

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.138 OF 2020

DISTRICT : KOLHAPUR

Shri Sunil Balkrishna Kumbhar.)
Age 27 Yrs., Occu.: Nil, Residing at)
Kumbhar Galli, Tal.: Ajara,)
District : Kolhrpuar – 416 505.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Public Works Department, Madam)
Cama Road, Hutatma Rajguru)
Chowk, Mantralaya,)
Mumbai – 400 032.)
2. Executive/Divisional Engineer,)
Division of Agricultural Construction)
1, Aarey Office, Aarey)
Dughdhavasahat, Goregaon (E),)
Mumbai – 400 065.)
3. The Principal Secretary.)
Law & Judiciary Department,)
Mantralaya, Mumbai – 400 032.)
4. The Principal Secretary.)
General Administration Department,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. K.K. Mishra, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 28.09.2021

JUDGMENT

1. The Applicant has challenged the communication dated 07.12.2019 issued by Respondent No.2 thereby rejecting his claim for appointment on compassionate ground invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

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

(i) Applicant's father viz. Balkrishna Narsu Kumbhar (deceased) was Class-IV employee on the establishment of Respondent No.2 and died in harness on 21.12.1998 leaving behind widow Smt. Anjana and Applicant (son).

(ii) Smt. Anjana applied for appointment on compassionate ground on 23.06.1999 inter-alia contending that after the death of husband, the family is in distress and need financial assistance by way of appointment to her on compassionate ground.

(iii) However, nothing was communicated to the widow in respect of appointment on compassionate ground.

(iv) The Applicant, therefore, after attaining the majority in view of illness of mother had applied for appointment on compassionate ground for himself along with consent of the mother by application dated 07.10.2013.

(v) Superintending Engineer, however, by letter dated 29.04.2014 informed to the Applicant that since the name of his mother is already taken in waiting list for appointment on compassionate ground, his claim cannot be entertained.

(vi) Even thereafter, nothing is communicated to the Applicant or his mother in respect of appointment on compassionate ground,

and therefore, the Applicant through Advocate sent notice on 04.08.2019 requesting for appointment on compassionate ground.

(vii) It is only in response to the legal notice, the Respondent No.2 by communication dated 07.12.2019 informed to the Applicant that though the name of his mother was on waiting list, it came to be deleted in 2015 on attaining the age of 45 years and once the name is deleted, his claim for substitution in place of mother cannot be entertained in absence of any such provision for substitution of name in the scheme for appointment on compassionate ground.

3. It is on the above background, the Applicant has challenged the legality of communication dated 07.12.2019 whereby his claim is rejected solely on the ground of absence of any such provision for substitution of heir in the scheme for appointment on compassionate ground.

4. The Respondent No.2 resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that the name of Applicant's mother was taken in waiting list in pursuance of her application dated 23.06.1999 but her name came to be deleted on attaining the age of 45 years in 2015, and therefore, his claim cannot be entertained there being no such express provision for substitution of heir in the scheme for appointment on compassionate ground.

5. Heard Shri M.M. Mishra, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

6. In view of submissions advanced at the Bar, the issue posed for consideration is whether the Applicant is entitled for consideration to the appointment on compassionate ground.

7. There is no denying that Applicant's father was the sole earning member in the family who died on 21.12.1998 in harness leaving behind

widow and son. Since the family was in financial distress, the name of widow was taken in waiting list but surprisingly for 16 years, no appointment was provided to her though it was required to be provided immediately to alleviate financial difficulties faced by the family. If the name is simply taken in waiting list and continued for more than decade without taking immediate steps for providing employment, it would defeat the very purpose and object of the scheme for appointment on compassionate ground.

8. It is in 2015, the name of widow was deleted from waiting list since she has attained the age of 45 years but the same was not communicated to her or to the Applicant, though Applicant had already applied for appointment on compassionate ground in place of mother by his application dated 07.10.2013. It is only after response to the legal notice, for the first time, the Respondent No.2 by communication dated 07.12.2019 informed to the Applicant that the name of his mother is deleted from waiting list and there being no scheme for substitution of heir, his name cannot be taken in waiting list.

9. True, in scheme for appointment on compassionate ground, there is no such express provision for substitution of heir. However, this issue is no more *res-integra* in view of several decision rendered by this Tribunal that even in absence of any such express provision in the scheme, the appointment has to be provided to other eligible heir, if no appointment is provided to the heir whose name was continued in waiting list for years together and deleted on attaining the age of 45 years. This Tribunal has consistently held that rejection of request of another heir, in such situation, would frustrate the very object of the scheme and would amount to denial of appointment on compassionate ground causing serious injustice and hardship to the family of the deceased employee. In so far as the facts of present case are concerned, there is absolutely nothing on record to indicate as to why appointment order was not issued to the Applicant's mother though her name was in

waiting list for 15/16 years. Indeed, in terms of decision of Hon'ble Supreme Court in **AIR 1989 SC 1976 [Sushma Gosain & Ors. Vs. Union of India]**, the Hon'ble Supreme Court held that even if there is no suitable post for appointment, then supernumerary post should be created to accommodate heir of the deceased for providing appointment on compassionate ground. However, in the present case, the name of Applicant's mother was remained in waiting list for 15 to 16 years without taking any concrete steps to provide her appointment and then deleted her name in 2015 as if the Respondents were waiting for completion of her 45 years of age, so as to delete the same mechanically and then to deny the appointment to her son on the specious ground of absence of provision for substitution of heir. Such a decision is unjust and totally arbitrary.

10. As regard the aim and object of this scheme for appointment on compassionate ground, it would be useful to refer the observations made by the Hon'ble Supreme Court in **Sushma Gosain** (cited supra) wherein in Para No.9, it has been held as follows :

“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.”

