

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.544 OF 2019
(Subject:- Compassionate Appointment)**

DISTRICT: - Aurangabad.

Shri Sandip S/o. Sheshrao Shejul,)
Age :27 years, Occ.: Unemployed,)
R/o. House No.1.1.35/1, Pattharfod Galli,)
Begumpura, Aurangabad-431004.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through : Secretary,)
Social Welfare, Mantralaya,)
O/o. Social Justice and Special)
Assistant Department, 1st Floor,)
Mantralaya, Madam Kama Road,)
Hutatma Rajguru Chowk,)
Nariman Point Mumbai-400032.)
- 2. The Director**)
O/o. Social Welfare Directorate,)
Govt. of Maharashtra, 3 Church Road,)
Near Police Commissioner Office,)
Pune 411001.)
- 3. The Regional Deputy Commissioner**)
O/o. Social Welfare Office,)
Dr. Babasaheb Ambedkar Samajik)
Nyay Bhavan, Near Shivaji High School)
Khokadpura, Aurangabad 431001.)
- 4. The Assistant Commissioner,**)
O/o. O/o. Social Welfare Office,)
Dr. Babasaheb Ambedkar Samajik)
Nyay Bhavan, Near Shivaji High School)
Khokadpura, Auranbabad 431001.)

5. **Gruhapal,**)
 O/o. Mulinche Shasakiya)
 Vastigruh June (Old),)
 Padampura, Aurangabad.)...**RESPONDENTS**

APPEARANCE : Dr. C. S. Temburnikar, learned Advocate for the applicant.
 : Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **04.07.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned order/communication dated 21/28.01.2019 (Annex. 'A-1') issued by the respondent No.3 i.e. the Regional Deputy Commissioner, O/o. Social Welfare Office, Aurangabad rejecting the claim of the applicant for appointment on compassionate ground referring to G.R. dated 22.08.2005 on the ground of delay and seeking appointment on compassionate ground.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

- (i) The father of the applicant, late Shri Sheshrao Yadavrao Shejul was working as a Peon in Old Girls Hostel, Padampura, Aurangabad under the respondent No.5. He died in harness on 01.03.2012. His death certificate is at Annex. 'A-2' (page no.13 of P.B.). The applicant who is son of the said deceased Government servant, made application dated 27.02.2013 (page No.29 of P.B.) to the respondent No.5 seeking appointment on compassionate ground. The applicant did not hear anything on that application. He again made application dated 18.12.2014 in proforma by annexing documents (page Nos.25 to 26 of P.B.) addressed to the respondent No.4 i.e. the Assistant Commissioner, Social Welfare Office, Aurangabad. The applicant visited the office of the respondent No.3 i.e. the Regional Deputy Commissioner, Social Welfare Office, Aurangabad as well as the respondent No.4 i.e. the Assistant Commissioner, Social Welfare office, Aurangabad

from time to time but both the offices did not give any response. In view of same, the applicant made application seeking information under Right to Information Act, 2005 and he received the documents from the office of the respondent No.4 under letter dated 07.12.2018 (Annex. 'A-4' collectively) which are at page No.23 to 36 of P.B. From the said documents the applicant came to know that his first application dated 27.02.2013 (page No.29 of P.B.) was not considered. However, his subsequent application dated 18.12.2014 (page No.30 to 31) was considered, but his claim was rejected being time barred vide order dated 19/20.03.2015 (page No.24 of P.B.).

- (ii) In view of above, the applicant made application/representation dated 01.01.2019 (Annex. 'A-3') to the respondent Nos.2 to 5 seeking to consider his first application dated 27.02.2013 (page No.29 of P.B.). The respondent No.3 i.e. the Regional Deputy Commissioner, Social Welfare, Aurangabad, however, by impugned letter dated 21/28.01.2019 (Annex. 'A-1') rejected the claim of

the applicant holding that his application dated 27.02.2013 was not registered in Inward Register of the respondent No.5 and his subsequent application dated 18.12.2014 was made beyond the period of limitation.

(iii) Being aggrieved by the said impugned communication/order dated 21/28.01.2019 (Annex. 'A-1'), this application is filed contending that in the first place the applicant is unemployed and he is in need of employment. The applicant is entitled for compassionate appointment having been made application on 27.02.2013 i.e. within the prescribed period of one year from the date of death of his father on 01.03.2012. He is having the requisite qualification and is eligible for getting appointment in Clerical Cadre on compassionate ground. His claim is wrongly rejected. Hence, this application.

3. The affidavit-in-reply is filed on behalf of the respondent Nos.2 to 5 by one Shivaji Sambhaji Shelke working as the Assistant Commissioner, Social Welfare, Aurangabad, District Aurangabad. Thereby he denied all the adverse contentions

raised in the Original Application and making following specific pleading.

- (i) At the outset it is contended that the claim of the applicant for appointment on compassionate ground is rejected on the ground of limitation rightly. G.R. dated 22.08.2005 (page No.51 of P.B.) prescribes limitation of one year for making application in proforma with the documents. Such application was made by the applicant only on 18.12.2014.
- (ii) Though the applicant claims that he made first application dated 27.02.2013, the same is not recorded in the office and therefore, copy of the said application seems to be fabricated document. The said application was not registered in inward register kept with the respondent No.5. His authentic application was dated 18.12.2014 and it was rightly rejected on the ground of limitation. Hence, no illegality is committed while passing impugned order/communication dated 21/28.01.2019. Therefore, the Original Application is liable to be dismissed.

