2007 which provides for appointment to the family member of the deceased or injured employee has no retrospective effect, and therefore, the claim of the Applicant has been rightly rejected. The application is further strongly opposed on the ground that the Applicant had attained majority in 2006, but his father made an application on 21.11.2016 i.e. after 10 years from attaining the majority by the Applicant. Thus, the application was barred by limitation in terms of G.R. dated 11.09.1996. With these pleadings, the Respondents prayed to dismiss the O.A.

4. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

5. In view of pleadings and submissions, following factors are not in dispute.

(a) The Applicant's father suffered injuries in accident occurred on 10.11.1991 while he was on duty in Naxalite affected area in Gadchiroli District as seen from FIR and information issued by the Department at Page No.22 of Paper Book.

(b) Even after incident occurred on 10.11.1991, the Applicant's father was in service till 28.02.2004 i.e. the date of voluntary retirement.

(c) In voluntary retirement notice dated 01.12.2003, there is no whisper that voluntary retirement is being taken on account of physically incapacity or injury related to the incident dated 10.11.1991.

(d) For the first time, the Applicant's father made an application to provide appointment to the Applicant on compassionate ground on 21.11.2016.

(e) The Applicant's date of birth is 05.05.1988 and he had completed 18 years of age on 05.05.2006.

6. In view of above, the crux of the matter in whether the rejection of the application by impugned order dated 07.05.2018 can be faulted with and the answer is in negative for the reasons to follow.

7. True, the Applicant's father seems to have suffered injuries in the incident occurred on 10.11.1991 while discharging duty in Naxalite area. He had also produced a copy of Disability Certificate issued by Sasoon General Hospital, Pune dated 27.10.2016 to show hearing impairment wherein disability was assessed 46%. However, admittedly, even after incident

occurred on 10.11.1991, he rendered service in SRPF till the date of voluntary retirement. He took voluntary retirement w.e.f.28.02.2004. Thus, there is no denying that even after the incident, he rendered service for 13 years. This goes to show that he was not that much physically incapacitated to perform the duties. Even assuming for a moment that he suffered hearing impairment because of the incident occurred on 10.11.1991, there is no denying that he was not physically incapacitated to discharge the duties, and therefore, continued service for 13 years. It is on this background, one needs to see the contents of notice of voluntary retirement.

8. The notice of voluntary retirement dated 01.12.2003 is at page No.19 of Paper Book, wherein there is absolutely no whisper or reason for taking voluntary retirement. All that he stated that he does not want to continue the service and opted for voluntary retirement. As such, there being no mention of the reason of voluntary retirement, it cannot be inferred that the Applicant's father opted voluntary retirement because of physical incapacity or injuries related to incident occurred on 10.11.1991. Suffice to say, there is no proximity between the incident and resignation submitted by the father of the Applicant. There could be other reason for taking voluntary retirement. Therefore, the story developed by the Applicant that his father was compelled to seek voluntary retirement because of injuries suffered while discharging duties can hardly be accepted.

9. As per G.R. dated 17.07.2007, the Government had taken policy decision to provide appointment on compassionate ground to the Government servant who died or suffered permanent disability while discharging duty in naxalite area and obtained voluntary retirement. It is clear from the G.R. dated 17.07.2007 that it has no retrospective effect and has come into effect from the date of issuance of G.R. Clause No.2 of G.R. is material which is as follows:-

“२) गट अ/ब/क/ड मधील जे शासकीय अधिकारी अथवा कर्मचारी नक्षलवादी / आतंकवादी / दरोडेखोर / समाजविघातक यांच्या हल्ल्यात / कारवाईमध्ये कायम स्वरुपी जायबंदी झाले आहेत व त्यांनी स्वतःहून शासकीय सेवा सोडून देण्याची लेखी अनुमती दिली आहे अशा अधिकारी / कर्मचाऱ्यांच्या पात्र कुटुंबियांतील एका व्यक्तीस वर विहित केलेल्या ५ टक्के मर्यादेमध्ये प्राधान्याने नियुक्ती देण्यात यावी.

वरील सुधारणा त्वरीत परीणामाने शासन निर्णयाच्या दिनांकापासून अंमलात येत असून वरील सुधारणांव्यतिरिक्त अनुकंपा नियुक्तीच्या योजनेतील प्रचलित इतर तरतुदी यापुढेही कायम राहतील. सदर शासन निर्णय महाराष्ट्र शासनाच्या वेबसाईटवर उपलब्ध करण्यात आला असून त्याचा संगणक संकेतांक २००७०७१७१५३४४१००१ असा आहे.”

