

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 695 OF 2001

WITH
MISC. APPLICATION NO. 42/2014

DISTRICT: DHULE

Shri Durgesh s/o Bhaskar Dixit,
Age: 38 years, Occu. : Daily Wager (Labour Work),
R/o Waghadi Bk., Tq. Shindhkheda,
Dist. Dhule.

.. APPLICANT

V E R S U S

- 1) The State of Maharashtra,
(Copy to be served on C.P.O., Maharashtra
Administrative Tribunal, Bench at Aurangabad)
- 2) The Secretary,
Department of Home,
Mantralaya, Mumbai-32.
- 3) The Inspector General of Police,
Nasik Zone, Nasik.
- 4) The Superintendent of Police,
Dhule, Dist. Dhule.
- 5) The Collector, Dhule,
Dist. Dhule.

.. RESPONDENTS

APPEARANCE : Shri- C.V. Bhadane, learned Advocate for the
Applicant.

: Shri- V.R. Bhumkar, learned Presenting Officer
for the Respondents.

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

J U D G M E N T**(Delivered on this 17th day of February, 2017.)**

1. Heard Shri C.V. Bhadane, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the Respondents.
2. The M.A. No. 42/2014 for condonation of delay as well as O.A. for appointment on compassionate ground are being disposed of by this judgment.
3. The O.A. was filed in the year 2001 wherein relief for appointment on compassionate ground was made, since it was found during the pendency of the O.A. that there was delay in filing O.A. The application for condonation of delay has been filed. The so-called delay is of 827 days.
4. In the O.A., the respondents have filed affidavit in reply and the matter was ready for disposal. In fact, it was initially dismissed in default and again it was restored. Considering the fact that the affidavit in reply is already filed and the pleadings are complete in the O.A., it has agreed to consider the M.A. as well as O.A. on merits.

5. The applicant Shri Durgesh Bhaskar Dixit, has filed O.A. No. 695/2001. He was informed vide impugned order dated 2.3.1998 by the respondent no. 4 i.e. The Superintendent of Police, Dhule that his case does not fall within the ambit of the G.R. dated 26.10.1994 and 11.9.1996. The impugned communication is as under:-

“महाशय,

उपरोक्त संदर्भाधीन अर्जात आपण शासन निर्णय सा.प्र.वि.क. अकंपा/ १०९३/ २३३५/ प्रक/ ९०/ ९३/आठ दि. २६.१०.९४ व शासन निर्णय क्रमांक अकंपा/१०९५/प्रक-३४/आठ/ दि. ११.९.९६ या दोन्ही शासन निर्णयाचा उल्लेख केलेला आहे. व त्या शासन निर्णयानुसार मुलास अनुकंपा तत्वावर पोलीस भरती करण्याबाबत विनंती केली आहे. परंतू दोन्ही शासन निर्णयानुसार विचार केला असता आपली केस अनुकंपा तत्वावर बसत नाही. म्हणून अर्ज निकाली काढण्यात आला आहे.

आपला विश्वासू,

सही/-

(पी.एन. जोशी)

पोलीस अधिक्षक, धुळे करीता.”

6. The applicant has claimed that the impugned order dated 2.3.1998 issued by the respondent no. 4 be quashed and the respondent no. 4 be directed to consider his claim for appointment to a suitable post on compassionate ground.

7. From the pleadings, it reveals that the applicant's father Shri Bhaskar Dixit was serving in the office of the Superintendent of Police, Dhule as Police Constable. On

6.10.1986, the applicant's father met an accident and his both legs got fractured. Shri Bhaskar Dixit was examined by the Civil Surgeon, General Hospital, Dhule on 4.7.1988 and certified that he was unfit to work on field as Police Constable but was fit to work on clerical job. On 7.7.1988, the respondent no. 4 issued retirement order and the applicant's father got retired on 7.7.21988. The applicant's father made representation to the respondent no. 4 on 23.05.1993 and 1.9.1993. He was promised that his claim will be considered on compassionate ground on applicant's attaining majority. The applicant's father therefore, made representation accordingly. Vide letters dated 13.10.1993 and 27.10.1993 the applicant's father requested respondent no. 4 to appoint his son as and when he becomes major. However, the said proposal was forwarded to the respondent no. 4 for action. On 17.11.1993 however, the applicant's father was informed that his proposal was rejected since it was filed after expiry of period of five years and therefore, it was rejected in view of the G.Rs. dated 25.10.1994 and 11.9.1996. On 29.04.1994, the respondent no. 3 communicated the applicant's father that his proposal was forwarded to respondent no. 4 for further action. Thereafter, the applicant's father again made representation on 13.10.1993. Vide letter dated 4.12.1993, the applicant's father was directed to contact respondent no. 4 being competent authority. The

applicant's father then again made representation on 11.02.1998 but it was not considered. Lastly vide letter dated 2.3.1998 the respondent no. 4 communicated to the applicant's father that his claim was rejected. The applicant's father again approached to the Inspector General of Police, Mumbai but for no use. The applicant has therefore, filed this Original Application.

8. The respondent no. 4 resisted the applicant's claim by filing affidavit in reply. It is stated that the date of birth of applicant as shown in the school leaving certificate is 20.05.1975 and therefore, the applicant has become major on 20.05.1993. As per G.R. dated 26.10.1994, application for compassionate appointment is to be preferred within five years from the date of death or retirement of Government employee. As per G.R. dated 11.09.1996, the minor ward of the deceased employee can make application for compassionate appointment within one year on attaining majority.

