

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1013 OF 2017

DISTRICT : PUNE

Shri Prateek Shirish Gaikwad.)
Age : 26 Yrs., Occu.: Nil,)
R/o. C/o. Smt. K.T. Owhal, Aundh Road,)
Patil Wadi, Kirkee, Pune – 3.)...**Applicant**

Versus

1. The Joint Director.)
Sports & Youth Services Department))
M.S, Pune having office at)
Chatrapati Shivaji Sports Complex,)
Balewadi-Baner, Pune – 411 045.)
2. The State of Maharashtra.)
Through Principal Secretary,)
School Education & Sports Dept.,)
Having office at Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 12.12.2019

JUDGMENT

1. The issue posed for consideration in the present Original Application is whether the rejection of application made by the Applicant for grant of compassionate appointment by orders dated 13.05.2016 and 17.11.2016 is legal and valid.

2. Shortly stated facts giving rise to this application are as follows:-

The Applicant's mother viz. Ushabai was Junior Clerk in the office of Respondent No.1 – Joint Director, Sports and Youth Service Department, Pune and died in harness on 11.06.2011 leaving behind her the Applicant, daughter and husband. After the death of mother, the Applicant made an application on 05.12.2011 for appointment on compassionate ground. It appears that the summary enquiry was conducted by the Department and it was revealed that the father of the Applicant viz. Shirish Gaikwad is serving as Superintendent in the Office of Zilla Parishad, Pune, and therefore, the financial condition of the family was not such so as to term it financially distressed. Therefore, by order dated 13th May, 2016, the Respondent No.1 rejected the application of the Applicant. He made representation to the Government which also stands rejected by order dated 17th November, 2016. These orders are challenged by the Applicant in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant assailed the impugned orders mainly on the following grounds :-

(a) Though the father of the Applicant was serving on the post of Superintendent in Zilla Parishad after the death of mother, the Applicant started living with maternal uncle as the

father neglected them, and therefore, the ground that the father is in service and was taking care of the family is incorrect.

(b) In terms of G.R. dated 26th October, 1994, there is no ceiling for the income of the family for appointment on compassionate ground, and therefore, only because the father was in service at the relevant time it cannot be the ground to reject the claim of the Applicant.

(c) The summary enquiry allegedly conducted by Respondent No.1 is not fair as no opportunity of participation in the enquiry was given to the Applicant.

4. Per contra, the learned Presenting Officer Smt. A.B. Kololgi submits that the Applicant is guilty of suppression of material fact. She has pointed out that in Affidavit, the Applicant made a blatant false statement that nobody from family is in service and this aspect itself is sufficient to doubt the genuineness of the claim made by him. She has further pointed out that the Applicant has later developed story that he is living with his maternal uncle and father is not maintaining him only to suit the claim and the same is exposed from the Affidavit filed by the Applicant wherein the address of the Applicant's father as well as Applicant himself is same.

5. In view of submissions advanced at the Bar, the question is whether the Applicant is entitled for appointment on compassionate ground and the impugned order can be faulted with.

6. To begin with, let us see the Scheme and object of provision for appointment on compassionate ground. It is intended to alleviate the sufferings of the family of the deceased because of loss of sole bread earner of the family. As such, it is by way of concession, the appointment on compassionate ground are being made available where the family is in financial distress and need immediate financial help for survival.

7. True, by G.R. dated 26th October, 1994, it was made clear that there will be no ceiling for the income of deceased family for the appointment on compassionate ground. However, by the said G.R, it is made mere clear that the appointing authority needs to consider that where some of the member of the family is already in service, then it should be seen as to whether the said person is financially supporting to the rest of the family and to find out whether the family is really financially distressed. It would be appropriate to reproduce Para No.7(a)(b) of G.R. dated 26th October, 1994, which is as follows :-

“७.(अ) अनुकंपा तत्वावर नियुक्ती करीता मासिक उत्पन्नाची तसेच ठोक रकमेची मर्यादा यापुढे राहणार नाही.

(ब) अनुकंपा तत्वावर नियुक्ती देताना असे प्रस्ताव शासन सेवेतील रोजगारावर असलेली मर्यादा योजनेच्या मागील भूमिका लक्षात घेउन जो कर्मचारी मृत झाला त्यांच्या कुटुंबियांना तात्काळ उद्भवणा-या आर्थिक पेचप्रसंगावर मात करण्याच्या उद्देशाने विचारात घ्यावेत.”

8. Suffice to say, by G.R. dated 26th October, 1994, it was emphasized that summary enquiry should be made to see that the Scheme for appointment on compassionate ground is not exploited on false pretext that the other members of the family is not taking care of the family.

9. Now, turning to the facts of the present case, there is no denying that the Applicant's father was serving as Superintendent in Z.P, Pune. Significant to note that this aspect is suppressed by the Applicant in his Affidavit submitted at the time of making application for appointment on compassionate ground. In Affidavit dated 20th November, 2015 (Page Nos. 43 and 44 of Paper Book), he made a statement that none from his family [out of brother, father or sister] is in service of Government or semi-Government. As such, it is explicit that the Applicant has suppressed this aspect while making declaration on Affidavit, for which in fact, the Applicant has invited liability of Criminal Prosecution for perjury.

