

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.254 OF 2021**

**DISTRICT : PALGHAR  
SUBJECT : COMPASSIONATE  
APPOINTMENT**

Shri Subhash Budhaji Gavit, )  
Aged 38 years, Occ. Nil, )  
R/o. A/P Pimpalshet, Tal. Jawhar, )  
Dist. Palghar. )... **Applicant**

**Versus**

- 1) The Superintending Engineer, )  
Irrigation Circle, Thane, Having office at )  
Sinchan Bhavan, Kopari Colony, )  
Thane (E) – 400 603. )
- 2) The State of Maharashtra, )  
Through Principal Secretary, )  
Water Resources Department, )  
having office at Mantralaya Mumbai-32 )...**Respondents**

**Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.**

**Smt. Archana B. Kologi, learned Presenting Officer for the Respondents.**

**CORAM : M.A. Lovekar, Member (J)**

**RESERVED ON : 02.05.2022.**

**PRONOUNCED ON : 06.05.2022.**

**JUDGMENT**

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. Case of the Applicant is as follows:-

Shri Budhaji Gavit, father of the Applicant, died in harness on 24.04.2009. He was working in the Respondent – Department as a Chowkidar. On 30.06.2009 the Applicant made an application (Exhibit D) for appointment on compassionate ground. He submitted documents including his driving license. By letter dated 29.09.2009 (Exhibit C), Deputy Executive Engineer recommended him for group 'C' post of Driver. In response to his application under the R.T.I. Act he came to know that one Mr. Balu Manoj Pedgaonkar was appointed to the post of driver on compassionate ground on 03.07.2019 (Exhibit D). He obtained copy of letter dated 02.01.2020 (Exhibit E) wherein Deputy Executive Engineer had forwarded a positive recommendation to Respondent No.1 to include his name in the list of group 'C' post. In O.A. No.202/2020 filed by him, this Tribunal, while disposing the Application on 29.10.2020 (Exhibit F), directed Respondent No.2 to pass appropriate order on the proposal forwarded by Respondent No.1 for inclusion of the name of the Applicant in the waiting list for the post of driver within two weeks. In response to the communication (Exhibit G collectively) the Applicant submitted certificate of driving experience (Exhibit H collectively) to Respondent No.1. Respondent No.2 rejected his Application by the impugned communication (Exhibit A) dated 20.11.2020. Hence, this Application.

**Contentions of the Applicant:-**

- A) The Applicant was admittedly holding valid and effective driving license of LMV w.e.f. 31.03.2006. He had renewed it from time to time.
- B) The license was valid for three years from the date of issue i.e. 31.03.2006. By letter (Exhibit I) the Applicant communicated to Respondent No.1 on 28.02.2017 that renewal of his driving license was now due on 29.08.2018.

- C) On the date of the Application i.e. on 30.06.2009 the Applicant was having requisite driving experience of three years. Therefore, his placement in the list of candidates eligible for group 'D' post cannot be sustained.
- D) On 29.08.2018 the Applicant renewed his license. Now it is valid till 29.08.2022.
- E) Legitimate claim of the Applicant cannot be allowed to be defeated on a mere technicality.

**Reply of Respondent Nos.1 & 2**

- A) Driving license submitted by the Applicant (Exhibit R-1) was valid only till 30.03.2009. It was not valid on the date of the Application i.e. 30.06.2009.
- B) With his Application the Applicant did not submit certificate of driving experience as stipulated by G.R. dated 14.11.1980. (Exhibit R-2).
- C) The impugned order is founded on G.R. dated 14.11.1980 which, *inter-alia*, stipulates possession of requisite experience and submission of experience certificate.
- D) In revised guidelines dated 21.03.2013 (Exhibit R-4) it is stipulated-
- “गट “क” संवर्गाच्या अनुकंपा प्रतिक्षासुचीवर नाव समाविष्ट करताना एखादा उमेदवार शालांत परिक्षा उत्तीर्ण असल्यास व त्या उमेदवाराने प्रत्यक्ष नियुक्ती देतेवेळी पदवी/पदविका प्राप्त केली असल्यास सदर उमेदवारास त्याच्या शैक्षणिक अर्हतेप्रमाणे गट “क” संवर्गातील उच्चतम पदावर (वरिष्ठ लिपिक, अनुरेखक, प्रयोगशाळा सहाय्यक, संदेशक, भंडारपाल इत्यादी) नियुक्ती देणे अभिप्रेत आहे. तथापि, गट “ड” संवर्गाच्या अनुकंपा प्रतिक्षा सूचीवरील एखादया उमेदवाराने प्रत्यक्ष नियुक्तीच्यावेळी गट “क” संवर्गासाठी आवश्यक असणारी शैक्षणिक अर्हता धारण केली असली तरी त्यास गट “ड” संवर्गातच नियुक्ती देण्याची कार्यवाही करण्यात यावी.”
- E) Name of the Applicant came to be included in the list of the candidates who were found eligible / suitable for appointment to class IV / group 'D' post (Exhibit R-5).

