

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.1082 OF 2019

(Subject:- Compassionate Appointment)

DISTRICT: - AURANGABAD.

Naresh S/o Waman Sakpal,)
Age : 29 years, Occu: Nil,)
R/o: Shreenath Construction,)
Jaihind Nagari, Pisadevi Road,)
Aurangabad.)..**APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Secretary,)
Public Health Department,)
Gokuldas Tejpal Rugnalaya,)
Compound, Complex Building,)
10th Floor, Mantralaya,)
Mumbai-400 0011.)
- 2. The Commissioner,**)
State Labour Insurance Scheme,)
Panchadeep Bhavan, 6th Floor,)
N.M. Joshi Marg, Lower Parel,)
Mumbai- 400 013.)
- 3. Medical Superintendent,**)
State Labour Insurance Scheme,)
Rugnalaya, MIDC, Chikalthana,)
Aurangabad.)..**RESPONDENTS**

APPEARANCE : Shri L.V. Sangit, learned Advocate
for the applicant.

: Shri I.S. Thorat, learned Presenting
Officer for the respondents.

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

DATE : **06.06.2022**

ORDER

By invoking the jurisdiction under Section 19 of the Administrative Tribunals Act, 1985, the applicant has filed this O.A. challenging the impugned order/communication dated 23.07.2019 issued by the respondent No.2 i.e. the Commissioner State Level Insurance Scheme, Mumbai refusing the claim of the applicant substituting the name of the elder brother i.e. Dinesh for appointment on compassionate ground.

2. The facts in brief as unfolded from the pleadings and documents produced on behalf of the applicant are as follows:-

- (i) The applicant's father named Waman Chiman Sakpal was in the service of the respondent No.3 i.e. the Medical Superintendent, State Labour Insurance Scheme, Rugnalaya, MIDC, Chikalthana, Aurangabad as a Ward Boy. While in service he died on 15.08.2009 leaving behind his widow named Shilabai Waman Sakpal, two sons named Dinesh and Naresh (i.e. the present applicant) and two daughters named Aasha and Usha as reflected in heirship certificate

dated 26.04.2010 (part of Exh. 'A-1' collectively) issued by Tahsildar-Fulambri, Dist. Aurangabad.

- (ii) After the death of the deceased Waman Chiman Sakpal his elder son named Dipesh Waman Sakpal (applicant's brother) made application dated 01.10.2009 (Exh. 'A-8') to the respondent No.3 seeking appointment on compassionate ground in Class-IV cadre. Thereby he stated that he has studied upto 8th Standard. Subsequently, the applicant who is the second son of the deceased also made application dated 06.10.2009 (Exh. 'A-1') to the respondent No.3 seeking appointment on compassionate ground but without referring to his brother Dinesh's application dated 01.10.2009. He submitted the said application annexing his education certificate, no objection of his mother, his own affidavit, affidavit of his brother and ration card. On the same day, the application was also made by the applicant's brother Dinesh to the respondent No.3 (Exh. 'A-9') seeking compassionate appointment for the applicant in his place.
- (iii) The office of the respondent No.3, however, processed the application made by the applicant's elder brother Dinesh and submitted the proposal of appointment of

elder brother of the applicant on 26.11.2009 to the office of the respondent No.2 i.e. the Commissioner, State Labour Insurance Scheme, Mumbai. Pursuant to that, medical examination of the applicant's brother Dinesh was carried out in Government Medical College and Hospital, Aurangabad, who issued certificate dated 16.04.2016 that the applicant's brother Dinesh was suffering from mental illness namely Paranoid Schizophrenia. Accordingly in the meeting dated 14.05.2016 held in the office of the respondent No.2 it is ordered that the applicant's elder brother Dinesh was not eligible for appointment due to Medical Report.

- (iv) Thereafter, the applicant made application dated 04.06.2016 (Exh. 'A-2') seeking appointment on compassionate ground for himself in place of his elder brother Dinesh. The respondent No.2 by letter dated 27.06.2017 addressed to the respondent No.1 sought guidance that, whether the present applicant can be appointed substituting the name of his elder brother Dinesh. The respondent No.1 after taking into consideration the G.R. dated 20.05.2015 (Exh. 'A-3') said to have opined that the substitution is not permitted. By communication dated 05.05.2018, it

was communicated to the respondent No.2 that the name of the applicant cannot be taken by replacing the name of applicant's elder brother Dinesh in the waiting list.

