

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.884 OF 2012

DISTRICT : MUMBAI

Mr. Deepak Mohan Naik,)
Age : 22 years, Occ.: Nil,)
R/at : New BDD Chawl No.11, Room No.80,)
G.K. Ambekar Road, Naigaon, Dadar,)
Mumbai 14) **...APPLICANT**

VERSUS

1. The Commissioner of Police)
for Greater Mumbai,)
having office at Crawford Market,)
Mumbai)
2. The Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai)

...RESPONDENTS

APPEARANCE : Shri K.R. Jagdale, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Dr. Justice S. Radhakrishnan, Chairman
Shri Rajiv Agarwal, Vice-Chairman

DATE : 24.12.2013

PER : Shri Rajiv Agarwal, Vice-Chairman

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ORDER

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. In this O.A. the Applicant is seeking appointment as a Police Constable in place of his father who was a Police Head Constable and passed away on 24.01.1999, after rendering 26 years of service. The mother of Applicant preferred an application for appointment on compassionate grounds in place of her husband and her name was placed in the waiting list at Sr. No.145. On 11.12.2005, the Applicant was appointed as 'Child Constable' (Bal Shipai) at the age of 16 years. He was working as an office boy in a police establishment and was getting some fixed remuneration. On 29.11.2007, the mother of the Applicant was offered appointment in a Group 'D' post by the Respondent No.1. However, mother of the Applicant submitted an application to the Respondent No.1 that her son viz. the Applicant was working as a 'Child Constable' and was also studying in 12th standard and requested that the Applicant may be appointed on compassionate basis on the basis of his mother's seniority in the waiting list. On 06.02.2008, the Respondent No.1 informed the mother of the Applicant that her name was removed from the waiting list and the Applicant could

apply for compassionate appointment after attaining majority and passing 12th standard. The Applicant reached majority i.e. 18 years of age on 30.04.2009 and passed H.S.C. examination in June, 2010. He then approached the Respondent No.1 for compassionate appointment and filed application accordingly on 15.06.2010. By communication dated 19.06.2010, the Respondent No.2 informed the Applicant that he has preferred application for compassionate appointment after completion of 19 years of age while such application has to be filed within one year after attaining the age of 18 years. His application for compassionate appointment was rejected on that ground. The Applicant again applied for compassionate appointment on 27.08.2010 and his case was recommended by the Respondent No.1 to the Respondent No.2 to relax the condition of age for compassionate appointment. By a communication dated 15.12.2011, the Respondent No.2 rejected the recommendation of Respondent No.1 on the ground that there is no provision for relaxation of age in the relevant rules.

3. Rules regarding appointment of Police Constable have been issued by Government on 16.06.2011 under the Bombay Police Act, 1951. The Rules are called Maharashtra Police Constable (Recruitment) Rules, 2011. Rule 9 is regarding compassionate appointments. The said rule states that for compassionate appointment of Police constables the procedure based on the




instructions issued by G.A.D. for compassionate appointment in the Government from time to time may be adopted. From this it is clear that the instructions issued by G.A.D. from time to time are to be followed for appointment to the post of Police Constable on compassionate basis. By G.R. dated 11.09.1996, the General Administration Department has issued instructions that for compassionate appointment, the heir must apply for such appointment within one year of reaching the age of majority i.e. 18 years. The relevant clause reads :

“सेवेत असताना दिवंगत झालेल्या किंवा दुर्घटनेत ज्याचीमुळे अकाली सेवानिवृत्त झालेल्या कर्मचा-यांच्या कुटुंबातील अज्ञान वारसदाराच्या बाबतीत एकाच सज्जान म्हणजे १८ वर्षांच्या झाल्यावर एक वर्षांच्या आत या योजने खाली नोकरीसाठी अर्ज करावा”

4. Learned Presenting Office argued that the Applicant attained the age of 18 years on 30.04.2009. He passed 12th standard examination in 2010 and applied for compassionate appointment on 15.06.2010. By the time he applied for compassionate appointment, it was more than one year after attaining majority and therefore, the Applicant could not be considered for compassionate appointment as there is no provision in the relevant rules for relaxation of age criterion.

