

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.1218/2023 (S.B.)**

Dhanraj S/o Gorakhnath Mane,
Age: 28 years, Occup: Educated, (Unemployed)
R/o: Tulsi Vihar, colony,
Karanga Lad, Tq. Karanga Lad,
Dist. WASHIM,
Mobile: 9699151562.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home Department,
Maharashtra State,
Mantralaya, Mumbai-32.
- 2) The Director General of Police,
Maharashtra State,
Chhatrapati Shivaji Maharaj,
Marg, Colaba, Mumbai-400 005.
- 3) The Commissioner of Police,
WIJG+C3G, Near Bus Stand,
Morshi Road, Amravati,
Pin Code - 444 606.
cp.amravati@mahapolice.gov.in
Amravati, Dist. Amravati.

Respondents

Shri K.G.Salunke, Id. Advocate for the applicant.

Shri V.A.Kulkarni, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 07th August, 2024.

Judgment is pronounced on 30th August, 2024.

Heard Shri K.G.Salunke, Id. counsel for the applicant and Shri V.A.Kulkarni, Id. P.O. for the Respondents.

2. Perused written submission of the applicant.

3. Father of the applicant died in harness on 11.07.2007. He was holding a post of Police Sub-Inspector. Date of birth of the applicant is 24.03.1994. Soon after attaining majority he submitted application dated 13.06.2013 (at P. 23) to respondent no. 3 for appointment on compassionate ground. On 16.08.2013 mother of the applicant submitted application (A-4) to respondent no. 3 to appoint her son, who had attained majority, on compassionate ground. (This application refers to previous application dated 17.07.2007 made for the purpose). Letter dated 25.07.2013 was received from the respondent department by mother of the applicant that application for appointing her son on compassionate ground was not filed within the stipulated period of one year and, therefore, it was rejected, whereupon mother of the applicant submitted application dated 26.09.2013 (A-5) to respondent no. 2 to condone the delay and consider her son, the applicant for appointment on compassionate ground. On 21.04.2014 the applicant again submitted

application (A-6) to appoint him on compassionate ground. On 21.08.2023 the applicant submitted application (A-10) to respondent no. 3 stating therein that at the time of his retirement his father was holding a post of Hawaldar, family pension which his mother was getting was fixed accordingly and, therefore, non-consideration of his claim for appointment on compassionate ground by proceeding on a footing that his father was holding a post of Police Sub-Inspector was not sustainable. Hence, this Original Application for following relief:-

By issuing appropriate order or directions the respondent authorities more particularly the respondent no. 3, may kindly be directed to consider and appoint applicant on compassionate ground as per the qualification acquired by him, by placing his name in wait list of the candidates for appointment on compassionate ground while considering his first application dated 17.06.2013.

4. The first application for appointment on compassionate ground filed by the applicant is dated 13.06.2013 (at P. 23). Endorsement on this application shows that it was received by respondent no. 3 on 17.06.2013. A conjoint consideration of application at P. 23 and aforequoted prayer clause shows that the applicant is seeking directions to the respondents to consider his application dated 13.06.2013.

5. In para 5 of the O.A. the applicant has pleaded that the Original Application is within limitation since respondent no. 3 has communicated nothing to him so far whether his application is accepted or rejected. This pleading has nexus with the application dated 13.06.2013 made by the applicant. The applicant presumably wants to rely on application dated 21.08.2023 (A-10) to contend that this O.A. is within limitation. From pleadings of the applicant and the documents, especially A-6 dated 21.04.2014 and A-10 dated 21.08.2013, placed on record by him it can be gathered that during the intervening period the applicant didn't pursue the matter.