- (v) Thereafter, the applicant made various representations dated 12.03.2019, 28.05.2019 and 21.09.2019 (Exh. 'A-4' collectively) seeking appointment by way of substitution and also raising objection to waiting list published on 19.09.2019.
- (vi) Thereafter the applicant received impugned communication/order dated 23.07.2019 (Exh. 'A-5') issued by the respondent No.2 i.e. the Commissioner, State Level Insurance Scheme, Mumbai stating thereby that the applicant's name cannot be considered for compassionate appointment as he is ineligible in view of the name of his elder brother Dinesh being appeared in the waiting list. The said impugned order dated 23.07.2019 (Exh. 'A-5') said to have been issued in view of guidance sought by the respondent No.2 from the respondent No.1 by his letter dated 27.06.2019.
- (vii) It is the contention of the applicant that the impugned order/communication dated 23.07.2019 (Exh. 'A-5')

issued by the respondent No.2 denying the claim of the applicant of compassionate appointment is not legal and proper. The applicant's brother Dinesh was mentally ill and as such he could not be appointed. That apart the applicant's brother Dinesh had given no objection for taking the name of the applicant in waiting list pursuant to application made by the applicant on 06.10.2019. The concerned clause of G.R. dated 20.05.2015 is applicable for appointment to Class-C category and not to Class-D category in which the applicant is seeking appointment.

(viii) The respondents have taken technical view while denying the claim of the applicant and the same is in contravention of the various case laws in that regard. Hence this application.

3. Affidavit-in-reply is filed on behalf of the respondent No.1 to 3 by one Feroj Khan Pathan, working as Medical Officer/Administrative Officer in the office of the respondent No.3. i.e the Medical Superintendent, E.S.I.S. Hospital, Chikalthana, Aurangabad. Thereby he denied the adverse contentions raised in the application.

(i) At the outset it is contended that as per Clause 1(C) of G.R. dated 20.05.2015 once the name of the eligible

family member is taken in the waiting list prepared for appointment on compassionate ground, the same cannot be substituted. That part, name of the applicant's brother was taken in the waiting list as per his application dated 01.10.2009. The application made by the applicant is dated 06.10.2009 which is subsequent one. Applicant's brother was declared unfit by the Medical Board due to mental illness whose proposal was made for considering his name for compassionate appointment. In view of same, considering the name of the applicant in place of his brother does not arise. Therefore, 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.

(i) He thereby admitted that his elder brother Dinesh made application dated 01.10.2009 seeking appointment on compassionate ground. However, at the same time, he submitted that his brother Dinesh by application dated 06.10.2009 (Exh. 'A-9') gave his No Objection and infact sought appointment of the applicant on compassionate ground in his place.

- (ii) It is further submitted that infact the respondent No.3 submitted the proposal of the applicant for appointment on compassionate ground but by letter dated 03.05.2010 (Exh. 'A-10') corrected the proposal by inserting the name of the applicant's brother Dinesh. Accordingly, the name of the applicant's brother was taken in the waiting list at Sr.No.22 on 01.06.2017 (Exh. 'A-11'). Infact the replacement is permissible as per the various case laws.

5. Meanwhile, during pendency of the Original Application, the applicant's brother died on 28.10.2021. On the date of hearing on 17.11.2021, the learned Advocate for the applicant produced on record the death certificate of Dinesh Waman Sakpal marked as document 'X' for identification. On that date it was also pointed out that the name of Dinesh Waman Sakpal was removed from the waiting list due to his earlier illness. Learned P.O. was directed to place on record the current status by filing short affidavit.

6. Accordingly, the short affidavit is filed on behalf of respondents by one Shankarrao Bhosale working as Medical Superintendent with the office of the respondent No.3. Thereby he reiterated the contentions raised in the affidavit-in-reply and submitted that the applicant's brother Dinesh was disqualified due

to his mental illness certified by Medical Board. The applicant is not entitled for substitution in view of the provisions of concerned G.R. Repeatedly the applicant was informed that his name cannot be taken in the waiting list in place of his brother Dinesh's name due to restrictions.

7. Short affidavit-in-rejoinder is filed by the applicant denying adverse contentions raised in said short affidavit-in-reply filed on behalf of the respondents. It is his contention that at no point of time the applicant withdrew his application dated 06.10.2009 seeking appointment on compassionate ground.

8. I have heard the arguments advanced by Shri L.V. Sangit, learned Advocate on one hand and Shri I.S. Thorat, learned Presenting Officer for the respondents on other hand.

9. Upon scrutiny of rival pleadings on record, the admitted facts emerged before me are as under:-

- (i) The applicant's father while working as a Ward Boy with the respondent No.3 died in harness on 15.08.2006 leaving behind his widow named Shilabai Waman Sakpal, two sons named Dinesh and Naresh (the present applicant) and two daughters named Aasha and Usha as reflected in heir ship certificate dated 26.04.2010 (part of Exh. 'A-1' collectively, page

No.16 of P.B.) issued by Tahsildar-Fulambri, Dist. Aurangabad.

