

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**MISC. APPLICATION NO.29 OF 2023
IN
REVIEW APPLICATION NO.01 OF 2023
IN
ORIGINAL APPLICATION NO.87 OF 2019**

**DISTRICT : SOLAPUR
SUBJECT : FOR DELAY**

Shri Mujahid Mohammad Yusuf Daruwala)
Age 40 years, Occ. Nil)
R/at A-37, Karnik Nagar, Solapur.)... **Applicant**

Versus

1) The State of Maharashtra)
Through Principal Secretary)
Food, Civil Supplies and Consumer Protection)
Department, Mantralaya, Mumbai-32.)

2) The District Collector, Solapur)
Solapur, Tal. Pandharpur, Dist. Solapur.)

3) Division Commissioner (Supply),)
Sadhu Vaswani Council Hall,)
Pune Camp Pune, VidhanBhavan,)
(Marathi) M.G. Road, Pune.) **Respondents**

Shri A. A. Deshpande, learned Advocate for the Applicant.

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

CORAM : Shri Ashutosh. N. Karmarkar, Hon'ble Member (J)

DATE : 06.09.2024.

ORDER

1. This is an application for condonation of delay of 1,221 days caused in filing Review Application in O.A.No.87 of 2019 which is already decided on 17.07.2019.

2. Learned Advocate for Applicant submits that Applicant's father Mohammad Yusuf Daruwala entered in Government service on 21.07.1973 as a Clerk in the office of Respondent No.2. He was then promoted to the post of 'Naib Tahsildar', F-Zone, Foodgrain Distribution Officer, Pune in the grade pay of 5500-9000 from 11.06.2003. The Applicant's father died in harness on 08.07.2008 when he was on duty due to heart attack. The Applicant applied for appointment on compassionate ground as 'Clerk' vide application dated 24.07.2008. The Respondent No.2 informed vide communication dated 03.10.2008 that Applicant's case will not be considered as his father was 'Naib Tahsildar' Group-II at the time of death. Subsequent representations of Applicant were also rejected by the Respondent No.3 by order dated 14.12.2018.

The applicant made representation dated 31.01.2008 to the Minister of Food, Civil Supplies and Consumer Protection Department. The concerned Minister forwarded a letter for necessary action. The Respondent No.2 vide order dated 14.12.2018 rejected the Applicant's claim. Being aggrieved by the same, the Tribunal has dismissed the said O.A. on the ground that Applicant's father was working on the post of Naib Tahsildar at the time of death and as per GR dated 22.08.2005, the legal heir of Group 'C' and 'D' are entitled for compassionate appointment.

3. Now the Applicant has come with a case that in 1st week of February 2022 when he was cleaning cupboard of his house, he found some documents. He found photocopy of promotion order of his father dated 01.06.2004 which shows that Applicant's father promotion was a temporary interim arrangement. The promotion order was issued on condition that seniority benefit or pay fixation benefit will not be applicable. The Applicant contacted his Advocate to ascertain whether this order is beneficial to him for getting appointment on compassionate ground. On getting positive response, he has filed application for Review Application along with this application. In the meantime, he was trying to collect the certified copy of promotion order of his father.

4. The Respondent Nos.1 to 3 filed Affidavit in Reply and resisted the application. According to them, the Applicant has not properly explained the delay. Though the application for condonation of delay is to be considered liberally, it does not mean that merit of the application is not to be looked into. It is asserted that the Applicant has deliberately approached this Tribunal after more than three years.

5. Learned Advocate for Applicant has invited my attention to promotion order of his father at 'Exhibit A' and submitted that promotion of his father was temporary in nature so he cannot be treated as Group 'B' employee.

6. On the other hand, learned Presenting Officer has submitted that there is no provision for condonation of delay in filing Review Petition so the application is not tenable. He has relied on the judgment of this Tribunal at Nagpur Bench in Civil No.470/2016 in R.A. 1887/2016 in O.A.No.492/2015, dated 25.04.2017.

Section 22(3) of Administrative Tribunal Act. 1985 says that the Tribunal shall have, for the purpose of discharging its functions, same powers as are vested in Civil Court under Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of matters mentioned in clauses (a) to (i) in the said section including reviewing its decision. Rule 18 of the Maharashtra Administrative Tribunal (Procedure) Rules 1988 is as under

“ No application for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is sought

The above Rule makes it clear that no application for Review is to be entertained, if it is not filed within 30 days from the date of the order. The Applicant is seeking review in respect of order dated 17.07.2019 in O.A. No.87/2019.

7. Learned PO has invited my attention to Clause 15 of the order of this Tribunal at Nagpur Bench in Civil No.470/2016 in R.A. 1887/2016 in O.A.No.492/2015, dated 25.04.2017. Since Rule 18 of Maharashtra Administrative Tribunal (Procedure) Rules, 1988 specifically provides for filing review within 30 days from the date of order, it cannot be said that there is no substance in submission of learned PO.

8. Even if it is accepted for a moment that the contents in this application are to be considered, it is to be seen whether there is sufficient cause for alleged delay. The main contention of the Applicant is that he came to know on getting promotion order dated 01.06.2004 of his father that promotion of his father was of temporary in nature or it was interim arrangement. The recitals of O.A.No.87/2019 shows that Applicant had already raised the said contention in it, that his father was given purely ad-hoc promotion on the post of 'Naib Tahsildar'. Therefore, the same ground which was already considered in O.A.No.87/2019, is tried to be raised in the present application.

The Applicant has referred one letter dated 31.01.2018 addressed to Minister of Food, Civil Supplies & Consumer Protection Department. The copy of said letter ('Exhibit-F') was included in the proceeding of O.A.No.87/2019 in which there is reference of promotion of Applicant's father on 01.04.2006. Therefore, it is clear that Applicant was having knowledge about promotion of his father as per order dated 01.04.2006. Therefore, it is difficult to accept that Applicant got knowledge of this fact after getting copy of promotion order of his father and that promotion of his father was of temporary nature.

9. So far as the aspect of review is concerned, the judgment of the Hon'ble Supreme Court in **(State of West Bengal Vs. Kamal Sengupta & Anr.) 2008 (8) SCC 612**, decided on 16.06.2008 would be helpful, wherein the Hon'ble Supreme Court has laid down well settled principles which are as under: -

“28. The principles which can be culled out from the above noted judgments are :

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”

As per the principle mentioned in Clause (vii) in this judgment, contention of Applicant about obtaining knowledge subsequent to the impugned order, as to temporary nature of promotion of Applicant's father cannot be considered.

10. The Applicant has also contended that on showing the copy of promotion order to the Advocate, he got positive response that order would be helpful for getting compassionate appointment. The Applicant has not given any details as to when he contacted his Advocate. Even the Affidavit of concerned Advocate is not filed to support his contention. These facts lead me to say that Applicant failed to establish sufficient cause for delay in filing review, if any. As such, this application cannot be said to be tenable and it deserves to be dismissed. Hence, the following order :-

ORDER

- (A) Misc. Application No.29/2023 is dismissed. Consequently, Review Application is disposed of accordingly.
- (B) No order as to costs.

Sd/-

(Ashutosh N. Karmarkar)
Member (J)

Place: Mumbai

Date : 06.09.2024

Dictation taken by: V. S. Mane

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