

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD
ORIGINAL APPLICATION NO.329 OF 2019
(Subject:- Compassionate Appointment)**

DISTRICT: - JALGAON.

Ashok S/o Vijay Birari,)
Age :29 Years, Occu. Nil,)
R/o. At Patonda Tq. Amalner Dist. Jalgaon.)..**APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Additional Chief Secretary,)
Home Department,)
Mantralaya, Mumbai.)
2. **The Superintendent of Police,**)
Jalgaon Tq & Dist. Jalgaon.)
3. **The Deputy Superintendent of Police)**
Economics Crime Branch, additional)
office, Deputy Superintendent of Police)
(Mukhyalay) Jalgaon Tq & Dist.Jalgaon)..**RESPONDENTS**

APPEARANCE : Shri Yogesh Jadhav, learned Advocate
holding for Shri Girish Nagori, learned
Advocate for the applicant.

: Shri B.S. Deokar, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **06.06.2022**

ORDER

By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the order dated 07.01.2019 (Annex. 'A-9') issued by the respondent No.3 i.e. the Deputy Superintendent of Police, Economics Crime Branch, additional office Deputy Superintendent of Police (Mukhyalay), Jalgaon, Tq & Dist. Jalgaon thereby denying the claim of the applicant on the ground of birth of fourth child in the family of the deceased Government Servant after cutoff date of 31.12.2001 regarding the small family and seeking direction to appoint the applicant on compassionate ground.

2. The facts in brief giving rise to this application can be summarized as follows:-

- (i) The applicant's father named Vijay Deva Birari died in harness on 10.11.2015 while working as a Police Head Constable. Mother of the applicant namely Anjanabai Vijay Birari predeceased her husband being died on 07.12.2007. The applicant's father thereafter performed second marriage with Anjanabai @Sangitabai Vijay Birari on 27.07.2008. Annex. 'A-4' is their marriage registration certificate. The applicant

is son of the first wife of the deceased father of the applicant. He has one brother and one sister and they all have born before 31.12.2001. The applicant's father has three children from his first marriage.

- (ii) It is contended that the applicant submitted an application dated 30.03.2016 (Annex. 'A-6'), seeking compassionate appointment. His brother and sister as well as step mother have given consent for his appointment by executing affidavit dated 18.02.2016 (Annex. 'A-7'). The applicant's name was taken in the waiting list. As per waiting list of the year 2007, the name of the applicant appeared at Sr.No.44. However, the name of the applicant came to be deleted from the waiting list of the year 2018 (Annex. 'A-8').
- (iii) The respondent No.3 issued impugned letter dated 07.01.2019 (Annex. 'A-9') in view of G.R. dated 28.03.2001 regarding the small family and informed that the applicant is not entitled to get compassionate appointment as the fourth child to his father was born in the year, 2009.
- (iv) Thereafter, the applicant submitted representation dated 06.03.2019 (Annex. 'A-10') to the respondent No.1 ventilating his grievances regarding impugned

order. The real brother and sister of the applicant were born prior to cut of date of G.R. dated 28.03.2001. Infact the applicant is third son of his deceased father being born prior to 2001. The scheme of compassionate appointment is not applicable to second wife and her children. Therefore, the contention of the respondent authority in rejecting the application of the applicant is not sustainable in the eyes of law. Hence, this application.

3. The affidavit-in-reply is filed on behalf of the respondent no.2 by one Deepak Kisanrao Budhwant, working as Police Inspector (Control Room) in the office of respondent No.2 i.e. the Superintendent of Police, Jalgaon, Dist. Jalgaon.

- (i) He thereby denied the adverse contentions raised in the application. It is contended that admittedly the deceased father of the applicant performed second marriage with Anjanabai @ Sangitabai Santosh Patil on 27.06.2008. The deceased father of the applicant from his first wife has 3 children who were born prior to 31.12.2001. The birth certificates of the children of the deceased father of the applicant are produced at Annex. 'R-1' collectively. However, the deceased father of the applicant is having fourth child after cutoff date

of 31.12.2001 in perms of G.R. dated 28.03.2001. In view of the same, the family members of the deceased father of the applicant are not eligible to get appointment on compassionate ground. In view of the same, impugned order of rejection of claim of the applicant for compassionate appointment is legal and proper and is in accordance with law. There is no merit in the contentions raised on behalf of the applicant that the second wife of the applicant and the child born to second wife of deceased father of the applicant are not family members. Hence the application is liable to be dismissed.

