

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.894 OF 2018

DISTRICT : MUMBAI

Shri Anil Ravindra Khedekar.)
Age : 49 Yrs, Occu.: Nil,)
R/at : Worli BDD Chawl, 113, R.No.35, Worli,)
Mumbai – 400 018.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Public Works Department,)
Mantralaya, Mumbai - 400 032.)
2. The Director.)
Chawl Development Department,)
G.J. Marg, Worli, Mumbai – 400 018.)
3. The Manager.)
Chawl Development Department,)
BDD Chawl No.51, Ground Floor,)
Bhosale Marg, Worli, Mumbai – 18.)
4. The Secretary.)
General Administration Department,)
Mantralaya, Mumbai.)
5. The District Collector & District)
Magistrate, Mumbai City Shahid)
Bhagat Singh Marg, Fort, Mumbai – 1.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 09.07.2019

JUDGMENT

1. In the present Original Application, the Applicant is seeking direction to the Respondents to appoint him on compassionate ground in Group 'D' cadre.

2. Shortly stated facts giving rise to this application are as under :-

The father of the Applicant viz. Ravindra Khedekar was in Government serving on the post of Peon. He died in harness on 28.03.1987 leaving behind him widow, daughter and two sons. After the death of father, the Applicant made an application on 29th April, 1987 for appointment on compassionate ground stating that his mother is suffering from Cancer and the family is in distress. Thereafter again, he made representations on 03.04.1999, 26.08.1999, 04.08.2000 and 30.05.2005. However, there was no communication to the Applicant. It is only on 29.11.2012, the Respondent No.3 issued letter to the Applicant and called upon certain documents from him for verification. Accordingly, he submitted the documents sought by Respondent No.3. However, thereafter, nothing was communicated to the Applicant despite his representation on 11.03.2013. As such, there was no communication to the Applicant in pursuance to his application for appointment on compassionate ground. The Applicant contends that his name was taken in waiting list for the issuance of order but no further steps were taken to issue appointment order. The Applicant, therefore, obtained certain information under Right to Information Act and found that the Respondents have issued appointment orders

to others, but nothing is communicated to him. Ultimately, the Applicant has filed the present O.A. seeking direction to the Respondents to appoint him on compassionate ground.

3. The Respondent No.5 viz. Collector, Mumbai City has filed one page Affidavit-in-reply only to state that the name of the Applicant was deleted from waiting list on attaining 40 years of age. The Applicant's date of birth is 18.06.1968 and has completed 40 years on 18.06.2008. The Respondent No.5, therefore, contends that the Applicant is not entitled to the appointment on compassionate ground.

4. Shri K.R. Jagdale, learned Advocate for the Applicant vehemently urged that though the Applicant had applied for appointment on compassionate ground on 29th April, 1987, the Respondents neglected and completely ignored his application, as if they were waiting for completion of 40 years of age of the Applicant so as to delete his name from waiting list taking shelter of G.R. under which the name of heir, if crossed 40 years of age, shall be deleted from the waiting list. He, therefore, submits that had the Respondents took prompt steps on receipt of application of the Applicant perhaps he would have got the appointment before crossing 40 years of age. He has further pointed out that till filing of O.A, there is no communication to the Applicant about his entitlement to appointment on compassionate ground and it is for the first time in reply, the said ground is taken. On this line of submission, he prayed for necessary directions to Respondents to consider his name for appointment on compassionate ground.

