

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.79 OF 2021

DISTRICT : PUNE

Shri Gaurav Chandrakant Gawade)
Age : 20 years, Occ.: Nil)
R/O. Yedgaon (Indira Nagar),)
Taluka : Junnar, District : Pune.) **...Applicant**

Versus

1. The State of Maharashtra,)
Through Secretary, Irrigation Dept.,)
Mantralaya, Mumbai 32.)
2. The Executive Engineer, MKDVDC,)
Kukadi Project, Sinchan Bhawan,)
Barne Road, Mangalwar Peth, Pune-11.) **...Respondents**

Shri R. M. Kolge, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 27.08.2020

JUDGMENT

1. The Applicant has challenged the impugned order dated 26.11.2020 whereby his claim for appointment on compassionate ground has been rejected by the Respondents invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. In nutshell, the facts giving rise to O.A. are as under:-

The Applicant is the son of deceased Chandrakant Gawade who was serving as Chowkidar on the establishment of Respondent No.2 and died in harness on 23.12.2011. After his death, widow namely Jayshree Gawade made an application for appointment on compassionate ground on 02.01.2012 *inter-alia* stating that after the death of her husband, family is in distress since

there was no other earning member in the family. Their elder daughter Kalyani was married and leaving with her husband. Second daughter Pallavi as well as son (present Applicant) was minor at the time of death of his father. In pursuance of Application made by Jayshree Gawade, her name was taken in the waiting list. However, her name came to be deleted in waiting list by communication dated 29.12.2017 on attaining the age of 45 years in terms of G.R. dated 06.12.2010. The Applicant's date of birth is 14.09.2000 and he attained majority on 14.09.2018 . Therefore, he independently in his personal capacity made an application for appointment on compassionate ground on 05.10.2020. He has stated that he had passed HSC examination and Marathi as well as English Typing examinations and needs employment on compassionate ground by way of substitution of his name in place of his mother. However, the Respondent No.2 rejected his application by communication dated 26.11.2020 solely on the ground that there is no provisions of substitution of heir in the scheme for appointment on compassionate ground which is under challenge in present O.A.

3. This O.A. was filed on 28.01.2021 and notices were issued by order dated 08.02.2021 since then learned P.O. presenting for the Respondents availed enough time for filing Affidavit-in-Reply but the same was not filed. Ultimately, the Tribunal kept the matter for hearing at the stage of admission and having found that the Respondents are least interested in filing reply by order dated 09.06.2021 and thereafter the matter was adjourned on 3-4 dates but no effort was made to file reply. It is on this background, today heard learned Counsel for the Applicant and learned P.O. for final decision of O.A. at the stage of admission.

4. Learned P.O. for the Respondents submits that despite several reminders to the Respondents, they have not given instructions for preparation of Affidavit-in-Reply. Learned P.O. has shown correspondence dated 09.02.2021, 01.03.2021, 22.03.2021, 08.04.2021, 09.06.2021 and 22.07.2021 made with the Respondents. It is thus obvious that despite efforts made by learned P.O., the Respondents did not bother to furnish information to him for preparation of

Affidavit-in-Reply. This shows total indifference and totally irresponsible attitude of the Respondents.

5. Shri R. M. Kolge, learned Counsel for the Applicant sought to assail the impugned order stating that in view of consistent decisions delivered by this Tribunal and bearing in mind very object of the scheme of appointment on compassionate ground, rejection of the Applicant's claim is totally arbitrary and outcome of non application of mind. He further submits that the deceased was the only earning member in the family and after his death there being no other member in the family it is in economical distress condition and need immediate assistance for the survival.

6. Per contra, Shri A. J. Chougule, learned Presenting Officer for the Respondents submits that even if the Respondents have failed to file reply within time granted by the Tribunal, the application made by the Applicant being made after expiration of two years period of limitation and it was not maintainable. He submits that the authority to condone the delay is Government and has opposed the Original Application.

7. Insofar as the limitation is concerned, significant to note that application made by the Applicant dated 05.10.2020 is not rejected on the ground of limitation as seen from the impugned order dated 26.11.2020. The application has been rejected solely on the ground that there is no provisions of substitution of heir in the scheme for appointment on compassionate ground as the name of his mother was already taken in the waiting list and it was deleted on attaining the age of 45 years of age in terms of the scheme for appointment on compassionate ground.

8. It may be noted that initially, limitation for making application by son, if minor, at the time of death was one year from the date of attaining majority. However, by G.R. dated 20.05.2015, it is extended up to three years from the death of deceased and head of the department of the concerned administrative department in Mantralaya is empowered to condone the delay. Suffice to say, where the application is not made within one year but made within three years from the death of deceased, the competent authority can condone the delay

having regard to the scheme for appointment on compassionate ground so as to advance substantial justice and to fulfil the object of scheme.

