

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 35 OF 2018
(Subject – Compassionate Appointment)**

DISTRICT: NANDED

Shri Akbar Hussain s/o Mohd)
Iftekar Hussain,)
 Age: 23 years, Occu. : Education,)
 R/o. Dharmabad, Taluka Dharmabad,)
 District : Nanded.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
 Through its Secretary,)
 Public Works Department,)
 Mantralaya, Mumbai.)
- 2) **The Executive Engineer,**)
 Public Works Department,)
 Nanded, District- Nanded.)
- 3) **The Executive Engineer,**)
 Public Works Department,)
 Bhokar District Nanded.) .. **RESPONDENTS**

APPEARANCE : Shri M.S. Taur, Advocate holding for Shri A.N.
 Kakade, Advocate for the Applicant.

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

CORAM : B.P. PATIL, MEMBER (J).

DATE : 06.10.2018.

O R D E R

1. The applicant has challenged the communication dated 08.11.2017 issued by the respondent No. 3 thereby

rejected his application dated 23.01.2015 for appointment on compassionate ground by filing the present Original Application.

2. Shri Iftekar Hussain was father of the applicant. He was serving as Senior Clerk in the office of respondent No. 3. He died on 04.10.2007 while in service. After his death, his wife i.e. mother of the applicant viz. Shahajadi Begum filed an application with the respondents for seeking appointment on compassionate appointment in the year 2008. On the basis of her application, her name was entered in the waiting list at Sr. No. 27. However, she was not appointed and therefore, she has filed an application with the respondent No. 3 on 23.01.2015 and requested to consider the case of the applicant in her place. The respondent No. 3 forwarded the application of the applicant to the respondent No. 2 for further action. At the time of death of Shri Iftekar Hussain, the applicant was minor. After attaining the age of majority, his mother has filed an application dated 23.01.2015 for appointment on compassionate ground in her place. The application of the applicant was not decided by the respondents for long time and therefore, the applicant has filed O.A. No. 252/2017 before this Tribunal and sought directions of this Tribunal to decide his application. This Tribunal has disposed of

O.A. on 13.09.2017 directing the respondent No. 3 to decide the application of the applicant within a period of two months from the date of order. Thereafter, respondent No. 3 has issued a communication dated 08.11.2017 and rejected the application of the applicant on the ground that there is no provision to replace the legal heir in the rules on the basis of G.R. dated 20.05.2015. It is contention of the applicant that the respondent No. 3 has wrongly rejected the application of the applicant relying on the G.R. dated 20.05.2015. In fact, the said G.R. specifically provides that, in case of minors the name of such legal heirs should be taken after he completes 18 years of age. It further provides that the State Government may condone the delay up to 2 years in case of minor. It is his contention that provision to give appointment on compassionate ground is made with intent to give benefit to the family members of the Government employees who dies during their service tenure. It is his contention that the respondent No. 3 has considered the provisions of G.R. dated 20.05.2015 in its true spirit and has wrongly rejected the application and issued communication dated 08.11.2017 accordingly. Therefore, he prayed to quash and set aside the impugned communication dated 08.11.2017 by allowing the present Original Application.

3. The respondent Nos. 1 and 2 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact regarding the death of Shri Iftekar Hussain, when he was in service. They have also admitted the fact that after death of Shri Iftekar Hussain, his widow Smt. Shahajadi Begum applied for appointment on compassionate ground. As per the prevailing rules, name of mother of the applicant enrolled in the waiting list of the eligible candidates to be appointed on compassionate ground. It is their contention that the Desk Officer, Public Works Department issued a letter dated 27.06.2017 and informed the concerned that once the name of legal heir of deceased Government employee is enrolled in the waiting list of the eligible candidates to be appointed on compassionate ground then name of other heir shall not substituted in his place. They have not disputed the fact that the applicant has filed O.A. No. 252/2017 and this Tribunal has disposed of the said O.A. on 13.09.2017 with a direction to the respondent No. 3 to decide the application of the applicant as per the rules. It is their contention that as per the direction given by this Tribunal, the respondent No. 2 had taken a conscious decision on 07.11.2017 as per the G.R. dated 20.05.2015 and rejected the application of the applicant. It is their contention

that there is no provision in the G.R. or rules to record the name of another legal heir in the waiting list of the candidates to be appointed on compassionate ground once the name of other heir has already been recorded in the list. It is their contention that the communication challenged in the present O.A. is as per the rules and there is no illegality in it. Therefore, they prayed to reject the present Original Application.