5. Per contra, Ms. N.G. Gohad, learned P.O. reiterated the stand taken in reply and nothing more is submitted.

6. Undisputedly, Applicant's father died in harness on 28.03.1987 and after his death on 29.04.1987 i.e. after one month from the demise of her father, he made an application for appointment on compassionate ground. For the first time, by letter dated 29.11.2012, the Respondent No.3 asked the Applicant to submit certain information/documents which he submitted on 03.12.2012 itself. Material to note that till date, there is no communication to the Applicant about his request for appointment on compassionate ground. For the first time in reply, the Respondent No.5 sought to contend that, as the Applicant has completed 40 years of age, he is not entitled to the appointment on compassionate ground in terms of G.R. dated 06.10.2010. As there was no response or communication from the Respondents, the Applicant obtained certain information invoking provisions of Right to Information Act. He had produced the waiting list maintained by the department dated 24.09.2012 obtained under R.T.I. Act. The name of Applicant is at Serial No.38 in the waiting list. Thus, this list appears to have been prepared on 24.09.2012. True, the Applicant had attained 40 years of age on 18.06.2008. However, the question posed why the Applicant's name is not taken in the waiting list earlier in 2012 for which there is no explanation from the Respondents. As stated above, one page cryptic reply is filed only to state that the Applicant's name is deleted from waiting list having crossed 40 years of age. Except this statement, reply is silent on other aspects.

7. Needless to mention that the object of providing employment to the heir of deceased employee is to obviate the financial difficulties of the family because of loss of sole earning member of the family. Therefore, the Respondents were obliged to consider the application made by the Applicant immediately on receipt of it and to process further in accordance to Rules. The Applicant had made an application on 29.04.1987. As such, the Respondents were under obligation to be sensitive in the matter and to decide the same within reasonable time so that

the very purpose of Scheme could be achieved. Otherwise, the very purpose of the Scheme would be frustrated. The Respondents even did not bother to communicate the decision, as the case may be to the Applicant and it is for the first time in reply, the stand is taken that because of attaining 40 years' age, the Applicant is not entitled to appointment on compassionate ground. Suffice to say, the stand taken by the Respondents in view of lapses on their part is not sustainable in law. Had the Respondents considered the Applicant's request made in 1987 perhaps he would have got appointment as it is only in 2008, he attained 40 years of age. What Respondents did from 1987 to 2008 is not at all explained. It is not the case of Respondents that there were no vacancies or for any other justifiable reason, the appointment could not have been made. It is also not the case of Respondents that the Applicant is not eligible for appointment on compassionate ground. As such, it seems that the Respondents were only waiting for completion of 40 years of age by the Applicant, so that after attaining 40 years of age, his name would be deleted mechanically. Such conduct and attitude of the Respondents is highly deplorable and cannot be countenanced.

8. Needless to mention that the concept of compassionate employment is intended to alleviate to distress of the family and rigid or two technical approaches should be avoided, as it would defeat very object of this scheme. As such, the Courts cannot ignore the very purpose of providing employment on compassionate ground to the family member of deceased Government servant died in harness. 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.

9. As regard the aim and object of this 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 for appointment supernumerary post should be created to accommodate the applicant.”

10. It would be also appropriate to refer the decisions rendered by this Tribunal in earlier matters, 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 on 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.

11. The Respondents have rejected the application solely on the ground that there is no provision in G.R. for substitution of another heir of the deceased. True, there is no specific provision for substitution of heir in G.R. dated 22.08.2005. However, having regard to the aim and object of this scheme of appointment to provide financial assistance to the distressed family, the judicial approach is expected from the executive. As such, in view of Judgment of Hon'ble Supreme Court in ***Sushma Gosain's*** case, it was unjust on the part of Respondents to keep the issue of issuance of appointment order pending for years together. In fact, the Hon'ble Apex Court held that, if there is no suitable post for appointment, then supernumerary post should be created to

accommodate the heir of the deceased. Had this mandate of Hon'ble Supreme Court was followed by the executive, the Applicant would have got appointment on compassionate ground within time. Having not done so and rejecting the application of the Applicant on the ground that substitution is not permissible is contrary to the spirit and mandate of the Judgment of Hon'ble Supreme Court as well as scheme for the appointment on compassionate ground.

12. As such 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 this scheme for providing employment to the heir of the deceased employee on compassionate ground, the State is under obligation to consider the application for substitution in proper perspective. Accordingly, directions were issued to consider the application for substitution and inclusion of the name in waiting list.

13. The necessary corollary of aforesaid discussion leads me to conclude that the rejection of the application 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 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 be included in the

waiting list for the issuance of appointment order, subject to fulfillment of eligible criteria in accordance to Rules.

- (C) This exercise be completed within three months from today.
- (D) No order as to costs.

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

Mumbai

Date : 09.07.2019

Dictation taken by :

S.K. Wamanse.

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