

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.389 OF 2017
WITH
ORIGINAL APPLICATION NO.844 OF 2017**

DISTRICT : THANE

Shri Aniket Jaywant Hodarkar)
Age 34, Address : 202, Ganpati Enclave, IInd floor,)
Opp. Philixa Hospital Tembhoade Road, Palghar,)
Pin 401 404)...**Applicant**

Versus

1. Superintending Engineer & Zonal Officer,)
Vigilance Circle, Mumbai Zone,)
(Irrigation Department),)
Thane.)
2. Superintendent Engineer,)
Thane Irrigation Circle,)
Sinchan Bhavan, Kpari,)
Thane (East) 3)
3. The Collector,)
Dist. Palghar,)
Administrative Building,)
Nawli, Palghar, At post, Tal. Dist. Palghar.)
4. Secretary,)
Water Resources (Old Irrigation Deptt.))
Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Mr. M.B. Kadam, Advocate for the Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.

CORAM : SHRI J.D. KULKARNI (VICE-CHAIRMAN)

DATE : 07.09.2018

J U D G M E N T

1. Heard Mr. M.B. Kadam, learned Counsel for the Applicant and Ms. S.T. Suryawanshi, learned Presenting Officer for the Respondents.

2. This Misc. Application is for condonation of delay in filing the Original Application. The delay caused in filing O.A. is of one year and two months or in the alternative seven years and four months.

3. In the O.A.844/2017, the Applicant has claimed that the orders dated 14.06.2016 and 3.04.2010 issued by Respondent Nos. 3 and 4 respectively be quashed and set aside and the Respondent Nos.1 and 2 be directed to consider the case of the Applicant for appointment on compassionate ground.

4. The learned Counsel for the Applicant as well as learned P.O. agreed to argue the matter on merits since Affidavit-in-reply has been filed in the application for condonation of delay as well as in the O.A, and therefore, it has been decided to hear the matter on merit along with application for condonation of delay. Since the matter is being heard on merits, the issue of condonation of delay loses its importance and as such, O.A. is being disposed of on merits.

5. From the admitted facts on record, it seems that the Applicant's father was serving with Respondent No.3 and was a Group 'B' Officer. He suddenly died during the service period, and therefore, the Applicant applied for appointment on compassionate ground in place of his father. Vide communication dated 03.04.2010, the Applicant's application for compassionate appointment was rejected as per Annexure 'A-2' at Paper-book Page No.9.

6. Thereafter, the Hon'ble High Court at Bombay, Bench at Aurangabad in Writ Petition No.5440/2009 delivered one Judgment stating that the pay scale of Rs.9000/- falls within the category of Group 'C' as well as Group 'B'. The Applicant's father, therefore, falls within Group 'C' category, and therefore, the Applicant was entitled to be considered for compassionate appointment.

7. The Applicant filed number of representations such as on 18.08.2009, 19.08.2009, 22.10.2013, 20.03.2015 and lastly on 21.04.2015. However, his representation was rejected vide communication dated 14.06.2016 (Annexure 'A-1) at Paper-book Page No.8, on the ground that his father was working on Group 'B' (Class-II), and therefore, he was not entitled to be considered for appointment on compassionate ground.

8. The Respondent Nos.1 to 4 in their Affidavit-in-reply have stated that the Applicant's father was Sectional Engineer and as per 5th Pay Commission, his pay was in the pay group of 6500-10500, and therefore, as per the G.R. dated 02.07.2002, he was of Group 'B' category. The provisions of appointment on compassionate ground are applicable to

Group 'C' and Group 'D' employees, and therefore, the Applicant's claim has been rightly rejected.

9. The only material question to be considered in this case is whether the Applicant's father belongs to Group 'B' or Group 'C' category.

10. The learned Counsel for the Applicant submits that the case of the Applicant has been covered by the Judgment delivered by the Hon'ble High Court at Bombay, Bench at Aurangabad in Writ Petition No.5440 of 2009 on 5th February, 2010. The copy of the said Judgment has been placed on record at Paper-book Page Nos.45 to 50 (both inclusive) as Annexure 'A-8'. The Hon'ble High Court has observed in Para No.5 as under :-

"5. In so far as Group-B category is concerned, it stipulates that in cases where the Pay Scale is not less than Rs.9000/- and not more than Rs.11500/-, the same will be covered by Group-B category. In so far as Group-C category is concerned, it stipulates that in cases where the Pay Scale is not less than Rs.4400/- and not more than Rs.9000/-, the same will be covered by Group-C category."

11. From the aforesaid observation, it is clear that the Hon'ble High Court has interpreted the G.R. dated 02.07.2002 and has clearly observed that where the pay scale is in between 9000 to 11500, the employee will be covered by Group 'B' category. In the application itself, the Applicant has stated that, his father was of Group 'B' category. Even in the representations filed by the Applicant, it has been reiterated that, though the Applicant's father was belonging to Group 'B' category, he was not authorized to exercise the powers of Group-II Officer.

12. In the written short note submitted by the Applicant dated 04.09.2018, which is marked 'X-1', the Applicant has stated in Para No.6 that the pay scale of the Applicant's father was 6500-200-10500. Considering this pay scale, it will be clear that the higher pay scale of the Applicant's father was more than Rs.9000, and therefore, he belongs to category of Group 'B' Officer. Admittedly, the scheme of compassionate appointment is not applicable to Group 'B' and it is only applicable to LRs of the employees of Group 'C' and 'D' category. The application, therefore, has been rightly rejected by the Respondent authorities.

13. In view thereof, I pass the following order.

ORDER

The Original Application No.844/2017 stands dismissed with no order as to costs. Consequently, the Misc. Application No.389 of 2017 also stands disposed of accordingly.

Sd/-

(J.D. Kulkarni)
Vice-Chairman
07.09.2018

Mumbai

Date : 07.09.2018

Dictation taken by :

S.K. Wamanse.