

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.404 OF 2021

DISTRICT : PUNE

Ms. Amruta Chandrakant More.)
Age : 32 Yrs., Occu.: Nil,)
R/at : Jahagirdar Wada, Behind Smruti)
Sugandh Building, Patil Chowk, Daund,)
District : Pune – 411 308.)...**Applicant**

Versus

1. The Additional Chief Secretary.)
Home Department, Mantralaya,)
Mumbai – 32 through Chief)
Presenting Officer, M.A.T, Mumbai.)
2. Commandant.)
State Reserve Police Force,)
Group-7, Daund, District : Pune.)
3. The Collector.)
(Revenue Branch), District : Pune.)
4. The Director General of Police,)
M.S, Kulaba, Mumbai.)...**Respondents**

Mr. V.P. Potbhare, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.03.2022

JUDGMENT

1. The Applicant has challenged communication dated 15.04.2020 issued by Respondent No.2 – Commandant, SRPF, Daund, Pune as well as communication dated 24.03.2021 issued by Respondent No.1 – Government thereby rejecting the claim of Applicant for appointment on compassionate ground, invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Following are the undisputed facts to be borne in mind for decision of the present O.A.

- (i) Deceased Chandrakant More was Police Constable in SRPF on the establishment of Respondent No.2 and died in harness on 06.12.1999 leaving behind Smt. Jayashree (widow), Ajit (son), Punam and Amruta (daughters).
- (ii) After the death of husband, his widow Smt. Jayashree had applied for appointment on compassionate ground on 11.01.1995 (Page No.29 of Paper Book).
- (iii) The name of Smt. Jayashree was taken in waiting list for appointment on compassionate ground (Page No.30 of P.B.).
- (iv) Smt. Jayashree by application dated 25.01.1999 (Page No.158 of P.B.) had requested Respondent No.2 – Commandant, SRPF that in her place, appointment be given to her elder son viz. Ajit [who was that time 14 years' of age] on attaining the age of majority. In the said application, she further stated that her mental and physical condition is not well.
- (v) Respondent No.3 – Collector issued order of appointment in the name of Smt. Jayashree by order dated 25.05.1999 (Page No.32 of P.B.) and directed Respondent No.2 – Commandant, SRPF to issue appointment order.
- (vi) On receipt of application made by Smt. Jayashree dated 15.01.1999, the Respondent No.2 – Commandant, SRPF by

letter dated 29.06.1999 requested Respondent No.3 – Collector, Pune to cancel the appointment of Smt. Jayashree and consequent to it, the Collector, Pune cancelled the appointment offered to Smt. Jayashree and informed Respondent No.2 – Commandant, SRPF that in place of Smt. Jayashree, another candidate is being appointed from waiting list (Page No.39 of P.B.).

- (vii) Respondent No.2 – Commandant, SRPF accordingly deleted the name of Smt. Jayashree from waiting list in view of cancellation of appointment and by letter dated 19.07.1999 and informed Smt. Jayashree that she may apply for appointment on compassionate ground to her son Ajit on attaining majority (Page No.40).
- (viii) Instead of Ajit, Applicant Amruta (daughter of deceased) then applied for appointment on compassionate ground by making application on 14.02.2006 stating that she has completed 18 years in 2006 and entrusted with the liability to maintain the family.
- (ix) The name of Applicant was accordingly taken in waiting list maintained by Respondent No.2 – Commandant, SRPF as seen from letter dated 15.04.2006 (Page No.67 of P.B.).
- (x) Respondent No.2 – Commandant, SRPF by his letter dated 23.07.2009 informed to Respondent No.3 – Collector, Pune that the name of Applicant is on waiting at Serial No.1 and whether there is any objection from the office of Collector for her appointment (Page No.69 of P.B.).
- (xi) Simultaneously, Respondent No.2 – Commandant, SRPF by his letter dated 22.01.2010 also referred matter to Respondent No.1 – Government (Page No.71 of P.B.).
- (xii) Thereafter, Respondent No.2 – Commandant, SRPF by his letter dated 15.04.2020 again informed to Respondent No.1 – Government that Applicant is not entitled to appointment on

compassionate ground in view of cancellation of initial appointment offered to Smt. Jayashree (Page No.92 of P.B.).

(xiii) Respondent No.1 – Government then issued communication dated 24.04.2021 rejecting the claim of Applicant for appointment on compassionate ground, which is challenged in the present O.A. (Page No.94 of P.B.).

3. Shri V.P. Potbhare, learned Advocate for the Applicant sought to contend that though initially appointment on compassionate ground was offered to Smt. Jayashree by order dated 25.05.1999 much before it, Smt. Jayashree by her application dated 15.01.1999 informed Commandant, SRPF for giving appointment to her son Ajit on attaining majority on the ground of her illness, and therefore, it cannot be said that Smt. Jayashree has refused to accept the appointment. He has further pointed out that, thereafter, it is Applicant Amruta (daughter of deceased) applied afresh on 14.02.2006 since she attained majority in 2006, and therefore, her application being made within one year from date of attaining majority, her claim ought to have been accepted by the Respondents. On this line of submission, he sought to contend that having regard to the aim and object of scheme for appointment on compassionate ground, the Applicant ought to have been given appointment on compassionate ground. Thus, according to him, the reason given in impugned order that Smt. Jayashree had refused to accept the appointment is incorrect.

