

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.203 OF 2018

DISTRICT : PUNE

Shri Sanket K. Devkar.)
Age : 26 Yr., Occu.: Nil,)
R/o. Baglohre Gaonthan,)
A/P Narayangaon, Tal.: Junnar,)
District : Pune.)...**Applicant**

Versus

1. The Superintending Engineer.)
Kukari Irrigation Circle,)
Pune – 411 011.)
2. The Executive Engineer.)
Kukadi Irrigation Division No.1,)
Narayangaon, Tal.: Junnar,)
District : Pune.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

**Mr. Arvind V. Bandiwadekar with Shri Bhushan A. Bandiwadekar,
Advocates for Applicant.**

Mrs. K.S. Gaikwad, Presenting Officer for Respondent No.3.

Mrs. Snehal Jadhav, Advocate for Respondent No.1 & 2 is absent

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

DATE : 09.02.2021

JUDGMENT

1. The Applicant has challenged the communication dated 22.06.2018 thereby rejecting his claim for appointment on compassionate ground of delay in making application, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to the O.A. are as under :-

The father of the Applicant namely Kisan Devkar was Class-IV employee on the establishment of Respondent No.2. He died on 03.09.2005 in harness leaving behind widow, three married daughters and son (Applicant). After death of sole earning member of the family, his son i.e. Applicant made an application dated 14.08.2006 for appointment on compassionate ground supported with Affidavit of the mother. That time, the Applicant was 15 years old. The Applicant's date of birth is 28.09.1991. Thus, he attained majority on 28.09.2009. Despite the application made by him during his minority dated 14.08.2006, the Respondents did not communicate anything in this behalf to him. Thereafter again, the Applicant made an application by way of reminder on 06.01.2015 and 19.01.2018. However, there was no communication or response to his applications made from time to time. It is on this background, the Applicant has filed the present O.A. seeking direction to the Respondents for appointment on compassionate ground.

3. It is during the pendency of O.A. only, the Respondent No.3 – Government of Maharashtra had issued communication dated 22.06.2018 rejecting the application on the ground that the application made by the Applicant dated 19.01.2018 was barred by limitation since the application was required to be made within one year from attaining majority in terms of G.R. dated 21.09.1996 (in impugned order, G.R. is wrongly stated as 11.09.1996). The Applicant accordingly amended the O.A. and challenged the legality of order dated 22.06.2018.

4. The Respondents opposed the O.A. solely on the ground of delay in making an application for appointment on compassionate ground in terms of G.R. dated 21.09.1996.

5. Shri Bandiwadekar, learned Advocate for the Applicant sought to assail the legality of impugned order contending that no cognizance was taken by the Respondents about the application made by the Applicant on 14.08.2006 during his minority itself and that application itself ought to have been kept pending till the Applicant attains majority. He, therefore, canvassed that the ground of delay taken in impugned communication is totally unsustainable in law and facts. In this behalf, he sought to place reliance on the decision of Hon'ble Supreme Court in ***Writ Petition No.877/2015 (Dulaji Kharat Vs. State of Maharashtra) decided on 12th December, 2018*** arising from similar situation.

6. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer submits that the Applicant was required to make an application within one year from the date of majority and considering that he attained majority on 28.09.2009, the application ought to have been made on or before 28.09.2010. However, the application was made on 09.01.2018, and therefore, it is hopelessly barred by limitation and no exception can be taken to impugned communication.

7. Needless to mention that the very object of providing compassionate employment is to alleviate the suffering of the distressed family and there should not be delay in such appointment, otherwise the very purpose of providing appointment on compassionate ground, which is to mitigate the hardship due to death of bread earner of family, would be defeated. Suffice to say, the rigid or too technical approach should be avoided and efforts should be made to fulfill the object of the scheme.

8. Indeed, as regard aim and object of the scheme for appointment on compassionate ground, it would be useful to refer the observation made by Hon'ble Supreme Court in ***AIR 1989 SC 1976 (Smt. Sushma Gosain***

& Ors. Vs. Union of India) wherein in Para No.9, it has been held as follows :

“9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.”

