

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.427 OF 2019

DISTRICT : PUNE

1. Smt. Meena Prakash Mohite.)
Age : 46 Yrs., Occu.: Nil,)
 2. Ms. Asmita Prakash Mohite.)
Age : 18 Yrs, Occu.: Education,)
- Both residing at C/o. Ratnakant G.)
Ingale, D/35, Shivaji Nagar Police)
Lines, Pune 411 005.)...**Applicant**

Versus

1. The Commissioner of Police)
[Railways], Mumbai,)
Having Office at Area Manager)
Building, 4th Floor, P.D'Mello Road,)
Wadi Bundar, Mumbai – 10.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 23.07.2021

JUDGMENT

1. The Applicant has challenged the communication dated 07.09.2018 whereby his request for appointment on compassionate ground stands rejected on the ground of absence of provision for

substitution of heir invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated following are the undisputed facts :-

(i) Deceased Prakash Mohite was in service on the establishment of Respondent No.1 as Class-IV employee and died in harness on 14.08.2001 leaving behind Applicant No.1 [Widow] and Applicant No.2 [Daughter].

(ii) After the death of husband, the Applicant No.1 – Smt. Meena applied for appointment on compassionate ground as Class-IV employee on 26.03.2002. Accordingly, her name was taken in waiting list for appointment on compassionate ground as per seniority.

(iii) Though the name of Applicant No.1 was in waiting list, she was not provided employment till she attained the age of 40 years.

(iv) The Applicant No.1- Meena made application on 25.07.2018 for appointment on compassionate ground stating that though her name was taken in waiting list, till date no appointment was provided to her. She, therefore, requested to provide appointment on compassionate ground to her daughter Applicant No.2 – Asmita.

(v) However, Respondent No.1 by communication dated 07.09.2018 rejected her claim stating that the name of her mother is already deleted from waiting list and there is no provision of substitution of heir.

3. The Applicant, therefore, challenged the communication dated 07.09.2018 rejecting their claim for appointment on compassionate ground.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned communication rejecting the claim of Applicant for appointment on compassionate ground *inter-alia* contending that Respondents ought to have provided appointment on compassionate ground to the widow of deceased on priority basis and by creating supernumerary post, so as to give relief to the distressed family for their survival. However, Respondents waited till Applicant No.1 attained the age of 40/45 years and after attaining the said age, deleted her name from waiting list in terms of G.R. dated 06.12.2010 which defeat the very purpose and object of the Scheme for appointment on compassionate ground. He further submits that even if there is no such specific provision in the Scheme for substitution of heir, in view of serious of decisions rendered by this Tribunal, the name of Applicant No.2 ought to have been substituted in place of Applicant by providing appointment on compassionate ground. He has further invited attention to G.R. dated 23.04.2008 whereby ceiling of 5% quota for appointment on compassionate ground has been relaxed. Adverting to this aspect, he submits that Respondents ought to have taken necessary steps in terms of G.R. dated 23.04.2008 for providing appointment on compassionate ground.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned communication stating that the name of Applicant No.1 was taken in waiting list but for want of vacancy, no appointment could have been provided to her. He further submits that in the Scheme for appointment on compassionate ground, there is no such provision for substitution of heir, and therefore, the impugned communication needs no interference.

6. Needless to mention that the Scheme of compassionate appointment is intended to alleviate the difficulties of distressed family and efforts are always to be made to provide employment, so as to advance aim and object of the Scheme where a candidate is otherwise

eligible. One should avoid too technical or rigid approach in such matter otherwise it would defeat the very object of the Scheme.

7. In this behalf, as regard aim and object of the claim for appointment on compassionate ground, it would be useful to refer the observations made by Hon'ble Supreme Court in **AIR 1989 SC 1976 [Smt. Sushma Gosain & Ors. Vs. Union of India]** wherein in Para No.9, it has been held as under :-

“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.”

8. Apart, the learned Advocate for the Applicant also referred to various decisions rendered by this Tribunal, which are as follows :-

(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.No.503/2015 (Piyush Shinde Vs. State of Maharashtra) decided on 05.04.2016. In this matter arising from similar situation, this Tribunal relying on its various earlier decisions rendered in O.A.No.184/2005 (cited supra), O.A.No.432/2013 (cited supra), O.A.No.1043/2014 (cited supra) and Judgment of Hon'ble High Court in Writ Petition No.7793/2009 (Vinodkumar Chavan Vs. State of Maharashtra) decided on 09.12.2009, directions were given to replace the name of the Applicant for appointment on compassionate ground.

(iv) **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.

(v) **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.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.