10. In the present case, the Applicant's father took voluntary retirement w.e.f.29.02.2004, and therefore, apparently the G.R. is not applicable to him.

11. Furthermore, there is no proximity between the voluntary retirement and need of the Applicant for appointment on compassionate ground. Needless to mention that the very object of providing employment to the heir of the deceased or injured employee is to obviate their financial difficulties due to loss or service of sole earning member of the family. In other words, the object is to provide immediate financial assistance to the family, and therefore, the claim ought to have been raised without any delay. However, in the present case, though the Applicant had attained majority in 2006, for the first time his father submitted an application for appointment to his son on 21.11.2016. Thus, the application was filed after 10 years from attaining majority. Any other member of the family of the Applicant did not make an application for appointment on compassionate ground immediately after obtaining voluntary retirement by the Applicant's father. As such, if there was any such need of financial assistance, then the other member of the family ought to have applied for appointment on compassionate ground without delay. However, none of the family member applied for job. It is only on 21.11.2016, the Applicant's father made an application to provide job to his son.

12. It may be noted that as per G.R. dated 11<sup>th</sup> September, 1996, following note has been added below Rule 5(a) to the Annexure of Government Resolution dated 26.10.1994.

“A minor heir in the family of the government servant who died while in service or retired prematurely due to serious disease, should apply for appointment under this scheme within one year from the date of attaining the majority.

These orders will be effective from 1<sup>st</sup> March, 1996.”

However, in the present case, no such application has been made by the Applicant within one year from the date of attaining majority. It is only on 21.11.2016, the Applicant's father made an application on behalf of Applicant. Suffice to say, the application made by the father was hopelessly barred by limitation. True, as seen from the proposal dated 18.04.2017 forwarded by Special Inspector General of Police, he made recommendation for condonation of delay of 9 years and 2 months. However, the fact remains that the Government rejected the proposal and delay was not condoned.

12. The learned P.O. rightly referred to the recent Judgment of Hon'ble Supreme Court in **(2019) 3 SCC 653 (State of Himachal Pradesh and Anr. Vs. Shashi Kumar)** wherein on account of delay in making application for appointment on compassionate ground, the Hon'ble Supreme Court held that the Applicant is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place. The Hon'ble Supreme Court further held that the sense of immediacy is evidently lost in delay on the part of Applicant in seeking compassionate appointment. As such, the principles laid down in the Judgment are squarely attracted to the present case.

13. Shri K.R. Jagdale, learned Advocate for the Applicant referred to decision passed by this Tribunal in O.A.884/2014 (Deepak Naik Vs. Commissioner of Police) decided on 24.12.2013. I have gone through the Judgment and found based on total different facts. In that case, there was technical delay of little more than one month in applying for the appointment on compassionate ground on the post of Police Constable after working on the post of Child Constable till reaching the age of 15 years. As such, in peculiar circumstances of the case, the O.A. was allowed with direction to consider the name of Applicant on the post of Police Constable in fact situation.

14. The learned Advocate for the Applicant further referred to the decision of this Tribunal in ***O.A.380/2016 (Sangita R. Doijad Vs. State of Maharashtra) decided on 14.03.2017***, wherein the issue was about substitution of heir because of deleting the name of another heir from waiting list on attaining 40 years of age. It is in that context, directions were issued to consider the name of the Applicant for appointment on compassionate ground in place of his deceased father. As such, this authority is of no assistance to the Applicant in the present case.

15. Needless to mention that the appointment on compassionate ground is a concession and not a right. It is not source of regular employment and cannot be treated as bonanza. In the present case, there is no proximity between the injury suffered in the incident by the father of the Applicant and his resignation. Secondly, there is inordinate and unexplained delay of near about 10 years in making the application for appointment on compassionate ground from the date of attaining majority by the Applicant. This inordinate delay itself goes to show that there was no such dire need of appointment. In such situation, the rejection of the claim of appointment on compassionate

ground can hardly be faulted with. I see no legal infirmity in the impugned order and it does not warrant any interference.

16. The cumulative effect of aforesaid discussion leads me to conclude that the Applicant is not entitled to the relief claimed and O.A. is devoid of merit. Hence, the following order.

**ORDER**

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

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

Mumbai

Date : 11.07.2019

Dictation taken by :

S.K. Wamanse.

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