4. The applicant filed his affidavit-in-rejoinder and denied the adverse contentions raised in the affidavit-in-reply and reiterated the contentions raised in the Original Application. The applicant sought information from the respondent No.1 about the right of the second wife for compassionate appointment. The respondent No.1 by letter dated 22.12.2021 (part of Annex. 'R-1' collectively) informed that there is no provision for second wife's right in compassionate appointment scheme after the death of the deceased Government servant. In the circumstances, the applicant submits that he is entitled for compassionate appointment.

5. I have heard the arguments advanced by Shri Yogesh Jadhav, learned Advocate holding for Shri Girish Nagori, learned Advocate for the applicant on one hand and Shri B.S. Deokar, learned Presenting Officer for the respondents on other hand.

6. Undisputedly the deceased father of the applicant was having three children including the applicant from his first wife named Anjanabai Vijay Birari. The said three children were born prior to cutoff date of 31.12.2001 in terms of G.R. dated 28.03.2001 applicable to the small family. The said first wife died on 07.12.2007. Her death certificate is at Annex. 'A-1'. The deceased father of the applicant performed second marriage with Anjanabai @ Sangitabai Vijay Birari on 27.06.2008. A child was born to her from the marriage with deceased father of the applicant in the year 2009. It was fourth child of the deceased Government servant.

7. The scheme of compassionate appointment is to be understood from recent G.R. dated 21.09.2017 (Annex. 'A-7'). It is compilation of 41 previous G.R.s in that regard. Clause No.6 of the said G.R. relates to small family. It is as under:-

“ (६) लहान कुटुंबाचे प्रमाणपत्र:—

दिनांक ३१ डिसेंबर २००१ नंतर तिसरे अपत्य झालेल्या कर्मचाऱ्यांच्या कुटुंबियास अनुकंपा तत्वावरील नियुक्तीसाठी पात्र समजले जाणार नाही. (शासन निर्णय, दि.२८/३/२००१)”

Plain reading of the above said clause would show that what is required to be considered is birth of the third child to the deceased Government Servant and if there is third child born after 31.12.2001 in terms of G.R. dated 28.03.2001 such family would not be entitled for appointment on compassionate ground.

8. From the facts of the present case, it appears that the deceased father of the applicant performed second marriage with Anjanabai @ Sangitabai Vijay Birari on 27.06.2008 after the death of his first wife named Anjanabai on 07.12.2007. In view of same, the second wife of the deceased Government Servant named Vijay Deva Birari is his legally wedded wife. A child was born to her in the year, 2009. It is fourth child of the deceased Vijay Deva Birari.

9. The learned Advocate for the applicant submitted that the applicant is third child from first wife of deceased Vijay Deva Birari and he was born on prior to 2001. In view of same, the G.R. dated 28.03.2001 regarding small family will not be applicable. In this regard he also placed reliance on decision of Co-ordinate Bench of this Tribunal in O.A.No.293/2017 dated 27.09.2019 in the matter of **Siddhesh Mangesh Sawant Vs. The State of Maharashtra & Ors.** In the said case the third child was counted out of twins and therefore relaxation was given. That is not the case in hand.

10. The applicant has also relied upon letter dated 22.12.2021 (Annex. 'R-1' collectively) received from the respondent No.1 under Right to Information Act, where it is stated that there is no provision for compassionate appointment regarding second wife of deceased Government servant. However, the said information in my considered opinion will not help the applicant in any manner. One has to examine the provision of clause 6 of G.R. dated 21.09.2017 as it stands. The said clause speaks of family disentitlement for compassionate appointment in case of birth of third child after cut of date of 31.12.2001. I have already observed that fourth child was born to second wife of the deceased Vijay Deva Birari. Second wife namely Anjanabai @ Sangitabai Vijay Birari is the legally wedded wife of deceased Vijay Deva Birari and hence she and her child are family members of the deceased Vijay Devan Birari. There is no denial that the fourth child of deceased Vijay Deva Birari begotten to his second wife. They all are family members. However, case of birth of fourth child in the family after 31.12.2001 disentitles the whole family from getting compassionate appointment to any of them.

11. In view of same, I do not find any substance in the contentions raised on behalf of the applicant. The impugned order dated 07.01.2019 (Annex. 'A-9') rejecting the claim of the applicant issued by the respondent No.3 is legal and proper.

No interferences is called for. Accordingly I proceed to pass the following order:-

ORDER

- (A) The Original Application stands dismissed.
- (B) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :- 06.06.2022
SAS O.A.329/2019