4. The applicant filed affidavit-in-rejoinder and denied all the adverse contentions raised in the affidavit-in-reply. Along with the rejoinder, the applicant produced on record initial application made by the applicant's mother namely Smt. Janabai Sheshrao Shejul on 28.06.2012 as well as application dated 27.02.2013 made by the applicant (Annex. 'A-6' collectively, page Nos.71 & 72 of P.B.) which both documents bare acknowledgment from the concerned office. In view of same, he denied that his earlier application dated 27.02.2013 was fabricated. He also placed reliance on second G.R. dated 23.08.1996 (page No.78 of P.B.), which prescribes the responsibility of the concerned office to apprise the family members of the deceased Government about the compassionate appointment within 15 days.

5. I have heard at length the arguments advanced by Dr. C.S. Temburniakar, learned Advocate for the applicant on one hand and Smt. Deepali S. Deshpande, learned presenting Officer for the respondents on other hand.

6. Upon rival pleadings, it is evident that the claim of the applicant is that after death of his father late Shri Sheshrao Yadavrao Shejul on 01.03.2012, he made simple application

dated 27.02.2013 (page No.29 of P.B.) seeking compassionate appointment. The respondents disputed the said contention of the applicant and alleged in the affidavit-in-reply that the copy of such application showing endorsement of the office of the respondent No.5 is fabricated and no such application was received from the applicant. The respondents, however, admitted that the applicant had made application for appointment on compassionate ground in proforma on 18.12.2014 (page No.25 of P.B.). However, it is their contention that such application was received after one year from the date of death of late Shri Sheshrao Yadavrao Shejul on 01.03.2012. According to the respondents in terms of G.R. dated 22.08.2005, the limitation period for filing the application for compassionate appointment is of one year.

7. In this regard along with the affidavit-in-rejoinder, the applicant has placed on record G.R. dated 23.08.1996 (page Nos.78 to 81 of P.B.). The said G.R. provides that after death of the Government servant, it is the duty of the concerned department to give information about the compassionate appointment to the bereaved family members. There is nothing on record to show that the respondents took any such steps to comply the directions issued in the said G.R.

8. Moreover, the applicant has also placed on record the copy of consolidated G.R. dated 21.09.2017 along with the affidavit-in-rejoinder at page Nos.90 to 117 of P.B.). Various G.Rs., notifications and circulars relating to scheme of compassionate appointment are consolidated in said G.R.

9. Considering the facts as above, it was incumbent upon the respondents to take into consideration the first application dated 27.02.2013 (page No.23 of P.B.) made by the applicant seeking compassionate appointment. I do not find any doubt about the said document. The respondents have failed to establish that the same is fabricated document. Record shows that the respondents rejected the claim of the applicant initially by communication/order dated 19/20.003.2015 (page No.24 of P.B.) and impugned communication/order dated 21/28.01.2019 (Annex. 'A-1', page no.12 of P.B.). In both the communications, it is mentioned that the applicant did not made application for compassionate appointment within the prescribed period of limitation in accordance with G.R. dated 22.08.2005. The application dated 18.12.2014 made by the applicant was time barred.

10. However, as ordered earlier, in view of the failure of the respondents to apprise the bereaved family of the deceased Government servant according to G.R. dated 23.08.1996 (page No.78 of P.B.), the view taken by the respondents in that impugned communication/order is not sustainable in the eyes of law. It appears that the office of the respondent No.5 failed to record the said application dated 27.02.2013 in the requisite register. Hence, negligence in that regard will attribute to the respondent No.5.

11. During the course of arguments learned Advocate for the applicant has produced on record the copy of communication dated 14.03.2022 received by the applicant for remaining present in the office of the respondent No.2 i.e. the Director, Social Welfare Directorate, Govt. of Maharashtra, Pune along with the requisite documents relating to compassionate appointment. It is taken on record and marked as document 'X' for the purpose of identification. It appears from the communication dated 14.03.2022 (marked as 'X' for identification) that the case of the applicant for appointment on compassionate ground is already under consideration.

12. Learned Advocate for the applicant further placed on record the copy of communication dated 28.01.2022 addressed by the respondent No.1 to the Commissioner, Social Welfare, Pune, whereby the Government condoned the delay in case of one Smt. Savita Suresh Shirke, who had made application after one year but before three years of the date of death of her deceased husband. The said document is taken on record and marked as document 'X-1' for the purpose of identification. In such situation, it seems that the respondents have powers to condone the delay, if any. The facts of the present case seem to be similar to the facts of the case of Smt. Savita Suresh Shirke.

13. In such circumstances as above, in my considered opinion, the impugned communication/order dated 21/28.01.2019 (Annex. 'A-3') issued by the respondent No.3 i.e. the Regional Deputy Commissioner, Social Welfare office, Aurangabad rejecting the claim of the applicant for appointment on compassionate ground is not sustainable in the eyes of law and is liable to be quashed and set aside. This is a fit case to direct the respondents to take into account the initial application dated 27.02.2013 (page No.29 of P.B.) as well as subsequent application dated 18.12.2014 (page No.30

of P.B.) in accordance with law and consider the case of the applicant even by condoning the delay, if necessary. I, therefore, proceed to pass the following order.

ORDER

The Original Application is allowed in following terms:-

- (A) The impugned communication/order dated 21/28.01.2019 (Annex. 'A-3') issued by the respondent No.3 i.e. the Regional Deputy Commissioner, Social Welfare office, Aurangabad rejecting the claim of the applicant for appointment on compassionate ground is hereby quashed and set aside.
- (B) The respondents are directed to take into consideration the claim of the applicant for appointment on compassionate ground considering his eligibility on requisite post in accordance with law and to complete the endeavor to give such appointment within the period of four months from the date of this order.
- (C) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place :- Aurangabad
Date :- 04.07.2022
SAS O.A.544/2019