

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.16 OF 2020

DISTRICT : MUMBAI

Ms. Supriya Anant Talekar.)
Age : 30 Yrs., Occu.: Nil, Worked as)
Clerk-Typist and residing at Building No.33,)
Room No.14, 3rd Floor, Sir Pochkhanwala)
Road, Worli Police Camp, Worli,)
Mumbai – 400 030.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai – 400 032.)
2. The Commissioner of Police, Mumbai))
Having Office at Mumbai Police)
Commissionerate, L.T. Marg,)
Opp. Crawford Market, Fort,)
Mumbai – 400 001.)
3. The Joint District Registrar (Grade-I)))
Mumbai Suburban District, Mumbai))
Having Office at Family Court)
Building, Ground Floor,)
Bandra-Kurla Complex, Bandra (E),)
Mumbai – 400 051.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 27.01.2022

JUDGMENT

1. The Applicant has challenged the communication dated 16.05.2016 issued by Respondent No.1 – Government thereby cancelling letter dated 03.02.2016 whereby recommendation for appointment on compassionate ground has been made on the ground that two sons of deceased Government servant are in Government service and there is no dire need for appointment on compassionate ground.

2. Shortly stated facts giving rise to this Original Application are as under :-

Applicant's father viz. Anant Talekar was serving as Assistant Sub-Inspector on the establishment of Respondent No.2 – Commissioner of Police and died in harness on 22.09.2011, leaving behind him widow, 2 sons viz. Amol, Suraj and daughter Supriya (present Applicant). After the death of father, the Applicant made an application on 26.07.2012 for appointment on compassionate ground. Her application was forwarded to Respondent No.1 – General Administration Department. In turn, the Respondent No.1 by letter dated 03.02.2016 (Page No.22 of Paper Book) recommended the name of Applicant for appointment on compassionate ground, subject to production of certain documents and necessary compliance, as required under relevant G.R. Accordingly, Office of Respondent No.3 – Joint District Registrar, Mumbai Suburb was directed to take necessary steps for her appointment on the post of Clerk-cum-Typist. She approached the Office of Respondent No.3 – Joint District Registrar on 10.02.2016 for joining and on the same day, she was asked to furnish certain documents. She has submitted Affidavit, which is at Page Nos. 28 and 29 of P.B. in which she has disclosed that her two brothers viz. Amol Talekar and Suraj Talekar are in Government service as Police Constables. Having found that Applicant's two brothers are in Government service, the Respondent No.3 sent letter dated 23.02.2016 to Respondent No.1 seeking further direction about the eligibility of the Applicant for appointment on compassionate ground. It is on this

background, the Respondent No.1 issued communication dated 16.05.2016 cancelling recommendation letter dated 03.02.2016, which is under challenge in the present O.A.

3. Initially, Applicant has approached Hon'ble High Court by filing Writ Petition No.14128/2017 which was disposed of on 29.08.2019 with liberty to the Applicant to approach MAT and observation were made that Applicant will be entitled for benefit of Section 14 of Limitation Act for the period during which she was prosecuting remedy before Hon'ble High Court. Accordingly, Applicant has filed this O.A. along with M.A. for condonation of delay. Delay was condoned and O.A. was admitted for hearing.

4. The Respondents opposed O.A. *inter-alia* contending that Applicant's two brothers being in Government service, she was not eligible and entitled for appointment on compassionate ground. The Respondents thus sought to justify the impugned communication dated 16.05.2016.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned communication on the following grounds :-

(i) Since Applicant was already appointed by letter dated 03.02.2016, the appointment should not have been cancelled without giving opportunity of hearing or notice and there is breach of principles of natural justice.

(ii) The Applicant has not suppressed that her two brothers are in Government service and since knowing it, the order of appointment is issued, now Respondent No.1 cannot cancel the appointment order.

(iii) In view of G.R. dated 26.10.1994, it was incumbent on the part of authority to make enquiry about the financial condition of

the Applicant, but no such enquiry is made which vitiates the order of cancellation of appointment.

