

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 310 OF 2019

(Subject – Compassionate Appointment)

DISTRICT : HINGOLI

Durgesh S/o Mohanrao Jadhav,)
Age : 28 years, Occu. : Education,)
R/o. Banjara Colony, Aundha Nagnath,)
Dist. Hingoli.)
.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through, Principal Secretary,)
Home Department, Mantralaya,)
Mumbai-32.)
2. **The Special Inspector General of Police,))**
Nanded Region, Nanded.)
3. **The Deputy Inspector General,**)
Hingoli, Dist. Hingoli.)
4. **The District Superintendent of Hingoli,))**
Dist. Hingoli.)
... RESPONDENTS

APPEARANCE : Shri K.B. Bhise, Advocate for the Applicant.

: Shri V.R. Bhumkar, Presenting Officer for
Respondents

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **06.06.2022.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned communication dated 26.06.2018 (Annexure A-9) issued by the respondent No. 4 i.e. the Superintendent of Police, Hingoli, Dist. Hingoli (wrongly mentioned as respondent No. 3 in O.A.) thereby rejecting the claim of the applicant for appointment on compassionate ground contending that there is no provision for substitution of the name of nominee in the policy of giving compassionate appointment.

2. The facts in brief giving rise to this Original Application are as follows :-

(a) The applicant's father viz. Mohanrao Shankarrao Jadhav died in harness on 22.05.2005 when he was working as Police Constable with the respondent No. 4. The applicant's mother viz. Smt. Suman Mohanrao Jadhav made application / affidavit dated 20.06.2006 (Annexure A-1) (wrongly mentioned as 20.05.2006) seeking appointment for herself on compassionate ground in Class-IV category. However, the application was processed and her name was taken in the waiting list of the candidates to be appointed

on compassionate ground at Sr. No. 22. Subsequently, the applicant's mother also made application dated 18.02.2010 (Annexure A-2) seeking appointment on compassionate ground for the applicant upon attaining the age of majority by him. The said application was also processed and his name was taken in the waiting list at Sr. No. 22 only as reflected in document dated 20.09.2017 (Annexure A-3) obtained under the Right to Information Act. The applicant's mother had given her consent for considering the claim of the applicant on compassionate ground on Class-III post. The applicant and his mother were not given posting. The applicant therefore, filed Original Application St. No. 1630/2017 before this Tribunal seeking appointment order on compassionate ground. The said O.A. was disposed of by the order dated 18.12.2017 (Annexure A-5) observing that the appointment order can be issued to the applicant as when his turn comes. In spite of that order, the respondents did not consider the claim of the applicant for giving appointment on compassionate ground, though his juniors were considered and were given appointments.

(b) Thereafter, the respondent No. 4 (wrongly mentioned as respondent No. 3) issued order / letter dated 10.11.2017 (Annexure A-6) mentioning that the name of the applicant's mother was deleted from the waiting list of the candidates to be appointed on compassionate ground in view of the G.R. dated 06.12.2010 upon completion of her 45 years and being barred upon completion of 45 years of her age as per the said G.R. dated 06.12.2010. However, the name of the applicant continued to be there in the waiting list. Name of the applicant is recorded in that list as on 09.06.2009.

(c) After receipt of the said order / letter dated 10.11.2017 (Annexure A-6), the applicant approached the respondent No. 4 and requested to appoint him on compassionate ground, as his name appeared at Sr. No. 22 in the seniority list / waiting list. He, however, was informed by the office that the applicant's name was also deleted from the said list. The applicant therefore, made application dated 14.06.2018 (Annexure A-8) requesting to give him appointment by way of substitution as per the settled law and annexed the copy of decision dated

18.12.2017 in O.A. St. No. 1630/2017 filed by him earlier (Annexure A-5).

(d) After reasonable waiting time, the applicant and his mother filed O.A. St. No 1076/2018 along with sue jointly application. Their sue-jointly application was rejected directing this applicant to file O.A. only. Thereafter, the applicant received the impugned communication dated 26.06.2018 (Annexure A-9) in or about January, 2019 stating thereby that there is no provision of substitution of name and therefore, his claim of compassionate appointment was refused.