9. The learned Presenting Officer submits that the applicant's father did not apply for compassionate appointment of his son within five years from the sanction of invalid pension. It seems from the record that the invalid pension was granted to the applicant's father w.e.f. 6.7.1988, whereas the applicant's father

made application for appointment on compassionate ground for his son on 01.09.1993 i.e. after laps of five years. This can be seen from the impugned communication dated 17.11.1993 whereby the applicant's father's claim for appointment was rejected. The said impugned communication is placed on record as Exhibit-E at paper book page no. 16. Even though the applicant is claiming that his father applied for compassionate appointment for his son i.e. applicant on 23.05.1993 and the copy of said application is placed on record at paper book page no. 60, there is no inward number on the said application nor it bears acknowledgment of the Superintendent of Police, Dhule.

10. From the facts discussed and appearing on the record, it seems that after retirement on invalidated medical ground on 6.7.1988, the applicant's father for the first time applied for the appointment on 28.09.1993 i.e. after more than five years and the applicant's father was accordingly communicated vide letter dated 17.11.1993 (Exhibit 'E') at paper book page no. 16 as under:-

“महोदय,

उपरोक्त संदर्भ व विषयानुसार आपणास कळविण्यात येते की, महाराष्ट्र शासन, सामान्य प्रशासन विभाग शासन परिपत्रक क्र.अकंपा १०९०-राम-२७, आठ दि. २२.१०.९० अन्वये दिवंगत/ अकाली सेवानिवृत्त/ बेपत्ता कर्मचा-याच्या कुटूंबियाने अथवा /कर्मचा-याने सेवानिवृत्त झाल्याच्या दिनांकापासून ५ वर्षांचे आत अनुकंपा तत्तावर नियुक्ती मिळणेसाठी अर्ज सादर केला पाहिजे.

आपणास सेवानिवृत्त होउन ५ वर्षांचे तर झाल्याने आपल्या मुलास अनुकंपा तत्वावर नोकरी देता येत नाही. सबब आपला अर्ज निकाली काढण्यात आलेला आहे. दिलगी आहोत.

आपला विश्वासू,

सही/-

(बी.सी. निकम)

पोलीस अधिक्षक, धुळे करिता.”

11. It is material to note that the applicant's father has died on 05.02.2009 as stated by the learned Advocate for the applicant and the learned Advocated for the applicant frankly admitted the fact that the communication dated 17.11.1993 was never challenged by the applicant's father. The O.A. is filed by the applicant in the year 2001, which in other words means that the applicant or his father did not challenge the communication dated 17.11.1993 till 2001.

12. The learned Advocate for the applicant submits that the applicant has become major and has requested for getting appointment on compassionate ground. It is admitted fact on record that the applicant's date of birth as per school record is 20.05.1975 and therefore, he became major on 20.05.1993. It was incumbent upon the applicant to apply for appointment on compassionate ground within one year from the date of attaining majority.

13. The learned Advocate for the applicant frankly admits the fact that the applicant never applied for appointment on compassionate ground even till today. The learned Advocate for the applicant has referred to the application dated 23.05.1993 vide which the application was made for the first time that the applicant has become major and therefore, he should be considered for appointment on compassionate ground. It is material to note that this application dated 23.05.1993 has no inward number nor it appears any acknowledgement. Even for argument sake, it is accepted that such application was made still it will be clear that the said application has been preferred by the applicant's father and not by the applicant.

14. The learned Advocate for the applicant then referred to one communication dated 27.10.1993 (Exhibit-D) wherefrom it seems that the same application for compassionate appointment was preferred on 13.10.1993. This also refers to the application preferred by the applicant's father Shri Bhaskar Ghanshyam Dixit and not by the applicant. The learned Advocate for the applicant then referred to copy of one application dated 1.9.1993 which marked Exhibit-C at paper book page no. 14 but the said application was also shows that it was preferred by the

applicant's father and not by the applicant and the applicant was also major at that time.

15. From circumstances on record therefore, it will be clear that the applicant's father was allowed to retire on medical ground and he got invalid pension from 6.7.1988. The application was however, not preferred within five years from the date of getting invalid pension and therefore, the said application was rejected. The applicant's father never challenged that rejection application for compassionate ground. During the lifetime of the applicant's father, he never challenged the communication, whereby his claim for compassionate appointment for his son was rejected, ultimately his father died in the year 5.2.2009. After attaining majority, the applicant never applied for appointment on compassionate ground. Considering all these circumstances, it will be clear that the competent authority has rightly rejected the applicants claim and I do not find any illegality in not considering the claim to the applicant by respondent no. 4. Considering the fact that the applicant's father has already died and got invalid pension from 6.7.1988 till his death in 2009 and the fact that he never challenged the rejection of his son's claim for compassionate appointment and further fact that the applicant also never applied for the appointment on compassionate ground.

I am satisfied that there may not be any circumstances even existing to consider the case of the applicant for compassionate ground. In view thereof, I pass following order:-

ORDER

The Original Application stands dismissed. As the O.A. stands dismissed, nothing survives in the Misc. Application and hence, the same also stands disposed of with no order as to costs.

(J.D. KULKARNI)
MEMBER (J)

KPB/S.B. O.A. No. 695 of 2001 with M.A. NO. 42 of 2014 JDK 2017 Comp.