

**BEFORE THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.125 OF 2017

DISTRICT : AURANGABAD

Syed Amjad s/o. Syed Hamza,)
Age : 33 Yrs., Occu. Nil, R/o. H.No.2-6/91/)
P, Near Saba Hospital, Majnu Hill Road,)
Ganesh Colony, Aurangabad.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 32.)
(Copy to be served on C.P.O, MAT,)
at Aurangabad).)

2. The Superintending Engineer,)
Quality Control Circle,)
Sinchan Bhavan Compound,)
Jalna Road, Aurangabad.)...**Respondents**

Mr. A.D. Gadekar, Advocate for the Applicant.

Smt. D.S. Deshpande, Presenting Officer for Respondents.

CORAM : SHRI B.P. PATIL (MEMBER-J)

Closed on : 09.06.2018

Pronounced on : 17.07.2018

J U D G M E N T

1. The Applicant has challenged the letter / communication dated 24.10.2016 issued by the Respondent No.2 rejecting his application for appointment on compassionate ground by filling the present O.A.

2. The father of the Applicant viz. Syed Hamja was serving under the control of Respondent No.2 as Steno-Typist in Group 'C' in the pay scale of Rs.335-680 i.e. Rs.5500-9000 respectively. He died on 16.04.2010 while in service leaving behind the Applicant, his mother as his legal heirs. On 18.05.2010, the mother of the Applicant filed an application with the Respondent No.2 contending that she has no source of income and she is suffering from financial problems, and therefore, requested to consider the name of the Applicant for appointment on compassionate ground. She submitted necessary documents i.e. Death Certificate, Heirship Certificate, consent letter and other documents along with the application. On 25.10.2010, the Respondent No.2 issued communication and returned the application stating that, as per the G.R. dated 22.08.2005, only the heirs of those Government servants who expired while in service and holding Group 'C' (Class 'III') or Group 'D' (Class 'IV') posts are entitled to be appointed on compassionate ground. He has further informed the Applicant that, his father was holding the post of Stenographer at the time of his death, and therefore, he was not entitled to be appointment on compassionate ground.

3. The Applicant thereafter came to know about the Judgment and Order passed by this Tribunal in O.A.No.921/2012, and thereafter, he made a representation dated 08.04.2015 to the Respondent No.2 giving reference of the said Judgment and stated that the Applicant's case is similar to the case of the Applicant in the above said O.A, and therefore, requested to reconsider his case for giving appointment on compassionate ground and attached the necessary documents along with it. The Respondent No.2 issued letter dated 24.10.2016 and rejected the claim of the Applicant stating that his father was serving in Group 'B' category (Non-gazetted) on the post of Higher Grade Stenographer, and therefore, his heirs are not entitled to get the appointment on compassionate ground.

4. It is averred by the Applicant that, his father was serving on Class-III post but the Respondent No.2 has not considered the said aspect and wrongly interpreted the G.R. dated 28.03.2001 and rejected his claim. It is his contention that the Respondent No.2 has also not considered the order passed in O.A.No.219/2012 with proper perspective, and thereby, rejected his application. It is his contention that, he is 'Karta' of his family and his family has no sufficient source of income to maintain his family members, and therefore, his family is suffering from financial crises. He, therefore, prayed to quash the communication dated 24.10.2016 issued by Respondent No.2 by filing the O.A. and also prayed to direct the Respondent No.2 to treat him eligible for appointment on compassionate ground and to include his name in the waiting list of the candidates eligible for appointment on compassionate ground.