11. Furthermore, it would be useful to refer the decision rendered by this Tribunal in earlier O.A. wherein directions were issued to consider the name of the Applicant for providing appointment on compassionate ground and the defence of absence of provision for substitution of heir was rejected.

(i) **O.A.No.432/2013 (Shivprasad U. Wadnere Vs. State of Maharashtra and 2 Ors.) decided on 01.12.2014.** In this matter, in similar situation, the substitution of the name of son in place of mother's name was rejected. However, the order of

rejection has been quashed. In this judgment, the Tribunal has referred its earlier decision in O.A.No.184/2005 decided on 03.05.2006 wherein substitution was allowed and the said order has been confirmed by Hon'ble High Court.

(ii) **O.A.No.184/2005 (Smt. Nirmala Doijad Vs. State of Maharashtra) decided on 03.05.2006.** In this matter, while allowing the substitution, this Tribunal held that where there is no specific provision for substitution, justice requires that the policy of Government should be implemented and interpreted in its spirit for giving its benefit to the legal representative of the person who died in harness. It has been held that, there is no specific rule prohibiting the substitution, and therefore, the directions were issued for substitution of the heir and appointment subject to eligibility.

(iii) **O.A.604/2016 (Anusaya More Vs. State of Maharashtra) decided by this Tribunal on 24.10.2016,** wherein the name of one of the heir of the deceased employee was taken on record, but having attained the age of 40 years, her name was deleted. In her place, her son seeks substitution, which came to be rejected. The Tribunal held that it would be equitable that son's name is included in waiting list where his mother's name was placed and O.A. was allowed. This Judgment was challenged in Writ Petition No.13932/2017. The Hon'ble High Court by Judgment dated 18.07.2018 maintained the order of Tribunal with modification that the name of son be included in waiting list from the date of application made by son w.e.f.11.02.2014 and not from the date of mother's application.

(iv) **O.A.No.327/2017 (Smt. Vanita Shitole Vs. State of Maharashtra) decided on 7th August, 2017, O.A.636/2016 (Sagar B. Raikar Vs. Superintending Engineer) decided on 21.03.2017, O.A.239/2016 (Swati Khatavkar Vs. State of Maharashtra) decided on 21.10.2016, O.A.645/201770.A.884/2016 (Mayur Gurav Vs. State of Maharashtra) decided n 30.03.2017 and O.A. 1126/2017 (Siddhesh N. Jagde Vs. State of Maharashtra) decided on 04.06.2018.** In all these O.As, the name of one of the heir was taken on record for the appointment on compassionate ground, but having crossed 40 years of age, the name came to be deleted and second heir son seeks substitution, which was rejected by the Government. However, the Tribunal turned down the defence of the Government that in absence of specific provision, the substitution is not permissible. The Tribunal issued direction to consider the name of the Applicant for appointment on compassionate ground.

12. At this juncture, it would be apposite to take recourse of one more Judgment of Hon'ble Supreme Court, which is directly on the point in issue. In this behalf, Hon'ble Supreme Court in **Civil Appeal No.5216/2018 (Supriya S. Patil Vs. State of Maharashtra) decided on 12.05.2018** held as under :-

“We find from the Judgment of the High Court that the main reason for rejecting the case of the appellant was that the family had managed to survive for over ten years and, therefore, there was no immediate necessity. We are afraid that this cannot be a major reason for rejection. Whether the family pulled on begging or borrowing also should have been one consideration. We do not propose to deal with the matter any further in the peculiar facts of this case. The widow had already been empaneled for appointment under the Compassionate Appointment Scheme, but was declined the benefit only on account of crossing the age. We are of the view that in the peculiar facts of this case, her daughter should be considered for compassionate appointment.”

13. As such, even if there is no specific provision for substitution of heir, this aspect is no more *res integra* in view of the aforesaid decisions. Indeed, it is obligatory on the part of Respondents to create supernumerary post, if there is no suitable post for appointment and to provide appointment to the heir of the deceased. Had this mandate of the Hon'ble Supreme Court in **Sushma Gosain's** case (cited supra) was followed by the executive, the Applicant's mother would have got appointment on compassionate ground before she attained the age of 45 years. However, unfortunately the Respondents did not take any action, as if they were waiting for the Applicant's mother to cross the age of 45 years. Such approach of executive is contrary to spirit and mandate of the decision of the Hon'ble Supreme Court in **Sushma Gosain's** case as well as object of the scheme for appointment on compassionate ground. Only because after the death of the deceased Government servant, his family had managed to survive for long period, that itself cannot be the ground to reject the application and it cannot be assumed that there is no immediate necessity for appointment on compassionate ground.

14. It is really very unfortunate that the claim of Applicant for appointment on compassionate ground which was required to be

considered expeditiously, so as to provide financial assistance to the economically distressed family is kept lingering for years together which shows total laxity and insensitiveness of the Respondents which frustrate the very object of the Scheme for appointment on compassionate ground. The delay is on the part of Respondents which is totally unexplainable and no latches can be attributed to the Applicant.

15. The totality of aforesaid discussion leads me to conclude that the impugned communication dated 07.12.2019 is totally unsustainable in law and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned communication dated 07.12.2019 is quashed and set aside.
- (C) The Respondent Nos.1 and 2 are directed to consider the application made by the Applicant dated 07.10.2013 for appointment on compassionate ground and it would be equitable as well as judicious that his name be included in the waiting list for the issuance of appointment order, subject to fulfillment of eligibility criteria in accordance to Rules.
- (D) The above exercise should be completed within two months from today.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 28.09.2021
Dictation taken by :
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2021\September, 2021\O.A.138.20.w.9.2021.Compassionate Appointment.doc

Uploaded on