

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 281/2010.

Dinesh Kewalram Warekar,
Aged about 36 years,
Occ-Nil,
R/o Tarna, Tq. Kuhi, Distt. Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests,
Mantralaya, Mumbai-32.
2. The Conservator of Forests,
Nagpur.

Respondents.

Shri N.R. Saboo, Ld. Advocate for the applicants.

Shri D.M. Kakani, Ld. Special counsel for the respondents.

**Coram:- B. Majumdar, Vice-Chairman and
Justice M.N. Gilani, Member (J).**

Dated:- 11th July, 2014.

Order

Per: M.N.Gilani, M(J)

The point for consideration in this O.A. is: whether the applicant is entitled to get appointment on the establishment of the respondent No.2, on compassionate ground.

2. One Kewalram Warekar (since deceased), was working as Forester on the establishment of the Deputy Conservator of Forests, Nagpur Circle, Nagpur. He died in harness on 16.8.1984. On 18.9.1987, the mother of the applicant intimated to the office of the respondent No.2 that her son, the applicant herein was minor and is taking education. In that, she requested that on his attaining majority, he shall be appointed on compassionate ground. In turn, the department informed her that the applicant would be given appointment on compassionate ground after his attaining the age of 18 years. The applicant,

whose date of birth is 30.6.1973 passed SSC examination in March 1994. On 1.7.1994, he applied for his appointment on compassionate ground. Despite such application and representations submitted from time to time, the respondents did not accept his request. Ultimately, vide communication dated 19.3.2009 (Annexure A-7), he was informed that his request for appointing him in the department of Government, cannot be accepted. Therefore, this O.A.

3. The respondent No.2 filed return. It is stated that the request of the applicant is not tenable in view of G.R. dated 8.3.1985. It is the case of the respondents that on 24.6.1991, the applicant attained the majority, whereas his mother, on 1.7.1994 applied on his behalf for giving him appointment on compassionate ground. It is further clarified that the applicant cannot take advantage or benefit of the communications particularly the communications dated 17.12.1994 and 7.12.200 issued by the office of the Chief Conservator of Forests, Nagpur. While denying appointment to the applicant, he has not been meted out with any discriminatory treatment.

4. Mr. Saboo, the learned counsel appearing for the applicant took us through the entire record to buttress his contention that the delay, if any, occurred in making an application for appointment was due to the reason like, minority of the applicant, he prosecuting his studies etc. After he passed SSC examination, immediately he applied. He placed reliance upon the G.R. dated 11.9.1996 (Annexure A-9) wherein it is stated that the minor heir of the deceased employee can apply for appointment on compassionate ground within one year of his attaining the age of 18 years. He also invited our attention to the communication wherein the authorities supported the case of the applicant.

5. Annexure A-1 is the application dated 18.9.1987, which the mother of the applicant submitted to the office of the respondent No.2 intimating that the applicant is minor and on his attaining majority, he may be given job. Annexure A-2 is the response given by the office of the respondent No.2. She was informed that after the applicant would attain the age of 18 years, his claim for appointment on compassionate ground will be considered as per rules. Annexure A-3 dated 1.7.1994 is an application, which the mother of the applicant submitted to the office of the respondent No.2, stating that the applicant had attained the age of 18 years and now he should be favoured with an order of appointment. Annexure A-8 is a communication sent by the respondent No.2 to the respondent No.1. In that, he recommended the case of the applicant for appointment on compassionate ground. The learned counsel for the applicant is of the view that, it was within the domain of the respondent No.2 to issue appointment order, instead of referring the matter to the Government. Annexure A-10 dated 15.1.2000 is the second communication by the respondent No.2 addressed to the respondent No.1. On 26.10.2005, the Department of Revenue and Forests informed to the Additional Chief Conservator of Forests, Nagpur to take steps towards giving appointment to the applicant on compassionate ground. It appears that, the matter was again put in the court of the respondent No.1 and ultimately it went before the High Powered Committee. The Committee turned down the request.

6. Apart from the merits of the case, even technically, the request of the applicant is not tenable. The reason is, inordinate delay in making the application. The advantage of the G.R. dated 11.9.1996 (Annexure A-9) is not available to the applicant for the reason that he attained the age of majority on

24.6.1991 and he failed to apply till 1.7.1994. Even on 1.7.1994, he did not apply, but his mother on his behalf made application. According to the learned counsel for the applicant, since the applicant had not passed SSC examination, did not apply. It was unfortunate that the applicant was required to cross the age of 21 years to pass SSC examination. Since he was to get employment in Group-D, there was no need for him to wait till he passed SSC examination. Apart from this, the G.R. dated 11.9.1996 does not extend the period of limitation on any count. Strictly speaking, nothing prevented the applicant from making an application immediately after he attained the age of majority. In that event, it would have been for the department to consider his application and give him a job suitable to his qualification whatever he possessed at that time. In fact, in the communication dated 25.9.1987 (Annexure A-2), it was clarified by the respondents that the case of the appointment of the applicant on compassionate ground would be considered immediately on his attaining the age of 18 years. On behalf of the applicant, emphasis has been laid on this communication. In that view of the matter, it was not expected of the applicant to wait for a period of three years more even after attaining the age of 18 years.

7. As a rule, the appointments in public service should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Legal position is well settled. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. It is not on the ground of descent simplicitor. It enjoins a duty on a concerned department to make endeavour to find out whether a particular case needs sympathetic consideration. Neither the Government nor the public authorities are at liberty to

follow any other procedure or relax the qualification laid down by the rules for the post. Appointment on compassionate ground is an exception to this to assist the family to relieve from economic distress by sudden demise in harness of the Government employee. Such appointments cannot be offered as a matter of course. One of the important criterion is, it cannot be granted after a lapse of reasonable period.

8. Reference can usefully be made to the decision in case of **State of Jammu and Kashmir V/s Sajad Ahmed Mir, AIR 2006 SC 2743**. In that case, the father of the applicant died in harness in March 1987 and for the first time, the application was made by the applicant after more than four years i.e. in September 1991. The family thus survived for more than four years after the death of the applicant's father. Considering these aspects of the matter and in the light of Article 14 of the Constitution of India, their Lordships observed thus:

“We may also observe that when the Division Bench of the High Court considering the case of the applicant holding that he had sought ‘compassion’, the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the setback. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say ‘goodbye’ to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution”.

In this connection, reference can usefully be made in case of **Haryana State Electricity Board V/s Naresh Tanwar and another (1996) 8 SCC 23.**

9. While concluding let us advert to the facts of the case in hand. Circumstances like: by the time the applicant approached this Tribunal, he attained the age of 36 years, after 10 years of the death of bread earner in the family, application was submitted and that too after lapse of three years of the applicant attaining the age of majority. This indicates that family had managed to survive, presumably on the retiral benefits and family pension. Thus, very purpose of giving appointment on compassionate ground did not survive now as well as when application was made.

10. In the result, we do not find any substance in this O.A. Accordingly, it is dismissed with no order as to costs.

(Justice M.N.Gilani)
Member (J)

(B.Majumdar)
Vice-Chairman