(e) Being aggrieved by the said impugned communication dated 26.06.2018 (Annexure A-9) issued by the respondent No. 4, the present Original Application is filed contending that there are various decisions of this Tribunal, as well as, the Hon'ble High Court holding that the substitution of name in the scheme of compassionate appointments is not barred.

3. (a) The Original Application is resisted on behalf of respondent Nos. 2 and 4 by filing affidavit in reply of one Shri Krishnadeo S/o Somaji Patil, working as Police

Inspector (Welfare), in the office of Superintendent of Police, Hingoli, Dist. Hingoli, thereby adverse contentions raised in the O.A. were denied. It is not disputed that after death of father of the applicant, the mother of the applicant made application for compassionate appointment and that considering the said application of the applicant's mother, her name was taken in the waiting list at Sr. No. 22 as is reflected in the extract from the list of the candidates to be considered for compassionate appointment produced at Annexure R-1. It is further stated that in fact as per the applicant's mother's application, she sought compassionate appointment in Class-IV category. However, she was not having minimum educational qualification for that post. Hence, she was not given appointment. Later on her name was deleted from the waiting list, when she attained the age of 45 years and being barred.

(b) In fact, thereafter, the respondent No. 4 issued call letter dated 11.03.2010 (Annexure R-2) to the applicant in the recruitment process for the post of Police Constable on the basis of compassionate ground. During the physical test it was revealed that the height of the applicant was less

than the prescribed height for the post of Police Constable. So he was held ineligible.

(c) Thereafter, the applicant made application on 16.08.2012 to the respondent No. 4 claiming appointment on compassionate ground in Class-IV category. In view of that the respondent No. 4 sent letter dated 21.08.2012 (Annexure R-3) to the respondent No. 2 seeking guidance mentioning the previous facts of the case of making the application by the applicant, as well as, his mother. In turn, the respondent No. 2 by their letter dated 26.09.2012 (Annexure R-4) bringing to the notice of the respondent No. 4 that as per the Government letter dated 31.03.2006 (Annexure R-5), government letter dated 23.02.2010 (Annexure R-6) and DGP Mumbai letter dated 03.01.2012 (Annexure A-7), there is no provision to change the name of nominee from the waiting list of compassionate appointment register. In view of that, the respondent No. 4 issued letter dated 26.06.2018 (Annexure R-8) denying the claim of the applicant, which is legal and proper. Moreover, before that by the letter dated 10.11.2017 (Annexure R-9) the applicant's mother was informed by the respondent No. 4 that her name was deleted as she was barred on

09.07.2016 being completed 45 years of age in terms of G.R. dated 06.12.2010. In the circumstances, there is no merit in the Original Application and the same is liable to be dismissed.

4. The applicant filed rejoinder affidavit and denied all the adverse contentions raised in the affidavit in reply and reiterated his contentions in the Original Application. It is his contention that there are catena of judgments of the Tribunal and the Hon'ble High Court stating that there is no bar for substituting the name of nominee in the scheme of compassionate appointment. He thereby produced on record the copies of the decision of this Tribunal in O.A. No. 770/2018 in the matter of Vishwajeet S/o Vishwambhar Jondhale Vs. State of Maharashtra and Ors. decided on 16.10.2018 and the decision of this Tribunal at Nagpur Bench in O.A. No. 944/2017 in the matter of Arif Nimuddin Sayyed Vs. The State of Maharashtra and Ors. decided on 02.04.2019. He also produced on record letter dated 05.11.2011 received from the respondent No. 2 for remaining present for police recruitment admitting that he was called for in police recruitment.

5. The affidavit in sur-rejoinder to the rejoinder affidavit is filed on behalf of respondent Nos. 2 and 4 by one Shri Vishwanath S/o Kishanrao Zunjare, working as Deputy Superintendent of Police, Hingoli, Dist. Hingoli, denying all the adverse contentions raised in the rejoinder affidavit, thereby they have annexed various G.Rs. Those G.Rs. are dated 22.08.2005 amending procedure.