4. Per contra, Smt. A.B. Kololgi, learned P.O. submits that since appointment was already offered to Smt. Jayashree, but she did not join, therefore, now after lapse of 28 years from the date of deceased, the appointment cannot be given to the Applicant. In other words, she meant to say, there was no such necessity or dire need to the family for appointment on compassionate ground, and therefore, the claim of Applicant is rightly rejected. In this behalf, she referred to the decision of Hon'ble High Court in **Writ Petition No.43/2020 (Sou. Arti Nimje Vs.**

State of Maharashtra) decided on 06.12.2021) in which the claim for appointment on compassionate ground being raised after two decades was rejected.

5. The factual aspect has enumerated above are at all not in dispute. The issue posed for consideration is whether in the facts and circumstances of the matter, now after the gap of 28 years from the death of deceased whether the appointment on compassionate ground can be given to the Applicant. Needless to mention, the objection of granting compassionate appointment to the heir of deceased is intended to obviate financial difficulties of the family, so as to tide over the financial crises suffered by the family on account of loss of earning member of the family. The appointment on compassionate ground is thus an exception to the Rule of equality in the matter of public employment and there is no such vested right to claim appointment on compassionate ground.

6. Thus, having regard to the aim and object of the scheme for appointment on compassionate ground, after the death of deceased Chandrakant, her widow Smt. Jayashree was offered appointment on compassionate ground by appointment letter date 25.05.1999. As such, Smt. Jayashree ought to have accepted the appointment to tide over any such financial difficulties. However, she did not join which is indicative that there was no such immediate need or requirement in the family for appointment on compassionate ground. True, Smt. Jayashree before issuance of appointment order by the Department, by her application dated 15.01.1999 requested the Department that her son Ajit was 14 years' old and he be given appointment on compassionate ground on attaining majority. In that application, all that, she stated that due to death of husband, her mental condition is not stable. Except this bald statement, no record is produced that she was really incapacitated to accept the job. Moreover, though in her application dated 15.01.1999

she referred the issue of providing appointment to her elder son Ajit, curiously, no such application made by Ajit after attaining majority.

7. Admittedly, Ajit was elder to her. As per the information supplied by learned Advocate for the Applicant during the course of argument, Amruta attained majority on 06.02.2006, and therefore, applied for appointment on compassionate ground on 14.02.2006 within one year as required under the scheme. It is applicable where at the time of death, no one in the family is major, so that minor can apply on getting age of majority. However, in the present case, admittedly, Ajit was elder to Amruta and in application made by Shri Jayashree, she requested to provide appointment to Ajit on attaining majority. But Ajit though elder to Amruta, he did not apply for appointment on compassionate ground. There is absolutely no explanation forthcoming as to why Ajit did not apply for appointment on compassionate ground. Later, by way of Rejoinder, the Applicants have filed on record Death Certification of Ajit, which goes to show that he died on 21.09.2015. However, why Ajit did not apply for appointment on compassionate ground is not at all explained by the Applicant. All that, it is stated in Rejoinder that he was mentally ill. However, no such medical evidence is tendered. Be that as it may, the fact remains that Ajit did not apply for appointment on compassionate ground though he was elder to Applicant Amruta.

7. Deceased Government servant died on 06.12.1994 and after his death, the appointment on compassionate ground was offered to widow Smt. Jayashree by letter dated 25.05.1999. However, she did not join. Though prior to issuance of appointment letter, she applied on 15.01.1999 for giving job to her son Ajit, the fact remains that she did not join though employment was offered to her. Except bald statement that she was not well, no such documentary evidence is forthcoming to establish that she was really incapacitated for one or other reason to accept the job. Indeed, if family was in dire need of appointment on compassionate ground, she would have accepted the appointment, but it

is not so. Then in 2006 only, the Applicant applied for appointment on compassionate ground though her elder brother Ajit was there, who did not apply for appointment. All these factors goes to suggest that family was not in need of financial help or in distress, otherwise Smt. Jayashree would have joined.

8. Apart, curiously, it is seen from impugned order dated 15.04.2020 that simultaneously Punam (2nd Daughter of the deceased Government servant) had also applied for appointment on 05.02.2014 stating that present Applicant Amruta is not willing to work as Junior Clerk, and therefore, she requested for appointment. Her claim was rejected by the Department by letter dated 21.04.2014. Punam had not challenged rejection of her claim and that order had attained finality.

