

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.17 OF 2020**

**DISTRICT : THANE**

1. Smt. Vidya W/o. Sunil Ahire, )  
Age : 40 Yrs., Occu.: Household, )  
R/o. Gurusai Apartment, B/102, )  
Belawali, Badlapur (W), Dist : Thane.)
  
2. Shri Manish Sunil Ahire. )  
Age : 25 Yrs., Occu.: Nil, )  
R/o. As above. )...**Applicant**

**Versus**

1. The Commissioner of Police, )  
Thane. )
  
2. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )...**Respondents**

**Mr. B.A. Bandiwadekar, Advocate for Applicant.**

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

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

**DATE : 13.10.2020**

**JUDGMENT**

1. The Applicant has challenged the communication dated 11.01.2019 whereby the claim of appointment on compassionate ground is rejected invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Factual matrix is as under :-

The Applicant No.1 Smt. Vidya is widow and Applicant No.2 Manish is son of deceased employee viz. Sunil Ahire. He was Police Naik on the establishment of Respondent No.2 – Commissioner of Police, Thane. He died in harness on 11.02.2013 and survived by the Applicants and two more daughters viz. Kum. Komal and Kum. Harshada. After the death of deceased, the Applicant No.1 widow applied for appointment to Applicant No.2 Manish on compassionate ground by application dated 14.08.2013. The Respondent No.1 by communication dated 06.09.2013 intimated that the name is taken in waiting list. Thereafter, the Applicant again sent representations to the Government on 02.03.2016 and 04.06.2016 for appointment on compassionate ground. However, the Respondent No.1 by letter dated 11.01.2019 communicated to the Applicant that the family is not entitled for appointment on compassionate ground in terms of G.R. dated 28.03.2011 which *inter-alia* stipulates that in case of birth of third child in the family after 31<sup>st</sup> December, 2001, the appointment on compassionate ground cannot be granted and such family will be ineligible for any such appointment under the scheme of compassionate appointment. This communication dated 11.01.2019 is under challenge in the present O.A. *inter-alia* on the ground that there was no publication of G.R. dated 28.03.2001 and secondly, the G.R. dated 28.03.2001 has become redundant and loses its efficacy after enforcement of Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (hereinafter referred to as 'Rules of 2005'), and therefore, the impugned order is unsustainable in law.

3. The Respondents resisted the O.A. by filing Affidavit-in-reply *inter-alia* denying that the impugned order suffers from any illegality. The Respondents contend that third child viz. Kum. Harshada was born on 06.08.2002, and therefore, in view of G.R. dated 28.03.2001, the family is ineligible for appointment on compassionate ground. As regard publication and communication of G.R. dated 28.03.2001, the

Respondents contend that it was widely circulated to the various Departments and the ground of non-publication of G.R. is without substance. As regard 'Rules of 2005', the Respondents contend that those are not relevant, as the matter in issue is squarely covered by G.R. dated 28.03.2001 issued much prior to 'Rules of 2005' and in case of birth of third child in the family after 31<sup>st</sup> December, 2001, such family is declared ineligible for appointment on compassionate ground. With these pleadings, the Respondents prayed to dismiss the O.A.

4. Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicant made two-fold submission. In the first place, he submits that there is no effective publication of G.R. dated 28.03.2001 so as to get the knowledge of the same to the concerned, and therefore, it cannot be used to the detriment of the Applicant. In second limb of submission, he submits that the matter in issue is governed by 'Rules of 2005' and it is only after the enforcement of 'Rules of 2005', the birth of third child in the family is disqualification for appointment in Government service. In the present case, as third child to the deceased was born prior to enforcement of 'Rules of 2005', the rejection is unsustainable in view of overriding effect of 'Rules of 2005' on G.R. dated 28.03.2001. He also raised the plea of discrimination contending that in the matter of Smt. Alka Karde, even if the family had third child born after 31<sup>st</sup> December, 2001 as per cut-off date in G.R. dated 28.03.2001, the appointment on compassionate ground was granted to the said family.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer supported the communication contending that the matter in issue is squarely covered by G.R. dated 28.03.2001 and 'Rules of 2005' are not relevant in the present situation. According to him, in Alka Karde's matter, the request for appointment on compassionate ground was granted as a special case.

6. In view of submissions advanced at the Bar, the issue posed for consideration is whether the matter in issue is governed by G.R. dated 28.03.2001 or by 'Rules of 2005'.

7. Indisputably, the third child viz. Kum. Harshada was born on 07.08.2002 which was after the cut-off date mentioned in G.R. dated 28.03.2001. Material to note that G.R. dated 28.03.2001 has been issued by GAD, Government of Maharashtra exclusively pertaining to appointment on compassionate ground and conditions/stipulations contained therein are important. As per Clause (इ) of G.R. dated 28.03.2001 where third child is born to the employee after 31<sup>st</sup> December, 2001, in that event, such family could be ineligible for appointment on compassionate ground.

