

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.898 OF 2019

DISTRICT: Kolhapur

Shri Mahesh Baburao Arade)
Age – 34 years, Occ : Nil)
R/o. Datta Nagar, Shirol, Tal. Shirol, Dist. Kolhapur.) **....Applicant**

Versus

1. State of Maharashtra,)
Through its Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. Superintendent of Police, Kolhapur.)
3. Collector, Kolhapur.) **...Respondents.**

Shri Rahul Khot, learned Advocate for the Applicant.

Ms N. G. Gohad, learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER (J)

: 10.02.2021.

DATE

J U D G M E N T

In present Original Application, challenge is to the order dated 28.04.2019 whereby application of the Applicant for appointment on compassionate ground stands rejected on the ground of limitation in terms of G.R. dated 21.09.2017 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

in Datta

2. Shortly stated facts giving rise to the Original Application are as under:-

The Applicant's father namely Baburao Arade was Assistant Sub-Inspector at Hatkanangale Police Station on the establishment of the Respondent No.2- Superintendent of Police, Kolhapur. He died on 25.02.2012 in harness. After his death his elder son Pramod Arade made an application on 27.03.2012 for appointment on compassionate ground in place of deceased father. The matter was placed before the Committee constituted by the Government for examining eligibility in terms of character of the candidate. The Committee found that Applicant –Shri Pramod Arade is habitual offender since two criminal cases for the offences under Section 65 of Bombay Prohibition Act were filed against in the court of Judicial Magistrate 1st Class and in one another criminal case, he was acquitted in view of compounding of the offences with the complainants (Details of that case are not forthcoming). The Committee, therefore, held that the Applicant is not suitable for appointment in Government service having regard to his criminal antecedents. Accordingly, the decision was communicated to Shri Pramod Arade by communication dated 24.06.2016 stating that his request for appointment on compassionate ground is rejected.

3. Later, the Applicant who is younger brother of Applicant again made an application to Respondent No.2 – Superintendent of Police, Kolhapur on 07.03.2019 stating that in view of rejection of the claim of his brother he be considered for appointment on compassionate ground. However, Respondent No.2 by order dated 25.04.2019 rejected his application stating that in terms of G.R. dated 29.09.2017 application for appointment on compassionate ground was required to be made within one year or maximum within the period of three years from the date of death of deceased employee, and

therefore, application made by the Applicant being barred by limitation is not acceptable. This order is under challenge in the present Original Application.

4. Shri Rahul Khot, learned Counsel for the Applicant sought to assail the impugned order solely on the ground that G.R. dated 21.09.2017 as referred in impugned order is not applicable since the father of Applicant died in 2012, and therefore, G.R. dated 21.09.2017 cannot be applied retrospectively. He further submits that after rejection of the claim of the elder brother on the point of his antecedents, the Applicant having eligible, made an application afresh and it ought to have been considered to provide employment on compassionate ground to the distressed family.

5. Per contra, Ms N. G. Gohad, learned Presenting Officer submit that indeed, in terms of G.R. dated 05.02.2010 , the application for appointment on compassionate ground is required to be made within a year from the date of death of employee and in the present case, the application made by present Applicant being made on 07.03.2019 i.e. belatedly after seven years is not at all maintainable. She has further urges that earlier the application made by the elder brother was rejected by communication dated 24.06.2016 which was within the knowledge of the Applicant but still he did not take any steps within reasonable time and applied for appointment on compassionate ground on 07.03.2019 which is also delayed by more than 2 ½ years from the rejection of the claim of elder brother. She further submits that no exception can be taken to the impugned order.

6. The facts as adverted to earlier are not in dispute. The father of Applicant died on 25.02.2012 and his elder son Pramod Arade applied for appointment on compassionate ground on 27.03.2012. His antecedent was found bad, and therefore, his claim was rejected and the same was communicated to him on 24.06.2016. It is after more than 2 ½ years from the said communication, the Applicant (younger brother of Pramod) again made

W. Prasad

an application on 07.03.2019 which is also rejected being not within limitation.

7. Since the father of Applicant died on 25.02.2012, G.R. dated 22.08.2005 holding the field then would apply and as per the said G.R. limitation for making application for appointment on compassionate ground is one year from the date of death. Earlier, the limitation was five years but it was reduced to one year by G.R. dated 22.08.2005 as well as by Circular dated 05.02.2010. It is in case of minority only, the application can be made within one year from attaining majority in terms of G.R. dated 11.09.1996 as well as Circular dated 05.02.2010. In so far as limitation is concerned, it is one year from the death of deceased in case of major heir. The Applicant No.1 is around 35 years old. Admittedly, he was not minor at the time of death of his father.

8. In so far as reference of G.R. dated 21.09.2017 in impugned communication dated 25.04.2019 is concerned, by the said G.R. limitation of one year is extended upto three years subject to condonation of delay by the Competent Authority. Thus, suffice to say that limitation for making application for appointment on compassionate ground is one year since issuance of G.R. dated 22.08.2005.

9. In the present case, the Applicant's elder brother – Pramod had applied within limitation but having regard to his bad antecedent, his claim was rejected. This is not a case where name of the heir is empanelled in waiting list and subsequently deleted on account of crossing 40 years of age. Rather this is a case, where the claimant (brother of Applicant) found not eligible in view of his bad antecedent. The Applicant, therefore, made an application afresh on 07.03.2019. As such, it was clearly barred by limitation since as per G.R. dated 05.02.2010, the Application was required to be made within a year from the death of deceased employee. The rejection of claim of elder brother

would not extend the period of limitation nor it would give fresh cause of action to the Applicant for filing an application for appointment on compassionate ground. Needless to mention that the claim for appointment on compassionate ground must be traceable to the scheme made for appointment on compassionate ground, and there could be no appointment beyond the scheme of the appointment. The appointment on compassionate ground is by way of concession and cannot be claim as a right of succession. In any case, such claim must be within four corners of the scheme of appointment on compassionate ground.

10. At this juncture, it would be apposite to refer the decision of the Hon'ble Supreme court in **(2010)11 SCC 661 State Bank of India and Anr. V/s Raj Kumar**), wherein it has been held as under:-

"The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules of by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme".

The aforesaid principle laid down in the above judgment is squarely attracted to the present Original Application.

11. Admittedly, the Applicant's brother had not challenged the communication dated 24.06.2016 whereby his claim was rejected by Respondent No.2. Apart, the Applicant remained silent for more than 2 ½ years and applied only on 07.03.2019. This being the position, his claim is obviously not in term of G.R. dated 05.02.2010 which *inter-alia* mandates that the application should be made within one year from the date of death of deceased. In the present case, his father died on 27.03.2012 whereas Applicant had applied on 07.03.2019 which is belated by seven years.

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12. For the aforesaid reasons, I see no illegality in the impugned commutation rejecting the claim of the Applicant and challenge to the impugned order is devoid of merit. Hence the following order:-

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member(J)

Place : Mumbai
Date : 10.02.2021
Dictation taken by : V.S. Mane
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