9. The Hon'ble High Court in **Writ Petition No.43 of 2020 [Sau. Aarti W/o Purushottam Nimje Vs. State of Maharashtra & Ors.] decided on 06.12.2021** in Para Nos.7 held as under :-

“7. The principles for appointment on compassionate ground, as laid down in several decisions of the Supreme Court [viz. Umesh Kumar Nagpal v. State of Haryana, reported in (1994) 4 SCC 138, SBI v. Jaspal Kaur, reported in (2007) 9 SCC 571, SBI v. Anju Jain, reported in (2008) 8 SCC 475, V. Sivamurthy v. State of A.P., reported in (2008) 13 SCC 730, SAIL v. Madhusudan Das, reported in (2008) 15 SCC 560, Bhawani Prasad Sonkar v. Union of India, reported in (2011) 4 SCC 209, State of Gujarat v. Arvindkumar T. Tiwari, reported in (2012) 9 SCC 545, Union of India v. Shashank Goswami, reported in (2012) 11 SCC 307] , may be summarized as follows :

“a) Public employment in offices or posts under the State or its instrumentalities or any other authority covered by Article 12 of the Constitution must be in accordance with Articles 14 and 16 of the Constitution, meaning thereby that appointment must be preceded by an invitation to the public for offering one's candidature for consideration, providing equal opportunities to each of the applicants to participate in the process and subject to fulfillment of the eligibility criteria, selection on the basis of merit.

b) Appointment based solely on descent is inimical to the Constitutional scheme.

c) Appointment on compassionate ground, which is offered on humanitarian grounds, is an exception to the above rule of

equality in the matter of public employment. However, compassionate appointment is not permissible in the absence of any scheme therefor.

d) None can claim compassionate appointment, on the occurrence of death/medical incapacitation of the concerned employee (the sole bread earner of the family), as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible.

e) The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased/incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should only be made in exceptional cases to save the family of the deceased/incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should only be made in exceptional cases to save the family of the deceased/incapacitated staff from destitution where, but for such appointment, they would not survive.

f) An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over.

g) Compassionate appointment can only be made on Group C and Group D posts.

h) Satisfaction that the family members have been facing financial distress and that an appointment on compassionate ground may assist them to tide over such distress is not enough; a dependent must fulfil the eligibility criteria for appointment.

i) A decision on an application for compassionate appointment ideally ought to be made within a given time or else the object of such appointment might be frustrated.

j) The idea of compassionate appointment is not to provide for endless compassion.

k) The object of compassionate employment is not to give a member of a family of the deceased employee a post much less a post for post held by the deceased.

l) Compassionate employment cannot be granted after lapse of reasonable period, which must be specified in the scheme.

m) There cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions.

n) Compassionate employment being an exception to the general rule, the scheme therefor has to be strictly construed and confined only to the purpose it seeks to achieve.

o) Compassionate employment is permissible to one of the dependents of the deceased/incapacitated employee.

p) An appointment on compassionate ground made many years after the death/incapacitation of the employee or without due consideration of the financial resources available to the dependant of the deceased/incapacitated employee would be directly in conflict with Articles 14 and 16 of the Constitution.

q) Although administrative process might result in delay in disposal of the pending claims under the scheme either due to non-availability of vacancies or if other eligible candidates are in the queue ahead of the concerned applicant waiting for appointment, for which appointment may not be offered to an applicant immediately upon death/incapacitation, the date of the application for appointment in particular cases might have some bearing on the right claimed having regard to the object of the scheme.

r) Irrespective of the time taken for offering compassionate appointment, rejection of a claim for compassionate appointment on the ground that the family members of the deceased/incapacitated employee are not in financial distress cannot be followed by an application by a different dependent.

s) Having regard to the fixation of minimum and maximum age by an employer answering the definition of State within the meaning of Article 12 of the Constitution for entering service, it is axiomatic that while an over-aged dependent cannot seek appointment, even an under-aged dependent cannot also seek such appointment.

t) It is only in rare cases, if provided by the scheme for compassionate appointment and not otherwise, that a dependent who was a minor on the date of death/incapacitation, can be considered for appointment upon attaining majority.

u) Having regard to the object of compassionate appointment, time frame fixed in the schemes for making an application ought to be considered mandatory unless of course a different intention appears from a reading of the scheme.”

10. In view of the legal principles culled out from various Judgments as reproduced above, the compassionate appointment cannot be granted

after the lapse of considerable period or where it is shown that the family was not in distress and there cannot be reservation of the vacancy as per the whims of the claimant. Where appointment is made many years after the death of Government servant without due consideration of the financial resources available to the dependent, it would be in conflict with Articles 14 and 16 of the Constitution of India. Suffice to say, now appointment on compassionate ground in the facts and circumstances of this case as discussed above, cannot be granted after the period of 28 years from the death of deceased Government servant. It is more so when Smt. Jayashree though offered appointment, she did not join. In other words, there is forfeiture of claim for appointment on compassionate ground in view of refusal of Smt. Jayashree, and therefore, now the claim cannot be raised or revived by another heir after about 3 decades from the death of deceased Government servant.

11. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned order holds no water and O.A. deserves to be dismissed. Hence, the order.

ORDER

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

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 04.03.2022
Dictation taken by :
S.K. Wamanse.

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