

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO.488/2016.**

Shridhar Vishvas Dhandare,  
Aged about 26 yrs.,  
Occ-Nil,  
R/o Sahakar Nagar, Adarsh Colony,  
Bhandara.

**Applicant**

**-Versus-**

- 1) The State of Maharashtra,  
Through its Secretary,  
General Administration Department,  
Mantralaya, Mumbai-440 032.
- 2) The Superintending Engineer & Divisional Officer,  
Vigilance Unit (Nagpur Division),  
Water Resources Department, 2<sup>nd</sup> floor,  
Govt. Building No.1, Civil Lines,  
Nagpur-40 001.
- 3) The Assistant Superintending Engineer,  
Gosekhurd Lift Irrigation Circle, Ambadi,  
District Bhandara.

**Respondents**

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Shri S.K. Kotwal, the learned counsel for the applicant.  
Shri A.M. Khadatkhar, the learned P.O. for the respondent Nos. 1 and 2.  
Shri A.M. Kukde, learned counsel for respondent No.3.

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

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**JUDGMENT**

**(Delivered on this 8<sup>th</sup> day of August 2017.)**

Heard Shri Shri S.K. Kotwal, the learned counsel for  
the applicant and Shri A.M. Khadatkhar, the learned P.O. for

respondent Nos. 1 and 2. Shri A.M. Kukde, the learned counsel for respondent No.3.

2. The applicant has challenged the impugned communication dated 28.4.2016 issued by respondent No.2, whereby his claim for appointment on compassionate ground has been rejected.

3. The applicant's father late Shri Vishvas Namdeorao Dhandare was working with respondent No.3 and he died in the service period on 4.8.2001 leaving behind him the applicant, applicant's mother and two daughters viz. Swati and Sayali. After the death of Vishwas, applicant's mother applied for appointment on compassionate ground. However, her claim was rejected in 2008 on the ground that, she has attained the age of 40 years. After attaining majority, the applicant applied for appointment on compassionate ground on 14.2.2008. His name was added in the wait list of the candidates to be appointed on compassionate ground on 12.5.2008 and he was placed at Sr. No.29. The applicant filed representation, but his claim was not considered and on the contrary, on 10.12.2014, it was intimated to him that the name of his mother was removed from the wait list. The applicant, therefore, filed W.P. No.1359/2016 before the Hon'ble High Court, Nagpur Bench. The said Writ Petition came to be disposed of on 22.3.2016. The Hon'ble High Court, Nagpur Bench in W.P.

No.1359/2016 was pleased to pass an order on 22.3.2016 and the petitioner was permitted to move the fresh representation, in accordance with law within three weeks and it was further directed that if the said representation containing all necessary data is moved by the petitioner (applicant) within three weeks, respondent No.2 shall consider it, in accordance with law within eight weeks.

4. The applicant accordingly filed representation on 1.4.2016. However, vide impugned order dated 28.4.2016, his representation has been rejected. It was stated in the impugned communication that the applicant's mother was already in the waitlist. But since she attained the age of 40 years, her name was removed from the wait list and now since name of the applicant's mother was already recorded in the wait list, her name cannot be replaced by adding the applicant in her place. The said communication has been challenged in this O.A.

5. Respondent Nos. 1 and 2 have filed their affidavit in reply and submitted that the applicant's name cannot be considered for the reasons already stated.

6. From the arguments put forth by the learned counsel for the parties as well as from the record, it seems that the applicant's mother's name was earlier recorded in the wait list of the candidates to

be appointed on compassionate ground place of the applicant's father. But her name was removed from the wait list, since she attained the age of 40 years. As per G.R. dated 22.8.2005 which was prevailing at that time, a candidate on the wait list if completes 40 years of age, could not be given appointment and, therefore, the name was deleted. The learned P.O. also placed on record the notification issued by the Secretary, Government of Maharashtra to all Collectors in the State dated 31.5.2006, which clearly states that there is no provision to replace the name of a person from the wait list of candidates to be appointed on compassionate ground.

7. The learned counsel for the applicant, however, submitted that the applicant has applied for the post on compassionate ground after he attained the age of 18 years. As per G.R. dated 20.5.2015, a person can apply for appointment on compassionate ground within one year from the date of attaining majority. It is also material to note that, in the order passed by the Hon'ble High Court in W.P. No. 1359/2016, the Hon'ble High Court has specifically observed that, the petitioner has attained majority and not only that his name was included in the wait list and the applicant was permitted to move a fresh representation. It was also clarified that the communication dated 16.12.2014 vide which it was intimated that, applicant's mother's name

has been removed from the wait list, will not come in the way for fresh consideration of applicant's claim.

8. The learned counsel for the applicant has also placed reliance on the judgment delivered by this Tribunal in **O.A. No. 279/2015 in case of Amoll Anil Suryavanshi V/s Sub-Divisional Officer, Bhor and two others.** In para 7 of the said judgment, this Tribunal has observed as under:-

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** case, a D.B. of the Hon'ble High Court in **W.P. No. 8915/2011 (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 the orders mandating consideration of the claim. Further, Shri Bhise, the 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 Hon'ble 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 because **Sushma Gosain** (supra), is a judgment of the Hon<sup>ble</sup> 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.+

9. In view of the discussion in foregoing paras, it will be thus crystal clear that, though the applicant's mother's name was not considered, since she had attained the age of 40 years, applicant's name was already substituted in her place. Even otherwise the applicant was minor at the time of consideration of applicant's mother's name and he has an independent right to apply for appointment on compassionate ground within one year from the date of attaining majority, admittedly nobody is appointed from applicant's family on the post.

10. The learned P.O. submitted that the applicant's father died in the year 2001 and the situation at the time of his death may not be prevailing for considering the case of the applicant for

appointment on compassionate ground. In my opinion, this aspect can be considered by the respondent authorities at the time of considering the case of the applicant for appointment on compassionate ground. There are number of circulars issued by the Government of Maharashtra in the field which gives guidelines as to what shall be considered and what shall not be considered while reviewing the case of appointment on compassionate ground. Merely rejecting the application on the ground the applicant's mother's name was already removed, will not be sufficient.

11. In the impugned communication dated 28.4.2016 itself, in the last line, it is stated that the applicant's claim has been sent as a special case for consideration to the Government vide letter dated 6.7.2015. But till today, no communication is received from the Government. In view of this submission, I pass the following order:-

**ORDER**

- (i) The O.A. is allowed.
- (ii) Respondent No.1 is directed to take a decision on the submission dated 6.7.2015 as referred in the impugned communication dated 28.4.2016.
- (iii) Respondent No.1 shall also consider the representation filed by the applicant for getting appointment on compassionate ground dated

1.4.2016 with proper perspective afresh, without being influenced by any of the observations made in this order. It is further directed that the representation shall not be rejected only on the ground that his mother's name has already been deleted from the wait list of candidates to be appointed on compassionate ground and that there is no provision for substitution of the name.

- (iv) The decision shall be taken considering various Circulars in the field as regards appointment on compassionate ground. Said decision shall be taken within **two months** 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)