

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

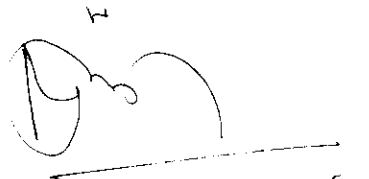
ORIGINAL APPLICATION NO.279 OF 2015

DISTRICT : PUNE

Shri Amol Anil Suryawanshi,)
Age 25 years, Occ. Nil,)
R/o Kole-Kalyan Police Line, Building No.5,)
Room No.204, Santacruz (E), Mumbai)
Address for service of notice:)
Shri A.V. Bandiwadekar, Advocate,)
9, 'Ram-Kripa', Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016)..Applicant

Versus

1. The Sub Divisional Officer,)
Bhor, Sub Division, Bhor,)
Taluka Bhor, District Pune)
2. The District Collector, Pune)
3. The State of Maharashtra,)
Through Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032)..Respondents



Shri A.V. Bandiwadekar – Advocate for the Applicant
Shri K.B. Bhise – Presenting Officer for the Respondents


CORAM : Shri R.B. Malik, Member (J)

DATE : 16th March, 2016

J U D G M E N T

1. This OA seeks appointment on compassionate ground.

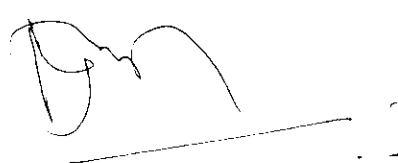
2. I have heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents. The facts are a few and simple. The late Shri Anil Suryawanshi was working as Talathi. He was declared permanently incapacitated and unfit for Government service. In that connection an order dated 14.1.2002 made by the respondent no.1 Sub Divisional Officer, Bhor is at Exhibit 'D' page 22 of the paper book. The second and third respondents are the District Collector, Pune and State of Maharashtra in GAD respectively. It is not in dispute that in accordance with a GR of 23.8.1996 the dependents of an employee losing the job in the manner Shri Anil Suryawanshi did on account of the scheduled illness were entitled to be treated eligible for compassionate appointment

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almost at par with the heirs and legal representatives of the employees who died in harness. This category of dependents admittedly was deleted by the 2005 GR but in this OA we are concerned with 1996 GR.

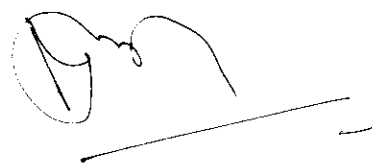
3. The mother of the applicant was admittedly included in the waiting list initially. However, in accordance with the provisions of the GR then in force she crossed the age of 40 and her name was deleted from that list and she was accordingly informed vide Exhibit 'E' page 23 dated 2.9.2006. The applicant is her son. He was born on 16.7.1989 and attained the age of 18 years on 15.7.2007. He applied for his inclusion in the list which the respondents call substitution of the son for the mother.

4. There is a communication from the first respondent to the mother of the applicant dated 16.10.2008 at page 27 of the paper book in which it was mentioned inter alia that her name was deleted as already mentioned above and the name of her son the present applicant was included at Sr. No.7. There are documents to show that the name of the applicant remained included and as on 19.1.2009 he was at Sr. No.7 but in view of the fact that the others may have either got the employment or whatever, but his name climbed up to No.4. The events that happened subsequently were that the case of one similarly placed wait listed candidate Shri Rahul Bhimaj

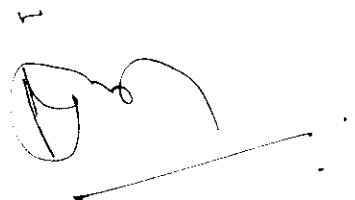
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Wadkunde was referred for guidance to the Government by the respondent no.2 Collector and the Government apparently indicated that he was disentitled for being appointed on compassionate ground. The communication in that behalf from the Government to the Collector is the first exhibit to this OA at page 16 of the paper book wherein it was also mentioned that the act of including applicant's name in the list of candidates for compassionate appointment was incorrect because there was no provision to substitute son for the mother. The applicant was then informed vide communication of 12.2.2015 all about the Government directives. It is, therefore, very clear that the ground on which the claim of the applicant was negatived was the absence of any provision to substitute the name of the applicant for his mother.

