

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1170 OF 2017**

**DISTRICT : MUMBAI**

Smt. Madhuri Yashwant Raut. )  
Occu.: Nil, Residing at C/o. Eknath )  
Ladkoji Navale, Worli B.D.D. Chawl, )  
Building No.22, Room No.67, G.J. Marg, )  
Worli, Mumbai – 400 018. )...**Applicant**

**Versus**

1. The Commissioner of Police, )  
Mumbai, having office at Mumbai )  
Police Commissionerate, L.T. Marg, )  
Opp. Crawford Market, Fort, )  
Mumbai – 400 001. )  
2. The State of Maharashtra. )  
Through Principal Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )...**Respondents**

**Mr. Bhushan A. Bandiwadekar, Advocate for Applicant.**

**Mr. S.D. Dole, Presenting Officer for Respondents.**

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

**DATE : 09.06.2020**

**JUDGMENT**

1. The Applicant has challenged the communications dated 18.01.2016 and 29.07.2017 whereby her application for appointment on compassionate ground was rejected invoking

jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to the O.A. and necessary for the decision are as follows :-

(i) Applicant's father viz. Yashwant Raut was Assistant Sub-Inspector (ASI) on the establishment of Respondent No.1 – Commissioner of Police, Mumbai and died in harness on 07.07.2004 leaving behind widow namely Smt. Vandana, two daughter's viz. Madhuri (present Applicant), one married daughter and two sons viz. Dinesh and Ganesh.

(i) Smt. Vandana (widow of deceased) claims to have made an application on 20.04.2005 and 30.09.2005 for appointment on compassionate ground to her son Dinesh (Page No.31 and 230 of Paper Book) on the ground that elder son Ganesh is living separate, and therefore, requested for appointment to Dinesh.

(iii) There was no communication to Smt. Vandana about her application dated 20.04.2005. Dinesh died on 07.08.2010.

(iv) Since there was no communication in respect of application made by Smt. Vandana on 20.04.2005 after death of Dinesh, the present Applicant made an application for appointment on compassionate ground to her on 13.07.2015 (Page No.55 of P.B.).

(v) However, Respondent No.1 by impugned communication dated 18.01.2016 rejected the application made by the Applicant on the ground that it is belated by ten years and secondly, her brother Ganesh is already in service, and

therefore, she is not entitled to appointment on compassionate ground.

(vi) The Applicant then made representation dated 22.02.2017 to Respondent No.1 – Commissioner of Police and requested to re-consider her claim.

(vii) Respondent No.1 by communication dated 29.07.2017 rejected her application dated 22.02.2017 stating that her application is already rejected and communicated by letter dated 18.01.2016 and no case is made out to re-consider the decision.

3. Being aggrieved by communications dated 18.01.2016 and 29.07.2017, the Applicant has filed the present O.A.

4. The Respondent Nos.1 and 2 resisted the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondents denied that Smt. Vandana had ever made application dated 20.04.2005 or 30.09.2005 for grant of appointment on compassionate ground. According to Respondents, no such application was made by Smt. Vandana on 20.04.2005 or 30.09.2005 which she claims to have made vide Page No.31 and 230 of P.B. and it is fabricated document. Thus, the Respondents contend that for the first time, the Applicant made an application on 13.07.2015 for appointment on compassionate ground. It was processed in terms of G.Rs. dated 26.10.1994, 11.01.1996 and 22.08.2005. Respondents sought to justify the impugned order contending that the Applicant made application for the first time on 13.07.2015 and the same being barred by limitation, it has been rightly rejected. The Applicant's father died on 07.07.2004 and the application was required to be made within five years from the date of death in terms of G.R. dated 26.10.1994.

Thereafter, the limitation of five year was curtailed to one year by G.R. dated 22.08.2005. Whereas in case of minor, application for appointment on compassionate ground was required to be made within one year after attaining the majority. The Applicant's date of birth is 11.10.1985 and she attained majority on 11.10.2003. Thus, application ought to have been made on or before 11.10.2004. However, she applied on 13.07.2015, and therefore, being belated by ten years, the same has been rightly rejected. The Respondents further contend that elder son of deceased Yashwant, (brother of applicant) namely Ganesh is already in service, and therefore, the family was not in need of any financial assistance so as to provide appointment on compassionate ground. The Respondents further raised plea of limitation contending that Applicant's claim was rejected by order dated 18.01.2016, and therefore, the O.A. ought to have been filed within one year from the date of impugned order. However, O.A. is filed on 18.12.2017, and therefore, it is barred by law of limitation as contemplated under section 21 of Administrative Tribunal Act. With this pleading, the Respondents prayed to dismiss the O.A.

