

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 413 of 2022 (S.B.)

Mr. Afzan Danish s/o Zaheer Saudagar,
Aged about 25 years, Occu.: Student,
R/o Ram-Rahim Nagar, Baitul Road Kandali,
Paratwada, Tq: Achalpur, Dist: Amravati-444805.

Applicant.

Versus

1. The State of Maharashtra,
Through its Secretary, Revenue & Forest Department,
Mantralaya, Mumbai-400032.
2. Chief Conservator of Forest,
Amravati Circle, Camp Area,
Amravati-444602.
3. The Additional Principal Chief Conservator of Forest &
Field Director of Tiger Project Melghat Region,
Near Girls High school, Camp Road Amravati-444602.
4. Divisional Forest Officer (Melghat Wild Life Division)
Timber Depot Road, Paratwada,
Dist. Amravati. Paratwada-444805

Respondents.

Shri A.P. Sadavarte, Advocate for the applicant.
Shri M.I. Khan, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 13/04/2023.

JUDGMENT

Heard Shri A.P. Sadavarte, learned counsel for the
applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The father of applicant was promoted as ad-hoc Range Forest Officer, Class-II, Group-B post on 01/03/2014. He was posted at Range Forest, Gulargath under the control and supervision of respondent no.4. On 31/10/2019, the father of applicant died due to heart attack during the course of employment. The family members of the applicant are facing financial crisis due to sad demise of his father. The applicant is qualified and having degree of S.S.C., H.S.S.C., B.Sc. with MS-CIT. The applicant applied for appointment on compassionate ground on 10/08/2020. On 20/08/2022, the respondent no.4 has rejected his application on the ground that his father was working in Class-II, Group-B post and as per the G.R. dated 21/09/2017, the dependents of the deceased employees who were working on Group-B post are not eligible for appointment on compassionate ground. Therefore, the applicant approached to this Tribunal for the following reliefs –

“(i) Quash and set aside the Impugned Oder dated 18.1.2021 (Annexure A-8 passed by Respondent No.3 and also quash and set aside the Impugned communication dated 08.09.2020 at (Annexure- A-6) passed by Respondent No.3.

(ii) Direct the Respondents to consider the candidature of the applicant for appointment on compassionate ground.

(iii) grant any other reliefs, which will be deemed fit and proper in the facts and circumstances of the case.”

3. Heard Shri M.I. Khan, learned P.O. for the respondents. The application is strongly opposed by the respondents. It is submitted that as per the G.R. dated 21/09/2017, the employees who were working on Group-B post are not entitled for appointment on compassionate ground.

4. During the course of argument, the learned counsel for applicant Shri A.P. Sadavarte has pointed out the Judgment of Hon'ble Bombay High Court in Writ Petition No.1071/2019, decided on 15/06/2021. The learned counsel has pointed out the Judgment of this Tribunal in O.A.368/2022.

5. From the perusal of Judgment of Hon'ble Bombay High Court, more particularly, para-8 of the Judgment shows that the dependents of deceased employee who was working on Group-B post, are entitled to get employment on compassionate ground. The fact in the present O.A. is similar in the Judgment of Hon'ble High Court. The Hon'ble High Court has observed that the application straight way cannot be rejected on the ground that deceased father of applicant was working in Group-B post, i.e., Naib Tahsildar.

6. In the present O.A., the father of applicant was working as ad-hoc Range Forest Officer. It was not a regular promotion. As per the communication issued by respondent vide letter dated 20/09/2021

(P-38) the respondents have informed the applicant that his father Sheikh Zaheer Saudagar was ad-hoc Range Forest Officer was not regularized on the said post. The learned counsel for applicant has submitted that the rejection of the application by respondent as per communication dated 08/09/2020 is illegal, because, the father of applicant was not working in Group-B post, his promotion was on ad-hoc basis. Therefore, his earlier posting on the post of Forester was in Group-C service.

7. In view of the Judgment of Hon'ble Bombay High Court, it is clear that ad-hoc promotion cannot be treated as a regular promotion and therefore the dependents of the deceased employee can claim the service on compassionate ground. The Hon'ble Bombay High Court has passed the following order –

“(i) The impugned order dated 25 June 2018 passed by the tribunal in Original Application No.70 of 2018 is quashed and set aside, as also the order dated 13 November 2017 passed by respondent no.3 in rejecting the petitioner’s application for compassionate appointment is quashed and set aside.

(ii) The respondents are directed to consider the petitioner’s application for compassionate appointment as valid, and as per rules, grant compassionate appointment to the petitioner in the class-III post.

(iii) The petition is allowed in the above terms. No costs.”

8. The learned counsel for applicant has pointed out the Judgment of this Tribunal in O.A.368/2022, dated 16/02/2023. This Tribunal has held in para-5 and 6 as under –

“5. It was argued by Shri Sarda, Id. Counsel for the applicant that since the deceased was holding the promotional post of Group-B only on ad-hoc basis, benefit of compassionate appointment to his dependent could not have been denied. In support of this submission reliance is placed on judgment of the Hon’ble Bombay High Court delivered on 15.06.2021 in W.P. No. 1071/2019 (Shri Nikhil Maruti Gosarade Vs. The District Collector, Sangli and two others). In this case it is observed:-

"It is also not in dispute that the name of petitioner’s late father qua such promotion was never notified in any final list of regularly promoted candidates, which would show that in reality he was never substantively promoted to the Group 'B' post and was kept as an ad-hoc promotee. Merely providing a pay-scale of a higher post, without a regular promotion, would not bring about a situation that the legal character of an ad- hoc promotion order would get transformed into a 'regular promotion order'. In other words, in the present case unless there was to be a conscious act or a decision in law, to regularly promote, by issuance of a regular promotion order in favour of petitioner’s late father, by no stretch of imagination and/or by applying any standard, it could have been held that the ad-hoc promotion stood converted into a regular promotion. In regard to the

emoluments, the law would require that if an employee is posted on a particular post even temporarily or ad-hoc, he would be entitled to draw the pay- scale and benefits of such post, till he continues to hold such post on the principle of equal pay for equal work. The petitioner's late father being paid the salary or the pay scale of Naib Tahasildar, could not have been any indicia of his regular promotion to the post of Naib Tahasildar in the absence of a regular promotion order issued in his favour. The tribunal has completely ignored these basic facets by inappropriately construing the ad-hoc promotion order as issued to petitioner's late father to be a regular promotion."

6. In the instant case the aforequoted observations will clearly apply since the respondents do not dispute that the deceased was holding the promotional post only on ad-hoc basis. Hence, the order –

ORDER

A. The original application is allowed.

B. The impugned communications dated 05.09.2019 (A-R-V), 05.05.2022 (A-R-VI) and 24.05.2022 (A-X) are quashed and set aside. The respondents are directed to consider application of the applicant for appointment on compassionate ground as valid so far as his eligibility to make the same is concerned, and decide the same in accordance with law within two months from today.

C. No order as to costs."

9. In view of the Judgment of Hon'ble Bombay High Court in Writ Petition No.1071/2019 and Judgment of this Tribunal in O.A.No. 368/2022, the following order is passed –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned communication **dated 08/09/2020** is hereby quashed and set aside.
- (iii) The respondents are directed to consider the application of applicant for appointment on compassionate ground as valid so far his eligibility to make the same is concerned and decide the same in accordance with law within a period of two months from the date of receipt of copy of this order.
- (iv) No order as to costs.

Dated :- 13/04/2023.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 13/04/2023*