

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.922 OF 2019

DISTRICT : RATNAGIRI

Shri Ganesh Ramchandra Nagle.)
Age : 24 Yrs., Occu.: Laborer,)
Residing at At & Post : Charveli,)
Tal. & District : Ratnagiri – 415 612.)...Applicant

Versus

1. The State of Maharashtra.)
Through its Secretary,)
Public Works Department, Madam Cama)
Road, Hutatma Rajguru Chowk,)
Mantralaya, Mumbai 400 032.)
2. Chief Engineer.)
Public Works Department, Regional)
Division, 25, Marzban Road, Fort,)
Mumbai – 400 001.)
3. Executive Engineer.)
North Ratnagiri, Public Works Department)
Ratnagiri Division, Ratnagiri.)
4. Superintending Engineer.)
Ratnagiri P.W.D. (Sub-Division),)
Bandhkam Bhavan, Jaysthambha,)
Ratnagiri – 415 612.)...Respondents

Mr. S.S. Deokar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

W. S. Deokar

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 12.06.2019

JUDGMENT

1. This is an application made by the son of deceased employee for direction to the Respondents to consider his name for the appointment on compassionate ground invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as follows :-

The Applicant's father viz. Ramchandra D. Nagle was in service in the Office of Sub-Divisional Engineer, P.W.D, Ratnagiri and died in harness on 21.12.2009. After his death, the Applicant's mother made an application for compassionate ground on 06.06.2010 through her relative viz. Sakharam P. Nagle, who was working in the same Department. However, nothing was communicated in this behalf either to the Applicant or his mother. The Applicant's date of birth is 11.04.1994 and attained majority on 10.04.2012. After attaining the majority, the Applicant made an application on 20.04.2016 requesting for the appointment on compassionate ground on the ground that nothing has been communicated to his mother in pursuance of her application dated 06.06.2010, and therefore, his name be considered for the appointment on compassionate ground. Thereafter again, the Applicant's mother made an application on 10.03.2017 for the same relief. After much pursuation, the claim of Applicant was forwarded to the Government. However, the Respondent No.1 by impugned order dated 06.08.2018 (mistakenly typed as 06.08.2017) rejected the application on the ground that the application is time barred being filed after four years from the date of attaining majority which in fact ought to have been

filed within one year from the date of attaining majority in terms of Government Resolution.

3. On the above background, the Applicant has filed the present O.A. seeking direction to the Respondents to include his name in waiting list without raising the issue of limitation. The Applicant contends that there is no intentional delay in making the application and having regard to the object of the Scheme, there being no earning member in the family, his name be included in the waiting list.

4. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.74 to 88 of Paper Book) *inter-alia* denying the entitlement of the Applicant for inclusion in waiting list for appointment on compassionate ground. The Respondents denied that the mother of the Applicant had ever made application dated 06.06.2010 or any other application within one year from the date of death of the deceased employee. Thus, the filing of the application by the mother of the Applicant itself is specifically denied. In so far as the application made by the Applicant is concerned, the Respondents contend that the Applicant had attained majority on 10.04.2012 but had filed application on 20.04.2016 which was after the delay of four years from attaining majority, and therefore, in terms of G.R. dated 21st September, 2017, the application having not made within one year has been rightly rejected. As per this G.R, latest application can be made within three years from attaining the majority subject to condonation of delay by the Competent Authority. However, in the present case, the application having made after lapse of four years from attaining majority was not maintainable, and therefore, the Government rightly rejected the application. With these pleadings, the Respondents sought to justify the impugned order and prayed to dismiss the O.A.

5. Shri S.S. Deokar, learned Advocate for the Applicant made two-fold submissions. First, the objection of the application made by the Applicant on the

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ground of limitation in terms of G.R. dated 21.09.2017 is erroneous, as the G.R. dated 21.09.2017 cannot be applicable with retrospective effect. Secondly, the Respondent No.3 was under an obligation to inform the family members of the deceased about the entitlement to make an application for the appointment on compassionate ground after the death of deceased employee, but no such information was given to the family of deceased, and therefore, the Respondents cannot raise the plea of limitation.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer pointed out that the Applicant has not produced the acknowledgement or any other record to substantiate that his mother had made an application dated 06.06.2010 for the appointment on compassionate ground, and therefore, this contention of making an application on 06.06.2010 is concoction, so as to create ground for condonation of delay and to blame the Respondents. He has further pointed out that admittedly, the Applicant had attained the majority on 10.04.2012, but made an application after lapse of four years which was required to be made within one year from the death of deceased employee. Therefore, the rejection of the application dated 20.04.2016 being hopelessly barred by limitation cannot be faulted with.

