

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3902 OF 2018

Petitioner : Eknath Gulabrao Wankhede,
 Aged about 33 years, Occ. Nil,
 R/o Jawla Bk. (Dodki), Tah. & Distt. Akola.
 – Versus –

Respondents : 1] The State of Maharashtra,
 through the Secretary,
 Department of Revenue and Forest, Mah. State,
 Mantralaya, Mumbai.
 2] The Collector,
 Collector Office at Akola, Tah. & Distt. Akola.
 3] The Sub Divisional Officer, Akola,
 Tah. & Distt. Akola.
 4] The Tahsildar, Akola,
 Tah. & Distt. Akola.

 Mr. S.D. Chande, Advocate for the Petitioner.
 Mr. M.K. Pathan, A.G.P for the Respondents.

CORAM : **ROHIT B. DEO AND Y.G. KHOBRADE, JJ.**
DATE : **1st FEBRUARY, 2023.**

J U D G M E N T : (Per Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of
 the learned Counsel for the parties.

02] The challenge in the petition is to the order dated 22/11/2017

rendered by the learned Maharashtra Administrative Tribunal, Nagpur ('MAT' for short) in Civil Application No.62 of 2017 in Original Application No.124 of 2017, whereby the learned MAT dismissed the application seeking condonation of delay in preferring the original application.

03] The petitioner was aggrieved by the refusal of the respondents to deny appointment on compassionate ground.

04] The original application was delayed, according to the petitioner, by eight months. The petitioner contended that his father was working as Kotwal from 05/02/1981 till his death on 22/06/2005 and he immediately preferred an application for seeking appointment on compassionate ground. The application dated 28/07/2005 was submitted to the Sub- Divisional Officer, Akola. According to the petitioner, he was orally asked to work as Kotwal at Jawla Bk. (Dodki) till issuance of the formal appointment order, and the petitioner worked as said without receiving any payment for about one year. Since the appointment order was not issued, the petitioner again requested the authority concerned for formal appointment order. The petitioner was again assured that the formal appointment order shall be issued and he continued to discharge the duties as Kotwal as is apparent from the experience certificates dated 31/05/2006 and 29/05/2006 issued by the concerned

Talathi and Circle Officer respectively. At this stage, we note that the issuance of the certificates is a matter of dispute.

05] The petitioner again made representations from time to time and finally the Tahsildar issued a communication dated 02/01/2016 addressed to the petitioner, in which it was mentioned that as and when the post of Kotwal would filled in, the order shall be issued. The petitioner submits that till 2015, several vacancies of Kotwal were filled in without considering the claim of the petitioner and finally the petitioner made representation dated 15/02/2017, which evoked no response and the MAT was approached.

06] We have perused the reasons recorded by the MAT for refusing to condone the delay. In our considered view, looking at the sequence of the events and the circumstances, the delay in approaching the MAT is well explained. Even otherwise, nothing is brought to our notice to suggest that there was any time limit prescribed for the authority to take a decision on the application seeking compassionate appointment. In this view of the result, there cannot be a straitjacket formula for fixing the date of accrual of the cause of action in such matters. It is true that every case shall have to be examined on facts and that a claim hit by delay and laches may not be entertained. But then, we do not find that the learned MAT was

right in holding that the application was time barred. The MAT ought to have considered the application on merits.

07] In this view of the matter, we quash and set aside the order impugned and remit the matter to the MAT for deciding the original application by directing that the delay be condoned and with a request to the learned MAT to consider the original application on merits as expeditiously as possible.

08] The petition is partly allowed in the aforestated terms.

(Y.G. KHOBRADE, J.)

(ROHIT B. DEO, J.)

**sandesh*