6. Stand of respondent no. 3 is as follows. Mother of the applicant was informed by letter dated 17.09.2013 that application dated 17.06.2013 filed by her could not be considered because it was filed beyond the period of one year stipulated by para 2 (3) of G.R. dated 22.08.2005. However, the office moved respondent no. 2 to condone the delay in making the application. By letter dated 30.07.2015 (A-R-1) respondent no. 1 informed respondent no. 2 as follows:-

उपरोक्त संदर्भाधीन विषयाच्या अनुषंगाने असे कळविण्यात येते की, दिवंगत पोलीस उपनिरीक्षक श्री गोरखनाथ बापूराव माने हे गट-ब या पदावरील कर्मचारी आहेत. शासन निर्णय सामान्य प्रशासन विभाग - दि.२२.८.२००५ नुसार केवळ शासकीय सेवेत कार्यरत असताना दिवंगत झालेल्या गट-क व गट-ड मधील

कर्मचारी यांच्या पात्र नातेवाईकांस अनुकंपा नियुक्ती देय आहे. त्यानुसार अर्जदार श्री धनराज गोरखनाथ माने यांना अनुकंपा नियुक्ती देय नाही.

This position was reiterated by Circular dated 24.08.2016 (A-R-2) issued by respondent no. 2.

7. According to the applicant, he was continuously pursuing the matter with the establishment of respondent no. 3 but on every such occasion he was told by the concerned Clerk that his deceased father was holding a Group-B post and since under the scheme of compassionate appointment only the dependant of Group-C and Group-D was eligible, his case could not be considered.

8. It was submitted by Advocate Shri Salunke, Id. counsel for the applicant that in view of legal position crystallised by the Bombay High Court, the ground on which application of the applicant was rejected (which was communicated to respondent no. 2 by letter (A-R-1) dated 30.07.2015, by respondent no. 1) cannot be sustained.

9. The applicant has relied on the judgment of the **Hon'ble Bombay High Court dated 25.10.2021 (A-9) in W.P. No. 13166/2019 (Ramhari S/o Govind Sontakke Vs. State of Mah. & 2 Ors.)** wherein it is held:-

6) *The Circular dated 27th May 2016 has been relied to contend that the post of P.S.I. is within the pay scale of 5500-9000 and as such form the part of Group 'B'. Clause (2) of the said circular in regional language clarified thus:-*

२. दि.०२.०७.२००२ च्या शासन निर्णयातील परिच्छेद ३,४,५ व ६ मधील आदेश जसेच्या तसे लागू राहतील. तसेच वरील आदेशामध्ये काहीही अंतर्भूत असले तरी पदनिर्मितीच्या आदेशामध्ये, आकृतीबंध निश्चितीच्या आदेशामध्ये अथवा सेवा प्रवेश नियमांमध्ये ज्या पदांचा उल्लेख विवक्षितपणे गट अ/ब/क/ड असा आहे त्यांच्या वर्गीकरणामध्ये बदल होणार नाही.

Clause (2) as referred above very clearly states that the orders about formation of the post, Staffing Pattern or Service Rules if provide for a particular group, are categorised in a particular group, the categorisation of the said group would not change. The respondent State has admitted in the affidavit filed through the Deputy Superintendent of Police that, "Though the circular dtd. 28.06.2016, issued by the office of the Special Inspector General of Police (Administration), contained the category of PSI as non gazetted class 3, it does not mean that the post of PSI comes under the group – C category." The respondents in unequivocal terms have admitted that, even respondent considered the category of P.S.I. as non gazetted Class III. The said categorisation is sought to be changed on the basis of pay scale. The same is not in consonance with the clause (2) of the Government Resolution reproduced supra. Further, circular dated 6th March, 2020 also provides that the categorisation may not be on the basis of pay scale. The categorisation of the post in Group A, B, C and D would be based upon the Service Rules and Conditions and categorisation made therein.