9. Now turning to the ground of absence of provisions for substitution of heir in scheme. True, there is no such specific provision in the scheme as well as various Government Resolutions issued by the Government in this behalf.

10. Material question is as to whether once the name of mother was deleted from the waiting list, the name of the Applicant can be substituted for providing appointment on compassionate ground. True, there is no specific provision of substitution of name in scheme for appointment on compassionate ground. However, this issue is no more *res integra* in view of various decisions rendered by this Tribunal where directions were given to consider the name of the Applicant, where name of heir was earlier taken in waiting list but deleted on account of crossing the age of 40/45 years.

11. Needless to mention that idea and object behind providing compassionate appointment to the heir of deceased employee is to alleviate the financial difficulties of distressed family due to loss of sole earning member of the family. Such appointment needs to be provided immediately to redeem the family in distress and application made by the heir should not be kept pending for years together. If the name of the heir is taken in waiting list then appointment is required to be given without further delay and it should not be kept pending, awaiting attaining the age of 40/45 years so that name can be deleted from waiting list mechanically. If such approach of executive is allowed, it would defeat very purpose of the scheme of compassionate appointment. In so far as facts of present case are concerned, there is absolutely nothing on record to indicate as to why appointment order was not issued to the Applicant's mother though her name was entered in waiting list. Indeed, in terms of decision of the Hon'ble Supreme Court even there is no suitable post for appointment then supernumerary post should be created to accommodate the heir of the deceased for providing appointment on compassionate ground.

12. As regard the aim and object of this scheme for appointment on compassionate ground, it would be useful to refer the observations made by the 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 follows :

“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.”

13. Furthermore, it would be useful to refer the decision rendered by this Tribunal in earlier O.A. wherein directions were issued to consider the name of the Applicant for providing appointment on compassionate ground and the defence of absence of provision for substitution of heir was rejected.

(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.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.

(iv) **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 Khataavkar Vs. State of Maharashtra) decided on 21.10.2016, O.A.645/201770.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.

14. As such, even if there is no specific provision for substitution of heir, this aspect is no more *res integra* in view of the aforesaid decision. Indeed, it is obligatory on the part of Respondents to create supernumerary post, if there is no suitable post for appointment and to provide appointment to the heir of the deceased. Had this mandate of the Hon'ble Supreme Court in **Sushma Gosain's** case (cited supra) was followed by the executive, the Applicant's mother would have got appointment on compassionate ground before she attained the age of 40 years. However, unfortunately the Respondents did not take any action, as if, they were waiting for the Applicant's mother to cross the age of 40 years. Such approach of executive is contrary to spirit and mandate of the decision of the Hon'ble Supreme Court in **Sushma Gosain's** case as well as object of the scheme for appointment on compassionate ground. Only because after the death of the deceased Government servant, his family had managed to survive for long period, that itself cannot be the ground to reject

the application and it cannot be assumed that there is no immediate necessity for appointment on compassionate ground.

15. Suffice to say, the rejection of the claim of the Applicant on the ground of absence of provision of substitution of heir in the scheme of appointment on compassionate ground is totally unsustainable. Insofar as delay aspect is concerned, application made by the Applicant being made within three years on attaining majority, the competent authority is required to consider this aspect judicially and to provide appointment subject to fulfilment of other conditions and eligibility criteria. Therefore, the Respondents ought to have referred the matter to competent authority for condonation of delay but they failed to do so and mechanically rejected the application on the ground of absence of provision in the scheme which is totally unsustainable as discussed above.

16. The necessary corollary of aforesaid discussion leads me to conclude that rejection of the scheme by order dated 26.11.2020 is arbitrary and totally unsustainable in law and facts and deserves to be quashed. The Respondents ought to have considered and condoned the delay in term of G.R. dated 20.05.2015 and should have provided appointment to the Applicant in view of consistent decisions rendered by the Tribunal referred to above as well as the decision of the Hon'ble Supreme Court. Resultantly, the O.A. deserves to be allowed partly. Hence the following order.

ORDER

- (A) Original Application is allowed partly.
- (B) The impugned order dated 26.11.2020 is hereby quashed and set aside.
- (C) The Respondent No.1 is directed to consider the aspect of delay and shall pass appropriate order for condonation of delay in terms of Clause 'D' of G.R. dated 20.05.2015.

- (D) The Respondents are directed to consider the application dated 05.10.2020 made by the Applicant for appointment on compassionate ground and it would be equitable as well as judicious that his name is included in the waiting list for issuance of appointment order, subject to fulfilment of eligibility criteria in accordance to Rules.
- (E) Above exercise be completed within three months from today.
- (F) No order as to costs.

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

Place :Mumbai

Date : 27.08.2021

Dictation taken by : VSM

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