

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.874 OF 2017  
(SUBJECT : COMPASSIONATE APPOINTMENT)**

**DISTRICT : PUNE**

Mrs. Farah Rizwan Shaikh alias, )  
Miss. Farah Jamal Shaikh, )  
Residing at : Survey No.668/69, Ganesh Peth, )  
Behind Khadake Godown, Govind Halwai Chawk, )  
Pune 411 002. ) **.....APPLICANT.**

**VERSUS**

1. The Dean, )  
B.J. Medical College & Sassoon General )  
Hospital, Pune 411 001. )  
2. The Collector, )  
Pune District, Pune. )  
**.....RESPONDENTS.**

Ms. R. Todankar, learned Advocate for the Applicant.

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

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

**DATE** : 24.01.2020.

**J U D G M E N T**

1. The challenge is to the impugned order dated 18.07.2017, whereby the claim of the Applicant for the appointment on compassionate ground stands

rejected invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal, 1985.

2. The uncontroverted facts necessary for the decision of the present Original Application can be summarized as follows :-

(a) Deceased Shri Jamal Kadar Shaikh was serving as 'ward boy' on the establishment of Respondent No.1 and died in harness on 31.12.2006 leaving behind his widow - Smt. Rizwana Jamal Shaikh and present Applicant - Mrs. Farah Rizwan Shaikh (married daughter).

(b) After the death of Shri Jamal Kadar Shaikh his widow Smt. Rizwana Jamal Shaikh made an application on 10.01.2007 for appointment on compassionate ground and her name was accordingly entered in the waiting list.

(c) As no employment was provided despite lapse of years together Smt. Rizwana Jamal Shaikh filed O.A.No.272/2010 before this Tribunal for directions to provide employment to her on compassionate ground.

(d) O.A.No.272/2010 was dismissed by this Tribunal on 08.01.2015 being infructuous with the observations that the Applicant Smt. Rizwana Jamal Shaikh has already crossed 45 years of age on 17.04.2013 i.e. during pendency of the O.A.

(e) Therefore, the Applicant (Mrs. Farah Rizwan Shaikh) herself made an application for appointment on compassionate ground on 12.02.2015 stating that in view of deletion of name of her mother, employment on compassionate ground be provided to her and again reminder was sent on 24.04.2017.

(f) However, by impugned order dated 18.07.2017 her claim for appointment on compassionate ground stands rejected on the ground that there is no provision to provide employment to another heir by substitution which is challenged in the present O.A.

3. Smt. R. Todankar, learned Advocate for the Applicant sought to assail the impugned order contending that after the death of Shri Jamal Kadar Shaikh in 2006, except widow - Smt. Rizwana Jamal Shaikh and daughter (present Applicant), there was no other member in the family and therefore, the application made by Smt. Rizwana Jamal Shaikh on 10.01.2007 ought to have been considered in right earnest within reasonable time so as to provide employment to the family who was in distress due to death of sole earning member in the family. She had pointed out that Smt. Rizwana Jamal Shaikh has attained 45 years of age on 17.04.2013, but prior to it no steps were taken to provide her employment for the period of six years and ultimately on attaining the age of 45 years her name was deleted from the waiting list. It is on this background O.A.No.272/2010 was disposed of having become infructuous. She, therefore, submits that in view of various decisions rendered by this Tribunal even if there is no express provision for substitution of heir, in the peculiar facts and circumstances of the case, the application made by the Applicant in terms of G.R. dated 26.02.2013 which was later modified by another G.R. dated 17.11.2016 ought to have been considered in proper prospective keeping in mind object of appointment on compassionate ground.

4. Par contra, learned P.O. for the Respondents submits that in terms of G.R. dated 06.12.2010 the name of Smt. Rizwana Jamal Shaikh was deleted on attaining 45 years of age and there being no provision for substitution of heir the claim of the present applicant is rightly rejected.

5. In view of the submissions the question posed for consideration is whether the rejection of the Applicant for appointment on compassionate ground is sustainable in law.