7) *In the light of above, we hold that the Tribunal did not consider the clause (2) of The Circular dated 27th May 2016 in its proper perspective. The subsequent circular dated 6th March 2020 also substantiate the same.*

8) *In the light of above, the impugned judgment of the Tribunal is quashed and set aside. The respondents shall consider the application of the petitioner for appointment on compassionate ground on it's own merits and shall not reject on the ground on which the impugned order was passed.*

10. The applicant has further relied on the **judgment of the Bombay High Court dated 08.03.2019 in W.P. No. 8413/2018 (The**

Director General of Police Vs. Riyaz Rafik Ahmed Patel). In this W.P. judgment dated 03.05.2016 of Principal Bench of this Tribunal in O.A. No. 1077/2014 was impugned. While allowing the O.A. the Principal Bench of this Tribunal held as follows:-

The conclusion is inevitable that the post of P.S.I. is a Group 'C' post as decided by Hon'ble High Court (Aurangabad Bench) by judgment dated 05.02.2010 in W.P. No. 5440 of 2009.

While upholding the judgment of this Tribunal by judgment dated 08.03.2019 in W.P. No. 8413/2018 it was held by the Bombay High Court:-

4. *The claim of the original applicant was basically resisted by the Petitioners, who were Respondents before the Tribunal, on the ground that the original applicant's father was working as Police Sub-Inspector, in Group 'B' post, and, as such, the original applicant was not entitled for the appointment on compassionate ground.*

5. *The learned Tribunal found that the post of Sub-Inspector has been held to be a Group 'C' post, by the judgment of the Aurangabad Bench of this Court in Writ Petition No. 5440 of 2009, dated 5th February, 2010 as well as by the learned Tribunal in Original Application No. 971 of 2010, vide judgment and order dated 30th October, 2014. Undisputedly, the learned AGP is not in a position to point out that either the judgment of Aurangabad Bench has been upset by the Hon'ble Supreme Court or the judgment and order of the Tribunal has been reversed by this Court.*

11. Aforequoted legal position shows that the application of the applicant for compassionate appointment ought not to have been rejected on the ground that his father was holding a Group-B post.

12. The principal prayer clause which is quoted hereinabove is founded on application dated 13.06.2013 (at P. 23) made by the applicant. It is the stand of the applicant that copy of communication dated 30.07.2015 (A-R-1) was never served on him nor was he made aware of it. It was submitted by Advocate Shri Salunke, for the applicant that the applicant cannot be blamed for not filing the application within the stipulated time since the respondents themselves failed to apprise him and his family about their right to apply for appointment on compassionate ground. To support this submission reliance was placed on the following stipulation contained in G.R. of G.A.D., Government of Maharashtra dated 21.09.2017 (A-A-8):-

(७) योजनेची माहिती देण्याची जबाबदारी :-

(अ) आस्थापना अधिका-याने अनुकंपा तत्वावर नियुक्तीच्या योजनेची माहिती (योजनेचा उद्देश, पात्र नातेवाईक, अर्ज करण्याची मुदत, शैक्षणिक अर्हता, टंकलेखन प्रमाणपत्र सादर करण्यास मुदत, अर्ज विहीत नमून्यात भरणे इ. माहिती) शासकीय कर्मचा-याच्या मृत्यूनंतर १५ दिवसानंतर किंवा कुटुंबनिवृत्तीवेतनाची कागदपत्रे पाठविताना शासकीय कर्मचा-यांच्या कुटुंबियांना त्वरीत उपलब्ध करून देणे आवश्यक आहे. तसेच सदर माहिती मिळाल्याबाबत कुटुंबाकडून पोच घेणे आवश्यक आहे. (शासन निर्णय, दि. २३.०८.१९९६ व शासन परिपत्रक दि.५.२.२०१०)

(ब) दिवंगत शासकीय कर्मचा-याचा पात्र वारसदार सज्जान नसेल तर तो सज्जान झाल्यानंतर एक वर्षाच्या आत अनुकंपा तत्वावर नियुक्तीसाठी अर्ज करू शकेल मात्र तो सज्जान झाल्यावर त्याने असा अर्ज करणे अपेक्षित आहे हे देखील कुटुंबनिवृत्तीवेतन धारकाला कुटुंब निवृत्तीवेतनविषयक कागदपत्रांची पूर्तता