(vi) **O.A.No.645/2017 [Manoj A. Damale Vs. Superintending Engineer & Administrator, Command Area Development Authority, Nashik] dated on 02.04.2019**. In this O.A. also, the name of one of the heir was taken on record for appointment on compassionate ground, but after crossing 40 years of age, the name came to be deleted and second heir seeks substitution which was rejected by the Tribunal. However, the Tribunal turned down the defence of the Government in absence of such specific provision that substitution is not permissible and issued direction to consider the name of the Applicant for appointment on compassionate ground.

9. In this behalf, reference of one more decision of Hon'ble High Court in **Writ Petition No.877/2015 (Dhulaji Kharat Vs. State of Maharashtra) decided on 12th December, 2018** would be very useful as it is directly on the point involved in the present matter about the composite application for grant of appointment on compassionate ground to widow or her son. In this matter, the Government servant died in

harness in 2008 and that time, the Petitioner Dhulaji was minor. His mother made an application for appointment to Dhulaji on compassionate ground on attaining the age of majority. However, it was not considered. Then again, the Petitioner Dhulaji made application in 2013 to consider the application made by his mother in 2008. The Government, however, declined to consider the request on the ground that the Applicant Dhulaji had not filed an application within one year from the date of attaining majority. In that context, the Hon'ble High Court held that the request for appointment of Petitioner Shri Dhulaji was already made by her mother well within one year from the death of deceased, and therefore, that application ought to have been considered for giving appointment on compassionate ground to Petitioner Shri Dhulaji and the contention that the application was not made within one year from the date of attaining majority was rejected. Accordingly, directions were issued to consider the application made by mother in 2008 for appointment on compassionate ground.

10. Now turning to the facts of the present case, admittedly, the name of Applicant No.1 was taken in waiting list in 2002, but she was not provided the employment. She crossed 40 years of age in 2012. Thus, for 10 years, her name was kept in waiting list without taking further steps to provide employment. Indeed, as per the ratio laid down by Hon'ble Supreme Court in **Sushma Gosain's** case (cited supra), it would be obligatory on the part of Respondents to provide appointment even by creating supernumerary post, if there was no stable post for appointment. Had this mandate of Hon'ble Supreme Court been followed by the executive Applicant No.1 would have got appointment on compassionate ground within time. But Respondents appear to be waiting for crossing age limit so that her name is deleted mechanically.

11. Since no appointment was provided to the widow, the Applicant No.2 – daughter applied for appointment on compassionate ground on 25.07.2018. The date of birth of Applicant No.2 is 16.09.2000 and she

attained 18 years on 16.09.2018. As such, her application which was made well in advance of two months which ought to have been considered in view of consent given by Applicant No.1 for substitution of the name of her daughter. However, her application was also mechanically rejected by impugned order stating that there is no provision for substitution of heir, which shows total insensitivity on the part of Respondents. Indeed, the Respondents ought to have been compassionate to see that though the name of mother of the Applicant No.1 was on waiting list for 10 years, she was not provided employment, and therefore, after she attained the age limit, the name of Applicant No.2 ought to have been taken in waiting list, so as to advance justice in letter and spirit of the Scheme. But unfortunately, the Respondents adopted too technical and pedantic approach which should not be countenanced by the Courts.

12. The defence raised by the Respondents in written statement that for want of vacancy, no appointment was provided to the Applicant No.1 for 10 years is without any evidence to that effect. Except mere statement, no material is produced that there was no such vacancy available. Indeed, in view of the decision of Hon'ble Supreme Court, such stand is totally unacceptable since Respondents ought to have created supernumerary post, if there was no such vacancy.

13. Apart, as rightly pointed out by the learned Advocate for the Applicant, earlier there was 5% ceiling to fill-in the post through appointment on compassionate ground, but it has been relaxed by G.R. dated 23.04.2008. The relevant portion of G.R. is as under :-

“शासन निर्णय

अनुकंपा तत्वावर नियुक्तीसाठी दिनांक २२.८.२००५ पूर्वी प्रतिक्षासूचितील असलेल्या पात्र उमेदवारांना शासन सेवेत नियुक्ती देण्यासंदर्भात शासनाने आता खालीलप्रमाणे निर्णय घेतला आहे.

अ) शासकीय कार्यालयातील आस्थापनेवर गट क व ड मध्ये अनुकंपा तत्वावर नियुक्तीकरिता तयार करण्यात आलेल्या प्रतीक्षासूचीमधील, दि.२२.८.२००५ पूर्वीच्या उमेदवारांना दि.२२.८.२००५ च्या शासन निर्णयातील परिच्छेद १(ओ) मध्ये विहित केलेली रिक्त पदांच्या ५% ची मर्यादा लागू राहणार नाही.

