

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.382/2013.

Suraj Subhashrao Bhende,
Aged about 20 yrs.,
Occ-Nil,
R/o Hanvatpura, Achalpur, Dist. Amravati.

Applicant

-Versus-

1) The State of Maharashtra,
Through its Secretary,
Department of Home Affairs,
Mantralaya, Mumbai-440 032.

2) The Superintendent of Police,
Amravati.

Respondents

Shri Shri N.R. Saboo, Ld. Counsel for the applicant.
Shri M.I. Khan, learned P.O. for the respondents.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (Judicial)

Dated: - 31st March 2017.

Order

Heard Shri N.R. Saboo, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

2. The applicant Suraj Subhashrao Bhende has filed this O.A. for getting appointment on compassionate ground and has challenged the impugned communication dated 9.5.2013 issued by the Superintendent of Police, Amravati (R.2). From the admitted facts on record, it seems that the applicant's father deceased Subhashrao

Bhende was serving as Police Constable in the office of respondent No.2 and he died on 19.11.2002 while in service. At the time of death of the original applicant, the applicant was aged about nine years. Applicant's mother, therefore, applied for appointment on compassionate ground and her application was pending. On 5.7.2011, applicant's mother requested to replace the name of the applicant in her place and that her son be considered for appointment on compassionate ground. On her request, applicant's name was substituted in her place. On 1.11.2011, respondent No.2 directed the applicant to produce some documents and not only that the a call letter was issued to the applicant on 16.11.2011. The applicant was interviewed on 17.11.2011. Out of 15 candidates, 7 candidates were appointed and the name of the applicant remained on waiting list.

3. The applicant was very much waiting for his turn to be appointed on compassionate ground. However, on 9.5.2013, he received the impugned communication whereby he was informed as under:-

अभरोत वषयांवये पीमती इंदरा सुभाष भडे आपणास कळवण्यात येते की आपल्या नावाची नद्व वगळू के अनुकंभा वतणा यादवणे करण्यात आलेल आहे. परंतु आपल जम ताराख १६.६.१९६५ असयाने आपले वय ४० वषाणे जात झायाने दनांक २२.८.२००५ या शासन नणखामधील नदशावये आपले नाव अनुकंभा वतणा यादवून नयमाणे कमी करण्यात येत आहे. तसेच चकत

अनुक्रमानुसार अनुक्रमा तवावराला नोकरा हा वारसा हक ठरत नसण्याने व अनुक्रमा करणी नामांजदक्षानाची तरतूद नसण्यामुळे आपला मुलगा / मुलगी नामे वी सूरज सुभाष भाडे यांना अनुक्रमा तवावर नोकरा मळण्याकरता पाठ ठरवता येत नाही”

4. From the aforesaid communication, it is clear that the claim of the applicant's mother for appointment on compassionate ground was not considered, since she crossed the age of 40 years as per G.R. dated 22.8.2005 and it was further informed that there was no provision to substitute the name.

5. Respondent No.2 filed affidavit in reply and admitted the fact that name of the applicant was earlier replaced in place of his mother in the waiting list. It is however stated that the said replacement was inadvertent and due to oversight. It was found that the applicant's name was wrongly taken on waiting list in place of his mother and his mother has already crossed the age of 40 years and, therefore, on these two grounds, vide impugned communication; name of the applicant was rejected.

6. According to the applicant, there are number of instances wherein name of the original applicant has been replaced and substituted it by the respondent authority and it seems that in affidavit in reply, the respondent No.2 has admitted this fact.

