

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 97 of 2020 (SB)

Akash S/o Haribhau Madse,
aged about 33 years, Occ. Nil,
R/o Ganesh Nagar, near Gajanan Maharaj Mandir,
Wadgaon Road, Yavatmal, Tq. & Dist. Yavatmal.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Home Department, Mantralaya,
Mumbai-32.
- 2) Superintendent of Police (Establishment),
Yavatmal.

Respondents.

Shri N.S. Warulkar, Advocate for the applicant.
Shri A.M. Khadatkhar, P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Member (J).**

Dated :- 07/12/2021.

JUDGMENT

Heard Shri N.S. Warulkar, learned counsel for the applicant and Shri A.M. Khadatkhar, learned P.O. for the respondents.

2. The father of applicant Shri Haribhau Vishwanath Madse was working as Police Constable. He died on 5/2/1997 while working as Police Constable. The mother of applicant and his grandmother had submitted applications on 1/10/2002, 10/11/2004 and 6/10/2005 in the office of respondent no.2 for considering any of the legal heirs under compassionate scheme.

3. The respondents have not considered the application of the mother of applicant at the relevant point of time and rejected on 15/3/2019. Therefore, the applicant prayed for direction to the respondents to include his name in the waiting list from the date 1/10/2002 and provide appointment on compassionate ground as per his qualification.

4. The application is strongly opposed by the respondents. The fact in reply-affidavit of respondent no.2 has stated that the applicant had filed application belatedly after attaining the age of majority in the year 2002. Since then he did not file application along with the consent letter of other legal heirs of deceased employee. Due to long delay, he cannot claim service on compassionate ground and the service on compassionate ground is not heritable. It is also submitted that the mother of applicant was Govt. employee and therefore service on compassionate ground cannot be given to the applicant.

5. Heard learned counsel for the applicant. He has pointed out the decision of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.2274/2017 and decision of this Tribunal in O.A. 946/2017.

6. The learned P.O. has submitted that the applicant is not entitled for any compassionate appointment as the applicant has not

filed any application immediately after attaining the age of majority. He has pointed out the G.R. dated 21/9/2017.

7. The first ground raised by the respondents that the mother of applicant was in Govt. service and therefore compassionate appointment cannot be provided to the applicant. The applicant has stated in para-4 of the rejoinder that he has two brothers and they are residing separately with their families and mother Smt. Asha H. Madse. The applicant is not having any income or job and he is residing separately. The Hon'ble Bombay High Court in Writ Petition No.2274/2017 held that younger brother who is residing separately from the earning members of the family, he is entitled for compassionate appointment.

8. The learned P.O. has submitted that the applicant personally not made any application. The documents filed on record clearly show that the mother of applicant from the year 1998 till 2019 made several applications stating that service on compassionate ground be provided to her son, but the respondents have not replied on it. On 15/3/2019, the respondents have rejected the application of applicant on the ground of delay. The G.R. says that whenever any Govt. employee dies, then it is duty for the establishment to inform the legal heirs of deceased to apply on compassionate ground. It is also mentioned in the said G.R. to help the family members of deceased.

The learned P.O. has submitted that the application was not supported by the consent letters of other family members. It was duty on the part of respondents authority to point out to the applicant / his mother to submit the application in prescribed form or along with the consent letters of other family members. Moreover, the application is not rejected on that ground, the application is rejected only on the point of delay. It is pertinent to note that in all the applications from the years 1998 to 2019, the mother of the applicant has specifically stated that service on compassionate ground be provided to her unemployed son, then it was duty of the respondents to point out the lacuna and direct the mother of applicant to file separate application of the applicant after attaining the age of majority, but no such information was given by the respondents. The guidelines are given in the G.R., which show that the employer/ authority should have guided to the family members of deceased employee.

9. In view of the above cited Judgment, the service on compassionate ground cannot be denied on the ground that the applicant's mother was in the Govt. service. The mother of applicant moved applications from time to time in above cited O.A. decided by this Tribunal, it is held that the mother can apply for compassionate appointment of her son. The representations of mother of applicant dated 7/1/1998, 1/10/2002, 25/2/2003, 15/6/2006, 24/9/2008 and

6/8/2019 show that in all applications the mother of applicant prayed to provide compassionate appointment to her sons. Not a single applications were replied by the respondents.

10. The respondent no.2 on 24/8/2017 recommended to the respondent no.1 to consider the name of applicant for compassionate appointment. The respondent no.1 without considering the details in the recommendation, rejected the prayer of the applicant on the ground of delay, only stating that the compassionate appointment cannot be granted as a heritable right.

11. Looking to the submissions putforth by learned counsel for the applicant and learned P.O., the following order is passed –

ORDER

- (i). The O.A. is allowed.
- (ii). The name of the applicant be included in the waiting list for providing compassionate appointment.
- (iii). The respondents are directed to provide compassionate appointment as per the qualification and as per the rules.
- (iv). No order as to costs.

Dated :- 07/12/2021.

**(Justice M.G. Giratkar)
Member (J).**

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 Member (J).

Judgment signed on : 07/12/2021.

Uploaded on : 09/12/2021.