6. Needless to mention, that the object of compassionate appointment is to alleviate the difficulties of the distressed family so that the family of deceased could survive in view of loss of sole earning member of the family. As regards, the aim and object of the scheme for appointment on compassionate ground, it will be useful to refer to the observations made by Hon'ble Supreme Court in **AIR 1989 SC 1976 (Smt. Sushma Gosain & Ors. V/s. Union of India**, (hereinafter referred as **Sushma Gosain's case**) where in paragraph 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.”*

7. Now turning to the facts of the present case, as stated above, after the death of Shri Jamal Kadar Shaikh there was no earning member in the family and therefore his widow- Smt. Rizwana Jamal Shaikh had immediately applied on 10.01.2007 for grant of appointment on compassionate ground. Accordingly, her name was taken in waiting list but nothing was communicated to her and therefore she was constrained to file O.A.No.272/2010.

8. Unfortunately, during the pendency of the said O.A. she had crossed 45 years of age on 17.04.2013 and taking note of this situation O.A.No.272/2010 was dismissed being infructuous. It would be apposite to

see the observations made by the Tribunal in order dated 08.01.2015 passed in O.A.No.272/2010 as follows :-

*“3. For the reasons to be presently set out in view of the important subsequent event, it is not necessary for us to closely examine the facts herein. It may only be noted that the Respondents have been contesting this move of the Applicant on various grounds. It appears from the record that the O.A. was once closed for orders but then on the request of the learned Advocate for the Applicant, it was withdrawn therefrom and further Affidavits were admitted on record. It was the case of the Applicant that the Respondents have been admitting the persons so similarly placed as she was, while she was being denied her rightful entitlement. The Affidavits came to be filed and again it will not be necessary for us to read herein the said Affidavits in detail. It appears from the Affidavit filed on behalf of the Respondents on 17/12/2014 Para 3.7 (Page 6) that the Applicant attained the age of 45 years on 17.4.2013. Therefore, even if the cut-off age in case of the Applicant was 45 when the matter came up for final disposal, she had already crossed that age limit also and Shri M.D. Lonkar, the learned Advocate for the Applicant in his customary fairness did not dispute this position. Therefore, even if we may not be quite satisfied with the lethargy shown by the Respondents in last five years in processing this matter legally, this O.A. has to fail, and therefore, the same is dismissed as infructuous with no order as to costs.”*

9. As Smt. Rizwana Jamal Shaikh had crossed 45 years of age her claim could not have been considered in terms of G.R. dated 06.12.2010 and therefore no relief was granted in O.A.No.272/2010. The present applicant was not party to that proceedings. The material aspect to note is that there was no communication by the Respondent to Smt. Rizwana Jamal Shaikh about deletion of her name from the waiting list because of crossing 45 years of age. Be that as it may, the Tribunal indeed has specifically observed in O.A.No.272/2010 that there was lethargy on the part of Respondents in not processing the matter legally and to see that the employment is provided to Smt. Rizwana Jamal Shaikh. As such it is because of inaction and non adherence of the observations made by the Hon'ble Supreme Court in **Sushma Gosain's case** cited supra, the claim of Smt. Rizwana Jamal Shaikh was rejected because of age bar. In **Sushma Gosain's case**, the Hon'ble

Supreme Court emphasised the necessity of processing application made by the heir for grant of appointment expeditiously so as to mitigate the hardship of the family in distress by death of the bread earner of the family. Hon'ble Supreme Court further emphasis that it would be improper to keep such application pending for years together and if there is no suitable post for appointment then supernumerary post should be created to accommodate such legal heir of deceased employee.

10. If Respondents had processed the application made by the applicant within reasonable time perhaps Smt. Rizwana Jamal Shaikh would have got appointment. Indeed such appointment ought to be provided even by creating supernumerary post so that object of this claim is fulfilled in letter and spirit.

11. O.A.No.272/2010 was disposed of on 08.01.2015 and on 12.02.2015 applicant made application for appointment on compassionate ground and again sent reminder on 24.04.2017. However, it is rejected by impugned order dated 18.07.2017 on the ground of absence of provision for substitution of heir.

12. As such, in such situation if the claim of applicant is rejected on the technical ground of absence of provision for substitution of heir then it would be amounting to giving benefit to the lethargy of the Respondents for no fault on the part of heirs of the deceased.