6. Learned Advocate for the applicant also placed on record G.R. dated 06.12.2010 extending the age from 40 to 45 for considering the appointment on compassionate ground, G.R. dated 20.05.2015 relating to qualification for appointment to the post of Clerk-Typist and latest consolidated G.R. dated 21.09.2017 relating to compassionate appointment thereby consolidating the 41 previous G.Rs., Notifications and Circulars.

6. I have heard the arguments advanced at length by Shri K.B. Bhise, learned Advocate for the applicant on one hand and Shri V.R. Bhumkar, learned Presenting Officer for the respondents on the other hand.

7. Upon perusal of the rival pleadings, following admitted facts emerge before me :-

(i) The applicant's father viz. Mohanrao Shankarrao Jadhav died in harness on 22.05.2005 while working as Police Constable with the respondent No. 4 i.e. the Superintendent of Police, Hingoli, Dist. Hingoli.

(ii) The applicant's mother made application dated 20.06.2006 (Annexure A-1) seeking appointment for herself on Class-IV category, at which time the applicant was minor.

(iii) After applicant attained the age of majority, the applicant's mother made application dated 18.02.2010 (Annexure A-2) seeking appointment for the applicant.

(iv) The name of the applicant's mother, as well as, the applicant were taken at Sr. No. 22 in the waiting list of the candidates to be appointed on compassionate ground. In the case of applicant's mother, the application date is shown as 20.05.2006, whereas in the case of the applicant the said date is shown as 09.06.2009.

(v) The applicant's mother completed the age of 45 years on 09.07.2016 therefore, in terms of G.R. dated 06.12.2010 her name was deleted from the list of the candidates to be

appointed on compassionate ground as per communication dated 10.11.2017 (Annexure A-6).

(vi) The respondent No. 4 by issuing the letter dated 11.03.2010 (Annexure R-2 at page No. 64 of the paper book) and by the letter dated 05.11.2011 (Exhibit B-4 at page No. 91 of the paper book) the applicant was called for remaining present on 12.03.2010 and 15.11.2011 respectively for police recruitment. However, in physical test height of the applicant was found lesser than the minimum requisite height for the post of Police Constable. He became ineligible.

(vii) After the applicant was declared ineligible for the post of Police Constable in Class III post, he made application dated 16.08.2012 seeking appointment on class-IV post of Sweeper. In respect of the said application / letter, the respondent No. 4 sought guidance from the higher authorities i.e. the respondent No. 2 and the Director General of Police. Upon receipt of the said guidance, the respondent No. 4 issued the impugned communication dated 26.06.2018 (Annexure A-9) denying the claim of the applicant on the ground that there is no provision to

substitute the name of nominee of deceased employee for compassionate appointment.

(viii) The applicant previously filed O.A. St. No. 1630/2017 seeking appointment on compassionate ground for himself. The said O.A. was disposed of on 18.12.2017 (Annexure A-5) observing that the name of the applicant appears at Sr. No. 22 in the requisite waiting list and the applicant may get the appointment as per his turn.

8. In view of abovesaid chronology of events, it is seen that the name of the applicant's mother as well as, the applicant were taken in the waiting list at Sr. No. 22. The applicant's mother did not get the appointment in Class-IV category till her name was deleted being barred on attaining the age of 45 years. When the application dated 18.02.2010 (Annexure A-2) was made by the applicant's mother for seeking appointment on compassionate ground to the applicant, the applicant was 18 and half years old. The date of application of the applicant's mother in the waiting list is shown as 20.05.2006, whereas against the name of the applicant it is shown as 09.06.2009. It is nowhere mentioned that application dated 09.06.2009 seeking appointment on compassionate was made by the applicant's mother. Only

application dated 18.02.2010 (Annexure A-2) was made. By that application appointment on compassionate ground was sought by the applicant's mother for the applicant stating that he was 12th Std. passed. The applicant was offered to participate in the Recruitment process for getting the post of Police Constable in Class-III category in the year 2010 and 2011. However, his height was not found requisite and it was less than the minimum requisite height for the post of Police Constable. In view of the same, the applicant gave up his claim for seeking compassionate appointment in class-III category.