8. The submission advanced by the learned Advocate for the Applicant that there is no proper publication of G.R. dated 28.03.2001 and for want of publication, the deceased had no knowledge of the said condition stipulated in G.R, and therefore, it cannot be used against the Applicant holds no water. It appears that the Applicant has sought certain information under RTI Act about the publication of G.R. dated 28.03.2001. He made an application under RTI to Public Information Officer, Commissioner of Police, Thane and by letter dated 30.03.2017 (Page No.45 of Paper Book), he was informed that there was no practise to publish G.R. in Police Circular. The information sought and answer given under RTI is as follows :-

अ.क्र.	मुददा	देण्यात आलेली माहिती
9	शासन निर्णय क्र. अकंपा १०००/प्र.क्र. २०/२०००/ आठ दि. २८/०३/२००१ अन्वये पास करण्यात आलेला जी.आर.ठाणे शहर पोलीस पत्रकार देण्यात आला असेल त्याची प्रत, ठाणे शहर पोलीस पत्रकार घेण्यात आला असेल त्याची प्रत मिळावी. तसे असल्यास हजेरीवर पोलीस कर्मचारी यांना समज दिली असल्यास, अगर वाचून दाखविले असल्यास त्या फॉर्म अगर लेखी समज पत्राची प्रत मिळावी त्यावेळी हजेरीवर उपस्थित असलेल्या पोलीस	महाराष्ट्र शासनाच्या अधिकृत संकेत स्थळावर प्रसिध्द करण्यात येणारे शासन निर्णय (जी.आर.) पोलीस पत्रकार प्रसिध्द करण्यात येत नाही. तसेच शासन निर्णय पोलीस कर्मचारी यांना हजेरीच्या वेळी वाचून देखील जात नाही तसेच त्याबाबत लेखी समज पत्र देखील दिले जात नाही. त्यामुळे सदर शासन निर्णय २००३ पूर्वीच्या पोलीस कर्मचा-यांना

	<p>कर्मचारी वर्गाची माहितीची प्रत मिळावी.</p> <p>वरील शासन निर्णय २००३ पूर्वी पोलीस कर्मचारी यांना कळविले, हे कोणत्या माध्यमाने कळविले त्याची लेखी माहिती मिळणेबाबत.</p>	<p>कळविण्यात आलेला नाही. सदर शासन निर्णयाची प्रत सोबत जोडण्यात येत आहे.</p>
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9. Whereas, the perusal of G.R. dated 28.03.2001 (Page No.30 of P.B.) reveals that the copy of it was circulated to the various Heads of the Departments. In my considered opinion, even assuming that there was no such wide circulation or proclamation of G.R. dated 28.03.2001 to the knowledge of Applicant that hardly matters. It is the policy decision taken by the Government in the nature of Government Resolution and its ignorance cannot be the ground to contend that the Applicant is not abided by terms and conditions mentioned in the G.R. The learned Advocate for the Applicant could not point out any such specific provision which mandates the proclamation of G.R. to the knowledge of the Applicant. Needless to mention that ignorance of law or rule is no excuse and same principle should also apply to the Government Resolutions. Suffice to say, ignorance of G.R. will not excuse the concerned from its legal consequences.

10. Now turning to the 'Rules of 2005', Rule 3 of the Rules which is material is as follows :-

**“3. Necessity of declaration of Small Family.-** Notwithstanding anything contained in any rules or orders or instruments made in that behalf, regulating recruitment to Group A, B, C or D post in Government Service or any other order or instruments made in that behalf, the declaration of Small Family shall be an additional essential requirement for an appointment to Group A, Group B, Group C or Group D post in any Government service :

Provided that, a person having more than two children on the date of commencement of these rules shall not be disqualified for appointment under these clause so long as the number of children he had on the date of such commencement does not increase :

Provided further that a child or more than one child born in a single delivery within the period of one year from the date of such a

commencement shall not be taken into consideration for the purpose of disqualification mentioned in the clause.”