5. The above discussion would make it quite clear that the applicant attained the age of majority pending the consideration of the application of his mother for being appointed. The respondents were not only agreeable but they also included applicant's name in the list after his mother become what can be described as age barred. Therefore, to repeat, the only disabling factor envisaged by the respondents is the absence of any provision for substitution of the heirs and legal representatives. The same issue fell for the consideration of the second Division Bench of this Tribunal in **OA No.21 of 2013 (Smt. Archana Ramkrishna Badmanji & Anr. Versus**



The Superintending Engineer & Anr., 20.8.2014). I spoke for the Bench. That was a matter where mother and son were both the party applicants. Initially mother made an application for being included in the list and was in fact included but later on sensing that she might become age barred she requested the name of her son to be included. In that context the issue of permissibility of such a substitution was quite clearly involved in that matter as well. The second DB relied upon a law laid down by the Hon'ble Supreme Court in **SMT. SUSHMA GOSAIN VERSUS UNION OF INDIA, AIR 1976 SC 1976**. The Hon'ble Supreme Court strongly denounced the approach of the authorities in dealing with such matters and two passages were quoted by the second DB from *Sushma Gosain's* case in the said judgment. The Hon'ble Supreme Court was pleased to underline the need to deal with such matters expeditiously so as to mitigate the hardship to the family that had to suffer on account of the removal of the protective umbrella in so far as provision for bread is concerned. In Para 12 three other judgments of the Hon'ble Supreme Court were noted for guidance. Thereafter an earlier judgment of this Tribunal in **OA No.884 of 2012 (Mr. Deepak Mohan Naik Versus The Commissioner of Police for Greater Mumbai and Another, dated 24.12.2013)** was relied upon and again referring to *Sushma Gosain's* case, relief was granted to the applicant.



6. Shri A.V. Bandiwadekar, learned Advocate for the applicant referred me to another judgment of second DB in **OA No.442 of 2011 (Smt. Kusum Prakash Kapse & Anr. Versus The Executive Engineer, Irrigation Department & 3 Ors. 22.1.2015)**. There also in similar set of circumstances a submission was made on behalf of the respondents that there was no provision in the rules for replacing the name of one family member by another in the matter of compassionate appointment. In Para 5 the Bench referred to earlier judgment dated 13.4.2010 in OA No.527 of 2009 wherein relief was granted which judgment was confirmed in Writ Petition No.8915 of 2011 which in turn relied upon an earlier judgment in **Writ Petition No.7793 of 2009 (Vinodkumar Khiru Chavan Versus The State of Maharashtra & Ors. dated 9.12.2009)** and based thereon relief was granted in OA No.442 of 2011. Shri Bandiwadekar, Ld. Advocate furnished for my perusal the judgment of the Division Bench of the Hon'ble High Court in Writ Petition No.7793 of 2009 above referred to.

7. It is, therefore, very clear that although Shri K.B. Bhise, learned Presenting Officer for the respondents may not be wrong in pointing out that the rules are silent about the matter of substitution but then he is not entirely right also in the context of the facts of this OA because here the respondents themselves took steps to include the name of the applicant and, therefore, they ought not to have raked up such an issue.



Apart from *Sushma Gosain's* case a DB of the Hon'ble High Court in **Writ Petition No.8915 of 2011 (The Executive Engineer, PWD, Solapur & Ors. Versus Jijabai Choudhary, dated 14.11.2011)** denounced the tendency of the State to carry the matters up even in case of the orders mandating consideration of the claim. Further, Shri Bhise, Ld. PO in his familiar fairness told me that the judgment of the second DB in OA No.21 of 2013 was not challenged before the Hon'ble High Court but in fact has been implemented by giving appointment to one of applicants therein. Therefore, the position has become stronger by reason of above judgments and orders than any rule made by the State originating from a source where the State instruments originate from. That is because *Sushma Gosain* (supra) is a judgment of the Hon'ble Supreme Court and is a guiding light. It is, therefore, quite clear that the applicant will be entitled to the relief herein sought and all the contentions to the contrary strongly put forward by the Ld. PO will have to be rejected. They are rejected.

8. The orders herein impugned are quashed and set aside. The concerned respondents are directed to consider the case of the applicant for appointment on compassionate ground to the post for which his name was included in the waiting list, within a period of two months from today which would be communicated to the applicant within one week thereafter and



if found fit, to give appointment to him within two weeks. The OA is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)
16.3.2016

16.3.2016

Date : 16th March, 2016

Dictation taken by: S.G. Jawalkar.

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