9. It is further a fact that the applicant thereafter, made application on 16.08.2012 seeking appointment in Class-IV category on the post of Sweeper. It seems that no steps were taken by the respondents to take the name of the applicant in the waiting list afresh. Thereafter, the applicant filed O.A. St. No. 1630/2017 before this Tribunal at Aurangabad Bench. That was disposed of by the order dated 18.12.2017 (Annexure A-5) observing that the name of the applicant was already in the waiting list at Sr. No. 22 and he may get the appointment when his turn comes. On perusal of the said order, it seems that nothing positive transpired from the year 2012. The fact remains that the name of the applicant remained in the waiting list till his

claim was denied vide impugned communication dated 26.06.2018 (Annexure A-9) by the respondent No. 4.

10. The learned Advocate for the applicant strenuously urged before me that there are catena of judgments of this Tribunal of various Benches, as well as, of the Hon'ble High Court holding that there is no bar for substitution of name of the nominee of the deceased employee. To substantiate the said contentions, he placed reliance on following decisions :-

- (i) O.A. No. 239/2016 in the matter of Swati P. Khatavkar and Anr. Vs. The State of Maharashtra and Anr. decided on 21.10.2016 by the Principal Seat of this Tribunal at Mumbai.
- (ii) O.A. No. 1153/2016 in the matter of Sudhir Tukaram Sabale Vs. The State of Maharashtra and Ors. decided on 03.05.2017 by the Principal Seat of this Tribunal at Mumbai.
- (iii) W.P. No. 7832/2011 decided on 28.02.2012 by the Hon'ble High Court of Judicature at Bombay, Appellate Side, Bench at Aurangabad.
- (iv) W.P. No. 6267/2018 in the matter of Snyaneshwar Ramkishan Musane Vs. The State of Maharashtra and ors. decided on 11.03.2020 by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad.

- (v) O.A. No. 351/2019 in the matter of Smr. Sangita Masaji Kalbande and Anr. Vs. The State of Maharashtra and Anr. decided on 03.02.2022 by this Tribunal at Aurangabad Bench.
- (vi) O.A. No. 770/2018 in the matter of Vishwajeet S/o Vishwambhar Jondhale Vs. State of Maharashtra and Ors. decided on 16.10.2018.
- (vii) O.A. No. 944/2017 in the matter of Arif Nimuddin Sayyed Vs. The State of Maharashtra and Ors. decided on 02.04.2019 by this Tribunal at Nagpur Bench.

11. For resisting the abovesaid arguments, the learned Presenting Officer strenuously urged before me that the Government issued consolidated G.R. dated 21.09.2017 consolidating the 41 previous G.Rs., Notifications and Circulars in that respect. In that respect basically the restriction was imposed upon the respondents as per the G.R. dated 20.05.2015 (page No. 110 of the paper book) that the name of legal representative of the deceased employee cannot be considered in place of another legal representative of the deceased employee, whose name happens to be in the waiting list for giving appointment on compassionate ground. The said provision was

there in Clause 1(C) of the said G.R. dated 20.05.2015, which is as follows :-

“क) अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे :-

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबीयांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नांव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नांव बदलण्याची तरतूद सध्याच्या धोरणात नाही.

परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवारऐवजी त्याच्या कुटुंबातील अन्य पात्र उमेदवाराचे नाव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल. मात्र नव्या उमेदवाराचे वय सदर दिनांकाला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकास १८ वर्षांपेक्षा कमी असेल तर, नव्या उमेदवाराचे नांव त्याला ज्या दिवशी १८ वर्षे पूर्ण होतील त्या दिनांकास घेण्यात यावे.”