4. The respondent No. 3 has filed his affidavit in reply and resisted the contentions of the applicant. The respondent No. 3 has raised the similar contentions to that of the contentions raised by the respondent Nos. 1 and 2 in their affidavit in reply. He has submitted that the impugned communication has been issued by the respondent No. 3 in view of the provisions of G.R. dated 20.05.2005 and there is no illegality in it. Therefore, he prayed to reject the Original Application.

5. I have heard Shri M.S. Taur, learned Advocate holding for Shri A.N. Kakade, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

6. Admittedly, deceased Shri Iftekar Hussain was father of the applicant. He was serving as Senior Clerk in the office of respondent No. 3. He died on 04.10.2007, while in service leaving behind his wife, applicant and other as his legal heirs. After his death, his widow viz. Shahajadi Begum had filed an application with the respondents in the year 2008 and requested the respondents to give her appointment on compassionate ground. On the basis of her application her name has been recorded in the waiting list of the eligible candidates to be appointed on compassionate ground and it continued thereafter. Admittedly, at the time of death of Shri Iftekar Hussain, the applicant was minor. Admittedly, the date of birth of the applicant is 02.02.1994. He attained the age of majority on 01.02.2012. Admittedly on 23.01.2015, the mother of the applicant moved an application for enrolling the name of the applicant in the waiting list of the eligible candidates to be appointed on compassionate ground in her place. The said application came to be rejected by the respondent No. 3 by impugned communication dated 08.11.2017 on the ground that there is no provisions in the scheme/rule to substitute the name of legal heir of deceased employee in place of another heir, whose

name has already been enrolled in the waiting list of the eligible candidates to be appointed on compassionate ground.

7. Learned Advocate for the applicant has submitted that name of the mother of the applicant has been enrolled in the waiting list after the death of Government employee i.e. Shri Iftekar Hussain in the year 2008. He has submitted that at the time of death of Shri Iftekar Hussain, the applicant was minor. He attained the age of majority in the year 2012. The mother of the applicant was unable to do service and therefore, she applied with the respondent No. 3 on 23.01.2015 and requested to consider the name of the applicant for the appointment on compassionate ground in her place. He has submitted that the scheme regarding the appointment on compassionate ground is beneficial scheme and provision is made to remove the financial constraints to the family members of the deceased Government servant. He has submitted that the respondent No. 3 ought to have considered the said aspect while deciding the application of the applicant's mother, but the respondent No. 3 had not considered the said aspect and rejected the application of the applicant on the ground that there is no provision to replace/ substitute the name of another heir in place of legal heir of deceased Government employee, whose name has been already

enrolled in the waiting list by the impugned communication. He has submitted that this Tribunal, as well as, the Hon'ble High Court had considered the said aspect and directed the respondents to make such changes and therefore, in support of his submissions he has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **W.P. No. 1384/2016** in case of **the State of Maharashtra and Ors. Vs. Mohd. Zakiyoddin Mohd. Anisoddin** decided on 27.02.2017. He has submitted that the facts in the present case and the facts in that case are similar and therefore, considering the principles laid down in the above cited decision, the appointment can be granted to the applicant and the necessary directions be issued to the respondents by allowing the present Original Application. He has attracted my attention towards the paragraph No. 5 of the said decision, which runs as follows:-

“5) There cannot be dispute over the propositions of the Hon'ble Apex Court made in the cases cited supra. In the present matter State Government has specific policy to give appointment on compassionate ground to a dependent of the deceased employee. The policy cannot be that rigid that it makes impossible to implement of the policy. On this point learned counsel for the respondent

*Mohd. placed reliance on the observations made by this Court in **Writ Petition No.5073/2007** at this Bench (The State of Maharashtra & Others v. Smt. Anjali Vijay Naikwade & Another). Even when there was no Government Resolution to allow to change the candidate this Court had held that such substitute is possible if there is a policy to give appointment on compassionate ground. This Court also held that there cannot be such restrictions which are coming in the way of the implementation of such policy.”*

He has submitted that the respondents have not considered the said aspect and rejected the application of the applicant. Therefore, he prayed to allow the present Original Application.