5. Learned Counsel for the Applicant argued that the Applicant has already worked as 'Child Constable' for the period from

11.12.2006 to 30.04.2009. The Applicant was keen to follow in the footsteps of his father and join the Police department as a Constable. He therefore, worked as 'Child Constable' after reaching the age of 15 years. The appointment as 'Child Constable' is also a compassionate appointment as can be seen from special police circular No.32/2010 dated 27.08.2010. In fact, the same circular covers appointment both as 'Child Constable' and Police Constable. Though it is not specifically mentioned in the circular, the appointment as a Police Constable is logical next step, if a person is appointed as a 'Child Constable'. Otherwise, there was no need to have a provision of appointment of a 'Child Constable' in the circular dealing with the compassionate appointment of Police Constable. Learned Counsel for the Applicant argued that the Applicant was appointed as 'Child Constable' on compassionate ground as is evident from the circular dated 27.08.2010. However, he could not continue as 'Child Constable' beyond 30.04.2009, the date he attained majority. As he did not have necessary educational qualification on the date of attaining majority, he could not apply for the post of Police Constable. He passed H.S.C. examination in June 2010, i.e. at the earliest opportunity. There was a technical delay of a little more than one month in applying for the compassionate appointment as a Police Constable. Learned Counsel for the Applicant argued that considering that the applicant is physically well built and tall (6 feet, 6 inches) and he



has the experience of working as Child Constable and his passion for police job, his case needs fresh and sympathetic consideration. Learned Counsel for the Applicant argued that slight delay in passing 12th standard was due to the fact that the Applicant was initially admitted to a school in Karvar (Karnataka) and after coming to Mumbai, he was again admitted to Class I. The mother and sister of the Applicant are dependent on him and he needs the job desperately.

6. We find that the Applicant is a well built and tall, young person, who appears physically fit for a police post. He has attained the requisite educational qualification i.e. H.S.C. also. He has shown his preference and passion for the police job by working as a 'Child Constable' for more than 2 years. Admittedly, selection as Child Constable is also done on compassionate ground and logically if a person is appointed as 'Child Constable', he should be considered for appointment to the post of Police Constable provided no other heir of the deceased Government servant has been appointment on compassionate basis and he/she fulfils other qualifications. In the present case, the Applicant appears to fulfill all the qualifications required for appointment as Police Constable (subject to fresh verification). The only fact coming in his way is that he passed H.S.C. examination in May 2010, though he appeared for the said examination before attaining the age of 19

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years. He actually applied for compassionate appointment on 15.06.2010, while as per Rule 9 of the Maharashtra Public Constable (Recruitment) Rules, 2011, and G.R. dated 11.09.1996, he should have applied before 30.04.2010.

7. Learned Counsel for the Applicant contended that G.R. dated 08.03.1985 has an appendix containing revised rules on compassionate appointment. Rule 8(A) provides that Government has powers to relax any of the rules. Accordingly, the rule regarding age on compassionate appointment can be relaxed. We find that these Rules have been amended from time to time. G.R. dated 26.10.1994 has appendix 'A' containing further revised rules for compassionate appointment. Rule 8 provides that the Government will have no power to relax any rule except Rule 4(c) which is regarding educational qualification for compassionate appointment of a widow. However, following rule is also relevant viz. Rule 5(A) of the said rules reads :

“पू (अ) नुकंपा कारणास्वतव नेमणुकहसाठीचा अर्ज शासकीय कर्मचारी दिवंगत. अकाली निवृत्त झालेल्या दिवसापासून ५ वर्षांचे मुदतीत करणे आवश्यक असेत.”

