

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.530 OF 2018

DISTRICT : SOLAPUR

Shri Sachin Chandrakant Charate.)
Talathi, Village Chikhali, Tal.: Mohol,)
District : Solapur and Residing at 66,)
Laxmi Vishnu Society, Kumtha Naka,)
Solapur – 413 003.)...Applicant

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Works Department, Mantralaya,)
Mumbai – 400 022.)
2. Chief Engineer.)
Public Works Department, Central)
Building Zone, Pune – 411 001.)
3. Sub-Divisional Officer.)
Pandharpur Sub-Division, Pandharpur,)
District : Solapur.)
4. Divisional Sub-Registrar.)
Cooperative Societies (Audit),)
Central Building, Pune – 411 001.)...Respondents

Mr. D.B. Khaire, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 10.07.2019

JUDGMENT

1. This is an application made by the Applicant for appointment to the post of Junior Engineer on compassionate ground by upgrading him from his present post of Talathi invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Factual matrix is as follows :-

The Applicant's mother was Peon on the establishment of Respondent No.4 viz. Divisional Sub-Registrar Cooperative Societies, Pune. However, she was declared medically unfit for continuation in service and was retired on 06.11.1999. Thereafter on 15.11.1999, the Applicant made an application for appointment on compassionate ground. In response to it, by order dated 09.10.2000, he was appointed on the post of Talathi on the establishment of Sub-Divisional Officer, MHADA, District : Solapur. Accordingly, he accepted the appointment and joined the service. Thereafter, on 30.04.2001, he made representation to the Government stating that he possess diploma in Civil Engineering, and therefore, requested for appointment on the post of Junior Engineer. However, the Collector, Solapur by letter dated 11.10.2001 rejected his request for appointment on the post of Junior Engineer. Thereafter again, the Applicant made representations on 14.10.2003 and 07.11.2003. He went on making representations but did not get appointment on the post of Junior Engineer. In 2016, he came across an advertisement for appointment of Junior Engineer in Public Works Department (PWD). He, therefore, filed the present O.A. contending that though he possess the requisite qualification for the appointment to the post of Junior Engineer, he is appointed on the post of Talathi, and therefore, seeks direction to the Respondents to appoint him on the post of Junior Engineer.

3. The Respondent Nos. 1 & 2 filed Affidavit-in-reply and resisted the entitlement of the Applicant for appointment on the post of Junior Engineer. It is not in dispute that the Applicant was appointed on the post of Talathi on compassionate ground in 2000. It is also not in dispute that the Applicant possess diploma in Civil Engineering. However, the Respondents contend that the request of the Applicant being falling beyond the scope of Scheme of appointment on compassionate ground was rejected by Collector on 11.10.2011 as well as again rejected by Superintending Engineer, PWD, Pune by letter dated 03.04.2006, but the Applicant did not take any steps to challenge those orders within limitation. He had accepted the terms and conditions while appointing him on the post of Talathi in 2000 and filed the present O.A. after the period of 18 years, and therefore, the same is not maintainable. The Respondents thus strongly contend that the O.A. is barred by limitation and admittedly, having not made application for condonation of delay, the O.A. is liable to be dismissed.

4. Shri D.B. Khaire, learned Advocate for the Applicant sought to contend that at the initial stage itself i.e. in 2000, the Applicant having diploma in Civil Engineering ought to have been appointed on the post of Junior Engineer, but he was made to work on the post of Talathi. He fairly admits that his request for appointment on the post of Junior Engineer was rejected by Collector by order dated 11.10.2001, which is not challenged within the period of limitation of one year. However, he sought to contend that in pursuance of representation made by the Applicant, the Commissioner, Pune Division, Pune by letter dated 30.06.2004 and again by letter dated 21.08.2004 had recommended for the appointment of the Applicant on the post of Junior Engineer, but the same has not been complied with. He further invited Tribunal's attention to the Advertisement issued by State of Maharashtra for appointment of 80 Junior Engineers on 12.05.2016 and urged that in view of the vacancies, the Applicant's claim needs to be considered by the Respondents for appointment to the post of Junior Engineer. He has pointed out that earlier, this Tribunal has given such

direction and made reference of ***O.A.No.600/2003 (Dhareppa Y. Yadravi Vs. State of Maharashtra) decided on 25.06.2004***. On this line of submission, he urged for direction to the Respondents to appoint the Applicant on the post of Junior Engineer.

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer reiterated the contentions raised in the reply and submitted that the application is hopelessly barred by limitation and there are lapses on the part of Applicant. She further urged that once the Applicant has accepted the post of Talathi, now he cannot ask for appointment to the post of Junior Engineer, that too, in different Department.

6. Undisputedly, the Applicant was appointed on the post of Talathi in place of his mother in Revenue Department on 09.10.2000. Here, significant to note that, in his application dated 15.11.1999 which was made for appointment on compassionate ground (Page No.33 of Paper Book), there is no specific averment for appointment on the post of Junior Engineer. True, in application he stated that he possess diploma in Civil Engineering. However, significantly, he did not ask for any particular post much less Junior Engineer. All that, he requested for appointment on compassionate ground because of financial difficulties faced by the family due to loss of job of mother. True, thereafter, he made representations as adverted to above for appointment to the post of Junior Engineer. However, the Collector, Solapur by order dated 11.10.2001 rejected his application stating that he had already accepted the post of Talathi without demur, and therefore, not entitled for appointment on the post of Junior Engineer. Thereafter again, the Superintending Engineer by his order dated 03.04.2006 rejected the application stating that there is no vacancy and in fact, existing posts of Junior Engineers are surplus.

