

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1270 OF 2022**

**DISTRICT : THANE**

**Sub.:- Compassionate Appointment**

Shri Ketan S. Chandanshive. )  
Age : 23 Yrs, Occu.: Nil, )  
R/at : A/3, Hina Ashish Co-op. Hsg.Soc., )  
Beturkar Pada, Kalyan West, )  
District : Thane. )...**Applicant**

**Versus**

1. The State Tax Joint Commissioner )  
(Professional Tax), B Building, )  
3<sup>rd</sup> Floor, Goods and Services Tax )  
Bhavan, Bandra Kurla Complex, )  
Bandra (E), Mumbai – 400 051. )

2. The Special Commissioner of Sales )  
Tax, M.S, Goods & Service Tax )  
Bhavan, Mazgaon, Mumbai – 10. )...**Respondents**

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

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

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

**DATE : 28.03.2023**

**JUDGMENT**

1. The Applicant has challenged the communication dated 27.07.2022 issued by Respondent No.2 – Special Commissioner of Sales Tax, Mumbai, thereby rejecting his claim for compassionate appointment on the ground of delay in making application, invoking jurisdiction of

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

2. Shortly stated following are the uncontroverted facts giving rise to this Original Application.

- (i) Applicant's father viz. Sunil Chandanshive was Clerk on the establishment of Respondents and died in harness on 07.07.2004 leaving behind widow, son (present Applicant) and one daughter.
- (ii) Applicant's mother (widow of deceased Government servant) made an application on 10.03.2005 for compassionate appointment to his son with specific mention in the application that she is in service, but request for compassionate appointment to her son (Page No.20). When Applicant's mother made an application, the Applicant was 6 year's old minor son. His date of birth is 07.11.1998.
- (iii) It is only on 28.12.2021, Applicant made an application in prescribed format stating that he had completed B.A. and requested for compassionate appointment. In Annexure, he has categorically mentioned that his mother is in service earning Rs.80,000/- per month.
- (iv) In terms of G.R. dated 11.09.1996 read with G.R. dated 21.09.2017, the application for compassionate appointment was to be made within one year from the date of attaining majority or maximum within a period of three years after attaining the majority, subject to condonation of delay by the administrative head of the department in Mantralaya.
- (v) Since Applicant did not make any application within maximum period of three years permissible in the scheme,

the Respondents called the explanation of the Applicant by his letter dated 04.05.2022 (Page No.33 of P.B.).

- (vi) Applicant submitted his explanation on 09.05.2022 stating that though he attained the majority on 07.11.2016, he was taking education, and therefore, could not make an application earlier. He further states that because of Covid-19 situation and lock-down, there was some delay in making an application.
- (vii) However, Respondents by communication dated 27.07.2022 rejected the claim of the Applicant on the point of delay stating that the application ought to have been made within a period of 3 years, but being made after 4 years, 1 months and 24 days, it is not maintainable and declined to send proposal to the Government.

3. It is on the above background, the Applicant has challenged the communication dated 27.07.2022 in the present O.A.

4. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the legality of communication dated 27.07.2022 on following grounds.

- (a) The Respondents were under obligation to furnish the details of Circular dated 22.10.1990, but they failed to do so, and therefore, Respondents were in ignorance about the limitation.
- (b) Even if Application is made after 4 years, 1 month and 24 days from the death of deceased Government servant, the powers to condone the delay vests with the Government, and therefore, Respondents ought to have forwarded the proposal to the Government for appropriate decision, but Respondents rejected the claim at their level.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned order stating that application being made after the maximum permissible period of 3 years was barred by limitation and is rightly rejected. He has further pointed out that as per information given by the Applicant himself, his mother is in service, and therefore, the claim for compassionate appointment is not maintainable.

6. In view of submissions, the issue posed for consideration whether in facts and circumstances of the present case, the Applicant is entitled to compassionate appointment.

7. Insofar as submission advanced by the learned Advocate for the Applicant for non-compliance of Circular dated 22.10.1990 is concerned, all that the said Circular speaks about giving detail information of the scheme for compassionate appointment to the heirs of deceased Government servant, so that aim and object of the scheme for compassionate appointment is fulfilled. Notably, in the present case, after the death of deceased Government servant, his widow applied for compassionate appointment to her son on 10.03.2005. In application, she requested to provide compassionate appointment as per the scheme. This being so, obviously, the family was aware about the scheme for compassionate appointment and its details. This being the factual position, the contention raised by the learned Advocate for the Applicant that the family of deceased Government servant was not aware about the details of the scheme is totally fallacious and incorrect. I see no substance in his submission in this behalf.

8. As stated above, as per the scheme for compassionate appointment if heir is minor, the application has to be made within one year after attaining majority and maximum within 3 years from the date of attaining majority, subject to condonation of delay by the head of the department in Mantralaya. Thus, if application is made maximum within 3 years, then powers of delay vests with the Government in appropriate cases. Whereas in the present case, the Applicant attained

majority on 07.11.2016, but made an application on 28.12.2021 which was made after 4 years, 1 month after attaining majority. True, Respondent No.2 at his level rejected the claim without sending the matter/proposal to the Government. As per the scheme, it is only in case where application is made within 3 years from the date of majority, in that event only, the powers vests with the Government to condone the delay. Where application is made after 3 years, the question of sending the matter to the Government does not survive. In such situation, there was no need to send the matter to the Government. I, therefore, see no illegality in the impugned communication dated 27.07.2022.

9. Even assuming for a moment that because of Covid-19 pandemic situation and lock-down, the Applicant was not able to make an application and delay was required to be condoned, in that event also, Applicant's claim for compassionate appointment is totally untenable in view of the admitted fact that his mother is in service drawing sumptuous salary of Rs.80,000/- per month. The Applicant himself disclosed this fact in his application dated 28.12.2021. The learned Advocate for the Applicant also fairly concedes that Applicant's mother is in service in Municipal Corporation of Greater Mumbai. However, he tried to contend that the claim of the Applicant was not rejected on the ground of income of mother.

10. True, the rejection is only on the ground of delay in making an application. However, the fact remains that Applicant's mother is in service getting sumptuous salary of Rs.80,000/- per month. This being the factual admitted position, the Applicant cannot be said entitled to compassionate appointment. Needless to mention, the aim and object of the claim for compassionate appointment is to provide financial assistance to the family in distress because of death of sole earning member in the family. It is socio-economic measure by way of concession to provide compassionate appointment, so that family could survive. The compassionate appointment cannot be claimed as a legally vested right. It is only by way of concession and claim must be within

the parameters of the scheme. It is not bonanza to a family. As such, where admittedly, widow is in service getting Rs.80,000/- per month salary, obviously, family is financially sound so as to survive and there was no such necessity of compassionate appointment. It is well settled that none can claim compassionate appointment as if it is a vested right and any appointment without considering the financial condition of the family of the deceased is legally impermissible. The compassionate appointment being an exception to the general rule, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. The idea of compassionate appointment is not to provide endless compassion. An appointment on compassionate ground claimed after many years of the death of a Government servant or without due consideration of financial resources available to the family of deceased would be directly in conflict with the Article 14 and 16 of the Constitution. The very fact that the family had survived for near about two decades is clearly indicative of no such necessity of compassionate appointment in view of regular source of income to the mother of the Applicant from her permanent employment.

11. The totality of aforesaid discussion leads me to sum-up that Applicant's claim for compassionate appointment is totally untenable and O.A. is liable to be dismissed. Hence, the order.

### **ORDER**

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

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

Mumbai  
Date : 28.03.2023  
Dictation taken by :  
S.K. Wamanse.

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