

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1275 OF 2022

DISTRICT : PUNE

Sub.:- Compassionate Appointment

Shri Chetan Kaluram More.)
Age : 36 Yrs, Occu.: Nil,)
R/o. Survey No.203, Todmal Vasti,)
Sadesatranali, Hadapsar, Pune – 28.)...**Applicant**

Versus

The Assistant Commissioner.)
Social Welfare, Pune, Having Office at)
Dr. Ambedkar Social Justice Bhavan,)
Yerwada, Pune – 6.)...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 06.06.2023

JUDGMENT

1. The Applicant has challenged the communication dated 08.05.2022 issued by Respondent thereby rejecting his claim for compassionate appointment, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Uncontroverted facts giving rise to this O.A. are as under :-

- (i) Applicant's father viz. Kaluram More was Watchman on the establishment of Respondent and while in service, he was declared permanently incapacitated for continuation in service because of dementia by Medical Board, Pune vide Medical Certificate dated 14.12.2021.
- (ii) Consequent to it, Respondent by order dated 08.02.2022 retired Kaluram More from service w.e.f.13.12.2021 on medical ground by order dated 08.02.2022.
- (iii) In view of retirement of father on medical ground, the Applicant made an application on 07.04.2022 for compassionate appointment and submitted necessary documents.
- (iv) However, Respondent by communication dated 08.05.2022 rejecting Applicant's claim stating that the facility/concession for compassionate appointment to the heirs of Government servant retired on medical ground is cancelled by G.R. dated 22.08.2005 and the said concession is now available to the heirs of Government servant died in harness only.

3. It is on the above background, the Applicant has filed the O.A. challenging the communication dated 08.05.2022 *inter-alia* contending that it is totally bad in law in view of judicial decisions rendered by this Tribunal and confirmed by Hon'ble High Court since the stipulation in G.R. dated 22.08.2005 that the facility of compassionate appointment is available only to heirs of Government servant who died in harness was struck down and compassionate appointment is held permissible to the heirs of Government servant retired on medical ground as it was available earlier to G.R. dated 22.08.2005.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that the impugned communication dated 08.05.2022 is totally

arbitrary and unsustainable in law, since the issue is already covered by the decision rendered by this Tribunal in **O.A.No.1006/2015 [Amol G. Deore Vs. Addl. Commissioner of Sales Tax] dated 07.08.2017** and confirmed by Hon'ble High Court and implemented by the Government. He further referred to the observation made by Hon'ble Supreme Court in **(2008) 13 SCC 730 [V. Sivamurthy Vs. State of Andhra Pradesh]** which was relied upon by the Tribunal in **Amol Deore's** case. He, therefore, submits that Applicant have two options, either to accept the pensionary benefits or to choose claim of compassionate appointment and where claim of compassionate appointment is opted for, the declarant will have to forego and return the benefits accrued towards retiral benefits of the father in view of settled legal position.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer in reference to stand taken in Affidavit-in-reply reiterated that by G.R. dated 22.08.2005 (Clause 2(1) of G.R.), the compassionate appointment is now only permissible to the heirs of Government servant who died in harness only and the concession existed earlier for providing compassionate appointment to the heirs of Government servant incapacitated on medical ground is taken away.

6. In view of pleadings and submissions, the issue posed for consideration is whether impugned communication dated 08.05.2022 rejecting the claim of Applicant for compassionate appointment is legally sustainable in law and the answer is in emphatic negative.

7. Indeed, the issue involved in the present matter is squarely covered by the decision in **Amol Deore's** case wherein the Tribunal following the legal principles expounded in **(2003) 4 SCC 524 [Kunal Singh Vs. Union of India]** and in **Sivamurthy's** case allowed the O.A. The Judgment rendered by the Tribunal in **Amol Deore's** case is confirmed by Hon'ble High Court and had attained finality. In **Amol Deore's** case, the Tribunal has quashed and set aside Clause No.2(v) of G.R. dated 22.08.2005 and declared that the claimant will be eligible to apply for

appointment on compassionate ground in furtherance to the policy of the Government. Clause No.2(1) of the G.R. dated 22.8.2005 (Exhibit 'N' page 52) thereby changing the policy of compassionate appointment reads thus:

२. याशिवाय अनुकंपा योजनेच्या सध्याच्या प्रचलित तरतुदीस खालीलप्रमाणे सुधारणा सदर आदेश निर्गमित झाल्याच्या दिनांकापासून करण्यात येत आहेत.

(९) गट 'क' व 'ड' मधील कर्मचारी कर्करोग, पक्षघात किंवा अपघात यामुळे सेवेसाठी कायमचा असमर्थ ठरवून रुग्णता निवृत्त झाल्यास त्याच्या कुटुंबीयांना गट 'क' व 'ड' मधील पदांवर नियुक्ती देण्याची सवलत रद्द करण्यात येत आहे. यापुढे केवळ सेवेत असताना दिवंगत झालेल्या गट 'क' व 'ड' च्या कर्मचा-यांच्या पात्र कुटुंबीयांना अनुकंपा नियुक्ती अनुज्ञेय राहिल."

8. Thus, scheme of compassionate appointment was earlier applicable where Government servant is declared medically unfit for service. Be that as it may, once Clause No.2(1) of G.R. dated 22.08.2005 restricting compassionate appointment to the heirs of deceased who died in harness only is quashed, consequently compassionate appointment has to be granted to an employee declared medically unfit, and therefore, Applicant's claim for compassionate appointment cannot be defeated.

