

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.335 OF 2017

DISTRICT : RATNAGIRI

Miss Sonali Raghunath Toraskar.)
[Since after marriage – Mrs. Sonali)
Santosh Dhole],)
Age : 29 Yrs., occu.: Nil, R/o. 1232,)
E- Wing, ‘Sanket’ Bungalow, Adarsha)
Vasahat, Karwanchiwadi, A/P. Pomendi)
Bk, Tal. & District : Ratnagiri.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commandant General,)
Home Guards, M.S, Mumbai,)
Having Office at Old Secretariat)
[Extension], 3rd Floor, M.G. Marg,)
Fort, Mumbai – 400 032.)
3. The District Commandant.)
Home Guards, Sindudurg, having)
Office at Oros, Tal.: Kudal,)
District : Sindhudurg.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 03.02.2020

JUDGMENT

1. The Applicant has challenged the impugned order dated 4th October, 2016 whereby her claim for appointment on compassionate ground is rejected invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Material facts for the decision of the present O.A. are summarized as under :-

(a) The deceased employee viz. Raghunath Toraskar was Peon (Group 'D' post) on the establishment of Respondent No.3 and died in harness on 29.07.2004 leaving behind Widow Smt. Reema and daughter viz. Sonali, who is the Applicant in the present O.A.

(b) The Widow Smt. Reema made an application on 10.08.2004 for appointment on compassionate ground and her name was accordingly taken in waiting list.

(c) By order dated 24.01.2007, it was communicated to Smt. Reema that she had attained 40 years of age on 15.06.2000, and therefore, her name is deleted in terms of G.R. dated 22.08.2005 from waiting list [Page No.21 of Paper Book].

(d) Smt. Reema again made an application on 21.02.2007 stating that her husband died in 2004, and therefore, G.R. dated 22.08.2005 on the basis of which her name is deleted from waiting list is not applicable to her matter.

(e) The Application dated 21.02.2007 was rejected stating that her name is rightly deleted from waiting list in terms of G.R. dated 22.08.2005 and she was accordingly communicated by letter dated 30.08.2007.

(f) Then the Applicant Ms. Sonali made an application on 16.08.2007 stating that in view of deletion of the name of her mother from waiting list, her name be taken in the waiting list and appointment on compassionate ground be made available to her [Page 22 of P.B.].

(g) Initially, the name of the Applicant in pursuance of her application dated 16.08.2007 was taken in the waiting list, but guidance was sought by the Department from Government for finalization of the same and to provide employment to the Applicant.

(h) The Government vide letter dated 15.02.2010 [Page 24 of P.B.] informed to the Department [Respondent Nos. 2 & 3] that there is no provision in G.R. dated 22.08.2005 for substitution of her name once the name of one of the heir is deleted from waiting list and consequently, the Applicant cannot be appointed on compassionate ground. Accordingly, the Respondent No.3 by his letter dated 20.03.2010 informed to the Applicant and it was again communicated to the Applicant by letter dated 29.04.2010 [Page No.74 of P.B.] and to substantiate it, has also produced the extract of Outward Register showing that the communication dated 29.04.2010 was dispatched vide order No.293/2010.

(i) However, the Applicant again applied for appointment on compassionate ground on 08.06.2010 [Page No.24A of P.B.] though it was already communicated to her vide letter dated 20.03.2010.

(j) The Respondent No.2 by his letter dated 28.01.2011 [Page No.76 of P.B.] again communicated to the Applicant that her application dated 08.06.2010 cannot be accepted for appointment to the appointment on compassionate ground.

(k) However, again the Applicant made an application on 14.02.2011 [Page No.91 of P.B.] to reconsider her claim for

appointment on compassionate ground. Material to note that in this letter dated 14.02.2011, she had acknowledged the receipt of letter dated 28.01.2011 whereby her application dated 08.06.2010 was already rejected.

(l) The Respondent No.2 by his letter dated 06.02.2012 [Page No.81 of P.B.] again informed the Applicant that her name cannot be taken in waiting list for appointment on compassionate ground.