- F) The impugned order is in consonance with G.Rs dated 14.11.1980, 22.08.2005, 21.03.2013 (Exhibit R-6 collectively).
- G) On the date of submitting the application, the Applicant did not possess valid and effective driving license nor did he furnish certificate of experience. Both these circumstances show that the impugned order would not be open to attack.

3. In addition to agitating the grounds to which I have already adverted, learned Advocate Shri A.V. Bandiwadekar heavily relied on contents of letter dated 02.01.2020 written by the Department to the Government in respect of giving an appointment to the Applicant on the post of driver on compassionate ground. Relevant part of this letter is as follows:-

“३. श्री.सुभाष बुधाजी गावीत यांचा मूळ अर्ज व प्रस्ताव वाहन चालक पदाकरिता असला तरी दिनांक ३०.०६.२००९ सादर केलेल्या अर्जाप्रमाणे प्रस्तावासोबत जोडलेल्या वाहन चालक परवान्याची मुदत दिनांक ३०.०३.२००९ रोजी संपुष्टात आलेली असल्याकारणाने त्यांचे नाव तत्कालीन सक्षम प्राधिकारी यांनी “ड” संवर्ग नोंदवही नोंदविले असावे असे निदर्शनास येते.

४. सदरस्थितीत सादर केलेल्या कागदपत्रानुसार श्री.सुभाष बुधाजी गावीत यांचेकडे दिनांक ३०.०३.२००६ ते २९.०८.२०१८ पर्यंतचा वाहन चालवण्याचा परवाना असल्याचे निदर्शनास येते. त्यामुळे ते अर्जाच्या दिनांकास “क” संवर्गातील वाहन चालक पदाकरिता पात्र होते.

५. वरील प्रकरणी श्री.सुभाष बुधाजी गावीत यांनी यापूर्वी कोणताही पत्रव्यवहार केल्याचे निदर्शनास येत नसून, त्यांनी दिनांक २९/१२/२०१६ रोजी अर्ज करून त्यांचे नाव ड संवर्ग अनुकंपा नोंदवहीत नोंदविलेले बाबत अक्षेप घेऊन वाहन चालक परवाना असल्याने त्यांच्या नावाची नोंद ‘क’ संवर्ग अनुकंपा प्रतिक्षासूचीवर करण्याबाबत विनंती केली होती. त्यानुसार त्यांना या कार्यालयाचे पत्र क्र. टापाम/अनुकं-२०१७/प्र.क्र.८/आ-१/६१०, दिनांक १८/०२/२०१७ अनुसार एकादा अनुकंपा प्रतिक्षासूचीमध्ये ड संवर्गाच्या प्रतिक्षायदीवर नोंद घेतल्यानंतर नांव नोंदविण्याचे आदेश नसल्याचे कळविलेले होते.

७. जलसंपदा विभाग, शासन निर्णय क्र.सुमात-२.१२/प्र.क्र.३०६/२०१२/आ (अतांत्रिक) दिनांक २१.०३.२०१३ अन्वये मुददा क्र.७ मध्ये अनुकंपा नियुक्तीबाबत गट ड संवर्गाच्या अनुकंपा प्रतिक्षासूचीवरील एखाद्या उमेदवाराने प्रत्यक्ष नियुक्तीच्या वेळी गट क संवर्गासाठी आवश्यक असणारी शैक्षणिक अर्हता धारण केली असलीतरी त्यास गट ड संवर्गातच नियुक्ती देण्याची कार्यवाही करण्यात यावी, असे निर्देश आहेत.

वरील प्रकरणांवरून श्री.सुभाष बुधाजी गावीत यांचा वाहन चालविण्याचा परवाना अर्जाच्या दिनांकाच्या पूर्वीपासून नियमित असल्याने ते वाहन चालक पदाकरिता पात्र ठरतात. त्यामुळे त्यांचे नाव अर्जाच्या दिनांकापासून (२९.०९.२००९ पासून) क संवर्ग अनुकंपा जेष्ठतासूचीत वाहन चालक पदाकरिता समाविष्ट करणे उचित ठरेल. तरी याबाबत पुढील मार्गदर्शन व्हावे, ही विनंती.”

It was argued by Shri A.V. Bandiwadekar, learned Advocate for the Applicant that letter (Exhibit E) was issued from the office of Respondent No.1. Respondent No.1 was in fact the competent authority to give appointment for Class III / Group ‘C’ post and for this reason reference to the Government (Exhibit R-2) ought not to have been made. The reference referred to in the preceding Para was answered by Respondent No.2 by passing the impugned order (Exhibit A). The impugned order states-