5. Heard Shri A. V. Bandiwadekar, learned Counsel for the Applicant and Shri S.D. Dole, learned Presenting Officer for the Respondents.

6. Filing of application dated 20.04.2005 and 30.09.2005 itself is questioned and denied by the Respondents. The father of the Applicant died on 07.07.2004, and therefore, application for appointment on compassionate ground was required to be made within five years in terms of the then applicable G.R. dated 26.10.1994. The Applicant claims to have made an applications on 20.04.2005 and 30.09.2005. In order to substantiate the same, the Applicant has produced zerox copies of the applications which is at page no.31 and 230 of PB. Perusal of page No.31 reveals that it was

addressed to कक्ष -९ (कनिष्ठ आस्थापना), पोलीस आयुक्त, मुंबई. It purportedly bears acknowledgment of receipt of the application by नोंदणी शाखा (कक्ष - ९), पोलीस आयुक्त, मुंबई. There is a stamp to that effect on page No.31. Whereas page No.230 is also addressed to कक्ष -९, पोलीस आयुक्त, मुंबई but it bears the stamp of acknowledgment by कक्ष -९ (मध्यवर्ती भरती कक्ष), न्यु बीडीडी वाळ, नायगाव, दादर, मुंबई. Whereas the Respondents contend that no such application was made and document at page No.31 and 230 are fabricated. It appears that the Applicant had sought information about the steps taken by the department on her application dated 20.04.2005. However, no such information was supplied to the Applicant. She, therefore, filed first appeal wherein by order dated 20.04.2017, the directions were issued to Public Information Officer to supply the information. As no information was supplied, the Applicant preferred second appeal before State Information Commissioner. It appears from the order of State Information Commissioner dated 10.07.2017 (Page Nos.254 and 255 of PB) that the statement was made by the department that no such application dated 20.04.2005 is available on record. It further appears that statement was made before the State Information Commissioner that the subject of appointment on compassionate ground was earlier dealt with by कक्ष -९ (कनिष्ठ आस्थापना, पोलीस आयुक्त, मुंबई). On the basis on this submission, State Information Commissioner allowed the appeal and directed the Public Information Officer to supply the information on or before 31.07.2017 without cost. In pursuance of order of State Information Commissioner, the Applicant was again informed that no record is available about the existence of any such application allegedly made on 20.04.2005 as seen from page Nos.250, 251 of PB. As such, it was consistent stand of the Respondents that no such application dated 20.04.2005 or 30.09.2005 was made by the Applicant.

7. True, the application dated 20.04.2005 at page No.31 and at page No.230 purportedly bears endorsement of acknowledgement.

However, the Respondents come with specific contention that no such application was ever made.

8. Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant sought to contend that Respondents are denying the receipt of applications dated 20.04.2005 and 30.09.2005 only to cover up their lapses for not taking appropriate steps with promptitude on those applications. Even assuming for a moment that Applicant's mother had made such application on 20.04.2005 and 30.09.2005, it was for appointment to her son Dinesh and not for the Applicant. Unfortunately, Dinesh died on 07.08.2010. Curiously, there is nothing on record to indicate that the Applicant's mother had taken any action or follow up in respect of application dated 20.04.2005 and 30.09.2005 even after the death of Dinesh who died on 07.08.2010. No application was made to the Respondents about the action taken on her earlier applications nor any application was made by the Applicant till 13.07.2015. It is only on 13.07.2015, the Applicant made an application for appointment on compassionate ground which is at page no.55 of PB which has been rejected by impugned order dated 18.01.2016.

9. Admittedly, the Applicant attained majority on 11.10.2003, and therefore, she was required to make an application within one year from attaining the age of majority in terms of G.R. dated 26.10.1994. However, she applied on 13.07.2015. As such, it is belated by ten years.

