

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.952/2017.** (S.B.)

Suraj Subhashrao Bhende,  
Aged about 24 years,  
Occ-Nil,  
R/o Hanvatpura, Tq. Achalpur,  
District-Amravati.

**Applicant.**

**-Versus-**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-400 032.
- 2) The Superintendent of Police,  
Amravati.

**Respondents**

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Shri N.R. Saboo, the learned counsel for the applicant.  
Shri A.M. Ghogre, the learned P.O. for the respondents.

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

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**ORAL ORDER**

(Passed on this 12<sup>th</sup> day of February 2019.)

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

2. From the facts on record, it is clear that the applicant's father Subhashrao Bhende was working as a Constable in the office of respondent No.2 and died on 19.11.2002. Admittedly, after his death, the applicant's mother applied for appointment on compassionate ground and her name was included in the wait list of candidates to be appointed on compassionate ground. Subsequently, the applicant's mother applied for substitution of name of the applicant after the applicant became major and name of the applicant was taken on wait list in place of his mother. The applicant's name was at Sr. No. 23 in the wait list and he was also called for interview. However, he was at the bottom of the list. Prior to that on 9.5.2003, applicant's request for appointment on compassionate ground was rejected on the ground that there was no provision for substituting the name in the wait list. Being aggrieved by the said communication, the applicant preferred the O.A. No. 382/2013 before this Tribunal and in the said O.A., this Tribunal was pleased to pass the order on 31.3.2017. Final order passed in the said O.A. is as under:-

- “(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.”

3. Subsequently, the applicant was called for interview as already stated and vide order dated 24.7.2017 (Page 61), applicant's name was rejected and not only that, his name has also been deleted from the wait list. Applicant's name was rejected on the following grounds:-

“1.आपली आई श्रीमती इंदिरा भोंडे यांचे नावाची नोंद वर्ग ४ चे अनुकंपा प्रतीक्षा यादीमध्ये करण्यात आली होती. श्रीमती इंदिरा भोंडे यांना वर्ग ४ चे नोकरी करिता दि. १३.८.२००५ रोजी हजर राहण्याबाबत कळविण्यात आले व त्या दि. १३.८.२००५ रोजी हजर झाल्या असता त्या वर्ग ४ च्या पदासाठी इच्छुक आहे का असे विचारणा करण्यात आली असता त्यांनी कोणताही प्रतीसाद दिला

नाही. यावरून असे निदर्शनास येते कि, त्यांना नोकरीची आवश्यकता नाही.

२. श्रीमती इंदिरा भोंडे यांनी दि. ५.२.२०११ रोजी पोलीस अधीक्षक कार्यालयात मुलाचे १८ वर्ष पूर्ण झाल्याने अनुकंपा तत्वावर यादीमध्ये नाव नोंदवून घेऊन नोकरी मिळणेबाबत अर्ज सादर केला होता. परंतु शासन निर्णय, सामान्य प्रशासन विभाग, क्र. अकंपा-१००४/प्र.क्र.५१/२००४/आठ दि. २२.८.२००५ अन्वये काही कालावधी उलटून गेल्यावर अनुकंपा तत्वावर नियुक्ती अनुज्ञेय राहत नाही.

३. तसेच, शासन निर्णय क्र. अकंपा-१००४/ प्र.क्र. ५१/ २००४/आठ दि. २२.८.२००५ नुसार अनुकंपा तत्वावरील नियुक्ती हा कर्मचाऱ्याच्या कुटुंबाचा वारसा हक्क होत नाही. म्हणजेच प्रतीक्षा सूचीतील नाव बदलण्याची तरतूद सध्याच्या धोरणात नाही.

४. आपल्या कुटुंबियांची मालमत्ता दायित्व इत्यादी बाबत पडताळणी केली असता आपल्या कुटुंबियांची परिस्थिती हलाकीची नसून ठीक आहे.