10. Be that as it may, there being admitted position that the Applicant's father was serving as Superintendent, in Z.P, it was incumbent on the part of Applicant to establish conclusively that the father is not supporting him and his sister. True, the Applicant sought to contend that, after the death of father, he started living separate with the maternal uncle, as the father was not taking care of him. However, this aspect does not find place anywhere in Affidavit submitted by the Applicant while seeking appointment on compassionate ground. Had it was really so, then this aspect would have figured in the Affidavit.

11. During the course of argument, the learned Advocate for the Applicant has shown a copy of application dated 27.07.2011 made by the Applicant for appointment on compassionate ground wherein there is some reference that he and his sister is living with maternal uncle. It is taken on record and marked letter 'X'. However, surprisingly in his application also, there is no whisper that his father is not taking care of his family, and therefore, he is need of service. Therefore, the story now sought to be developed by the Applicant that his father had left him, and therefore, he is living separate does not inspire any confidence.

12. Indeed, in Affidavit (Page No.44 of P.B.) sworn before Notary on 23.11.2015, the Applicant's address has shown as 88, Ashanagar Colony, Shivaji Housing Society, Pune tallies with the address of Applicant's father mentioned in Death Certificate, which is at Page No.81 of P.B. This aspect again belies the claim of the Applicant that he is living separate from his father.

13. It is further explicit from the record that the Applicant has tried to create evidence by inserting his name in Ration Card, which is at Page No.53. The said Ration Card is of the maternal uncle of the Applicant wherein the name of the Applicant is inserted on

20.05.2015. Whereas, the Applicant's mother died on 11.06.2011 and there is nothing to establish that he is really living separate from his father. On the contrary, it is obvious that he tried to develop a story of separate residence from father only to project the claim of appointment on compassionate ground.

14. Interestingly, the Applicant has not supplied the details of the salary of his father. However, in Rejoinder, he tried to explain that his father is getting very less pension, which is insufficient for his own survival. Material to note that, in Rejoinder, the father is shown getting monthly pension of Rs.19,000/- as an average. His father obtained voluntary retirement in July, 2016 and now getting pension. As such, when he is getting pension amount of Rs.19,000/- p.m, his salary in 2011 must be at least more than double of the pension of Rs.19,000/- mentioned in Rejoinder.

15. In view of above, it cannot be said that Applicant's family was financially distressed and there was nobody in the family to take care of the Applicant. His father was serving as Superintendent in Z.P, Pune. As such, this is a case where an attempt has been made to exploit the Scheme by suppressing material fact.

16. In so far as the submission of giving non-opportunity in the Enquiry conducted by the Department is concerned, all that G.R. contemplates summary enquiry and there is no such express provision of giving opportunity of hearing to the Applicant. Furthermore, in the present case, admittedly, the Applicant's father was serving on the post of Superintendent in Z.P, and therefore, the absence of opportunity of hearing to the Applicant in summary enquiry does not have any adverse effect. Therefore, the decision rendered by this Tribunal in **O.A.No.1040/2016 (Yogesh H. Mane Vs. The Commissioner of Police, Mumbai) decided on 26.04.2017**, wherein the matter was remitted back for enquiry on the point of

income of the deceased family is of no assistance to the Applicant. In that matter, there was no proper enquiry about the income of family of the deceased, and therefore, the matter was remitted back. Whereas, in the present case, admittedly, the Applicant's father was serving on the post of Superintendent drawing sumptuous salary, and therefore, reliance placed on this Judgment is misplaced.

17. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision of this Tribunal in ***O.A.381/2015 (Rahul L. Sakpal Vs. The Commissioner, E.S.I.S.) decided on 22.04.2016***, wherein the application was rejected by the respondent on the ground that the widow of deceased Government servant was getting family pension and was not in indigent circumstances. That O.A. was partly allowed on the ground that the income by way of pension to the one of the member of family of deceased cannot be the basis to deny the benefit of appointment on compassionate ground. There could be no dispute for this proposition, as the said pension is intended to meet immediate financial hardship suffered by the heirs of the deceased employee. Whereas, in the present case, the Applicant's father was in regular employment on the post of Superintendent, Z.P. drawing sumptuous salary, and therefore, the reliance placed on this decision is misplaced.

18. As stated above, the very concept of giving compassionate appointment is to tide over the financial difficulties faced by the family of the deceased due to death of sole bread earner of the family, as in that event, the family would be in financial distress. Whereas, in the present case, the Applicant's father was in regular service on the post of Superintendent in Z.P. and drawing sumptuous salary, and therefore, it cannot be said that the family of the deceased was in financial constrain. Needless to mention that the appointment on compassionate ground cannot be another source of recruitment and it

cannot be treated as a bonanza. The benefit is available to the family of the deceased where it is really in financial distress. Whereas, the facts of the present case do not disclose so, and therefore, the rejection of the claim put forth by the Applicant cannot be faulted with. The O.A, therefore, deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 12.12.2019
Dictation taken by :
S.K. Wamanse.