7. The learned P.O. submits that there is no provision for substitution of the name of a person who has been included in the waiting list of the persons to be appointed on compassionate ground. In support of his contention, the learned P.O. has placed reliance on the judgment delivered by this Tribunal in **O.A. No. 01/2013 Chetan Walde V/s State of Maharashtra and four others delivered on 5.2.2014 and O.A. No. 920/2010 Narul Haque s/o Sheikh Baba V/s State of Maharashtra and others delivered on 16.1.2012.** In both these judgments, it has been observed that there is no provision in the scheme of compassionate appointment to consider the substitution for appointment after one legal representative had applied on that count. The learned P.O., therefore, submits that replacement of the name of the applicant in place of his mother was absolutely wrong and, therefore, that mistake has been rectified by the department.

8. I had perused affidavit in reply filed by respondent No.2 on 18.2.2016. In para 15 of the said affidavit in reply, respondent No.2 admitted that the office of respondent No.2 has permitted to substitute the name for employment on compassionate ground. In the said reply, position of replacement and reasons with the help of the G.R. are also mentioned which are as under:-

Sr. No.. of the list	Name of original candidate.	Date of birth of original candidate	Age at the time of replacements	Name of the candidate after replacement	The date of the replaced candidate	The replaced candidate is on waiting list, excluded or appointed with reasons.
23	Smt. Indirabai Subhash Bhonde.	16.06.1965	46	Suraj S. Bhonde (Applicant)	12.11.2011.	At the time of replacement the age of mother of the applicant laws overage in view G.R. dated 22.8.2005 and 6.12.2010. Hence, name of the mother of the applicant including the applicant from the list under communication date d 9.5.2013.

9. From the aforesaid submission, it would be clear that, though the substitution of name is not allowed, same has been done by the respondent authorities in different cases. In this case, it is material to note that, name of the applicant's mother was pending when she requested the respondent authority to substitute the name of her son in her place. Admittedly, name of the applicant's mother was not rejected at that time and the same has been for the first time rejected vide communication dated 9.5.2013 on the ground that she has crossed the age of 40 years and, therefore, was not entitled to be considered for compassionate appointment. It is further material to note that the Govt. of Maharashtra has issued one G.R. dated 6.12.2010, whereby the age limit of 40 years for considering the

appointment of a candidate on compassionate ground has been extended to 45 years. But this fact seems to have not been considered by the respondent authorities. Had it been the fact that it was so considered the ground, the latter should have stated that the claim of applicant's mother was rejected since she has crossed the age of 45 years.

10. The learned P.O. invited my attention to the affidavit in reply in which it is stated that earlier the name of the applicant's mother was taken in the register of the persons to be appointed on compassionate ground and she was also offered the post of Class-IV employee as per her qualification. But she refused to accept that post. Even though, it is so stated, there is nothing on record to prove this and in any case inspite of such alleged refusal, the name of applicant's mother was kept pending for the reasons best known to the respondent authorities.

11. The learned counsel for the applicant as well as the respondents have relied on so many judgments of this Tribunal as well as the Hon'ble High Court on the point of compassionate appointment. These citations are: **(1) 2006 (9) SCC 195, Syed Khadim Hussain V/s State of Bihar and others, (2) Judgment delivered on 31.3.2015 in W.P. No. 2879/2014 by the Hon'ble High Court of Bombay,**

Bench at Nagpur, (3) 2013 (7) ALL. M.R. 55, (4) Judgment in O.A.No. 503/2015 passed by this Tribunal at Mumbai in Piyush Mohan Shinde V/s State of Maharashtra and two others delivered on 5.4.2016, (5) 2004 (3) ALL. MR 465 and (6) 2013 ALL SCR 2869-Nagpur Gramin Bank V/s Chakravarti Singh. I have carefully gone through all these citations. In my opinion, facts of this particular case are very peculiar where the claim of the applicant was also considered and he was also kept in waiting list of the persons to be appointed on compassionate ground. But subsequently the said claim was rejected for the reasons already stated.