The said provision is incorporated in the consolidated G.R. dated 21.09.2017 in clause 21, which is as follows :-

“(२१) अनुकंपा तत्वावरील प्रतीक्षासूचीवरील उमेदवाराचे निधन झाल्यास त्याऐवजी कुटुंबातील अन्य पात्र वारसदाराचा समावेश अनुकंपा नियुक्तीच्या प्रतीक्षासूचीत करणे :-

कर्मचा-याच्या मृत्यूनंतर त्याच्या पात्र कुटुंबीयांचे नांव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये घेतल्यानंतर त्याच्याऐवजी अन्य पात्र वारसदाराचे नांव प्रतीक्षासूचीमध्ये घेतले जात नाही. म्हणजेच प्रतीक्षासूचीमधील नांव बदलण्याची तरतूद सध्याच्या धोरणात नाही. परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवारऐवजी त्याच्या कुटुंबातील अन्य पात्र उमेदवाराचे नाव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल. मात्र नव्या उमेदवाराचे वय सदर दिनांकाला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकास १८ वर्षांपेक्षा कमी असेल तर, नव्या उमेदवाराचे नांव त्याला ज्या दिवशी १८ वर्षे पूर्ण होतील त्या दिनांकास घेण्यात यावे. (शासन निर्णय दि. २०.०५.२०१५)”

12. In fact, as per the judgment dated 11.03.2020 delivered by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in W.P. No. 6267/2018, the said clause was declared to be unjustified and was ordered to be deleted. In view of the same, the said restriction is no more in existence. Nothing is pointed out by the learned Presenting Officer representing on behalf of the respondents that the said order of the Hon'ble High Court is stayed or set aside. In these circumstances, the impugned order of rejecting the claim of the applicant as per that clause is totally unjustified in the eyes of law.

13. From the admitted facts on record, the claim of the applicant for the post of Class-IV category can be considered from the date of his subsequent application dated 16.08.2012 as contended in the affidavit in reply filed on behalf of respondent Nos. 2 and 4. In the impugned order, there is no reference of his said application dated 16.08.2012. The respondents can be directed to take the name of the applicant in the waiting list mentioning the date of his application as 16.08.2012 and consequently give the appointment on the requisite post in the scheme of compassionate appointment. The contentions raised by the respondents resisting the impugned order are totally

unjustified and not tenable in the eyes of law and hence, the said contentions are required to be rejected.

14. Before parting with this judgment, I would like to mention here that while deciding the matters pertaining to compassionate appointment on the basis of latest G.R. dated 21.09.2017, as well as, as per Lad-Page committee recommendations, the common factors which are required to be taken into consideration are the names of the heirs and legal representatives left behind back by the deceased Government servant and their respective ages preferably with dates of birth. In the absence of the said details thereof, there is always difficulty in giving the findings. Care of this aspect can be taken at the time of scrutiny of the O.A. by the Registry of this Tribunal. In view of the same, the Registrar can add all those factors in the check list of scrutinizing the O.As. received for such reliefs.

15. In view of the discussions as above, in my considered opinion, the impugned communication dated 26.06.2018 (Annexure A-9) issued by the respondent No. 4 is liable to be quashed and set aside and the applicant shall be entitled for the requisite directions making him entitled for compassionate

appointment in accordance with law. I therefore, proceed to pass following order :-

O R D E R

The Original Application No. 310 of 2019 is allowed in following terms :-

- (A) The impugned communication dated 26.06.2018 (Annexure A-9) issued by the respondent No. 4 i.e. the Superintendent of Police, Hingoli, Dist. Hingoli is hereby quashed and set aside.
- (B) The respondents are directed to take the name of the applicant in the waiting list of the candidates to be appointed on compassionate ground mentioning date of application dated 16.08.2012 and further they are directed to consider the claim of the applicant for the appointment on compassionate ground in Class-IV category in accordance with law at the earliest.
- (C) In view of the said direction, the O.A. stands disposed of with no order as to costs.

PLACE : AURANGABAD.

DATE : 06.06.2022.

KPB S.B. O.A. No. 310 of 2019 VDD Compassionate appointment

(V.D. DONGRE)

MEMBER (J)