7. Thus, the application made by the Applicant was rejected twice, firstly by Collector, Solapur on 11.10.2001 and secondly by Superintending Engineer, P.W.D, Pune on 03.04.2006. Admittedly, the Applicant has not challenged these orders within the period of limitation. He remained silent for 17 years and then filed the present O.A. which is obviously barred by limitation. The Applicant ought to have challenged the orders dated 11.10.2001 and 03.04.2006 within a year as required in Section 21 of Administrative Tribunals Act, 1985 and having not done so, on the ground of limitation itself, the O.A. is liable to be dismissed.

8. Needless to mention that, mere repeated representations of the Applicant will not revive the cause of action. The cause of action accrued to the Applicant on 11.10.2001 itself when rejection was admittedly communicated to him. Therefore, the subsequent representations will not extend the period of limitation nor it can revive the cause of action.

9. In this behalf, it would be profitable to refer recent Judgment of Hon'ble Supreme Court in **2019(1) Mh.L.J. (Union of India Vs. Chaman Rana)** where in the matter of promotion, the Hon'ble Supreme Court held that the person aggrieved by supersession must approach the Court at an earliest opportunity and mere repeated filing of representations does not give rise to a cause of action. True, it was a case of promotion but the principles laid down therein are squarely attracted to the present case.

10. Now turning to the recommendation / direction issued by Commissioner by letter dated 30.06.2004 and 21.08.2004, the perusal of these letters reveals that the Commissioner had forwarded the application of the Applicant for due consideration. True, in letter dated 21.08.2004, the Commissioner recommended for the appointment of the Applicant on the post in consonance to his qualification. In my considered opinion, these letters does not carry any weight in view of earlier rejection of the application by Collector, Solapur on

11.10.2001. Perhaps, the Commissioner was not aware about the decision taken by Collector, Solapur and communicated to the Applicant. Be that as it may, it does not revive the cause of action. Furthermore, again the Superintending Engineer by letter dated 03.04.2006 rejected the claim of the Applicant for appointment on the post of Junior Engineer. The Applicant is seeking appointment of Junior Engineer in P.W.D, and therefore, the order passed by Superintending Engineer, P.W.D. Division, Pune is material. He had clarified that the existing posts itself are surplus in view of sanctioned staffing pattern, and therefore, the claim of the Applicant was rejected.

11. True, in ***Dhareppa Yadravi's*** case decided by this Tribunal (cited supra), the directions seems to have been issued to consider the name of the Applicant for appointment on the post of Junior Engineer. The perusal of order reveals that in that matter, the Applicant was initially appointed on compassionate ground on the post of Civil Engineering Assistant. As such, in fact situation, the directions were issued. At any rate, it cannot be considered as a binding precedent, and therefore, it is of no avail to the Applicant, particularly when he failed to challenge the communication dated 11.10.2001 whereby his claim for appointment on the post of Junior Engineer was rejected. Needless to mention that subsequent decisions given by the Tribunal or by Court will not revive the cause of action nor revive stale claims which are already barred by limitation. In ***Chaman Rana's*** case (cited supra), the Hon'ble Supreme Court held that the subsequent pronouncement by the Court could not enthrone a fresh lease of life or furnish a fresh cause of action, to what was otherwise clearly a dead and stale claim.

12. As such, only because in 2016, the Applicant come across Advertisement to fill-in 80 posts of Junior Engineer in Government that will not give the Applicant a fresh cause of action. It is regular process of appointment with due process of law. The Applicant has no preferential right of appointment. The

appointment on compassionate ground is by way of concession and not absolute right.

13. Needless to mention that the object of providing appointment to one of the family member of the deceased employee is of obviate the difficulties faced by the family due to loss of bread winner of the family. As such, it is not source of regular appointment and cannot be treated as bonanza. The Applicant accepted the post of Talathi without any demur. Therefore, he cannot ask for another post by way of upgradation. Such person is always at liberty to appear in the process independently, so as to compete with the others.

14. At this juncture, it would be apposite to refer the Judgments of Hon'ble Supreme Court highlighting the object of the Scheme for appointment on compassionate ground and its scope.

(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 **(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.”

(C) 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.”

15. The conspectus of aforesaid discussion is that the appointment on compassionate ground cannot be claimed as a matter of right. It is the concession in peculiar situation faced by the family of the deceased and not right. Therefore, the Applicant cannot ask for the post of Junior Engineer as a right. He was already appointed on the post of Talathi in 2000. As such, considering the object of the Scheme, he was appointed on the available post. His claim for appointment on the post of Junior Engineer has been rejected twice, firstly on 11.10.2001 and again on 03.04.2006. The Applicant has not challenged those orders. This being the position, the application itself is barred by limitation. Secondly, he has no right to ask for a particular post by way of appointment on compassionate ground.

The cumulative effect of aforesaid discussion leads me to sum-up that the O.A. is devoid of merit and deserves to be dismissed. Hence, the following order.

ORDER

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

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

Mumbai

Date : 10.07.2019

Dictation taken by :

S.K. Wamanse.

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