11. The submission advanced by the learned Advocate for the Applicant that Rule 3 of 'Rules of 2005' starts with non-abstain clause, and therefore, G.R. dated 28.03.2001 which is prior to the enforcement of 'Rules of 2005' loses its efficacy and applicability is devoid of merit. Much prior to enforcement of 'Rules of 2005' the Government had already taken special policy decision in the matter of appointment on compassionate ground vide G.R. dated 28.03.2001, and therefore, the said G.R. cannot be said inapplicable or lost its efficacy due to enforcement of 'Rules of 2005'. The 'Rules of 2005' pertained to the recruitment to Group A, B, C and D posts in Government service and declaration of small family is required to be submitted by the Applicant along with the application form for service in recruitment process. Whereas, the scheme of appointment on compassionate ground is not recruitment but it is a special scheme aimed to provide succour to the family in distress on account of loss of sole earning member of the family. In other words, the appointment on compassionate ground cannot be equated to regular source of appointment by way of recruitment. Suffice to say, there cannot be inherent right to compassionate appointment but rather it is a right based on certain criteria specially to provide succour to needy family and such appointment has to be governed by the terms and conditions of the policy as existing at the relevant time. This being the position, the matter in issue has to be squarely examined on the basis of terms and conditions mentioned in the G.R. dated 28.03.2001 and 'Rules of 2005' are not relevant in the present scenario. I am, therefore, not in agreement with the submission of learned Advocate for the Applicant that third child being born on 07.08.2002 i.e. before enforcement of 'Rules of 2005', the Applicants are entitled to appointment on compassionate ground. It is G.R. dated 28.03.2001 being special G.R. governing terms and conditions for the appointment on compassionate

ground shall prevail and 'Rules of 2005' are not at all relevant in the present context.

12. As regards discrimination, true, in the matter of Smt. Alka Karde, even if family had third child born after the cut-off date in terms of G.R. dated 28.03.2001, the request for appointment on compassionate ground made by the widow of deceased was accepted. In this behalf, the perusal of letter (Page Nos.55 and 56 of P.B.) reveals that deceased was Police Hawaldar in Navi Mumbai. On 18.10.2006, there was an incident of dacoity on Punjab and Maharashtra Bank, Airoli and in that incident, the deceased Hawaldar Shri Karde fought bravely and succeeded in saving cash of crores of rupees. In that incident, Hawaldar Karde sustained grave injuries and was hospitalized in M.G.M. Hospital. After discharge, he resumed the duty in April, 2007, but because of injury suffered in the incident dated 18.10.2006, he was mentally affected. Unfortunately, he died in night of 02.06.2007 while on duty at Rabale Police Chowky. Therefore, considering the courage and bravery shown by Shri Karde in the incident of dacoity occurred on 18.10.2006, his case was recommended for appointment on compassionate ground relaxing condition of G.R. dated 28.03.2001 by special Committee headed by Chief Secretary appointed by Government in this behalf. As such, the condition was relaxed as a special case.

13. Whereas, in the present case, there is no such special case so as to relax the condition mentioned in G.R. dated 28.03.2001. Therefore, it cannot be said that the Applicant is subjected to discrimination in refusal of appointment on compassionate ground.

14. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision given by Hon'ble Vice-Chairman (A) of this Tribunal in **O.A.No.293/2017 (Siddhesh Sawant Vs. State of Maharashtra) decided on 27<sup>th</sup> September, 2019** wherein directions were given to consider the application and to take decision afresh within stipulated time. In that case, deceased had twins born on 04.11.1995

and third child was born on 28.04.2002. The claim for appointment on compassionate ground was rejected on the ground that third child was born after cut-off date as stipulated in G.R. dated 28.03.2001. This communication was challenged by filing O.A. before this Tribunal. While allowing O.A, the Tribunal in Para No.8 held as follows :-

**“8.** Though the government servant is expected to be aware of the orders issued by the Government from time to time, in the peculiar circumstances where there was a twin born earlier and the third child is born just immediately after the stipulated date, it would be in the interest of justice not to deny him consideration for compassionate appointment. The compassionate appointment is basically to meet the economic hardship of the Government servant who has expired.”

15. Thus, in that matter, there was birth of twin, and therefore, directions were given to consider the application afresh. There is no such order in O.A.293/2017 for appointment of the Applicant therein on compassionate ground. Apart, as pointed out by the learned P.O. the Judgment in O.A. 293/2017 is already challenged by filing Writ Petition and matter is subjudice before the Hon’ble High Court. This being the position, the Judgment in O.A.293/2017 is hardly of any assistance to the Applicant in the facts and circumstances of the present case.

16. It is well settled that the appointment on compassionate ground cannot be claimed as a matter of inherent right or right of succession rather it is the right based on certain criteria aimed to provide succour to needy family and it must be in conformity with the policy decision of the Government. By G.R. dated 28.03.2001, the Government had taken policy that where third child is born after 31.12.2001, the family could be ineligible for appointment on compassionate ground. The applicability and enforceability of the terms and conditions of G.R. dated 28.03.2001 is not in any way altered or modified by ‘Rules of 2005.



17. At this stage, it would be apposite to refer the decision of Hon'ble Supreme Court in the matter of **(2010) 11 SCC 661 (State Bank of India & Anr. Vs. Raj Kumar)**, wherein it has been clarified as follows:

*“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.”*

This Judgment is squarely attracted to the facts of the present case, as these could not be appointment on compassionate ground in contravention of G.R. dated 28.03.2001.

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

### **ORDER**

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

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 13.10.2020  
Dictation taken by :  
S.K. Wamanse.

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