(m) Undeterred by the consecutive rejections of claim, the Applicant again applied on 26.10.2015 for appointment on compassionate ground which has been again rejected by the impugned order dated 04.10.2016 and it is the subject matter in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that the ground taken by the Respondents that in absence of provision for substitution in G.R. dated 22.08.2005, the name of the Applicant cannot be taken in the waiting list is in defiance of various decisions rendered by this Tribunal wherein directions were given to consider the name of another heir, where the name of earlier heir is deleted from waiting list on attaining the age of 40/45 years. In this behalf, he referred one of the decisions rendered by this Tribunal in **O.A.645/2017 (Majoj Damale Vs. Superintending Engineer and Ors.) decided on 02.04.2019**. As regard delay in filing O.A, he submits that the claim of the Applicant is rejected on the ground of absence of provision to substitute another heir in waiting list and it is not rejected on the ground of limitation as seen from the contents of impugned order dated 4th October, 2016. He, therefore, submits that the name of the Applicant was earlier already taken in waiting list, and therefore, subsequent rejection is unsustainable in law. He, therefore, prayed that the direction be issued to substitute the name of Applicant in place of her mother.

4. Per contra, Shri A.J. Chougule, learned P.O. strongly opposed the O.A. contending that it is hopelessly barred by law of limitation, as despite consecutive rejections, no steps were taken to challenge the same within the period of limitation. To substantiate his submission, he has pointed out that the Applicant had acknowledged the receipt of communication whereby her claim for appointment on compassionate ground was rejected, and therefore, O.A. being not filed within one year from the date of rejection is deserves to be dismissed. He further submits that the deceased employee died in 2004, and therefore, the claim made by the Applicant after more than 13 years by filing the present O.A. is not sustainable in law.

5. There is no denying that the name of Applicant's mother Smt. Reena was earlier taken in waiting list, but it was deleted on crossing 40 years of age and it was admittedly communicated to Smt. Reema by communication dated 24.01.2007 [Page No.21 of P.B.]. Thereafter, the Applicant herself made an application on 16.08.2006 requesting the Respondents that in view of deletion of the name of her mother for waiting list, her name be substituted in her place. True, it appears that initially, her name was taken in waiting list, as seen from Page No.65 of P.B. (reply given by Respondent No.2 to the legal notice issued by the Applicant through her Counsel). However, it is explicit from reply itself that after taking the name of the Applicant in the waiting list, the directions were sought from the Government as to whether in such situation, the appointment can be given to the Applicant on compassionate ground. However, the Government instructed Respondent No.2 that the same is not permissible and in deference to it, the Respondent No.2 communicated it to the Applicant by letter dated 20.03.2010. Material to note that there is reference of the communication dated 20.03.2010 in the letter dated 29.04.2010 sent to the Applicant vide Outward No.293/2010. The Respondents have also produced the extract of Outward Register. As such, in normal course of business, the Applicant must have received the same. However, the

Applicant did not challenge the said communication dated 29.04.2010 and instead of challenging the same, she went on making application to Respondents 2 & 3 time and again. Even assuming for a moment that the communication dated 29.04.2010 was not received by the Applicant, it is explicit that the communication dated 28.01.2011 whereby her application was rejected was received by the Applicant, as seen from her own subsequent application dated 14.02.2011 [Page No.91 of P.B.]. By application dated 14.02.2011, she had requested to reconsider the decision. In letter dated 14.02.2011, she herself made reference of letter dated 28.11.2011 [Page No.76 of P.B.] issued by Respondent No.2 whereby her application dated 08.06.2010 was rejected. As such, it is crystal clear that the Applicant was fully aware that her claim for substitution of her name in the place of name of her mother was rejected by order dated 28.01.2011. This being the factual aspects, the Applicant ought to have challenged the rejection within one year from the communication dated 28.01.2011. However, she went on filing applications instead of challenging the communication dated 28.01.2011. In other words, the cause of action was accrued to her on 28.01.2011, and therefore, she ought to have filed the O.A. within one year as provided under Section 21 of Administrative Tribunals Act, 1985.

6. The legal position that once representation made by the applicant is decided, cause of action starts from the date of communication of the order and subsequent representations would not revive the period of limitation, is well settled. In this behalf, it would be apposite to refer to the judgment of Hon'ble Supreme Court in ***State of Tripura & Ors Vs. Arabinda Chakraborty & Ors, (2014) 6 SCC 460***. 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, in the present case, applicant got cause of action for the first time in view of rejection of his application by order dated 28.01.2011, and therefore, she ought to have

filed the Original Application within period of limitation of one year as contemplated under Section 21 of the Administrative Tribunals Act, 1985. This being the settled position, representations made, which is not provided in the statute would not extend the period of limitation and therefore, the submission advanced by the learned counsel for the applicant that fresh cause of action accrued to him on 04.10.2016 whereby his representation was rejected is misconceived and untenable in view of the ratio laid down by the Hon'ble Supreme Court in **Arabinda Chakraborty** case [cited supra]. Suffice to say that Original Application is hopelessly barred by law of limitation.