6. Per contra, Shri A.J. Chougule, learned Advocate for the Respondents sought to justify the impugned communication stating that all that Respondent No.1 – GAD only recommended the name of Applicant for appointment on compassionate ground on the establishment of Respondent No.3 by letter dated 03.02.2016, but it was subject to fulfillment of eligibility and other criteria and Applicant was never actually appointed or worked on the post of Clerk-cum-Typist. He has further pointed out that Applicant herself in her Affidavit has made it clear that her two brothers are in Government service and noticing this material fact, the Respondent No.3 brought it to the notice of Respondent No.1 and immediately Respondent No.1 by communication dated 16.05.2016 cancelled the recommendation letter dated 10.02.2016. He submits that since Applicant's two brothers are in Government service, the question of family in distress or requirement for appointment on compassionate ground did not survive, otherwise, it would be misuse of the scheme.

7. In view of submissions advanced at the Bar, the issue posted for consideration is whether the Applicant was eligible for appointment on compassionate ground after the death of her father. Indisputably, father died leaving behind widow, Applicant and two brothers viz. Amol Talekar and Suraj Talekar. Material to note, Amol Talekar was appointed in 2004 whereas Suraj Talekar was appointed in 2009. Needless to mention that the object of appointment on compassionate ground is to obviate financial difficulties of the family on account of death of sole earning member in the family. In other words, appointment on compassionate ground has to be made where family is in financial distress and cannot survive without there being some assistance by the Government in the form of appointment of one of the heir of the deceased on compassionate ground.

8. The scheme for appointment on compassionate ground was initially framed by G.R. dated 26.10.1994. It is made applicable to family of deceased Government servant in Group 'C' and Group 'D' who died in harness. Para No.7 of G.R. dated 26.10.1994 is material, which is as under :-

“ ७. अनुकंपा तत्वावर नियुक्ती देताना असे प्रस्ताव शासन सेवेतील रोजगारांवर आलेली मर्यादा, या योजनेच्या मागील भूमिका लक्षात घेऊन जो कर्मचारी मृत झाला त्याच्या कुटुंबियांना तात्काळ उद्भवलेल्या आर्थिक पेचप्रसंगावर मात करण्याच्या उद्देशाने विचारात घ्यावेत.

एखाद्या कुटुंबात मृत कर्मचा-यांचा नातेवाईक पूर्वी सेवेत असेल, तथापि तो त्याच्या कुटुंबातील अन्य सदस्यांना आधार देत नसेल तर अशा प्रकरणात त्या कुटुंबाची आर्थिक परिस्थिती हालाकीची आहे किंवा कसे हे ठरविताना नियुक्ती अधिका-याने अत्याधिक दक्षता घ्यावी, जेणेकरून सेवेत असलेला सदस्य कुटुंबाचा उदरनिर्वाह करीत नाही या नावाखली अनुकंपा तत्वावरील नियुक्तीचा दुरुपयोग केला जाणार नाही.

यासंदर्भात नियुक्ती अधिका-याने मिळणा-या निवृत्तीवेतनाची रक्कम, कुटुंबातील व्यक्तींची संख्या, त्यांची मालमत्ता, दयित्व, गंभीर आजारांमुळे किंवा अपघातांमुळे मृत झाल्यास त्यासाठी करण्यात आलेला वैदकीय खर्च कुटुंबातील मिळवत्या व्यक्ती, इत्यादी बाबी विचारात घेणे अपेक्षित आहे.”

9. As pointed out by learned Advocate for the Applicant, even if some of the members in family is in Government service, care is required to be taken by making appropriate enquiry to find out whether family is in distress, so as to provide appointment on compassionate ground and there is no misuse of the scheme. Shri Bandiwadekar, learned Advocate for the Applicant sought to contend that mere fact that Applicant's brothers were in service would not disentitle the Applicant for claiming appointment on compassionate ground and enquiry was required to be conducted and the same being not conducted, the cancellation of appointment is illegal.

10. At this juncture, pertinent to note that in Affidavit (Page Nos.28 to 30 of P.B.), the Applicant clarified that her two brothers are in Government service. What is striking to note that in application as well as in Affidavit, there is absolutely no whisper that her brothers are not taking her care. This is very very important aspect of the matter which needs to be borne in mind. The Applicant has maintained calculated silence on this point. In absence of any such specific contention and

pleadings, it cannot be presumed that brothers were not taking care of the Applicant.

