

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.134 OF 2023

DISTRICT : NASHIK

Sub.:- Compassionate Appointment

Shri Chaitanya Ramesh Gangode.)
Age : 22 Yrs, DoB : 28.03.2001)
Occu.: Study, R/at : Flat No.7,)
Daksheya Apartment, Gajpanth Stop,)
Behind Parikshit Hospital, Shivaji Nagar,)
Mhasrul, Tal. District : Nashik.)...**Applicant**

Versus

The Superintendent of Police.)
Nashik (Rural), Bhujbal Knowledge City,)
Adgaon, District : Nashik.)...**Respondent**

Shri K.R. Jagdale, 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 15.12.2022 whereby his request for substitution of his name in waiting list for compassionate appointment has been rejected, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

Applicant's father viz. Ramesh Gangode was Police Constable on the establishment of Respondent / Superintendent of Police, Nashik

(Rural). He died in harness on 04.09.2004 leaving behind widow Lalita and son Chaitanya (present Applicant). After the death of Ramesh Gangode, his widow Lalita made an application on 28.09.2004 for providing compassionate appointment to her stating that after death of husband, there is no earning member in the family. Thereafter also, she made various representations for providing compassionate appointment. However, no such concrete steps were taken to provide compassionate appointment. Quite belatedly, Respondent by letter dated 24.02.2020 called upon the Applicant to submit the documents. Accordingly, she submitted necessary documents and again requested to appoint her on the post of Clerk on compassionate ground. Later, Respondent by communication dated 02.03.2022 informed the Applicant that her name is in the waiting list at Serial No.1 and she was asked to remain present in the Office on 08.03.2022 for verification of documents. Accordingly, she attended the Office for verification of documents, but no such appointment was provided. Having found that no appointment is provided for 18 years, she again made an application on 02.12.2022 stating that despite compliance from her side, she was not provided compassionate appointment and by that time, she crossed 45 years of age on 31.05.2022. She, therefore, requested for substitution of name of the Applicant in her place. However, Respondent by communication dated 15.12.2022 rejecting her request for substitution stating that in terms of G.R. dated 22.08.2005, once the name of heir in waiting list is deleted on attaining age of 45 years, no further substitution is permissible. In impugned communication dated 15.12.2022, there is reference of G.R. dated 22.08.2005, but it is G.R. dated 20.05.2015 in which there is prohibition for substitution of heir in waiting list. Thus, the date 22.08.2005 seems to be inadvertent mistake and it should have been 20.05.2015. Insofar as G.R. dated 22.08.2005 is concerned, it does not have such provision prohibiting the substitution. The said prohibition is in G.R. dated 20.05.2015. The Applicant has, therefore, challenged the communication dated 15.12.2022 in the present O.A.

3. Shri Jagdale, learned Advocate for the Applicant placed reliance on the decision rendered by Hon'ble High Court in **Writ Petition No.6267 of 2018 [Dnyaneshwar Musane Vs. State of Maharashtra] decided on 11.03.2020** wherein stipulation in G.R. dated 20.05.2015 that if name of heir of deceased employee is taken in waiting list, it cannot be substituted by any other relative is declared arbitrary and irrational. He, therefore, submits that impugned communication is totally bad in law and Applicant's name ought to be substituted in place of mother in waiting list.

4. Per contra, Shri A.J. Chougule, learned Advocate for the Applicant in reference to the contentions raised in Affidavit-in-reply states that in view of stipulation in G.R. dated 20.05.2015, substitution is not permissible. This is the only contention raised to oppose the O.A.

5. In view of submission, the question posed for consideration is whether the impugned communication rejecting the claim of the Applicant for substitution of his name in waiting list is legally sustainable and answer is in emphatic negative.

6. True, in scheme for compassionate appointment, there is no specific provision for substitution of heir once the name of the heir is deleted on attaining the age of 45 years. However, this issue is no more *res-integra* in view of various decisions rendered by the Tribunal and particularly, in the light of decision in **Dnyaneshwar Musane's** case (cited supra). Hon'ble High Court in **Dnyaneshwar Musane's** case held as under :-

“We hold that the restriction imposed by the Government Resolution dated 20.05.2015 that if name of one legal representative of deceased employee is in the waiting list of persons seeking appointment on compassionate ground, then that person cannot request for substitution of name of another legal representative of that deceased employee, is unjustified and it is directed that it be deleted.”

Accordingly, directions were given to provide compassionate appointment to the petitioners therein. Suffice to say, it is on more *res-integra* that Government cannot take shelter of G.R. dated 20.05.2015 to reject the claim of another heir.

7. Indeed, in view of aim and object of the scheme for compassionate appointment, the steps for providing compassionate appointment were required to be taken expeditiously so as to alleviate financial difficulties of family in distress because of loss of sole earning member of the family. If the name of heir is entered in the waiting list and no further steps are taken for years together, it would frustrate the very aim and object of the scheme. In the present case, Government employee died on 04.09.2004, but till date, no steps were taken to provide compassionate appointment though name of widow was taken in waiting list. Record clearly spells that she made various representations from time to time and was pursuing the matter with concerned authorities, but in vain. Thus, it appears that Respondent was only waiting for age bar of the Applicant so that her claim would be frustrated by deleting the name from waiting list. It was because of inaction on the part of Respondent, she did not get appointment though her name was in waiting list for near about 17/18 years. This approach of the Respondent is upfront to the decision/direction given by Hon'ble Supreme Court in **AIR 1989 SC 1976 [Smt. Sushma Gosain & Ors. Vs. Union of India]**. In Para No.9, Hon'ble Supreme Court held as under :-

“9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.”

8. As such, even if there is no specific provision for substitution of another heir, this issue is no more *res-integra* in view of decision in **Dnyaheshwar Musane's** case, particularly when name of Applicant's

mother was deleted from waiting list for no fault on her fault. She was waiting for compassionate appointment for about 17/18 years and thereafter, her name is mechanically deleted from waiting list. In such situation, Respondent ought to have substituted the name of Applicant in place of mother. Only because after the death of Government servant family managed to survive at longer period, that itself cannot be the ground to reject the claim for compassionate appointment, particularly when inaction on the part of Respondent is obvious and no fault lies with the claimant.

9. In this view of the matter, I have no hesitation to sum-up that the rejection of substitution of the name is totally arbitrary and unsustainable in law. The impugned communication dated 15.12.2022 is, therefore, liable to be quashed and set aside. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) Impugned communication dated 15.12.2022 is quashed and set aside.
- (C) Respondent is directed to substitute the name of Applicant in place of his mother in the waiting list and to take further steps for providing compassionate appointment, subject to eligibility criteria within three months from today.
- (D) 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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