8. In the present case, the Applicant's father passed away on 24.01.1999. Applicant's mother, widow of the deceased Government servant, applied for compassionate appointment and she was placed in the waiting list for appointment to a Class IV

post. Applicant's mother was called to the office of the Respondent No.1 on 29.11.2007 to furnish documents for compassionate appointment in place of her husband. However, the mother of the Applicant wanted her son to be appointed in place of her husband and by letter dated 10.12.2007, submitted an application to the Respondent No.1 accordingly. The Applicant at that time was working as a 'Child Constable' and also studying in 12th standard. As the Applicant's mother had waited for almost 8 years, a little more waiting probably would have resulted in her son getting a post of Police Constable, in view of the experience gained by him as 'Child Constable'. She therefore, applied that her son may be given compassionate appointment in her place. The circumstances explaining delay of a few days in the Applicant applying for compassionate appointment are also explained. He was studying in Karnataka in Kannada medium school when his father died. His mother brought to Mumbai and admitted in a Marathi medium school in first standard. As a result, there was delay in his passing 12th standard examination. He could do so just after he reached the age of 19 years or thereabout. As a result there was a few days delay in submitting application for compassionate appointment.

9. The following facts have to be considered in the present case :

- (1) The Applicant's mother had sacrificed her chance for compassionate appointment in favour of her son, the

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Applicant. Now the situation is that neither she nor her son would get compassionate appointment. This would cause grave injustice to them.

(2) The Applicant had worked as 'Child Constable' from 11.12.2006 to 30.04.2009. This shows his aptitude and passion for the police job which was also discharged by his late father. The fact that he was appointed as 'Child Constable' must have given him expectation that he would someday be appointed in a police job.

(3) The circumstances in which the Applicant could not complete his 12th standard earlier have been adequately explained.

(4) Rule 4(B) of the Rules of 26.11.1994 reads :

“४ (ब) संबंधित पदांसाठी विहित शैक्षणिक पात्रता आणि निम्न वयोभर्यादा याबाबतच्या अटी या नेमणूकांसाठी कटाक्षाने पाळण्यात येतील. परंतु उच्च वयोमर्यादेची अट राहणार नाही.”

This clearly shows that the upper age limit is not applicable for appointment on compassionate grounds except in case of the legal heirs who are minor at the time of death of the Government servant.

10. For appointment for Police Constables as per Rule 3(1)(A), of the relevant recruitment rules the upper age limit is 25 years.

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Learned Counsel for the Applicant has cited judgment of Hon'ble Supreme Court in **Bhupinder Singh Saini Vs State of Punjab, AIR (SC) 2002 p.2535.** In this case, candidates worked in census operations and after termination of the jobs were given employment in Municipal Election Office. Hon'ble Supreme Court directed that the age of such candidates will be relaxed to the extent they have served in the census organization as well as in the Municipality. In the present case, the Applicant has served on 'Child Constable' for more than two years. Appointment of a 'Child Constable' is also made on compassionate ground as can be seen from special police circular No.32/2010 dated 27.08.2010. The learned Counsel for the Applicant stated that the Applicant should be given relaxation in age as per ratio of the aforesaid judgment of Hon'ble Supreme Court.

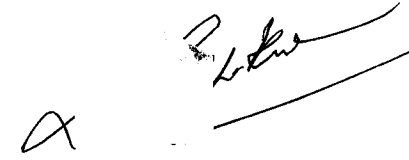
11. Considering the facts that the Applicant has worked as a Child Constable, his mother had lost chance of appointment to a Government post in 2007, the delay in applying for the compassionate appoint is only of a few days, the reasons for delay are adequately explained and the fact that for compassionate appointment in general, there is no upper age limit, we are of the opinion that this is a fit case, where the Applicant should be considered for compassionate appointment as a Police Constable condoning the delay in making the application for such

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appointment. It is, however, made clear that this order is being passed in view of the peculiar facts and circumstances of this case enumerated above and it will not act as a precedent for relaxation of condition in G.R. dated 11.09.1996.

12. Having regard to the aforesaid facts and circumstances, the Respondents are directed to consider the application dated 15.06.2010 of the Applicant for appointment as a Police Constable on compassionate ground if he is otherwise eligible, ignoring the delay in filing the said application within a period of 2 months from today. The O.A. is disposed of accordingly with no order as to costs.


(Rajiv Agarwal)
Vice-Chairman


(Dr. S. Radhakrishnan J.)
Chairman

Date : 24.12.2013
Place : Mumbai
Dictation by : PRK