“परंतु श्री.गावीत यांनी दि.३०.०९.२००९ रोजी अनुकंपा तत्वावर नियुक्ती संदर्भात अर्ज/कागदपत्रे दाखल करताना अर्जासोबत जोडलेल्या वाहन चालक परवान्याची मुदत दिनांक ३०.०३.२००९ रोजी संपुष्टात आली होती. त्यामुळे त्यांचे नाव वर्ग-क वाहन चालक पदाकरिता अनुकंपा प्रतिक्षायुक्तीत समावेश न करता शैक्षणिक अर्हतेनुसार गट-ड संवर्गाच्या अनुकंपा प्रतिक्षा यादीमध्ये त्यांच्या नावाचा समावेश करण्यात आला आहे. एखादया उमेदवाराचे नाव एक संवर्गाच्या प्रतिक्षायुक्तीमध्ये समाविष्ट केल्यानंतर त्यांचे नाव बदलून दुस-या संवर्गाच्या प्रतिक्षायुक्तीमध्ये समाविष्ट करण्याची शासन धोरणात स्वयंस्पष्ट तरतूद नाही. त्यामुळे तत्काळ उपलब्ध कागदपत्रांद्वारे श्री.गावीत यांचा समावेश “ड” वर्गाच्या प्रतिक्षायुक्तीत घेण्याचा निर्णय उचित आहे.”

4. The Respondents have, inter-alia, relied on concluding portion of Clause 7 of G.R. dated 23.03.2013. This portion of Clause 7 states that if any candidate acquires educational qualification making him eligible for appointment in Group ‘C’ post, after inclusion of his name in the candidates eligible for giving appointment in Group ‘D’ post, such candidate shall be given an appointment on Group ‘D’ post.

5. According to the Applicant, the Respondents should not have resorted to nit-picking by confusing “valid license” with “effective license”. So far as driving license is concerned the words “Valid and effective” cannot be separated. They must be read together.

6. G.R. dated 14.11.1980 relied upon by the Respondents *inter-alia* states that a candidate, in order to be eligible for being appointed to the post of driver, should possess effective driving license to drive heavy vehicle or Motor Car or a Jeep under Motor Vehicles Act, 1939 and in addition he should possess experience of not less than three years of driving motor vehicle other than motor cycle. Specific contention of the Respondents is that these conditions were not fulfilled by the Applicant on the date of application i.e. 30.06.2009. This assertion of the Respondents could not be effectively refuted by the Applicant.

7. On behalf of the Applicant reliance is placed on **“Rashmi Metaliks Limited and another V/s. Kolkata Metropolitan Development Authority and Others (2013) 10 SCC 95”**. In this case it is held that the impugned order must be examined with reference to the ground set-out in the order itself on which it is based and not with reference to any fresh ground brought subsequently. On the basis of these observations an argument is sought to be advanced that the earlier communication dated 02.01.2020 (Exhibit E) by which the appointing authority had concluded that the Applicant was eligible for being appointed to the post of driver could not have been departed from while passing the impugned which concluded otherwise. I do not find merit in this submission. The impugned order referred to the fact that validity of driving license of the Applicant had come to an end on 30.03.2009 i.e. before he had submitted the Application on 30.06.2009 for giving him an appointment on compassionate ground. The impugned order also refers to the relevant part of G.R. dated 21.03.2013 which stipulates that notwithstanding subsequent acquisition of qualification to be eligible for group ‘C’ post, candidate whose name is included in the list of group ‘D’ post, shall be given the appointment on group ‘D’ post.

8. The Applicant also relied on **“Yogita w/o. Shivsing Nikam v/s. State of Maharashtra and Others 2022 (2) Mh.L.J. 370 (Bombay High Court)”** In this case it is held that compassionate appointment is

an exception to rule of recruitment. So far as this ratio is concerned, it may be observed that appointment on compassionate ground is governed by certain Rules and guidelines. It would follow that these Rules and guidelines will have to be adhered to while giving an appointment on compassionate ground. In the instant case the Respondents have relied on stipulations in G.R. dated 14.11.1980 and G.R. dated 21.03.2013. These preconditions have not been fulfilled by the Applicant.

9. The Applicant has also relied on **“N.C. Santhosh v/s. State of Karnataka & Others (2020) 7 Supreme Court Cases 617”**. In this case the point in issue and answer to it are stated as follows in Para 19 of the judgment-

*“19. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.”*

These observations will not in any way assist the Applicant. They are clearly distinguishable on facts which have been dealt with at length hereinabove.

10. In the instant case validity period of driving license held by the Applicant expired on 30.03.2009. He applied for appointment on 30.06.2009. On this day his driving license was not valid and effective. He renewed it only on 22.09.2018. Driving license for transport vehicle is shown to have been issued on 20.11.2009. It does not appear to have been renewed at any subsequent point of time. Besides, he did not furnish certificate/s showing that he possessed driving experience of not less than three years, while issuing the communication dated

02.01.2020 (Exhibit E) most of these relevant details were either missed or not properly taken into account.

11. For the reasons discussed so far I find no merit in the Application. Hence, the Original Application is dismissed with no order as to costs.

**Sd/-**  
**(M.A. Lovekar)**  
**Member (J)**

Place: Mumbai  
Date: 06.05.2022  
Dictation taken by: N.M. Naik.  
Uploaded on: \_\_\_\_\_