

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.638 OF 2022  
(Subject:- Compassionate Appointment)**

**DISTRICT:-JALNA**

**Jitendra s/o Narayan Mutkule,** )  
Age :33 years, Occ: Nil, )  
R/o Irrigation Colony, )  
Moti Bagh Old Jalna, )  
Tq. Dist. Jalna. )  
Mobile No. 9511205577. ) **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
(Water Resource Management & )  
Command Area Development), )  
Water Resource Department, )  
3<sup>rd</sup> Floor, Main Building, )  
Mantralaya, Mumbai-32. )
  2. **The Superintending Engineer and** )  
**Administrator, Command Area,** )  
**Development Authority,** )  
Labh Kshetra Vikas Bhawan, )  
Garkheda Parisar, Aurangabad-431005) )
  3. **The Executive Engineer,** )  
Jalna Patbandhare Vibhag, )  
Jalna, Dist. Jalna. )
  4. **Sub-Divisional Engineer,** )  
Jalna Patbandhare Vibhag No.3, )  
Tembhurni, Tq. Jafrabad, )  
Dist. Jalna. ) **RESPONDENTS**
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**APPEARANCE** : Shri V.G. Pingle, learned Counsel  
for the applicant.  
: Shri M.S. Mahajan, learned Chief  
Presenting Officer for the respondent  
authorities.  
: Shri S.D. Dhongde, learned counsel  
holding for Shri Amit S. Dhongde,  
learned counsel for respondent No.3.

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**CORAM** : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**DATE** : **29.11.2023.**  
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### **O R A L - O R D E R**

Heard Shri V.G. Pingle, learned counsel for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent authorities and Shri S.D. Dhongde, learned counsel holding for Shri Amit S. Dhongde, learned counsel for respondent No. 3 finally at the stage of admission.

2. The present matter pertains to compassionate appointment. The applicant is challenging the communication dated 13.06.2022 (Annexure 'A-11') issued by respondent No. 2, thereby denied the claim of the applicant for appointment on compassionate ground for the post of Peon (Class-IV).

3. Brief facts giving rise to the Original Application are as follows:-

(i) The father of the applicant namely Narayan s/o Tukaram Mutkule was appointed as a Peon (Class-IV) on 21.10.1983 in the respondent department. However, while serving in the office of respondent No. 4, the father of the applicant namely Narayan s/o Tukaram Mutkule found missing since 16.10.2013.

(ii) The applicant has filed missing report dated 25.10.2013 in Police Station Hasnabad, Tq. Bhokardan Dist. Jalna in respect of missing of his father. Accordingly, concerned Police Station has registered the missing report and considered the case as Missing No. 6/2013 dated 25.10.2013. Thereafter, on 24.11.2013 (Annexure 'A-2 collectively) the proclamation came to be issued in Daily Lokmat Newspaper regarding missing of Narayan Tukaram Mutkule to find out his whereabouts.

(iii) On 15.12.2017, the mother of the applicant namely Anita w/o Narayan Mutkule has applied for grant of family pension and other consequential service benefits including appointment on compassionate ground by relying upon various G.Rs.

(iv) Further, the father of the applicant if not missing, then he would have been retired on superannuation on 31.05.2018 and considering this aspect, the office of respondent No.3 has issued order dated 22.05.2018 regarding retirement of Narayan Tukaram Mutkule w.e.f. 31.05.2018 (Annexure 'A-4').

(v) Pursuant to the application dated 15.12.2017 filed by the applicant's mother, the respondent authorities have forwarded the family pension proposal for sanction to Account General (A.G.), Nagpur and accordingly, the A.G. Nagpur issued Pension Payment Order dated 15.04.2019 thereby granted admissible family pension to applicant's mother in terms of G.Rs. dated 05.07.1991, 07.10.1993 and 26.06.1995. However, the respondent authorities have not communicated anything in respect of applicant's appointment on compassionate ground.

(vi) After filing of missing complaint dated 25.10.2013 and by waiting for the considerable period of 07 years, the applicant along with his mother filed Regular Civil Suit bearing R.C.S. No. 385/2020 on 27.10.2020 before Civil Judge (S.D.) Jalna seeking declaration of Civil Death of missing Narayan Tukaram Mutkule. By judgment and decree

dated 10.06.2021, learned Civil Judge (S.D.) Jalna has granted relief (Annexure 'A-6') as sought by the applicant and his mother.

(vii) After declaration of the Civil Death of Narayan Tukaram Mutkule by Civil Court as stated above, immediately on 25.06.2021 (Annexure 'A-7') the applicant had submitted an application to respondent No. 4 along with relevant documents including consent of his mother and married sister and other requisite documents for appointment on compassionate ground. The respondent No.4 has forwarded the said proposal with recommendation for further action to respondent No. 3 on the same day and respondent No. 3 forwarded it to respondent No. 2 on 07.07.2021.

(viii) By impugned communication dated 13.06.2022, the respondent No. 2 has informed to respondent No.3 and forwarded it's copy to the applicant thereby rejected the claim of the applicant for appointment on compassionate ground. The application came to be rejected only on the ground that in case of death of Government Servant while in service one of the family members is entitled for appointment on compassionate ground, however, Narayan Mutkule (the father of the applicant) was retired on superannuation on

31.05.2018 and as such, on the date of filing of an application seeking compassionate appointment, the father of the applicant Narayan Mutkule was not in service. Hence, this Original Application.