ब) प्रतीक्षासूचीवर असलेल्या दि.२२.८.२००५ पूर्वीच्या उमेदवारांना शासकीय कार्यालयात रिक्त असलेल्या/होणा-या पदांवर अनुकंपा तत्वावर नियुक्ती, या आदेशाच्या दिनांकापासून तीन वर्षात टप्प्याटप्प्याने देण्यात यावी. तीन वर्षात टप्प्याटप्प्याने नियुक्ती करताना दि.२२.८.२००५ पूर्वीच्या प्रतीक्षायादीतील उमेदवारांपैकी ५०% उमेदवारांची नियुक्ती पहिल्या वर्षी, २५% उमेदवारांची नियुक्ती दुस-या वर्षी व उर्वरित २५% उमेदवारांची नियुक्ती तिस-या वर्षी करण्यात यावी.

क) दि.२२.८.२००५ च्या शासन निर्णयातील परीच्छेद २(२) मध्ये नियुक्तीकरिता विहित केलेली ४० वर्षांच्या कमाल वयोमर्यादेची तरतूद ही आता प्रतीक्षासूचीतील दि.२२.८.२००५ पूर्वीच्या उमेदवारांसह सर्वांना लागू राहिल.

२. अनुकंपा तत्वावर नियुक्तीसाठी उपरोक्त आदेशाची अंमलबजावणी करताना दिनांक २२.८.२००५ पूर्वीच्या उमेदवारांना तीन वर्षात टप्प्या-टप्प्याने नियुक्ती देण्याकरिता नियुक्ती प्राधिका-यांकडे तितकी पदे उपलब्ध नसल्यास, त्यांनी अशा उमेदवारांना, सामायिक प्रतीक्षासूचीतील अन्य कार्यालयात नियुक्ती देण्याची विनंती संबंधित जिल्हाधिका-यांकडे करावी. बृहन्मुंबईतील गट 'क' च्या पदावरील नियुक्तीसंदर्भात अशी कार्यवाही बृहन्मुंबईतील नियुक्ती प्राधिका-यांनी, सामान्य प्रशासन विभाग, (का.क्र.१४-अ) यांच्याकडे करावी व बृहन्मुंबईतील, गट 'ड' च्या बाबतीत अशी कार्यवाही बृहन्मुंबईतील नियुक्ती प्राधिका-यांनी जिल्हाधिकारी, मुंबई जिल्हा, जुने जकात घर, मुंबई यांच्याकडे करावी. जिल्हाधिकारी/सामान्य प्रशासन विभाग, (का.क्र.१४-अ) यांना रिक्तपदावर अनुकंपा नियुक्तीकरिता शिफारस करणे शक्य व्हावे म्हणून सर्व नियुक्ती प्राधिका-यांनी त्यांच्या कार्यक्षेत्रातील गट 'क' व 'ड' मधील रिक्त पदांची संख्या त्यांना कळवावी.”

14. As such, in view of said G.R, the Respondents were under obligation to provide employment within three years step by step. As per Clause (b), the compassionate appointment ought to have been granted to 50% candidates in first year, 25% in second year and remaining 25% in third year from the waiting list as on 22.08.2005. Despite this position and instructions from the Government, no steps were taken to provide appointment to the Applicants.

15. Suffice to say, consistent view has been taken by this Tribunal in various O.As referred to above as well as by Hon'ble High Court that having regard to spirit and object of the Scheme, the employment on compassionate ground ought to be provided to the Applicants to mitigate difficulties faced by them due to loss of only earning member of the family and Respondents ought to have considered the application made by Applicant No.2 for taking her name in waiting list in view of deletion of the name of her mother from waiting list.

16. The necessary corollary of aforesaid discussion leads me to conclude that the rejection of the request of Applicant by impugned order dated 07.09.2018 for taking her name on the waiting list in place of her mother is arbitrary and not sustainable in law and fact and the same,

therefore, deserves to be quashed and set aside. The Respondents ought to have considered the request of the Applicant in view of consistent decisions rendered by this Tribunal referred to above as well as law laid down by Hon'ble High Court as well as Hon'ble Supreme Court. Resultantly, the O.A. deserves to be allowed partly. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 07.09.2018 is hereby quashed and set aside.
- (C) The Respondents are directed to consider the application of the Applicant for appointment on compassionate ground and it is equitable as well as judicious that her name is included in the waiting list for the issuance of appointment order, subject to fulfillment of eligible criteria in accordance to Rules.
- (D) This exercise be completed within three months from today.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 23.07.2021
Dictation taken by :
S.K. Wamanse.

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