9. Indisputably, Applicant's father was declared permanently incapacitated due to dementia. In other words, he suffered permanent disability during the period of employment. In this behalf, reference of decision of Hon'ble Supreme Court in **Kunal Singh's** case is inevitable. Hon'ble Supreme Court in **Kunal Singh's** case while dealing with applicability of Section 47(1) of "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'Disabilities Act 1995' for brevity) which is in *para-materia* to **Section 16** of 'Rights of Persons with Disabilities Act, 2016' in Para Nos. 12 and 13 held as under :-

"12. *Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the*

age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act.

13. *For the reasons stated and discussions made above, the appeal deserves to be accepted. Hence the impugned order affirming the order of termination of services of the appellant is set aside and the appeal is allowed. We direct the respondents to give relief in terms of Section 47 of the Act.”*

10. Thus, in **Kunal Singh’s** case, Hon’ble Supreme Court held that merely because Government servant got invalid pension, it cannot be the ground to deny protection mandatorily made available to Government servant under Section 47 of ‘Disabilities Act 1995’.

11. In this behalf, it would be further apposite to now refer the decision of Hon’ble Supreme Court in **Sivamurthy’s** case regarding principles governing compassionate appointment. Hon’ble Supreme Court summarized the principles relating to compassionate appointment as under :-

“(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are well recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well recognized contingencies which are carved out as exceptions to the general rule are :

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of family of the employee concerned, that is spouse,

son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, class III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts.”

12. Hon’ble Supreme Court in Para Nos.27 and 29 further observed as under :-

“27. When an employee dies in harness, his family is thrown into penury and sudden distress on account of stoppage of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently terminated, the family is thrown into greater financial hardship, because not only the income stops, but at the same time there is considerable additional expenditure by way of medical treatment as also the need for an attendant to constantly look after him. Therefore, the consequences in case of an employee being medically invalidated on account of a serious illness/accident, will be no less, in fact for more than the consequences of death-in-harness. Though generally death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia serious incapacitating illness, etc.

29. When compassionate appointment of a dependant of a government servant who dies in harness is accepted to be an exception to the general rule, there is no reason or justification to hold that an offer of compassionate appointment to the dependant of a government servant who is medically invalidated, is not an exception to the general rule. In fact, refusing compassionate appointment in the case of medical invalidation while granting compassionate appointment in the case of death in harness, may itself amount to hostile discrimination. While being conscious that too many exceptions may dilute the efficacy of Article 16 and make it unworkable, we are of the considered view that the case of dependants of medically invalidated employees stands on an equal footing to that of dependants of employees who die in harness for purpose of making an exception to the rule. For the very reasons for which compassionate appointments to a dependant of a government servant who dies in harness are held to be valid and permissible, compassionate appointments to a dependant of a medically invalidated government servant have to be held to be valid and permissible.

12. In **Amol Deore’s** case, the Tribunal had taken note of legal principles expounded by Hon’ble Supreme Court in **Kunal Singh’s** case and **Sivamurthy’s** case and allowed the O.A. There is no denying that the decision rendered by the Tribunal in **Amol Deore’s** case was confirmed by Hon’ble High Court in **Writ Petition No.7008/2018 decided on 24.10.2018** and implemented by the Government. Thereafter, in similar situation, this Tribunal dealt with similar issue in

O.A.No.407/2021 (Rajesh Dhangare Vs. The Commissioner, Animal Husbandry, Dairy Development & Fisheries Department) decided on 19.07.2022 in which the order of granting invalid pension on medical ground was held contrary to law and options were given to Applicant Rajesh Dhangare to elect the benefits of order of invalid pension or to avail the scheme of compassionate appointment. The decision rendered by the Tribunal in **Rajesh Dhangare's** case has also attained finality and also implemented by the Government.

13. Suffice to say, the issue involved in the present matter is no more *res-integra* in view of various decisions referred to above. Indeed, the Applicant being similarly situated person, the Respondent ought to have granted the benefit of decision rendered in **Amol Deore's** case as well as in **Rajesh Dhangare's** case. In this behalf, Hon'ble Supreme Court in **2015(1) SCC 347 [State of Uttar Pradesh Vs. Arvind Kumar Srivastava]** held that when particular set of employees seeking relief by the Court, all other similarly situated persons needs to be treated alike by extending them benefit and not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. The Government of Maharashtra, Law and Judiciary had also issued Circular dated 28.02.2017 instructing the Department to take necessary action where issue is covered by the decision rendered by the Tribunal/Courts and to apply it to all other identically situated persons, but in vain.

14. For the aforesaid discussion of law and facts, this O.A. also deserves to be decided and allowed on similar line, since Applicant is similarly situated person and he cannot be denied the benefits of order passed by the Tribunal in **Amol Deore's** case and **Rajesh Dhangare's** case which have attained finality and implemented by the Government. Otherwise, it would amount to discrimination and violative of Article 14 of Constitution of India. Hence, the following order.

ORDER

- (A) Original Application is allowed.
- (B) Impugned communication dated 08.05.2022 is quashed and set aside.
- (C) The Applicant is declared eligible to apply for compassionate appointment.
- (D) The Applicant shall have to elect whether he wants the benefit of invalid pension and other related benefits granted to his father or whether he wants compassionate appointment and he should submit representation exercising his option within a month from today.
- (E) If any such representation is made, Respondent shall take action thereon within next three months from the date of making representation in the light of this Judgment.
- (F) If Applicant opt for benefit of appointment on compassionate ground, in that event, his father will have to forego and return all the benefits accrued or received by him by virtue of invalid pension.
- (G) No order as to costs.

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

Mumbai

Date : 06.06.2023

Dictation taken by :

S.K. Wamanse.

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