५. श्रीमती इंदिरा भोंडे यांचे नावाची नोंद वर्ग ४ चे अनुकंपा प्रतीक्षा यादीमध्ये करण्यात आली होती. परंतु त्यांची जन्म तारीख १६.६.१९६५ असल्याने त्यांचे वय ४० वर्ष व ४५ वर्षांपेक्षा जास्त झाल्याने दि. २२.८.२००५ व दि. ६.१२.२०१० च्या शासन निर्णयामधील निर्देशान्वये त्यांचे नाव परीक्षा यादीमधून नियमाप्रमाणे कमी करण्यात आले आहे."

4. It is material to note that so far as the grounds at Sr. Nos. 1 to 3 and 5 are concerned, these aspects have also been considered while dealing with the case in O.A. No. 382/2013 and after considering the said aspects, this Tribunal was pleased to direct the respondents to consider the applicant's claim on its own merits and, therefore, it was obligatory on the part of the respondents only to

consider as to whether the applicant is fit to be appointed on compassionate ground and whether the financial condition of the applicant is so deteriorating so that it is necessary to appoint him on compassionate ground. However, instead of considering this aspect only, so many aspects have been considered which are already dealt with by this Tribunal in O.A. No. 382/2013.

5. The learned counsel for the applicant submits that, he was called for interview and some information has been collected as regards his financial condition. Information in this regard is at Annexure A-11 (Pages 59 and 60), from which it seems that the applicant own one acre land and financial condition of his family seems to be okay. It is also stated that the applicant's elder sister Sou. Deepali Akotkar is in Police department from 2007. However, admittedly she seems to be married.

6. From the wait list of candidates to be appointed on compassionate ground, it seems that there is a list of 23 candidates and the applicant stands at Sr. No.23. The list is at page Nos. 27 to 29 (both inclusive). It seems that alongwith the applicant, some candidates were called for interview and seven persons have been selected as per seniority and a last candidate selected is at Sr.

No. 14. Admittedly, the candidates from Sr. Nos. 15 to 23 are not considered. Admittedly, the applicant's name is at the end of the list at Sr. No.23. Once the name of the applicant has already been taken on wait list of candidates to be appointed on compassionate ground and it was at Sr. No.23 and only 14 persons have been considered for selection as per seniority, question of deleting the name of the applicant from the wait list of candidate, does not arise. In such circumstances, the impugned communication mentioning that since the applicant's mother's name was deleted, name of the applicant has also been deleted from the wait list, is not legal and proper. At the most, the respondents should have intimated the applicant that since he stands at the bottom of the wait list of persons to be appointed on compassionate ground and since some senior candidates are yet to be appointed, the name of the applicant cannot be considered at this juncture. The intimation vide impugned communication dated 4.7.2017 that the name of the applicant has been deleted from the wait list, is thus illegal.

7. In the reply affidavit, it has been stated that the applicant's name was to be considered on its own merits and as per various circulars in the field, appropriate decision was to be taken. It is further stated that the competent authority is entitled to consider

whether the circumstances at the time of death of an employee is still existing or not. There can be no quarrel on this point. It is not only the discretion of the respondents, but it is their duty to consider as to whether the prevailing circumstances at the time of death of an employee are in existence, while considering appointment on compassionate ground. It was never directed that the applicant's claim shall be considered without considering the seniority of other candidates. As per the rules and scheme framed for appointment on compassionate ground, the candidate on the wait list is to be very much there till he crosses the age of 45 years and, therefore, there was absolutely no reason to delete the name of the applicant from the wait list till he attains the age of 45 years. Whenever his case comes for consideration for appointment on compassionate ground before the respondents authorities as per the seniority in the list, the respondents will be at liberty to consider this aspect of appointment i.e. whether the condition still prevails or not. In view of discussion in foregoing paras, it is thus crystal clear that the communication dated 4<sup>th</sup> July 2017 (A-12) is not legal and proper and the same is required to be quashed and set aside. Hence, I proceed to pass the following order:-

**ORDER**

- (i) The O.A. is allowed in terms of prayer clause 9 (i) and (ii) of the O.A.
- (ii) The respondents shall consider the case of the applicant as per his seniority in the wait list whenever he will be entitled to be considered.
- (iii) The respondents will be at liberty to consider all aspects of appointment on compassionate ground as per various circulars in the field.
- (iv) No order as to costs.

(J.D.Kulkarni)

Vice-Chairman(J)

Dt. 12.2.2019

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