

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1175 OF 2019

DISTRICT : THANE

Shri Pravin Ramesh More.)
Age : 34 Yrs., Occu.: Nil,)
R/o. Room No.102, A-Wing, Man Mandir)
Apartment, Jagruti Colony, Near School)
No.14, Camp No.4, Ulhasnagar,)
District : Thane.)...**Applicant**

Versus

1. The Superintendent of Police.)
Thane Rural, Thane.)
2. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 15.11.2021

JUDGMENT

1. The Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for challenging the communication dated 16.09.2019 issued by Respondent No.1 - Superintendent of Police thereby rejecting the application dated

05.08.2019 made by the Applicant for appointment on compassionate ground after the death of his father in harness.

2. Undisputed facts giving rise to this application are as under :-

(i) Applicant's father viz. Ramesh Ranga More was Police Sub-Inspector (Group 'B' post) on the establishment of Respondent No.1.

(ii) On 24.11.2012 while he was on duty at Shahapur, he received information about one accident on Nashik-Mumbai Road, and therefore, along with staff, he went to the spot of accident where he noticed Trailer No.KA-03-B-5160 was stationery due to break down and thereby entire traffic was affected.

(iii) While he was inspecting the spot and standing on the Road, one Tempo No.MH-06-AC-9499 came in high speed from Nashik side and rammed into stationery Trailer and also dashed to the Applicant causing injuries to his left hand and both knees.

(iv) Applicant's father, therefore, lodged report of the said incident in Shahapur Police Station and in sequel, offences under Sections 279, 377, 338 were registered against Driver of Tempo.

(v) Applicant was admitted in Sayyed Hospital, Shahapur where fracture to wrist was detected.

(vi) Medical Officer, Sub-District Hospital, Shahapur issued Medical Certificate for grant of Medical Leave for three weeks.

(vii) Later, Applicant resumed duties.

(viii) Applicant was again admitted in Fortis Hospital on 14.08.2013 and treated for Metastatic Spine Disease with severe low back pain. He was treated by Oncologist and Chemotherapy was done. After treatment, he was discharged on 09.10.2013.

(ix) Applicant was again admitted in Fortis Hospital on 28.10.2013 for Cholangiocarcinoma with spinal Mets with Gastritis.

(x) However, he died on 23.11.2013 and cause of death was Septic Shock with Advance Metastatic Cholangiocarcinoma [पित्ताशयाचा कॅन्सर होता तो दुस-या अवयवामध्ये पसरत गेला व झटका येवून मृत्यु झाला]

(xi) After the death of father, the Applicant made an application on 04.02.2014 for appointment on compassionate ground requesting to treat it as a special case.

(xii) However, Respondent No.1 rejected his claim for appointment on compassionate ground by communication dated 16.04.2014 (Page No.150 of Paper Book) informing the Applicant that his father was serving in the cadre of PSI (Group 'B' Officer), and therefore, he is not entitled to appointment on compassionate ground, since it is applicable to Group 'C' and 'D' employees only.

(xiii) Applicant did not challenge the communication dated 16.04.2014 by filing judicial proceedings and it attained finality.

(xiv) However, Applicant continued to raise his claim through Chief Minister as well as MLA by his representations dated 06.08.2015m 05.08.2019 which were forwarded to Respondent No.1 for necessary action.

(xv) Respondent No.1 by communication dated 16.09.2019 again rejected the Applicant's claim on different ground stating that the benefit of G.R. dated 21.09.2017 is applicable where a Government servant dies in Terrorist attack while defending the State in discharge of duties, but in Applicant's case, his father died due to Cancer not associated with duties, and therefore, not entitled to appointment on compassionate ground even in terms of G.R. dated 21.09.2017.

2. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to challenge the impugned communication dated 16.09.2017 *inter-alia* contending that G.R. dated 21.09.2017 has to be construed liberally so as to advance its object and where death is on account of injuries suffered while on duty, the heir of such deceased Government servant should be provided appointment on compassionate ground to obviate the difficulties faced by the family due to loss of sole bread winner of the family. He tried to contend that even if deceased Government servant died due to Cancer primarily it was because of injuries suffered in the accident took place while he was on duty. He further submits that though there is no challenge to the order dated 16.04.2014 whereby initially the claim of Applicant was rejected on the ground that deceased was Group 'B' employee, the said order is bad in law in view of Judgment of Hon'ble High Court wherein a Government servant in pay scale of Rs.5500-9000 corresponding to 9300-34800 as per 6th Pay Commission falls in category of Group 'C' employee. In this behalf, he referred to the decision of this Tribunal in **O.A.No.1008 of 2016 (Abhijeet V. Mulik Vs. The District Collector) decided on 18.07.2017** which has been upheld by Hon'ble High Court in **Writ Petition No.1820/2018 (State of Maharashtra Vs. Abhijeet V. Mulik) decided on 10th April, 2018**. On this line of submission, he submits that having regard to the object of scheme for appointment on compassionate ground, the Respondents ought to have provided appointment on compassionate ground to the Applicant, but it has been rejected on totally unjustifiable grounds.

3. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents has raised the issue of limitation regarding order dated 16.04.2014 whereby the claim of Applicant was rejected on the ground that deceased employee was Group 'B' employee to whom scheme for appointment on compassionate ground is not applicable. She has pointed out that admittedly, the order dated 16.04.2014 has not been challenged by filing O.A. or any other judicial proceedings within the

period of limitation and had attained finality, and therefore, it cannot be questioned belatedly after six years, that too, without claiming any such relief in O.A. In so far as impugned communication dated 16.09.2019, which is subject matter of this O.A. is concerned, she submits that the deceased Government servant died due to Cancer much after accident and there is no nexus between the accident and cause of death. She, therefore, submits that the conditions set out in G.R. dated 21.09.2017 are not at all attracted and there is no illegality in the impugned communication dated 16.09.2019.

4. Needless to mention that the appointment on compassionate ground cannot be claimed as a matter of right and it must be provided for in the Rules. The appointment on compassionate ground to a dependent of a deceased employee is an exception or concession so as to enable the family of the deceased to get over the sudden financial crises due to loss of sole earning member in the family. As such, the primary object of such claim is to save the bereaved family from sudden financial crises and it is an exception to general rule of equality and not another independent and parallel source of employment. Suffice to say, the claim for appointment on compassionate ground has to be traceable only to the scheme framed by the Government for such employment and there is no right outside such scheme.

5. Now turning to the facts of the present case, admittedly, after the death of deceased Government servant, the Applicant had applied for appointment on compassionate ground on 04.02.2014, but the claim was rejected by communication dated 16.04.2014 on the ground that deceased Government servant was Group 'B' employee. There is no denying that the Applicant has not challenged the said communication dated 16.04.2014. Indeed, in O.A, the Applicant has not disclosed this aspect of rejection of his claim by communication dated 16.04.2014. It is only after the defence of limitation is raised by the Respondents in their Affidavit-in-reply, the Applicant has produced on record communication

dated 16.04.2014 along with Rejoinder. As such, initially, there was suppression of communication dated 16.04.2014. Be that as it may, admittedly, the Applicant did not challenge the communication dated 16.04.2014 and it attained finality.

6. True, this Tribunal in **Abhijeet Mulik's** case held that a Government servant (Naib-Tahasildar) carrying pay scale 5500-9000 falls in Group 'C' post and allowed the O.A. by giving direction to appoint the Applicant on compassionate ground. The said Judgment has been upheld by Hon'ble High Court in **Writ Petition No.1820/2018 (State of Maharashtra Vs. Abhijeet Mulik) decided on 10th April, 2018** as pointed out by the learned Advocate for the Applicant. However, these decisions are of little assistance now in this O.A, since order dated 16.04.2014 had already attained finality for want of any challenge to the same within the period of limitation. In other words, now Applicant cannot be allowed to rake-up the issue of legality of order dated 16.04.2014 which has already attained finality.

7. As regard impugned communication dated 16.09.2019, it is apparent that even after rejection of the claim for appointment on compassionate ground by order dated 16.04.2014, the Applicant continued to make representations through elected representatives. He made various representations and applications and ultimately those were forwarded by the Government to Superintendent of Police, Thane. In turn, the Superintendent of Police, Thane examined the entitlement of the Applicant for appointment on compassionate ground afresh from the point of applicability of G.R. dated 21.09.2017 and having found that the deceased Government servant died due to Cancer and not on account of injuries suffered in the accident, so as to attract G.R. dated 21.09.2017. It appears that at that time, Superintendent of Police was not made known that the claim of the Applicant has been already rejected by communication dated 16.04.2014 on the ground that the scheme for appointment on compassionate ground is applicable to Group 'C' and 'D'

employees only. Be that as it may, it is apparent that Applicant's case was again examined on the touch-stone of G.R. dated 21.09.2017 which *inter-alia* provides for appointment on compassionate ground to the dependent of a Government servant where Government servant dies in Terrorist attack or in any such incident while defending the State endangering his life.