12. The learned counsel for the applicant has placed reliance on the judgment delivered by this Tribunal in **O.A. No. 279/2015 in case of Amol Anil Suryavanshi V/s S.D.O., Bhor and two others delivered on 16.3.2016.** Facts in the said case are somewhat analogous with present set of facts. In paras 5 to 7, this Tribunal was pleased to observe as under:-

5. The above discussion would make it quite clear that the applicant attained the age of majority pending the consideration of the application of his mother for being appointed. The respondents were not only agreeable but they also included applicant's name in the list after his mother become what can be

described as age bar. Therefore, to repeat, the only disabling factor envisaged by the respondents is the absence of any provision for substitution of the heirs and legal representatives. The same issue fell for the consideration of the second Division Bench of this Tribunal in **O.A. No. 21 of 2013 (Smt. Archana Ramkrishna Badmanji and another V/s the Superintending Engineer and another dated 20.8.2014)**. I spoke for the Bench. That was a matter where mother and son were both the party applicants. Initially mother made an application for being included in the list and was in fact included but later on sensing that she might become age bar she requested the name of her son to be included. In that context, the issue of permissibility of such a substitution was quite clearly involved in that matter as well. The second DB relied upon a law laid down by the Hon^{ble} Supreme Court in **Smt. Sushma Gosain versus Union of India AIR 1976 SC 1976**. The Hon^{ble} Supreme Court strongly denounced the approach of the authorities in dealing with such matters and two passages were quoted by the second DB from **Sushma Gosain's** case in the said judgment.. The Hon^{ble} Supreme Court was pleased to underline the need to deal with such matters expeditiously so as to mitigate the hardship to the family that had to suffer on account of the removal of the protective umbrella insofar as provision for bread is concerned. In para 12 three other judgments of the

Honble Supreme Court were noted for guidance. Thereafter an earlier judgment of this Tribunal in **O.A. No. 884 of 2012 (Mr. Deepak Mohan Naik versus The Commissioner of Police for Greater Mumbai and another dated 24.12.2013)** was relied upon and again referring to **Sushma Gosain's** case, relief was granted to the applicant.

6. Shri A.V. Bandiwadekar, the learned Advocate for the applicant referred me to another judgment of second DB in **O.A. No. 442 of 2011 (Smt. Kusum Prakash Kapse and another V/s The Executive Engineer, Irrigation Department and 3 others dt. 22.1.2015)**. There also a similar set of circumstances a submission was made on behalf of the respondents that there was no provision in the rules for replacing the name of one family member by another in the matter of compassionate appointment. In para 5 the Bench referred to earlier judgment dated 13.4.2010 in O.A.No. 527 of 2009 wherein relief was granted which judgment was confirmed in W.P. No. 8915 of 2011 which in turn relied upon an earlier judgment in **W.P. No. 7793 of 2009 (Vinodkumar Khiru Chavan V/s the State of Maharashtra and others dt. 9.12.2009)**. and based thereon relief was granted in O.A. 442 of 2011. Shri A.V. Bandiwadekar, the learned Advocate for the applicant furnished for my perusal the judgment of the D.B. of the Honble High Court in W.P. No. 7793 of 2009 above referred to .

7. It is, therefore, very clear that although Shri K.B. Bhise, learned P.O. for the respondents may not be wrong in pointing out that the rules are silent about the matter of substitution but then he is not entirely right also in the context of the facts of this O.A., because here the respondents themselves took steps to include the name of the applicant and, therefore, they ought not to have raked up such an issue. Apart from **Sushma Gosain's** case a DB of the Honble High Court in **W.P. No. 8915 of 2011 (The Executive Engineer, PWD, Solapur and others V/s Jijabai Choudhary, dated 14.11.2011)** denounced the tendency of the State to carry the matters up even in case of orders mandating consideration of the claim. Further, Shri Bhise, Ld. P.O. in his familiar fairness told me that the judgment of the second DB in O.A.No. 21 of 2013 was not challenged before the Honble High Court but in fact has been implemented by giving appointment to one of the applicants therein. Therefore, the position has become stronger by reason of above judgments and orders than any rule made by the State originating from a source where the State instruments originate from. That is become **Sushma Gosain's** (supra) is a judgment of the Honble Supreme Court and is a guiding light. It is, therefore, quite clear that the applicant will be entitled to the relief herein sought and all the contentions to the contrary strongly put