7. Admittedly, the father of the Applicant died in harness on 21.12.2009. There is no denying that the Applicant had attained the majority on 10.04.2012, but made an application for the appointment on compassionate ground on 20.04.2016 which is at Page No.21 of Paper Book. Whereas, the impugned order dated 06.08.2018 (wrongly typed as 06.08.2017) in the order is at Page No.31.

8. In so far as the claim of the Applicant that she made an application for appointment on compassionate ground within one year from the death of the deceased employee is concerned, the Applicant has produced the copy of application dated 06.06.2010 which is Page No.19 of P.B. According to the

Applicant, the said application was handed to their relative Shri Sakham P. Nagle, who was working in the same Department. In this behalf, material to note that the Respondents have specifically denied the receipt of any such application of the mother of the Applicant. The Respondents also called explanation of Shri Sakham P. Nagle which is at Page No.81 of P.B. wherein he has categorically denied to have received any such application from the mother of the Applicant for filing the same in the office. In his explanation, he has specifically stated that the Applicant is making false allegation against him and no such application was entrusted to him for submitting in the office. The Applicant has also not produced the acknowledgment or any other document to substantiate that really any such application was filed in the Office for appointment on compassionate ground. This being the position, it is crystal clear that no such application was filed in the Office for appointment on compassionate ground. This story is nothing but concoction. An attempt has been made to put blame on the Department to contend that the Department did not consider the application of the mother, and therefore, now the application made by son has to be considered. This is nothing but an attempt to blame the Department and to create ground so as to condone the delay on fictitious and cooked story.

9. The submission advanced by the learned Advocate for the Applicant that the family of the deceased was not aware about their entitlement for appointment on compassionate ground and they were kept in dark has to be rejected in view of their own contention that the mother of the Applicant had applied for appointment on compassionate ground on 06.06.2010. This itself shows that the family of deceased was made aware about the Scheme of appointment on compassionate ground. The Applicant cannot be allowed to blow hot and cold. Therefore, the Applicant's contention that there is failure on the part of Department to make the family members of deceased known about the Scheme of compassionate ground and they were kept in dark, is nothing but ruse to revive stale and time barred claim.

W. S. S. S.

10. As regard retrospective effect of G.R. dated 21.09.2017, it needs to be clarified that there was no question of application of G.R. with retrospective effect as limitation for making application within one year on attaining majority was very much there in various G.Rs. issued prior to G.R. dated 21.09.2017. In this behalf, G.R. dated 11.09.1996 is material which provides that in case of death of deceased employee, his or her son has to make application within one year on attaining the age of 18 years. The father of the Applicant died on 21.12.2009, and therefore, the situation is covered by G.R. dated 11.09.1996. The same condition was maintained in Circular dated 05.02.2010 as well as G.R. dated 21.09.2017. All that, by G.R. dated 21.09.2017, time for making an application after attaining majority is extended upto three years, provided Competent Authority is satisfied for the delay in making an application and delay is condoned. Whereas, in the present case, the application was made on 20.04.2016 which was made after more than four years from the date of attaining majority. It is for this reason, the Respondent No.1 rejected the application, it being hopelessly barred by limitation.

11. The necessary corollary of aforesaid discussion leads me to conclude that there is inaction and negligence on the part of Applicant to make an application for appointment on compassionate ground within limitation and the rejection cannot be faulted with. Here, it may be noted that the Applicant has simply prayed for direction to Respondents to consider his application dated 20.04.2016 for appointment on compassionate ground without raising the issue of limitation. He has not asked for setting aside the impugned order dated 06.08.2018 whereby his application has been rejected with reasoned order. This being the position, the relief claimed for direction to Respondents not to raise point of limitation which is already determined can hardly be granted. Suffice to say, in the facts and circumstances of the case, no such relief can be granted, as the

application made by the Applicant stands already rejected having not made within limitation.

12. At this juncture, it would be apposite to refer the Judgment in **(2009) 6 SCC 481 (Santosh Kumar Dubey Vs. State of Uttar Pradesh & Ors.)** wherein the Hon'ble Supreme Court in Para Nos.11 and 12 held as follows :-

11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that is faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in Government service.

13. The ratio laid down in this judgment is fully attracted to the present case. The father of the Applicant died in 2009 and the application has been made in 2016 after seven years from the date of death. As such, the family of the deceased seems not suffering from any such financial hardship, and therefore, made application belatedly. The applicant does not satisfy the fact of proximity of the claim.

14. The totality of aforesaid discussion leads me to sum-up that the application is devoid of merit and deserves to be dismissed. Hence, the following order.

W. N. N.

ORDER

The Original Application is dismissed with no order as to costs.

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Sd/-

^{W*}
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 12.06.2019

Dictation taken by :

S.K. Wamanse.

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