8. At this juncture, it would be apposite to reproduce relevant portion of G.R. dated 21.09.2017 which is as follows :-

“शासकीय अधिकारी/कर्मचारी यांच्या पात्र नातेवाईकांना खालील नमूद परिस्थितीत अनुकंपा तत्वावर नियुक्ती लागू राहिल :-

- (अ) शासकीय सेवेत असताना दिवंगत झालेल्या गट-क व गट-ड संवर्गातील कर्मचा-यांच्या पात्र कुटुंबीयांना अनुकंपा तत्वावर नियुक्ती अनुज्ञेय राहिल. (शासन निर्णय दि.२२.८.२००५)
- (आ) गट अ/ब/क/ड मधील शासकीय अधिकारी अथवा कर्मचा-यास नक्षलवादी/आतंकवादी/दरोडेखोर/समाज विघातक यांच्या हल्ल्यात/कारवाईत मृत्यू आल्यास अथवा शासन सेवेत कार्यरत असताना स्वतःचा जीव धोक्यात घालून प्रत्यक्ष कर्तव्य बजावत असताना मृत्युमुखी पडल्यास अशा अधिका-यांच्या व कर्मचा-यांच्या कुटुंबियातील पात्र व्यक्तीस, अनुकंपा तत्वावर नियुक्ती देताना, त्यांचे नाव अनुकंपा धारकांच्या सामान्य प्रतीक्षासूचीमध्ये न घेता, त्यांची वेगळी यादी करून पद उपलब्ध असल्यास, रिक्त पदांच्या ५ टक्के मर्यादेची (१० टक्के - शासन निर्णय दि. १ मार्च, २०१४) अट शिथिल करून त्यांना सर्व प्राथम्याने अनुकंपा नियुक्ती देण्यात यावी.”

9. Now turning to the factual aspects, the perusal of FIR lodged by Applicant's father reveals that on 24.11.2012 while he was on duty at Shahapur, on receipt of information of accident, he went on Nashik-Mumbai Highway along with his staff and visited the place of accident. While he was standing at the place of accident, one Tempo No.MH-06-AC-9499 came in high speed from Nashik side and ramped into stationery due to break down and dashed the Applicant causing injuries to his left hand and both knees. He was hospitalized in Sayyed Hospital. The perusal of Medical Certificate issued by Sayyed Hospital reveals that the Applicant suffered fracture to wrist where he was treated conservatively and advised three weeks' rest. After recovery, he resumed duty. The Respondents in their Affidavit-in-reply have categorically stated that after discharge from Sayyed Hospital, the Applicant resumed duty and worked from February, 2013 to July, 2013. There is no specific

denial to it. It is thus quite clear that Applicant was completely recovered from the injuries suffered in the accident and later, he died due to cancer. He was admitted in Fortis Hospital on 14.08.2013 and was treated for Metastatic Spine Disease with severe low back pain. Chemotherapy was done and he was discharged on 09.10.2013. Later again, he was admitted in Fortis Hospital on 28.10.2013 and died on 23.11.2013. In Medical Certificate, the cause of death is shown Septic Shock with Advance Metastatic Cholangiocarcinoma [पित्ताशयाचा कॅन्सर होता तो दुस-या अवयवामध्ये पसरत गेला व झटका येवून मृत्यु झाला]. It is thus obvious that the cause of death was totally different from the injuries suffered in the accident from which he was recovered. In other words, there is no nexus of proximity between the accident and cause of death. In such situation, the question of applicability of G.R. dated 21.09.2017 does not survive which *inter-alia* provides for appointment on compassionate ground where a Government servant dies in Terrorist attack or in a situation where he endangered his life while discharging duties. Whereas, in the present case, the Applicant suffered fracture to wrist while he was discharging the duties on 24.11.2012 and after recovery, resumed the service. Unfortunately, he developed cancer and died on 23.11.2013 after one year from the date of accident. Suffice to say, this is not a case where G.R. dated 21.09.2017 would be attracted so as to provide appointment on compassionate ground.

10. In **(2010) 11 SCC 661 [State Bank of India & Anr. Vs. Raj Kumar]**, the Hon'ble Supreme Court has observed as under :-

“The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules of by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.”

11. It is thus manifest that the Applicant is raking the issue of appointment on compassionate ground time and again on unsustainable ground. As stated above, the claim for compassionate appointment has to be traceable strictly to the scheme framed by the Government for such employment and there is no right whatsoever outside such scheme. I, therefore, see no legal infirmity in the impugned order.

12. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned communication dated 16.09.2019 is devoid of merit and O.A. deserves to be dismissed. Hence, the order.

ORDER

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

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

Mumbai
Date : 15.11.2021
Dictation taken by :
S.K. Wamanse.

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