

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.799 of 2019

Shri Sachin Ramdas Sangale,)
Age :35 years, Occ. : Nil,)
R/at. Shivganga Hsg. Soc. Flat No.3,)
Old Jakat Naka, Mhasrul-Makhmalabad Link)
Road, In front of Pornima Mangal Karyalay,)
Peth Road, Panchavati, Nashik-422004.)...**Applicant**

Versus

1. The State of Maharashtra, through the Secretary)
Water Resource Department, 15th floor, New Admn.)
Bldg., Madam Kama Road, Mantralaya, Mumbai 32.)
2. The Superintendent of Engineer, Mechanical)
Mandal, Pune 411001.)
3. The Executive Engineer, Mechanical Division,)
Nashik.)...**Respondent**

Shri M.B. Kadam, learned Advocate for the Applicant.
Ms N.G. Gohad, learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 16.07.2020.

J U D G M E N T

1. The Applicant has challenged the communication dated 20.06.2019 and 18.07.2019 whereby his request for substituting his name in place of his deceased brother for appointment on compassionate ground has been rejected invoking the jurisdiction of this Tribunal u/s 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to the Original Application is as under:-

The Applicant's father namely Shri Ramdas Sangale was Helper on the establishment of Respondent No.3 – Executive Engineer, Nashik. Unfortunately, he died in harness on 25.08.2009. After his death, his elder son Hemant applied for appointment on compassionate ground in place of deceased on the ground that there is no other earning member in the family. Accordingly, Hemant's name was empanelled in the waiting list at Sr.No.69 for issuance of appointment order on compassionate ground. However, before getting an appointment, unfortunately Hemant died on 08.02.2014. After his death, his wife Vaishali applied for appointment on compassionate ground but she was found not eligible. Thereafter, present Applicant who is younger son of deceased employee made an application on 10.02.2017 for appointment on compassionate ground in terms of G.R. dated 20.05.2015 which *inter-alia* provides false substitution of other heir, in case heir who is empanelled in the waiting list, died before getting appointment on compassionate ground. The Respondent No.2-Superintendent of Engineer, Mechanical Division, Pune obtained legal opinion of District Government Pleader, Pune and in terms of his opinion, name of the Applicant was substituted in place of deceased Hemant by maintaining his seniority at Sr. No.69. Simultaneously, the Respondent No.2 forwarded the proposal dated 26.07.2018 to the Government to condone the delay made by the Applicant for substitution of his name in the name of deceased Hemant in terms of G.R. dated 20.05.2015 which *inter-alia* provides that in case the application is made beyond three years, the Administrative Head in Mantralaya can condone the delay. However, the Respondent No.1-Secretary, Water Resource Department, Mantralaya, Mumbai by communication dated 20.06.2019 informed to the Respondent No.2 that G.R. dated 20.05.2015 cannot be made applicable to the present situation and rejected the proposal. On the basis of communication dated 20.06.2019, Respondent No.2, accordingly

informed to the Applicant that his name cannot be substituted in place of deceased Hemant for appointment on compassionate ground. The communication dated 20.06.2019 and 18.07.2019 are under challenged in the present Original Application.

4. The Respondents are represented by Smt N.G. Gohad, learned Presenting Officer. The present O.A. was filed on 14.08.2019 and enough time was availed for filing the reply. However, no reply was filed. Lastly, by order dated 20.06.2020 again one week was lastly granted with specific directions that if reply is not filed, the matter will be heard finally at the stage of admission. Despite specific directions, no reply was filed. Ultimately, the Tribunal heard the matter on 02.07.2020. As such, no reply was filed by the Respondents despite availing enough time.

5. Shri M. B. Kadam, learned Counsel for the Applicant submits that in terms of G.R. dated 20.05.2015, the Government has taken policy decision to substitute the name of the heir in place of heir who is empanelled in the waiting list but died before getting an appointment. He, therefore, submits that in view of benevolent object of the scheme to provide employment to one of the eligible heir of the deceased and to provide financial assistance to the distressed family, the Respondent No.1 ought to have taken the name of the Applicant in the waiting list in place of deceased Hemant. He has further pointed out that even if there is no specific provision in G.R. for substitution of heir where the name of the heir is deleted from the waiting list on account of crossing the age of 40/45, the Tribunal has taken consistent view directing the Government to consider the substitution of heir and in most of the cases, the decisions rendered by the Tribunal are implemented. Learned Counsel for the Applicant, therefore, submits that in the present case in fact he is on better footing and in view of G.R. dated 20.05.2015, the Government ought to have taken the name of the Applicant in the waiting list in place of deceased Hemant in terms of G.R. dated 20.05.2015. Thus, the sum

and substance of his submission is that the decision rejecting application is arbitrary and unsustainable in law.

6. Per contra, all that Smt N.G. Gohad, learned Presenting Officer submits that Hemant died on 08.02.2014 whereas G.R. providing for substitution of heir, in case of death of heir already empanelled in the waiting list, was issued on 20.05.2015, and there being no retrospective effect to G.R. dated 20.05.2015, the Applicant's claim is not sustainable.