8. Learned Presenting Officer has submitted that the respondent No. 3 has rightly rejected the application of the applicant on the ground that there is no provision in the G.R. or Rules to replace/substitute the name of legal heir enrolled in the waiting list by the name of another legal heir. He has submitted that there is no illegality in the impugned communication and therefore, he prayed to reject the present O.A. He has submitted that the decision cited by the applicant is not applicable in the instant case, as the facts in that case are different than the facts

in the present case. Therefore, on that ground also he prayed to reject the present O.A.

9. Admittedly there is no provision in the G.R./rule for appointment on compassionate ground introduced by the Government to substitute the name of LR's whose name has already been enrolled in the waiting list by another heir. The respondent No. 3 has rightly considered the provisions of G.R. dated 20.05.2015 and rejected the application of the applicant by the impugned communication dated 08.11.2017. It is settled principle that the compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. When the rule does not permit to replace the name of heir whose name has been enrolled in the waiting list by another name, the application of such nature cannot be considered. The respondent No. 3 has rightly rejected the application of the applicant and issued the impugned communication dated 08.11.2017.

10. I have gone through the decision, which has been cited by the learned Advocate for the applicant. In the said decision, the decision of the Hon'ble Apex Court in cases of

Union of India v. Shashank Goswami, reported in **AIR 2012 SC 1194** and **MGB Gramin Bank v. Chakrawarti Singh** reported in **AIR 2013 SC 3365** have been considered. The relevant portion of both the decisions has been reproduced in the above cited decision, which are as follows:-

“9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be

made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

"5. Every appointment to public office must be made strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. Moreso, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

6. *In Umesh Kumar Nagpal v State of Haryana and Ors., (1994) 4 SCC 138 : (1994 AIR SCW 2305), this Court has considered the nature of the right which a dependent can claim while seeking employment on compassionate ground. The Court observed as under :*

"The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. ... The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned. ... the only ground which can justify compassionate employment is the penurious condition of the deceased's family. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis."

11. I have no dispute regarding the settled legal principles laid down in the aforesaid cited judgment. The said principles are appropriately applicable in the instant case. I have also gone through the fact in the above cited case. In the above cited case, the name of the married daughter of deceased Government employee was initially enrolled in the waiting list. She was to get

married and therefore, an application to enter the name of another son of deceased Government employee in her place was moved and that was rejected by the respondents. The petitioner approached this Tribunal and the Tribunal has considered the case of the applicant and quashed and set aside the order and directed the respondents to enroll the name of another son considering the peculiar circumstances in that case. The said decision has been challenged by the Government before the Hon'ble High Court and the Hon'ble High Court dismissed the petition. This Tribunal has allowed that O.A. of son considering the peculiar circumstances of the case. In that case the daughter was going to marry and therefore, name of another heir has been recorded in her place. In the instant case, the name of mother of the applicant has already been enrolled in the waiting list in the year 2008. Only because of the applicant has attained the age of majority, he wanted to record his name in place of his mother. In these circumstances, in my opinion, the decision relied upon by the applicant is not attracted in the instant case, as the facts in that case are different than the facts in the instant case. Therefore, in my view, the said decision is not much useful to the applicant.

12. Considering the above said discussions, in my opinion, there is no illegality in the impugned order issued by the respondent No. 3 on 08.11.2017 rejecting the claim of the applicant to enroll his name in the waiting list of the eligible candidates to be appointed on compassionate ground in place of his mother. The said decision has been taken by the respondent No. 3 as per the provisions of G.R. dated 20.05.2015 and the letter issued by the Government dated 27.07.2007. Therefore, I do not find illegality in the impugned communication. There is no merit in the present O.A. Consequently, O.A. deserves to be dismissed.

13. In view of the discussions in foregoing paragraphs, the O.A. stands dismissed with no order as to costs.

PLACE : AURANGABAD.

DATE : 06.10.2018.

(B.P. PATIL)

MEMBER (J)

KPB S.B. O.A. No. 35 of 2018 BPP 2018 Comp. appointment