

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.509 OF 2020

Shri Manoj Ashok Damale,)
Aged 28 years, Occ. Nil,)
R/o. Shree Swami Samarth CHS,)
Opp. Irrigation Colony, Makhamalabad ,)
Dist. Nashik).... **Applicant**

Versus

The Superintending Engineer & Admn.)
Command Area Development Authority,)
Nashik, O/at Sinchan Bhavan, Trymbak Road,)
Nashik – 2.).....**Respondents**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 17.08.2020

JUDGMENT

1. In second round of litigation, the Applicant has challenged the communication dated 03.03.2020 issued by Respondent whereby his name was taken in waiting list for Group-D post instead of Group-C post invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to the O.A. are as follows:-

Initially the Applicant has filed O.A. No.645/2017 challenging order dated 27.04.2016 whereby his claim for appointment on compassionate appointment was rejected on the ground that there is no provision for substitution of heir in waiting list. The Original Application was heard and decided on merit by judgment dated 02.04.2019 with the following order :-

“ORDER

- (A) *The Original Application is allowed partly.*
- (B) *The impugned order dated 27.04.2016 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 his 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.”*

3. The Applicant then made representation dated 16.04.2020 to the Respondent *inter-alia* stating that he has passed HSC examination and he is entitled for Group-C post.

4. Admittedly, the Respondents did not challenge the order dated 02.04.2019, passed by the Tribunal in O.A.645/2017 and it has attained finality. In other words, the Respondent was under obligation to consider the Applicant's qualification and to accommodate him on appropriate post. Since the Applicant has passed HSC examination, he was eligible for appointment in Group-C post.

5. However, the Respondent by communication dated 03.03.2020 informed to the Applicant that in terms of the decision rendered by this Tribunal in O.A.645/2017, his name is taken in waiting list at Sr. No.64/44 for Group-D post. Indeed, there was no such direction of the Tribunal to accommodate him on Group-D post. The Tribunal has directed for issuance of appointment order subject to fulfillment of eligibility criteria in accordance to rules. As such, though the Applicant was eligible for enrollment in waiting list for Group-C post, his name was taken in waiting list for Group-D post, which is under challenge in the present O.A.

6. Heard Shri A.V. Bandiwadekar, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

7. All that Respondent in his reply repeatedly stated that the Applicant's name is registered for Group-D post in waiting list and nothing is pleaded as to why he was not accommodated in Group-C post. It is no where the case of Respondent that the Applicant is not eligible for appointment in Group-C post neither it is a case of the Respondent that there is no such vacancy of Group-C post. Indeed, in terms of the decision of the Hon'ble Supreme Court in **AIR 1989 SC 1976 Smt. Sushma Gosain & Ors. V/s Union of India**) it is highly inappropriate to keep such claims pending for years together and if there is no suitable post for appointment, supernumerary post needs to be created to accommodate the Applicant. The Hon'ble Supreme Court further highlighted the importance of providing appointment on compassionate ground that the purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family and it should be done without further delay.

8. Now turning to the facts of the present case, the Applicant has produced HSC certificate as well as typing examination certificate of 30 w.p.m. in English typing. This being the position, the Applicant's qualification and eligibility was required to be examined for the post of Group-C since admittedly he is eligible for Group-C post.

9. During the course of hearing, learned P.O. could not point out anything so as to justify the impugned communication.

10. If a person is eligible for Group-C post and despite this position, he is offered Group-D post, it amounts to denial of his right of service and equality in Government office which is in violation of Article 14 of the Constitution of India.

11. A candidate possessing eligibility for Group-C post cannot be asked to work on Group-D post unless there are some justifiable reasons. However, no such reasons are forthcoming. Therefore, the impugned order taking the name of Applicant in waiting list for Group-D post is totally arbitrary and outcome of non application of mind.

12. The totality of the aforesaid discussion leads me to conclude that impugned communication for enrollment of Applicant's name in waiting list for Group-D post is totally arbitrary and unsustainable in law and it deserves to be quashed. Hence the following order:-

ORDER

- (A) Original Application is allowed partly.
- (B) Impugned communication dated 03.03.2020 is quashed and set aside.
- (C) The respondent is directed to consider the Applicant's claim for appointment on compassionate ground on Group-C post subject to fulfillment of eligibility criteria in accordance to rules.
- (D) This exercise be completed within two months from today.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J