7. Undisputed the facts are as follows :-

- (a) Applicant's father died in harness on 25.08.2009 and after his death the name of his elder son Hemant was empanelled in waiting list for providing appointment on compassionate ground.
- (b) No appointment order was issued to Hemant till his death on 08.02.2014.
- (c) Government issued G.R. dated 20.05.2015, which *inter alia* provides that in case where heir who is empanelled in waiting list die before getting appointment on compassionate ground the name of another heir can be substituted in his place.
- (d) The Applicant made an application for appointment on compassionate ground on 10.02.2017, asserting that in view of death of Hemant his name be substituted in waiting list in terms of G.R. dated 20.05.2015.

8. As such in view of submission advanced and facts adverted to above, the crux of the matter is whether the name of the Applicant can be substituted in place of deceased Hemant.

9. Needless to mention that the very object of providing appointment on compassionate ground is alleviate the financial difficulties of the distressed family and in such matter if the applicant is found eligible then appointment needs to be provided immediately, so as to mitigate hardship faced by the family due to death of the sole earning member in the family.

10. As regard to aim and object of the scheme 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 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 the appointment supernumerary post should be created to accommodate the applicant.”

11. Till the issuance of G.R. dated 20.05.2015 there was no provision for substitution of another heir, where the heir who is empanelled in waiting list die. It is for the first time by issuance of G.R. dated 20.05.2015, the Government has taken decision to substitute the name of another heir so that the very object of this scheme of compassionate appointment is fulfilled.

12. Material to note that by the said G.R. limitation for making application for appointment on compassionate ground is also extended up to three years subject to condonation of delay. Besides, in case of minor heir also the period of limitation has been extended upto three years on attaining majority, subject to condonation of delay by the Head of the Department in Mantralaya.

13. Material to note that the G.R. dated 20.05.2015 is silent about the period of limitation for making application by another heir where the heir who is already empanelled in waiting list die before getting appointment on compassionate ground. All that G.R. provides that in case of death of heir his name can be substituted by another legal heir. Furthermore, there is no specific stipulation in G.R. dated 20.05.2015 about the date of its enforcement. True, normally, the G.Rs are effective from the date on which it has been issued.

14. In present case, Hemant dies on 08.02.2014 and the G.R. has been issued by Government on 20.05.2015. The Applicant accordingly made an application on 10.02.2017. Thus on the date of making an application the G.R. dated 20.05.2015 was in force. While rejecting the claim of the applicant all that it is stated in impugned order is that the G.R. dated 20.05.2015 cannot be made applicable to the Applicant, except it, no other reasons are recorded. It appears that the claim of the Applicant was rejected because of the death of Hemant, prior to issuance of G.R. dated 20.05.2015. In my considered opinion, such technical approach should be avoided while considering the matter of appointment on compassionate ground by the Executive.

15. It would not be out of place to mention here that till date there is no provision in scheme for substitution of heir in case the name of heir who is empanelled in waiting list has crossed the age of 40/45 years. However, this Tribunal has taken consistent view in various Original Applications that keeping in mind the object of the scheme even if there is no specific provision to substitution of heir the name of another heir deserves to be considered for substitution and most of the decisions are implemented by the Government.

16. Whereas in present case, the Government in its wisdom to some extent rectified the situation by issuing G.R. dated 20.05.2015, whereby substitution of the name of heir is permissible where the empanelled

heir die before appointment on compassionate ground. This being the position in my considered opinion the Respondent No.1 ought to have accepted the proposal forwarded by Respondent No.2, whereby the name of the Applicant was substituted in place of deceased Hemant.

17. Indeed, the Hon'ble Supreme Court in **Smt. Sushma Gosain's case** (cited supra) held that appointment on compassionate ground should be provided immediately to redeem the family in distress and it would be improper to keep such matters pending for years together. It has been further held that if there is no suitable post for appointment then supernumerary post should be created to accommodate the applicant so that the hardship faced by the distressed family is mitigated. In present case, the father of the applicant died on 25.08.2009 and the name of his elder son Hemant was taken in waiting list. However, no appointment order was issued for near about 5 years. Unfortunately, he died on 08.02.2014. Thereafter, in pursuance of G.R. dated 20.05.2015, the Applicant made an application for substitution of his name in place of deceased.

19. Had the mandate of the Hon'ble Supreme Court in **Smt. Sushma Gosain's case** (cited supra) has been followed by the Executive, Hemant would have got appointment within time. However, he was kept waiting for five years. No reason is forthcoming as to why appointment was not provided to him. Unfortunately, he died on 08.02.2014. In this background, Respondent No.1 ought to have considered the proposal forwarded by Respondent No.2 sympathetically and ought to have given approval to the same. Only because after the death of deceased Government servant his family managed to survive for long period, that should not be the reason for rejection. Suffice to say, the rejection of the application made by the applicant for substitution of his name in place of Hemant is unjust and contrary to the spirit of this scheme for appointment on compassionate ground as well as mandate to the decision of Hon'ble Supreme Court in **Smt. Sushma Gosain's case**.

20. The necessary corollary of the aforesaid discussion leads me to conclude that the impugned orders are unsustainable in law and fact and deserves to be quashed.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 20.08.2019 and 18.07.2019 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 this 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)

VSM

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