11. In so far as enquiry, as contemplated under G.R. dated 27.10.1994 is concerned, the learned P.O. has rightly pointed out the report of Worli Police Station dated 14.12.2012 (Page No.121 of P.B.) wherein Police found that Applicant's two brothers are in service and in addition to it, deceased had left ancestral home and agricultural land at Village Talere, Tal. Kankawali, District Sindhudurg. In report, it is concluded that "अर्जदाराच्या कुटुंबीयांची मालमत्ता दायित्व इ. बाबी पडताळून पाहिले असता त्यांच्या कुटुंबियांची परिस्थिती हालाखीची असल्याचे आढळून येत नाही.". In fact, this report ought to have been forwarded to GAD by the concerned Department. However, the said report was not with GAD which resulted into issuance of recommendation letter dated 03.02.2016 for appointment on compassionate ground, but it was again subject to fulfillment of eligible criteria. It was not appointment letter but recommendation letter. Indeed, GAD ought to have taken care to call for all record before issuance of any such recommendation letter. Be that as it may, mere recommendation letter by GAD itself will not confer any right of appointment on compassionate ground much less legally vested right. It was only recommendation and Respondent No.3 was directed to look into the matter, call for record and documents from the Applicant and then Respondent No.3 was to issue appointment order. The Respondent No.3, however, noticed from Affidavit itself about two earning members in the family, and therefore, referred the matter to GAD who in turn cancelled the recommendation.

12. Thus, what transpired from the pleadings and Affidavit that there is no such specific averment that her brothers who are in Government service are neglecting the Applicant and her brothers are staying separate. As such, when there are two family members in Government service, it cannot be said that family is in financially distressed condition and need appointment on compassionate ground. In such situation, the

appointment on compassionate ground would be nothing but misuse of the scheme.

13. Insofar as absence of notice before cancellation of recommendation letter is concerned, as stated above, the Applicant was not actually appointed on compassionate ground and the communication dated 03.02.2016 was only recommendation which was subject to further eligibility criteria and enquiry. In other words, the recommendation was not culminated in the appointment order nor Applicant has worked on the said post. Therefore, the question of issuance of notice or breach of principles of natural justice did not survive. Reliance placed by learned Advocate for the Applicant in **O.A.167/2017 (Kavita S. Ghongade Vs. Conservator of Forest) decided on 02.02.2018** is misplaced. In that case, the Applicant was appointed on compassionate ground. She joined there and worked but later her appointment came to be cancelled without giving notice. Therefore, in fact situation, O.A. was partly allowed giving direction to reinstate the Applicant with liberty to make enquiry as regard eligibility of the Applicant and then to pass appropriate order.

14. As seen from record of Worli Police Station dated 14.12.2012, Police found there was no requirement of appointment on compassionate ground in view of two earning members in the family. As such, there was some enquiry as contemplated in G.R. dated 27.10.1994. It was summary enquiry and law does not contemplate issuance of notice or hearing of the Applicant in such summary enquiry on the point of eligibility of claimant.

15. It is nowhere res-integra that the appointment on compassionate ground offered to heir of the deceased employee is by way of concession and not right. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of sole bread winner and it is an exception to the general rule of equality and not

another independent and parallel source of employment. Suffice to say, the claim for compassionate appointment has to be traceable and should be strictly in accordance to the scheme framed by the Government and there is no right whatsoever outside such scheme. In this behalf, it would be apposite to refer following decisions :-

(A) “In **(2012) 11 SCC 307 (Union of India & Anr. Vs. Shashank Goswami & Anr.)**, the Hon’ble Supreme Court has observed as under :-

“It has been observed that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld up the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right.”

(B) In the matter of **(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.”

6. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned communication is devoid of merit and O.A. is liable to be dismissed. Hence, the following order.

ORDER

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

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 27.01.2022

Dictation taken by :

S.K. Wamanse.

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