5. Respondent No.2 resisted the contention of the Applicant by filing his Affidavit-in-reply. He has not denied the fact that the deceased Syed Hamza, the father of the Applicant was serving with Respondent No.2 and he died on 16.04.2010 while in service. He has not denied the fact that, after the death of Syed Hamza, the mother of the Applicant filed an application with Respondent No.2 on 18.05.2010 and requested to appoint the Applicant on compassionate ground. That application came to be rejected by Respondent No.2 by letter dated 25.10.2010 stating that, as per the G.R. dated 22.08.2005, the heirs of the Government servants who have been expired while in service and holding Group-III and Group IV posts, are entitled for appointment on compassionate ground and the Applicant is not eligible to be appointed on compassionate ground, as the father of the Applicant was holding the post in Group 'B' category (Non-gazetted) as Stenographer Higher Grade. They have admitted the fact that, thereafter, the Applicant made another representation dated 08.04.2015 to the Respondent No.2 on the basis of decision given by this Tribunal in O.A.No.921/2012 and the said representation came to be rejected by Respondent No.2 by communication dated 24.10.2016 by recording the reasons. He has denied that the Respondent No.2 has wrongly interpreted the G.R. dated 22.08.2005. It is his contention that, in view of the provisions of G.Rs. dated 28.03.2001 and 22.08.2005, the Applicant is not eligible and entitled for appointment on compassionate ground, as his father was serving on the post which is in Group 'B' category. It is his contention that, as per the policy decision of the Government, the appointment on compassionate ground can be given to the heirs of the deceased Government servants serving on the post in Group 'C' and Group 'D' category only and who were expired while

in service. It is his contention that, since the father of the Applicant was serving on the post in Group 'B' category, the application of the Applicant came to be rejected and there is no illegality in the communication issued by Respondent No.2 on 25.10.2010 in that regard. Therefore, he justified the impugned order and prayed to reject the O.A.

6. I have heard Mr. A.D. Gadekar, learned Advocate for the Applicant and Smt. D.S. Deshpande, learned Presenting Officer for the Respondents. I have perused the documents placed on record by both the parties.

7. Admittedly, Syed Hamza who was serving under the control of Respondent No.2 was the father of the Applicant. He died on 16.04.2010 while in service. At the time of his death, he was serving as Stenographer Higher Grade. Admittedly, after his death, the mother of the Applicant filed an application to the Respondent No.2 on 18.05.2010 with a request to consider the name of the Applicant for appointment on compassionate ground and the said application has been rejected by Respondent No.2 by communication dated 25.10.2010 stating that the father of the Applicant was holding the post of Stenographer Higher Grade in Group 'B' category, and therefore, in view of the G.R. dated 22.08.2005, he is not eligible for appointment on compassionate ground and as per the G.R, the heirs of the Government servant who have been expired while in service and holding Group 'C' and Group 'D', are only entitled for appointment on compassionate ground. Admittedly, the Applicant filed another application dated 08.04.2015 with the Respondent No.2 by giving reference to the Judgment passed by this Tribunal in O.A.No.921/2012 on the

ground of parity and requested to re-consider his case for giving appointment on compassionate ground. Respondent No.2, had, not considered the application of the Applicant and by communication dated 24.10.2016 informed the Applicant that he is not entitled to get appointment on compassionate ground, as his father was serving in Group 'B' category.

8. Learned Advocate for the Applicant has submitted that, the father of the Applicant was serving as Stenographer in Group 'C' category and getting pay in the pay scale of Rs.5500-9000 at the time of his death. The post of Stenographer Higher Grade is Group 'C' post, and therefore, the Applicant is entitled to get the appointment on compassionate ground, in view of the different G.Rs issued by the Government in that regard. He has submitted that, this Tribunal in case of one **Shaikh Mateen Ahmed S/o. Mansoor Ahmed Vs. State of Maharashtra & 2 Ors. in O.A. No.921/2012 decided on 28.11.2014** has held that the employee receiving the pay in the pay scale of Rs.5500-9000 is the Group 'C' employee, and therefore, he is entitled to get appointment on compassionate ground. He has submitted that the Applicant requested the Respondent No.2 to re-consider the case of the Applicant on the basis of Judgment delivered by this Tribunal in O.A.No.921/2012 as well as on the ground of parity, but the Respondent No.2 did not consider the said aspect and rejected the application of the Applicant wrongly by the impugned order. Therefore, he prayed to allow the O.A. and to quash and set aside the impugned order dated 24.10.2016 and to direct the Respondent No.2 to re-consider the case of the Applicant and to appoint him on compassionate ground.