10. The submission was advanced by learned Counsel for the Applicant that the application made by the applicant on 13.07.2015 ought to have been considered in continuation of application made by Smt. Vandana on 20.04.2005 and 30.09.2005 and the Applicant's name ought to have been taken in waiting list to provide appointment on compassionate ground. I am unable to accept this

submission. Indeed, the making of an applications dated 20.04.2005 and 30.09.2005 itself is in serious doubt. The Respondents have categorically denied the receipt of any such application. Even assuming for a moment that any such application was made, it was for appointment to Dinesh and not for Applicant. Unfortunately, Dinesh died on 07.08.2010. Therefore, the application allegedly made on 20.04.2005 and 30.09.2005 cannot be used for the benefit of Applicant. Indeed, silence of the Applicant and her mother Vandana for years together gives inference that no such application was made on 20.04.2005 or 30.09.2005 otherwise they would have taken follow up action.

11. Shri Arvind Bandiwadekar, learned Counsel for the Applicant sought to place reliance on the decision of the Hon'ble Supreme Court in **O.A.No.8771/2015 Shri Dhulaji Shrimant Kharat v/s. State of Maharashtra & Ors.**, decided on 12.10.2018. In that case, one Shrimant Tukaram Kharat was working as driver and died in harness on 12.01.2008. That time petitioner Dhulaji was minor on 30.06.2008, Dhulaji's mother made an application to consider the name of Dhulaji for appointment on compassionate ground upon attaining the age of majority. However, no action was taken by the department. Thereafter, petitioner Dhulaji himself made an application on 01.06.2013 and requested to consider the application made by his mother on 30.06.2008 and to provide appointment to him. However, claim of the Applicant was rejected on the ground that Applicant Dhulaji had not made an application within one year on attaining the age of majority. It is in that context, the Hon'ble High Court held that the Respondents could not have rejected the application made by Dhulaji since his mother had applied in June, 2008 when Dhulaji was minor. Accordingly, Respondent No.3 was directed to consider the application dated 30.06.2008 made by Dhulaji's mother so as to provide employment to Dhulaji on compassionate ground.

12. Whereas in the present case, making of any such application dated 20.04.2005 or 30.09.2005 itself is denied. Even assuming for a moment that any such application was made, it was for appointment to Dinesh and not to the Applicant. Therefore, the decision in Dhulaji's case referred to above is hardly of any assistance to Applicant.

16. As such, there is no escape from the conclusion that the application made by the Applicant on 13.07.2015 is belated by ten years and rightly rejected in terms of G.R. dated 26.10.1994 which *inter-alia* mandates that application ought to be made within one year from the date of attaining majority. The submission advanced by the learned Counsel for the Applicant that the Respondents ought to have been placed the matter before Committee headed by Chief Secretary which is specially empowered to condone the delay and in absence of placing the matter before such Committee, the impugned order is illegal, holds no water. True, in terms of Circular dated 05.02.2010 delay up to two years can be condoned by the administrative head of the concerned department. Whereas, in case of delay of more than three years, the Committee headed by Chief Secretary is empowered to condone the delay. However, in the present case, there is inordinate and huge delay of ten years in making an application for appointment on compassionate ground. Therefore, only because the matter was not placed before the concerned High Power Committee headed by the Chief Secretary that itself does not render impugned order illegal.

17. Second ground of rejection is that Applicant's brother Ganesh is already in service, and therefore, there is no need of any financial assistance of employment on compassionate ground to the family. Needless to mention that very object of providing employment to one of the family member of the deceased is to provide financial assistance to the distressed family so as to tide over the financial



difficulties faced by such family due to loss of breadwinner of the family. As such, request for appointment on compassionate ground should be reasonable and proximate to the time of death of breadwinner of the family. Appointment on compassionate ground is not the matter of right nor can it be treated as a bonanza. In the present case, father of the Applicant died in 2004 whereas, insofar as Applicant is concerned, she made an application for the first time on 13.07.2015. There is nothing on record to indicate that in the intervening period, Applicant or her mother took any step in respect of appointment on compassionate ground. These goes to show that family of the deceased was not in need of employment. Otherwise they would have taken certain steps with promptitude in that direction. As such, the claim for appointment on compassionate ground made after ten years from the death of deceased can hardly be granted.

18. At this juncture, it would be apposite to refer the judgment of the Hon'ble Supreme Court which has complete bearing over the present issue.