13. At this juncture, it would be apposite to take note of G.R. dated 26.02.2013 and subsequent G.R. dated 17.11.2016. Material to note that in terms of earlier G.R. dated 26.02.2013 in so far as married daughter is concerned appointment was permissible only in the event married daughter is the only surviving heir of the deceased or the family of the deceased is solely dependent upon the married daughter. As such in other situation the married daughter was not held entitled to appointment. However, the said

G.R. was cancelled by the Government in view of the decision rendered by this Tribunal in O.A.No.155/2012 as well as observations made by the Hon'ble High Court in Writ Petition No.1131/2016 by order dated 10.10.2016. Consequently, the Government had issued fresh G.R. on 17.11.2016, whereby married daughter were also held eligible for appointment under the scheme of compassionate appointment and discrimination was removed.

14. In present case, after the dismissal of O.A.No.272/2010 which was filed by Smt. Rizwana Jamal Shaikh, the Applicant made application for appointment on compassionate ground on 12.02.2015 and again made application on 24.04.2017. As such, the application dated 24.04.2017 made by the Applicant ought to have been considered in terms of G.R. dated 17.11.2016 in proper prospective keeping in mind that except the applicant there was nobody in the family to maintain her widow mother whose claim has been rejected and was frustrated only because of the delay on the part of Respondents to provide employment to her within reasonable time.

15. As such considering peculiar facts and circumstances of the case, the rejection on the sole ground of absence of provision for substitution of heir is not at all sustainable in law and facts.

16. There are consistent decisions rendered by this Tribunal wherein directions were given to include the name of other heir. In this behalf, reference can be made to following judgments :-

- (i) **O.A.No.432/2013 (Shivprasad U. Wadnere V/s. State of Maharashtra & 2 Ors.) decided on 01.12.2014.**
- (ii) **O.A.No.184/2005 (Smt. Nirmala Doijad V/s. State of Maharashtra) decided on 03.05.2006.**
- (iii) **O.A.No.503/2015 (Piyush Shinde V/s. State of Maharashtra) decided on 05.04.2016.**
- (iv) **O.A.No.604/2016 (Anusaya More V/s. State of Maharashtra) decided by this Tribunal on 24.10.2016.**

- (v) **O.A.No.327/2017 (Smt. Vanita Shitole V/s. State of Maharashtra) decided on 07.08.2017.**
- (vi) **O.A.No.636/2016 (Sagar B. Raikar V/s. Superintending Engineer) decided on 21.03.2017.**
- (vii) **O.A.No.239/2016 (Swati Khatavkar V/s. State of Maharashtra) decided on 21.10.2016.**
- (viii) **O.A.No.884/2016 (Mayur Gurav V/s. State of Maharashtra) decided on 30.03.2017.**
- (ix) **O.A.No.1126/2017 (Siddhesh N. Jagde V/s. State of Maharashtra) decided on 04.06.2018.**

17. Suffice to say that the impugned orders are contrary to the spirit and mandate of judgments of Hon'ble Supreme Court in **Sushma Gosain's case** (cited supra) as well as the object of this scheme for the appointment on compassionate ground.

18. In so far as the Judgment rendered by this Tribunal in **O.A.381/2017 (Amanulla S. Mahaldar Vs. State of Maharashtra) decided on 06.11.2017** referred by learned P.O. is concerned, I have gone through the Judgment and found it is quite distinguishable and not applicable in the present situation. In that matter, it was second round of litigation. Prior to filing of O.A.381/2017, the Applicant Amanulla Mahaldar had filed O.A.No.700/2016 seeking the relief of direction, as the request of substitution was rejected in view of deletion of the name of one of the heir on attaining the age of 40 years from the waiting list. Accordingly, in O.A.700/2016, the Tribunal gave direction to the Government to consider the request of the Applicant afresh and to take appropriate decision. As per the direction given by the Tribunal, the Government reconsidered the request of the Applicant, but again rejected his claim for appointment on compassionate ground. It is in that context, this Tribunal rejected O.A.381/2017. This being the position, obviously, it has no application to the present situation. Apart, learned Advocate for the Applicant has pointed out that the decision rendered in O.A.381/2017 has been challenged and the matter is subjudice before the Hon'ble High Court.



19. The necessary corollary of aforesaid discussion leads me to conclude that the rejection of the request of Applicant by impugned order dated 18.07.2017 for not taking his name on the waiting list in place of his 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 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 18.07.2017 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)**

prk