9. Now turning to the facts of the present case, material to note that there is no denying that the Applicant had made an application for appointment on compassionate ground during his minority itself on 14.08.2006 supported with Affidavit of mother. The Applicant has produced the copies of application as well as Affidavit under Right to Information Act and the Department had furnished the copies to him. As such, the submission of application dated 14.08.2006 supported with Affidavit of mother for appointment on compassionate ground is matter of record. However, unfortunately, no cognizance of the said application was taken. Later again, the Applicant made an application on 06.01.2015 by way of reminder and there being no response to it, again made an application on 19.01.2018. The Respondent No.1 only pick-up application dated 19.01.2018 and rejected it on the ground of delay oblivious of the fact that the Applicant had made an application during his minority itself and thereafter again made an application on 06.01.2015. Indeed, the Respondent No.1 – Superintending Engineer, Kukdi Irrigation Circle by his letter dated 26th March, 2015 (Page No.32 of P.B.) had referred the matter to the Government in reference to Applicant's application date 06.01.2015 and recommended for inclusion of his name in waiting list as a special case considering hardship of the family. It appears that the Government again called for fresh proposal by its letter dated 25.08.2015 (Page No.43 of P.B.) and thereafter, the Applicant again made fresh application on 19.01.2018. Suffice to say,

there was no dispute about the eligibility of the Applicant as well as dire need of the family for appointment on compassionate ground.

10. As stated above, since the Applicant had already made an application on 14.08.2006 supported with Affidavit of other family members, Respondents should have been taken cognizance of and it ought to have been kept pending till the Applicant attains majority for processing the same in accordance to Rules. However, the Respondents have totally ignored the application dated 14.08.2006 as well as application dated 06.01.2015, and therefore, the ground of limitation raised in impugned communication is totally arbitrary and unsustainable in law.

11. In this behalf, reference of decision of Hon'ble Supreme Court in ***Dulaji Kharat*** (cited supra) is inevitable since it is directly applicable to the present facts and circumstances and squarely applicable. In that matter, the Government servant died in harness in 2008 and that time, the Petitioner Dhulaji was minor. His mother made an application for appointment to Dhulaji on compassionate ground on attaining the age of majority. However, it was not considered. Then again, the Petitioner Dhulaji made application in 2013 to consider the application made by his mother in 2008. The Government, however, declined to consider the request on the ground that the Applicant Dhulaji had not filed an application within one year from the date of attaining majority. In that context, the Hon'ble High Court held that the request for appointment of Petitioner Shri Dhulaji was already made by her mother well within one year from the death of deceased, and therefore, that application ought to have been considered for giving appointment on compassionate ground to Petitioner Shri Dhulaji and the contention that the application was not made within one year from the date of attaining majority was rejected. Accordingly, directions were issued to consider the application made by mother in 2008 for appointment on compassionate ground.

12. As such, in view of decision of Hon'ble High Court referred to above, the plea of limitation raised by Respondents has to be rejected.

13. True, the father of the Applicant died in 2006 and period of near about 14/15 years is over. Only because long period has been elapsed and family had managed to survive without appointment on compassionate ground, it cannot be inferred or assumed that there was no immediate necessity for appointment on compassionate ground. If family had survived enduring financial distress, the blame lies with the executive for not considering the claim in proper perspective, keeping in mind the aim and object of the scheme. The Hon'ble Supreme Court in **2018 (4) SLR 771 (Supriya Patil Vs. State of Maharashtra)** observed that only because family had managed for survive for 10 years, it cannot be assumed that there is no necessity for appointment on compassionate ground and it cannot be a reason for rejection of claim.

14. As stated above, the claim of the Applicant is rejected only on the ground of limitation stating that the application ought to have been made within one year from the date of attaining majority in terms of G.R. dated 21.09.1996. True, as per said G.R, in case where heir is minor, such application is required to be made within one year on attaining 18 years of age. However, in the present case, the Applicant as well as his mother had already made an application on 14.08.2006 immediately well within one year from the death of deceased employee as contemplated in scheme and it ought to have been considered after attaining majority by the Applicant. However, unfortunately, the Respondents did not take any cognizance of the said applications, and therefore, now they cannot take plea of limitation.

15. The necessary corollary of aforesaid discussion leads me to conclude that the impugned order is unsustainable in law and facts and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 22.06.2018 is hereby quashed and set aside.
- (C) The Respondents are directed to consider the claim of the Applicant for appointment on compassionate ground and it is equitable as well as judicious that his name is included in the waiting list for the issuance of appointment order, subject to fulfillment of eligible criteria in accordance to Rules.
- (D) This exercise be completed within three months from today.
- (E) No order as to costs.

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

Mumbai
Date : 09.02.2021
Dictation taken by :
S.K. Wamanse.

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