करतेवेळी लेखी कळविणे संबंधित आस्थापना अधिका-यावर बंधनकारक राहील.
(शासन निर्णय, दि. २०.०५.२०१५)

Application dated 16.08.2013 (A-4) made by mother of the applicant refers to the application made by her on 17.07.2013 for considering her son, the applicant for appointment on compassionate ground. Thus, the applicant and his family were made aware of their right to apply for appointment on compassionate ground. On 13.06.2013 the applicant applied for appointment on compassionate ground. Before submitting application dated 26.09.2013 (A-5) mother of the applicant knew that the application made by her son was rejected/filed. Opening para of application (A-5) reads as under:-

उपरोक्त संदर्भाकित विषयान्वये विनंतीपूर्वक अर्ज करतो की, माझा मुलगा नामे धनराज गोरखनाथ माने हा १८ वर्षाचा झाल्यावर त्याला अनुकंपा नियुक्तीवर घेण्याकरीता पोलिस आयुक्त, अमरावती शहर येथे अर्ज केला असता त्यांनी सामान्य प्रशासन विभाग, शासन निर्णय क्र. अंकपा-१००४/प्र.क्र.५१/ २००४/आठ, दि. २५/०७/२०१३ अन्वये त्यांनी दिवंगत झाल्याचा दिनांकापासून एक वर्षाच्या कुटूंबियाकडून अर्ज प्राप्त न झाल्यामुळे अनुकंपा तत्वावर नोकरी मिळणेबाबत अर्ज रद्द केल्याचे पत्र मला प्राप्त झाले आहे.

Under the circumstances discussed above, the applicant will not get any assistance from the aforequoted Clause of G.R. dated 21.09.2017.

13. The applicant and his family knew that application dated 13.06.2013 (at P. 23) was not considered favourably. After getting this knowledge mother of the applicant made two more applications viz. A-5 & A-6 on 26.09.2013 and 21.04.2014, respectively. Thereafter, only on 21.08.2023 the applicant submitted application. There is nothing on record to show that in between any application was submitted either by the applicant or by his mother. By letter dated 30.07.2015 (A-R-1) respondent no. 1 informed respondent no. 2 that application of the applicant could not be considered because the scheme for compassionate appointment was meant for dependant of Group-C and Group-D employees only, and deceased father of the applicant was a Group-B employee. Though, the conclusion drawn in communication dated 30.07.2015 is not sustainable in law, that did not obviate the need to approach the Tribunal within limitation. It is the case of the applicant that he was not apprised of communication dated 30.07.2015. If this contention is accepted, the applicant could have waited for six months more after submitting application dated 21.04.2014, and approached this Tribunal without further delay. It is apparent that application dated 21.08.2023 could not have saved limitation. Instant O.A. was filed on 07.01.2023. It is clearly barred by limitation Section 21 of the Administrative Tribunal's Act, 1985 reads as under:-

21. Limitation:—

(1) A Tribunal shall not admit an application—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

On the point of limitation/laches the applicant has relied on

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1022. In this case the Hon'ble Supreme Court has held:-

Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based

upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the Rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay.

In the facts and circumstances of the case aforequoted observations will not assist the applicant in contending that the O.A. is within limitation.

Aforediscussed factual and legal position clearly shows that the O.A. is barred by limitation. It is accordingly dismissed with no order as to costs. Since I have held that application of the applicant ought to have been considered favourably by virtue of his father having held a Group-C post, and the original application is dismissed only on the ground of limitation, the applicant, if he so desires may move the authorities to consider his application dated 13.06.2013 (at P. 23) afresh by condoning the delay if Rules permit it.

Member (J)

Dated :- 30/08/2024
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 30/08/2024
and pronounced on

Uploaded on : 02/09/2024