4. Learned counsel for the applicant submits that initially the G.Rs. dated 21.09.2017, 06.01.2021, 23.06.2021 and 26.08.2021 were holding the field to the extent of compassionate appointment. However, by G.R. dated 19.09.2022, as a matter of clarification particularly in respect of missing employees, it is stated that after the Civil Death is announced by Civil Court in respect of missing employees, the eligible members of his family are entitled for compassionate appointment. Learned counsel for the applicant further submits that during pendency of the present Original Application, the General Administration Department, Maharashtra State has issued G.R. dated 19.09.2022 and in clause No. 3 of the said G.R. it is specifically mentioned about giving appointment on compassionate ground to the eligible family members of the missing employee after declaration of Civil Death. Learned counsel for the applicant submits that the applicant is

entitled for compassionate appointment in terms of G.R. dated 19.09.2022.

5. Learned P.O. submits that the claim of the applicant is not admissible and therefore it was rejected. The father of the applicant was retired on 31.05.2018 by superannuation and Civil Death was declared by the Civil Judge (S.D.), Jalna on 27.10.2020. Before these dates the applicant's mother had filed application dated 15.12.2017 and the applicant had filed one more application dated 25.06.2021. Learned P.O. submits that considering the aforesaid dates it is clear that the Civil Death of the applicant's father was declared after his retirement on superannuation. The scheme of compassionate appointment is for those persons whose family member died while in Government service or during the service.

Learned P.O. submits that in paragraph No. 10 of the judgment passed by Civil Judge (S.D.), Jalna in R.C.S. No. 385/2020 it is specifically mentioned that the investigation of the missing person i.e. applicant's father was not closed but it was in progress. Learned P.O. submits that the said observation indicates that the Civil Death of father of the applicant was not confirmed. Learned P.O. submits that the respondent authority has rightly rejected the claim of the

applicant and his mother. There is no merit in the present Original Application and the same is thus liable to be dismissed.

6. It is not disputed that the father of the applicant namely Narayan Tukaram Mutkule was found missing in the year 2013 and the applicant and his mother had filed the missing complaint bearing No. 06/2013 in the concerned Police Station. It is also clear from the documents annexed to Original Application that the applicant and his mother had approached to the Civil Court, Jalna by filing Regular Civil Suit No. 385/2020 on 27.10.2020 seeking declaration about the Civil Death of the applicant's father Narayan Tukaram Mutkule on 29.10.2020. By judgment and decree dated 10.06.2021, the Civil Court has declared the Civil Death of Narayan Tukaram Mutkule (father of the applicant) w.e.f. 29.10.2020.

7. In the backgrounds of these facts, Section 107 and 108 respectively of The Law Of Evidence are material. Under Section 107, the burden of proving that a person is dead, when it is shown that he was alive within 30 years, is on the person who affirms it. But the burden of proof so cast under



section 107 upon the person affirming death, is whittled down under section 108 by enabling the person who affirms the death of another to prove that such a person has not been heard of for seven years by those who would naturally have heard of him.

8. In the instant case the applicant and his mother are the applicants in R.C.S. No. 385/2020 before the Civil Court, Jalna and they have raised the specific contention in the suit that since October, 2013 deceased Narayan Tukaram Mutkule was missing. He was not found by anybody nor his whereabouts were known. The applicant, his mother and his married sister are persons who had naturally heard of Narayan Tukaram Mutkule had he been alive during the said period of seven years.

9. In view of the declaration about the Civil Death of Narayan Tukaram Mutkule by Civil Judge (S.D.), Jalna by judgment and decree dated 10.06.2021, the clause No.3 of the G.R. dated 19.09.2022 is attracted. In fact at the time of passing of impugned order this G.R. dated 19.09.2022 was not with the department. However, considering the clause No. 3 which reproduced herein below, it would be futile

exercise to remand the matter to the department to pass an appropriate order. The said clause No.3 of G.R. dated 19.09.2022 is as follows:-

“३) बेपत्ता झालेल्या शासकीय कर्मचाऱ्याच्या कुटुंबातील सदस्यांना अनुकंपा नियुक्ती देणे  
बाबत:- बेपत्ता झालेला शासकीय कर्मचाऱ्यास सक्षम न्यायालयाने मरत घोषित केल्यानंतर त्याच्या कुटुंबातील पात्र सदस्यांना अनुकंपा नियुक्ती अनुज्ञेय ठरेल. बेपत्ता कर्मचाऱ्याच्या पात्र वारसदारास अनुकंपा नियुक्तीसाठी अर्ज करण्याची मुदत ही अनुकंपा धोरणासाठी वेळोवेळी केलेल्या नियमानुसार लागू राहिल.”

In view of the said clause it is clear that the eligible member of the family of deceased Narayan Tukaram Mutkule is entitled for the compassionate appointment only after the Civil Death is announced by Civil Court and not prior to that. It is not disputed that the applicant has submitted an application within time. Thus considering the entire facts of the case this Original Application deserves to be allowed. Hence, the following order:-

### **ORDER**

- (A) The Original Application is hereby allowed.
- (B) The communication dated 13.06.2022 (Annexure 'A-11') issued by respondent No.2 to respondent No.3 is hereby quashed and set aside.
- (C) The respondent No.1 is hereby directed to reconsider the claim of the applicant for appointment on compassionate ground in view of

Clause No. 11 (e) of the Scheme framed by Government for appointment on compassionate ground in respect of Missing Government Servant.

(D) The Original Application is accordingly disposed of.

(E) No order as to cost.

**MEMBER (J)**

**Place:-Aurangabad**  
**Date : 29.11.2023**  
SAS O.A. 638/2022