7. True, it appears from reply to notice [Page No.65] that earlier, the name of the Applicant was taken in waiting list but the direction was sought from the Government as to whether the name of the Applicant can be substituted in place of her mother. The Government clarified that there is no provision for substitution of heir and accordingly, the Respondent No.2 had communicated to the Applicant that she is not entitled for appointment on compassionate ground. As such, only because provisionally the name of the Applicant was entered in the waiting list, that itself does not accrue right in favour of the Applicant much less legal enforceable right to seek appointment on compassionate ground. It is more so, when she failed to challenge the communication dated 28.01.2011 within the period of limitation.

8. Shri Bandiwadekar, learned Advocate for the Applicant sought to contend that by impugned communication dated 4th October, 2016, the claim of the Applicant is not rejected on the ground of limitation, and therefore, the issue of limitation cannot be considered by the Tribunal. According to him, the legality of the order has to be judged on the ground mentioned therein and it cannot be supplemented by other grounds. In this behalf, he sought to place reliance on **AIR 1977 SC 2050 (Sualal Yadav Vs. State of Rajasthan and 2013(2) Mh.L.J. (A.P. Ramtekkar Vs. Union of India & Ors.)**. I have gone through these decisions and in

my considered opinion, those are of little assistance to the Applicant in the present situation.

9. In **Sualal Yadav'** case (cited supra), the Sub-Inspector of Police was dismissed from service. The appeal was also dismissed. Thereafter, he made Review Application which was entertained by the Governor and he passed an order holding that the matter was not fit for review. It was challenged before the Hon'ble High Court. In High Court, the preliminary objection was taken by the State that the Review Application was made to the Governor after lapse of about two years. The Hon'ble High Court upheld the preliminary objection and dismissed the Writ Petition. When the matter went before the Hon'ble Supreme Court, it has been held that since the Governor had not dismissed the Review Application on the ground of delay and having entertained the same, it was dismissed on merit. It was not open to Hon'ble High Court to resurrect the ground of delay in Review Application at a remote stage. It is in that situation, the Hon'ble Supreme Court set aside the order of Hon'ble High Court and remitted Writ Petition for disposal in accordance to law. This decision in the present case is hardly of any assistance to the Applicant, as the Applicant herself failed to challenge the rejection of her claim which was communicated to her time and again. As concluded above, there is acknowledgement of order dated 28.01.2011 whereby the claim of the Applicant was rejected. But she failed to challenge the same within the period of limitation.

10. In so far as the decision in **P.P. Ramtekkar** (cited supra) is concerned, it pertained to maintainability of Writ Petition once Writ Petition is admitted for final hearing. The Hon'ble High Court in Para No.9 held that once the petition is admitted for final hearing, the petition cannot be thrown on technical ground on tenability of the petition. Whereas, in the present case, the point of limitation is involved which goes to the root of the matter and it cannot be said that it is technical

ground. Therefore, this authority is also of no assistance to the Applicant.

11. Similarly, the decisions rendered by this Tribunal in O.A.645/2017 and O.A.806/2019 being arising on different facts, the same are of no help to the Applicant. O.A.645/2017 was allowed by this Tribunal on the ground that after the death of deceased, his widow had made composite application for appointment on compassionate ground to herself as well as for her son. The name of widow was taken in the waiting list but deleted on attaining 40 years of age. Thereafter, son made an application for substitution in place of mother, which was also rejected. It is in that context, the Tribunal held that the composite application made by mother ought to have been considered for appointment to son who was minor at the time of application by mother. Whereas, in the present case, there is no such composite application and therefore, the Judgment in O.A.645/2017 is quite distinguishable.

12. In so far as the Judgment in O.A.806/2019 is concerned, it is arising from challenge to transfer order and is not relevant here.

13. Needless to mention that the request for appointment on compassionate ground should be reasonable and proximate to the death of earning member of the family and it cannot be another source of recruitment or bonanza. In the present case, the father of the Applicant is died in 2004. Thereafter, by consecutive communications, the widow as well as the Applicant were informed about the rejection of their claim. However, the Applicant did not take any steps within the period of limitation to challenge the said communication. As such, there is no proximity in the claim. Be that as it may, there are lapses on the part of Applicant and she had failed to file within the period of limitation of one year from the date when she got cause of action on receipt of letter dated 28.01.2011. Suffice to say, the O.A. filed in 2017 is thus hopelessly barred by law of limitation.

14. The totality of aforesaid discussion leads me to sum-up that the O.A. is not maintainable. The challenge to the impugned communication dated 4th October, 2016 having already attained finality is no more open to the Applicant to challenge the same. The O.A. therefore, 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 : 03.02.2020
Dictation taken by :
S.K. Wamanse.