

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.222 OF 2021**

**DISTRICT: THANE  
SUBJECT: APPOINTMENT ON  
COMPASSIONATE GROUND**

- 1) Smt. Namrata Nandkumar Bhosale, )  
Age: 48 years, Occ: Homemaker, )  
R/at. Pancharatna Apartment, D 10, Majarli Rd, )  
Datta Chowk, Badlapur (W), Dist: Thane. )
- 2) Mr. Karan Nandkumar Bhosale, )  
Age: 22 years, Occ: Job, )  
R/at. Pancharatna Apartment, D 10, Majarli Rd, )  
Datta Chowk, Badlapur (W), Dist: Thane. ) ... **Applicant**

**Versus**

- 1) State of Maharashtra, )  
Through its Secretarial Minister, )  
Ministry of Home Department, )  
Mantralaya, Mumbai 400 032. )
- 2) The Commissioner of Police, )  
For State of Maharashtra, Thane. )... **Respondents**

Ms. Vaishnavi M. Gujarathi, learned Advocate holding for Dr. U.P. Warunjkar, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 03.12.2021.

**JUDGMENT**

1. Heard Ms. Vaishnavi M. Gujarathi, learned Advocate holding for Dr. U.P. Warunjkar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This O.A. was taken up for admission on 26.11.2021 and Tribunal has raised query about the maintainability of the O.A. since deceased Government servant was terminated from service before his death, and therefore, the question of appointment on compassionate ground to his heirs could not arise. However, on the request of learned Advocate for the Applicant matter was adjourned to show how O.A. is maintainable.

3. The facts giving rise to the O.A. are as under.

Deceased Government servant namely Shri Nandkumar Bhosale was Police Constable. Applicants are his widow and son respectively. Deceased Shri Nandkumar Bhosale was suspended by Commissioner of Police, Thane on 02.05.2006 on the ground of registration of offence u/s. 392,452,342 r/w. 34, 170(1) of I.P.C. and u/s 3(25 (a) of Arm Act. Later Commissioner of Police, Thane by order dated 08.05.2006 terminated the Applicant from service exercising powers under Article 311(2)(b) of The Constitution of India with immediate effect. Thereafter he died on 19.07.2009.

4. Charge-sheet vide criminal case No.666/2006 was filed against deceased and co-accused. However since Shri Nandkumar Bhosale died during the pendency of criminal case, trial abetted against him and was continued against the remaining co-accused. Judicial Magistrate, First Class, Ulhasnagar by Judgment dated 11.06.2014 acquitted co-accused.

5. Perusal of record reveals that on 15.01.2015 the Applicants sent application for Appointment on Compassionate Ground to the Respondent No.2. However they did not receive any communication. Thereafter made representations to the Police Commissioner, Thane. It is in response of it by communication dated 19.03.2020 Applicants were informed that Appointment on Compassionate Ground is permissible to the heirs of deceased who died in harness only but in present case deceased Government servant was not in service at the time of death,

and therefore, they are not entitled for Appointment on Compassionate Ground. In O.A. the Applicants have challenged this communication dated 19.03.2020.

6. All that learned Advocate for the Applicant sought to contend that had deceased Government servant was alive he too would have been acquitted by learned J.M.F.C., and therefore, being exonerated from the charges by Court he would have been held entitled for reinstatement in service. On this line of submission it was tried to contend that the Applicants are entitled to Appointment on Compassionate Ground.

7. As noted above, indeed deceased Shri Nandkumar Bhosale was terminated from service under Article 311(2)(b) of Constitution of India, in view of registration of serious crime against him. Article under 311(2)(b) empowers appointing authority to dismiss or remove person from service if authority is satisfied that for some reasons, to be recorded, that it is not reasonably practicable to hold such inquiry. In other words under Article 311(2) Civil Servant can be dismissed or removed from service without holding any such inquiry. As such admittedly Shri Nandkumar Bhosale was dismissed from service and later he died on 19.07.2009. Thus when he died he was not in service. Merely because co-accused in criminal case are acquitted that *ipso-facto* does not make the Applicants entitle to contend that Shri Nandkumar Bhosale would have been acquitted and reinstated in service. This is nothing but hypothesis and conjuncture. Needless to mention in criminal case Judgment of acquittal or conviction is always based upon the evidence against particular accused. As such even if co-accused were acquitted on that basis only it cannot be said that Shri Nandkumar Bhosale would have been also acquitted.

8. Apart, fact remains that Shri Nandkumar Bhosale was dismissed from service three years before his death and that termination order has attained finality.

9. Scheme of Appointment on Compassionate Ground is applicable in cases where Government servant dies in harness. Whereas in present case Shri Nandkumar Bhosale was terminated from service which entails forfeiture of all service benefits. Therefore question of grant of Appointment on Compassionate Ground to such dismissed Government Servant wouldn't arise.

10. In view of above, I have no hesitation to conclude that O.A. is totally misconceived and not maintainable. Accordingly it is dismissed summarily.

11. No order as to costs.

Sd/-  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 03.12.2021  
Dictation taken by: N.M. Naik.