- (ii) After death of deceased Waman Chiman Sakpal on 15.08.2009, applicant's brother Dinesh made application dated 01.10.2009 (Exh. 'A-8') to which the applicant had given no objection.
- (iii) The applicant also made application for appointment on compassionate ground vide application dated 06.10.2009 (part of Exh 'A-1' collectively). As on that date, the applicant was about 17 years 11 months old being his date of birth dated 23.10.1991. On the same day, the applicant's brother by separate application dated 06.10.2009 (Exh. 'A-9') gave no objection for substituting the name of the applicant in his place.
- (iv) The name of the applicant's brother was taken in the waiting list by processing his application dated 01.10.2009.
- (v) Though the name of the applicant's brother was considered for giving appointment, it was revealed in Medical Examination that the said Dinesh was mentally ill and therefore, in review meeting dated 16.05.2016 conducted by the respondent No.2 Dinesh was declared disqualified for appointment.

- (vi) After applicant's brother Dinesh was declared disqualified, the applicant made application dated 04.06.2016 (Exh. 'A-2') seeking appointment on compassionate ground in place of his elder brother Dinesh's name and also made various follow up representations dated 12.03.2019, 28.05.2019 and 21.09.2019 (Exh. 'A-4' collectively).
- (vii) The respondent No.2 by communication dated 27.06.2017 sought guidance of the respondent No.1 about substitution.
- (viii) Lastly, the claim of substitution made by the applicant was refused by communication dated 23.07.2019 (Exh. 'A-5') issued by the respondent No.3.

10. Learned Advocate for the applicant submitted that the claim of the applicant for appointment on compassionate ground is denied only contending that in terms of G.R. dated 20.05.2015, there is no provision to substitute the name of nominee, who has already made such application. He submitted that there are various decisions of this Tribunal, where it is resolved that substitution cannot be denied being not expressed or impliedly barred. In this regard he placed reliance on **O.A.No.863 of 2017** in case of **Smt. Chhaya Vishwas Bhosale & Anr. Vs. The Superintending Engineer and Administrator, Command Area**

Development Authority (CADA), Nashik & Ors. decided on 23.01.2020. In the said citation case also the applicant No.2 had made application while he was minor. In para No.14 of above citation case, it is observed as follows:-

“14. It would be highly unjust and unfair rather arbitrary to reject the claim for appointment uncompassionate ground on such technical ground. Firstly, the claim made by Applicant No.2 (Shri Abhijeet Vishwas Bhosale) during his minority ought to have been considered an attaining his majority or to provide the employment to his mother during the period when her name was valid in waiting list, on priority basis in view of judgment of Hon'ble Supreme Court in **Sushma Gosain's case**. But no steps were taken to provide employment to her. If such course of action is countenanced it would be amounting to give benefits of lethargy and inaction to the Respondents, and would frustrate very object of scheme.”

11. On the other hand, learned P.O. for the respondents submitted that in this case the applicant's brother Dinesh was considered for compassionate appointment. However, no appointment can be given to him because he was disqualified on account of his mental illness. Moreover, when the applicant made application on 06.10.2009 he was minor. He also submitted that

in terms of provision of clause 1(C) of the G.R. dated 20.05.2015, the claim of substitution made by the applicant is rightly rejected.

12. In the case in hand, though the name of the applicant's brother was considered for giving appointment on compassionate ground, he was declared disqualified on account of his mental illness in review meeting dated 16.05.2016 conducted by the respondent No.2. The said fact is admitted by the respondents in short affidavit-in-reply. Record shows that immediately thereafter the applicant independently made application dated 04.06.2016 (Exh. 'A-2') seeking appointment on compassionate ground. His earlier application dated 06.10.2009 was already pending with the respondent authority. There is no evidence on record to show that the said application was withdrawn by the applicant at any point of time. In such circumstances, the subsequent application dated 04.06.2016 (Exh. 'A-2') made by the applicant is to be considered in continuation of his earlier application dated 06.10.2009 (Exh. 'A-1'). Hence is cannot be thrown out on the point of limitation.

13. It would not be out of place to mention the decision of the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in this regard passed in Writ Petition No.6267 of 2018 in case of **Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra & Ors.** decided on 11.03.2020 whereby the very clause 1(C) of G.R. dated 20.05.2015 was considered and it was

held that the restriction put therein is not justified and it is ordered to be deleted. In view of same, the contentions raised on behalf of the respondents defending the impugned order falls to the ground. In the peculiar facts and circumstances of the case, the applicant's brother being declared disqualified due to mental illness, in such circumstances refusing substitution would be totally unjust and arbitrary as the family of the deceased Government servant would become destitute. In the circumstances as above, in my opinion, impugned order issued by the respondent No.2 is not legal and proper and it is liable to be quashed and set aside.

14. So far as the seniority of the applicant for waiting list is concerned, his application dated 04.06.2016 (Exn. 'A-2') can be taken into consideration for fixing the seniority in waiting list of the candidates eligible for appointment on compassionate ground. In the result, I proceed to pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communication/order dated 23.07.2019 issued by the respondent No.2 is hereby quashed and set aside.
- (C) The respondents are directed to consider the application dated 04.06.2016 made by the applicant

for appointment on compassionate ground and include his name in the waiting list for issuances of appointment order subject to fulfillment of criteria in accordance with law and Rules.

(D) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :- 06.06.2022
SAS O.A.1082/2019