9. Learned P.O. has submitted that the Applicant has suppressed the material fact. He has argued that the deceased Syed Hamza was serving as Stenographer Higher Grade at the time of his death and he was Group 'B' employee. He has submitted that, in view of G.R. issued by the Government from time to time and more particularly, G.Rs. dated 28.03.2001 and 22.08.2005 the said Scheme is made applicable to the heirs of deceased Government employees who died in service and were serving on the post in Group 'C' and Group 'D' category only. As the father of the Applicant was in Group 'B' category, the Applicant is not entitled to claim the benefit of the said G.R, and therefore, the Respondent No.2 has rightly rejected the application of the Applicant for appointment on compassionate ground by communication dated 24.10.2016. He has argued that, the earlier application of the Applicant dated 18.05.2010 had been rejected by the Respondent No.2 on the same ground by communication dated 25.10.2012. He has submitted that, the decision in O.A.921/2012 is not attracted in the present case, as the facts in that case are not identical to the facts in the present case, and therefore, the Respondent No.2 has rightly rejected the claim of the Applicant. Therefore, he prayed to reject the present O.A.

10. On perusal of the record, it reveals that the deceased Syed Hamza was initially appointed as Steno-Typist. At the time of his death, admittedly, he was serving as Stenographer Higher Grade and this fact has not been disputed by the learned Advocate for the Applicant during the course of hearing. Admittedly, the post of Stenographer Higher Grade is in Group 'B; (Non-gazetted) category. The provisions of the G.R. issued by the Government to give appointment to the LRs of the deceased Government employees

on his death while he was in service is made applicable to the heirs of the deceased Government employees who were serving on the post in Group 'C' or Group 'D' category at the time of his death and this fact has been made clear in the G.Rs. dated 28.03.2001 and 22.08.2005. The Applicant is harping upon the decision of this Tribunal in O.A.No.921/2012 decided on 28.11.2014. The father of the Applicant in that case was drawing the basic pay of Rs.6900 in the pay scale of Rs.5500-9000, and therefore, the Tribunal has held that he was Group 'C' employee and accordingly, the benefit of the Scheme has been extended to the Applicant in that matter and directions were issued to the Respondents to consider his case accordingly. In the instant case, admittedly, the deceased Syed Hamza, the father of the Applicant was serving on Group 'B' post as Stenographer Higher Grade. Neither the Applicant nor the Respondents produced the documents to show his pay scale of payment at the time of his death. In spite of ample opportunities given to the Applicant, he has not produced the documents in that regard. In the absence of document, it is difficult to accept the contention of the Applicant that the deceased Syed Hamza was receiving the pay in the pay scale of Rs.5500-9000. In view of these facts, the principle laid down in the above cited decision is not attach in this case. Therefore, I do not find any substance in the argument advanced by the learned Advocate for the Applicant in that regard.

11. On the contrary, in view of the admitted fact as admitted by the Applicant, in his application submitted to the Respondent, which is at Page No15 of the O.A, it reveals that deceased Syed Hamza was serving as Stenographer Higher Grade which is a Group 'B' post at the time of his death. Therefore, in

view of the various G.Rs. issued by the Respondents, the heirs of the Group 'B' employee are not entitled to claim appointment on compassionate ground. The said Scheme is applicable to the heirs of the deceased Government employees who died while in service and holding any Group 'C' or Group 'D' post, are eligible to claim appointment on compassionate ground, and therefore, Respondent No.2 has rightly rejected the application of the Applicant on the basis of G.Rs. dated 28.03.2011 and 22.08.2005 and informed him accordingly by communication dated 24.10.2016. The Respondent No.2 issued the said communication on the basis of the decision of the Government dated 07.10.2016 which has been referred in the impugned order dated 24.10.2016 (a copy of which is placed on record at Page No.50 of the O.A.). I find no illegality in the impugned order. The impugned order has been passed in view of the policy of the Government and various G.Rs. issued by the Government in that regard. Therefore, I find no ground to interfere with the impugned order. There is no merit in the O.A. Consequently, it deserves to be dismissed.

12. In view of the above said discussion, the Original Application stands dismissed with no order as to costs.

Sd/-

(B.P. Patil)
Member-J
17.07.2018

Mumbai
Date : 17.07.2018
Dictation taken by :
S.K. Wamanse.