

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

MISC APPLICATION NO. 730/2023

IN

ORIGINAL APPLICATION NO. 1439/2023

WITH

MISC APPLICATION NO. 731/2023

IN

ORIGINAL APPLICATION NO. 1440/2023

DISTRICT : MUMBAI

1. M.A 730/2023 in O.A 1439/2023

Shri R.K Deorukhkar)
R/at: C-28, 614, Charkop,)
Suprabhat Society, Sector-6,)
Mumbai.)...**Applicant**

Versus

1. The Commissioner of Police,)
Mumbai, L.T Marg,)
Opp. Crawford Market, Mumbai.)
2. The Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Director General of Police,)
Police Headquarters,)
Old Council Hall, S.B.S Marg,)
Mumbai.)...**Respondents**

2. M.A 731/2023 in O.A 1440/2023

Shri M.M More)...Applicant

Versus

The State of Maharashtra & Ors)...**Respondents**

Shri K.R Jagdale, learned advocate for the Applicants.

Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)

Mrs Medha Gadgil (Member) (A)

DATE : 21.06.2024

J U D G M E N T

1. The present Misc Applications are filed seeking condonation of delay of 4 years and 11 months in filing the Original Applications No. 1439 & 1440/2023.

2. Learned counsel submits that the applicants challenge cancellation of their selection to the post of Police Constable by order dated 2.12.2016, on the ground that the applicants cannot fall in the category of Police child as the father of the applicants retired from the post of PSI which is a non-gazetted Group B post and not Group C post. Immediately thereafter the applicants submitted representation dated 3.1.2017 to Respondent No. 1 requesting to consider their case for appointment to the post of Police Constable under the Police child category. Learned counsel further submitted that the applicants applied under R.T.I on 26.5.2017 seeking copy of G.Rs referred to in the impugned communication. Thereafter on 21.7.2017 applicants filed RTI

appeal seeking the G.Rs. On 15.9.2017 the applicants were informed that the documents are not available since they were lost in the fire at Mantralaya. Learned counsel submitted that as the applicants were pursuing with the Respondents, they did not file the Original Applications in the year 2017.

3. Learned counsel further submitted that similarly situated candidate had filed O.A 1005/2017, Shri P.B Dhanawade Vs. The Commissioner of Police & Anr., before this Tribunal and the said matter was allowed by order and judgment dated 25.8.2023. Learned counsel has further submitted that on the basis of the judgment in O.A 1005/2017 the applicants preferred representations on 13.9.2023 and 15.9.2023 before Respondents No. 2 & 1 respectively. However, the present Original Applications are filed on 7.11.2023.

4. Learned counsel for the applicants relied on the following case laws in support of his submissions:-

- (1) K.C. Sharma Vs. Union of India & Ors, AIR 1997 SC 3588.
- (2) Mohinder Singh Vs. State of H.P & Ors, CWPOA No. 5286/2020.
- (3) Judgment of the High Court of Judicature at Bombay dated 3rd July, 2012, in Writ Petition No. 7519/2010, Smt Biner Soman Dattatraya Vs. State of Maharashtra & Ors

5. Learned P.O submitted that on 26.12.2017 the representation of the applicants was rejected. Learned P.O relied on the order dated 4.1.2024 passed by this Tribunal in M.A 779/2023 in O.A 1569/2023, N.D Bidkar Vs. The State of Maharashtra & Ors.

6. In the case of **K.C Sharma, (supra)**, appeal was filed against the judgment of the Principal Bench of the Central Administrative Tribunal. The issue involved was about pay fixation and it was a continuous cause of action. In the said case the Hon'ble Supreme Court expressed that it was a fit case in which the Tribunal should have condoned the delay in filing the Original Application, wherein the applicant has challenged the Notification dated 5.12.1988 in the year 1994. Learned counsel submitted that there was a delay of five years in filing the Original Application. The delay was condoned by the Hon'ble Supreme Court. However, the present case is about selection to the post of Police Constable. The applicants have challenged the impugned order dated 2.12.2016 by filing the present Original Applications in the year 2023 after the decision of this Tribunal in O.A 1005/2017.

7. In the case of **Mohinder Singh (supra)**, the Petitioner has challenged the regularization of service governed by the Policy of 2006. The said case is not applicable to the present set of facts and it is not pertaining to delay in filing the application.

8. In the case of **Smt Biner S. Dattatraya (supra)**, the Petitioner was working as Assistant Teacher in the School seeks regularization of her services. However, there was a delay of two years. The Petitioner was a widow with 12 years old daughter. In the said case, the Hon'ble High Court relied on the judgment of the Supreme Court in State of Nagaland Vs. Lipok A.O & Ors, (2005) 3 SCC 752 and it was mentioned that on technical grounds including delay the relief is not to be denied to the parties if the case on merits is bonafide, clear and justifiable.

9. In the present case the applicants seek selection to the post of Police Constable under Police child category. The recruitment

process has taken place in the year 2016. Thereafter, fresh advertisements were issued to the post of Police Constables and the recruitments have taken place. Thus, as on today undoubtedly there cannot be vacancy of the year 2016 available. The stand of the applicants that they have filed the representations in the year 2017 and 2018 cannot be a ground to condone the delay. Further filing of representations before the authorities is not a good ground to stretch the limitation beyond the stipulated period of one year. The applicants have filed this Original Application in November, 2023 after the decision of this Tribunal dated 25.8.2023 in O.A 1005/2017. If the applicants would have filed the Original Applications immediately thereafter, the delay would have been considered. We do not find any good ground to condone the delay in filing the Original Application.

10. As the Misc Applications seeking condonation of delay of more than 4 years is dismissed, the Original Applications also stand dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 21.06.2024
Dictation taken by : A.K. Nair.