forward by the Ld. P.O. will have to be rejected.
They are rejected.+

13. In my opinion, considering the peculiar facts and circumstances of the case, it will be in the interest of justice and equity, we direct the respondent authorities to consider the name of the applicant on merit. The learned P.O. Shri M.I. Khan invited my attention to the observations made by the Hon'ble Supreme Court in case of **Umesh Kumar Nagpal V/s State of Haryana and others, Anil Malik V/s State of Haryana and others in SLP (C) No.10504/93 and SLP (C) No.2385/94** wherein the Hon'ble Supreme Court has observed that, "*mere death of employee does not entitle his family for compassionate appointment. The authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death*". He thereafter placed reliance on **(2013) 11 SCC 178 State of U.P. and others V/s Pankaj Kumar Vishnoi with State of U.P. and others V/s Udaiveer Singh and another** in which it was held that the appointing authority has to ensure that minimum standard of work and efficiency expected of post is maintained. The learned P.O. then placed reliance on the judgment of the Hon'ble Apex Court in **Special Leave to Appeal (C) No. 1683/2013 Union of India and others Vs Sima Banerjee delivered**

on 10.1.2017. In the said case, the Honble Apex Court has observed as under:-

The Central Administrative Tribunal directed the appellant to consider the claim for the respondent on merits and this view has been upheld by the High Court. We have heard learned counsel for the parties. It is pointed out by the learned counsel for the appellant that the object of compassionate appointment is to enable the family to tide over the sudden crisis as laid down by this Court in Umesh Kumar Nagpal V/s State of Haryana & Ors. 1994 (4) SCC 138 and in State of U.P. & Ors. V/s Pankaj Kumar Vishnoi 2003 (11) SCC 178. Thus direction to give compassionate appointment several years after death was not justified. We are in agreement with the above submission. The death of the husband of the respondent took place on 26.11.2000 and there is nothing to show that any vacancy was available within the period of three years from the said date. In the circumstances, the view taken in the impugned order cannot be sustained. The appeal is accordingly allowed. There shall be no order as to costs.+

14. In this case, admittedly father of the applicant i.e. deceased Subhashrao Bhende died on 19.11.2002. At that time,

applicant's age was nine years. Thereafter applicant's mother applied for the post on compassionate ground and her application was kept pending till it was finally rejected vide impugned letter dated 9.5.2013. Vide similar communication dated 11.6.2013, it was intimated to the applicant that there is no provision to substitute the name and that the appointment on compassionate ground is not hereditary right. Whether the circumstances at the time of death of an employee are still existing or not can be considered by the competent authority while considering the claim for compassionate appointment. The Government has issued various G.Rs which entitle the respondent authorities to consider as to whether the exigency still exists for appointing a person on compassionate ground or not. The respondents will be at liberty to consider all these aspects while considering the claim of the applicant on its own merit. But straightway rejecting the claim on the ground that the applicant's mother had crossed the age of 40 years and that there is no provision for substitution of the name of a person to be considered for appointment on compassionate ground, itself will not be proper in view of the facts discussed in foregoing paras. I, therefore, pass the following order:-

(i) The O.A. is allowed.

(ii) The impugned communication dated 9.5.2013 issued by respondent No.2 and communication dated 11.6.2013 issued by respondent No.2 are quashed and set aside.

(iii) The respondent No.2 is directed to consider the name of the applicant for appointment on compassionate ground on its own merit and as per various circulars in the field in this regard and to take appropriate decision on the same without being influenced by any of the observations made in this regard.

(iv) Decision on such claim be taken within a period of eight weeks from the date of this order and the same shall be communicated to the applicant in writing.

(v) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)