(A) In **(2008) 15 SCC 560 (Sail Vs. Madhusudan Das (Page Nos.46 in O.A.770/2018))**, the Hon'ble Supreme Court has observed as under :-

*"15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz. That the death of the sole bread winner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said rule. It is a concession, not a right."*

- (B) In **(2008) 8 SCC 475 (General Manager, State Bank of India & Ors. Vs. Anju Jain)**, the Hon'ble Supreme Court has observed as under :-

*"It has been clearly stated that appointment on compassionate ground is never considered to be a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per the settled law, when any appointment is to be made in Government or semi-government or in public office, cases of all eligible candidates are be considered alike. The State or its instrumentality making any appointment to public office, cannot ignore the mandate of Article 14 of the Constitution. At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread winner. It is an exception to the general rule of equality and not another independent and parallel source of employment."*

- (C) In **(2012) 11 SCC 307 (Union of India & Anr. Vs. Shashank Goswami & Anr.)**, the Hon'ble Supreme Court has observed as under :-

*"It has been observed that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld up the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right."*

- (D) In the matter of **(2010) 11 SCC 661 (State Bank of India & Anr. Vs. Raj Kumar)**, the Hon'ble Supreme Court has observed as under :-

*"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."*

**(E) AIR 2006 SC 2743 State of Jammu & Kashmir & Ors V/s Sajad Ahmed Mir**, in that case father of the Applicant died in harness in March, 1987 and application for appointment was made after more than four years. The family thus survived for more than four years after the death of deceased employee. Considering these aspects, the Hon'ble Supreme Court rejected the claim for appointment on compassionate ground and observed as follows :-

*"We may also observe that when the Division Bench of the High Court considering the case of the applicant holding that he had sought 'compassion', the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the setback. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution"*

**(F)** The decision of the Hon'ble Supreme Court in **Civil Application No.1955/2003 Santosh Kumar Dubey V/s State of U.P. Ors**, decided on 18.05.2009 wherein also the claim for appointment on compassionate ground being belated was rejected. The Hon'ble Supreme Court in this behalf made following observations:-

*"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. 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.*

*In the present case, the father of the appellant became untraceable in the year 1981 and for about 18 years, the family could survive and successfully faced and overcame the financial difficulties that they faced on missing of the earning member. That being the position, in our considered opinion, this is not a fit case for exercise of our jurisdiction. This is also not a case where any direction could be issued for giving the appellant a compassionate appointment as the prevalent rules governing the subject do not permit us for issuing any such directions. The appeal, therefore, has no merit and is dismissed."*

19. In view of the aforesaid decisions of the Hon'ble Supreme Court, it is no more *res-integra* that such belated applications for appointment on compassionate ground are not maintainable. This being the position of law, the impugned order cannot be faulted with.

20. Apart, the present O.A. is also not maintainable being barred by law of limitation. The Applicant has challenged the impugned order dated 18.01.2016 whereby her application dated 13.07.2015 was rejected. As such, as per Section 21 of Administrative Tribunal Act, the Application ought to have been made within one year from the order dated 18.01.2016. However, O.A. is filed on 18.12.2017 without any application for condonation of delay. True, it appears that on receipt of impugned order, the Applicant had made representation on 22.02.2017 which has been turned down by communication dated 29.07.2017. However, this communication

dated 29.07.2017 can hardly revive the case of action. Limitation starts from order dated 18.01.2016. Merely because after the impugned order, the Applicant had made representation that itself cannot extend the period of limitation. It is not statutory representation contemplated in law but it was application to reconsider the decision. In this behalf, it would be apposite to refer the judgment of the Hon'ble Supreme Court in State of ***State of Tripura & Ors Vs. Arabinda Chakraborty & Ors, (2014) 6 SCC 460*** wherein the Hon'ble Supreme Court held that the period of limitation commences from the date on which cause of action arises for the first time and simply making representations in absence of any statutory provisions, the period of limitation would not get extended. As such, present O.A. being not filed within one year from the date of impugned order dated 16.01.2016 is also liable to be rejected on the point of limitation.

21. Apart assuming for a moment that Applicant got fresh cause of action by order dated 29.07.2017 and O.A. is within limitation in that event also claim of the Applicant for appointment on compassionate ground is not maintainable on merit as discussed above.

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

**ORDER**

Original Application stands dismissed with no order as to cost.

Sd/-

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