

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 74 OF 2022
(Subject:- Compassionate Appointment)**

DISTRICT:-PARBHANI

Siddiqui Mohd. Minhauddin,)
s/o Mohd. Sardauddin,)
Age : 44 years, Occ: Nil,)
R/o. Near Gadiwan Mohalla,)
United Compute Institute,)
Parbhani, Tq. & Dist. Parbhani)
Mobile No. 8788706581)
E-mail:- minhajparbhani@gmail.com) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai -32.)

2. **The Collector, Beed,**)
Nagar Road, Beed-431122.)

3. **The Tehsildar, Parali Vaijanath,**)
Tq. Parali Vaijanath,)
Dist. Beed-431515.) **RESPONDENTS**

APPEARANCE : Shri Avinash A. Phad, learned Counsel
for the applicant.
: Shri N.U. Yadav, learned Presenting
Officer for the respondent authorities.

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

DATE : **07.12.2023.**

O R A L - O R D E R

Heard Shri Avinash A. Phad, learned counsel for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondent authorities finally at the stage of admission.

2. By this Original Application, the applicant is seeking direction against the respondent authorities to consider his claim for the post of Talathi or any suitable post vacant with the respondent Nos. 2 and 3 on compassionate ground as well as seeking direction to consider the proposal dated 28.09.2021 submitted by the respondent No.3 to respondent No.1 in this regard.

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

(i) The brother of the applicant was serving with the respondent Nos. 2 & 3 as a Talathi. He had joined the service with the respondent Nos.2 & 3 as a Talathi after following due process of law. All of sudden on 13.04.2021 the applicant's brother namely Aziz Wahajuddin Siddiqui s/o. Mohammad Sardaruddin died due to railway accident at Parbhani railway station. The said deceased brother of the applicant was

shouldering the responsibility of entire family. The applicant is jobless, searching for the job. He is Bachelor of Science.

(ii) After the sad demise of brother, the applicant has submitted an application for appointment on compassionate ground on 23.04.2021 (Annexure 'A-3'). The applicant is having responsibility of his old age mother, brother and other family members. There is no other earning source to the family. According to the applicant the respondent authorities have not responded to him and therefore, he has again filed an application to respondent No. 2 on 01.09.2021 (Annexure 'A-4'). Even thereafter, the applicant has filed applications on 08.09.2021 and 21.09.2021 respectively.

(iii) In respect of his application dated 21.09.2021, the respondent No.3 i.e. Tehsildar, Parali Vaijanath has forwarded proposal submitted by the applicant to respondent No. 2 i.e. the District Collector, Beed along with necessary documents.

(iv) According to the applicant, the deceased brother of the applicant was unmarried and age of the applicant is 44 years and 6 months. His claim is squarely covered by the G.R. dated 21.09.2017 particularly clause No. 4(5) of the said G.R. In terms of the said clause it is clear that in case of deceased

unmarried Government servant, the claim of brother or sister entirely dependent upon him can be considered. Further in terms of clause 19 of the said G.R. dated 21.09.2017, the maximum age limit is fixed as 45 years.

(v) The applicant submits that the respondents as on date not responded to the genuine request of the applicant. Consequently, the applicant has approached this Tribunal for seeking direction against the respondent authorities to consider his claim for compassionate appointment.

4. Learned counsel for the applicant submits that it is well settled that compassionate appointment can be given to the eligible family members of the deceased employee as due to sudden death of the employee, the livelihood of the family comes into trouble. The respondent authorities have failed to consider the request of the applicant and not taken any steps for inclusion the name of the applicant in the list. The applicant is near about 44 and 6 months as on the date of filing of the Original Application and as such, if his claim is not considered within certain period, the great prejudice would likely to be caused.

5. Learned P.O. for the respondents submits that so far as the application dated 23.04.2021 filed by the applicant is concerned, it was the simple application requesting for appointment on compassionate ground. In terms of G.R. dated 21.09.2017 issued by General Administration Department (G.A.D.), legal eligible relative of the family of the deceased Government servant is required to submit an application in prescribed format to the concerned appointment authority within a period of one year from the death of the deceased employee and secondly as per the said G.R., the age limit for such an appointment is 45 years of age.

6. Learned P.O. submits that after receiving application in the prescribed format form the applicant on 21.09.2021, the respondent No.3 forwarded the said proposal of the applicant for compassionate appointment to the office of respondent No.2 on 01.10.2021. The respondent No.2 after gone through the said proposal has communicated to the respondent No.3 vide letter dated 15.11.2021 that, since the applicant has completed age of 45 years on 05.05.2021, he is not entitled for appointment on compassionate ground.

7. Learned P.O. further submits that the applicant is not entitled for appointment on compassionate ground as he has completed age of 45 years on 05.05.2021. Learned P.O. submits that there is no substance in the Original Application and the same is liable to be dismissed.

8. In the case of **Union of India Vs. P. Venkatesh** reported in **(2019) 15 SCC 613** in para No. 7, the Hon'ble Apex Court has made following observations :-

“7. The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the respondent in these proceedings, is simply this: Compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need.

9. In the case of **State of Himachal Pradesh and Anr. Vs. Shashi Kumar** reported in (2019) 3 SCC 653, the Hon'ble Apex Court of India in para Nos. 21 & 26 has made following observations :-

“21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been

subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2)

“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non- manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable

treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

26. The judgment of a Bench of two Judges in Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

10. On careful perusal of the G.R. dated 21.09.2017 particularly clause No. 11 it appears that the compassionate appointment is permissible till the applicant completes the age of 45 years and even if his name is entered in the waiting list and till the age of 45 years if no compassionate appointment is made then the name of such an applicant from the waiting list is also liable to be removed on completion of age of 45 years.

11. The applicant has submitted an application in the prescribed format only by 21.09.2021. In terms of communication dated 15.11.2021 by the District Collector, Beed to Tehsildar, Parali Vaijanath, the applicant has completed age of 45 years on 05.05.2021. Even assuming that the applicant has submitted first application on 23.04.2021, however, within few days he had to complete the age of 45 years.

12. Further, on careful perusal of the application submitted by the applicant from time to time particularly dated 23.04.2021 it appears that the applicant himself has mentioned in the said application that after death of said brother, the other members of his family i.e. brother and sister, they have their own employment and further his mother is also a retired servant and as such, they are not interested in securing the employment on compassionate ground.

13. However, the applicant has nowhere stated in any of the applications that he was entirely dependent upon the earning of his deceased brother or that his deceased brother was

maintaining him. In terms of clause No. 4 of G.R. dated 21.09.2017 only the fully dependent brother and sister of deceased unmarried employee are entitled for compassionate appointment. In the instance case, it is not the case of the applicant that he was fully dependent on deceased employee and as such, entitled for compassionate appointment.

14. On perusal of the record and proceedings it appears that the applicant and his family members have approached to Court by filing Civil Misc. Application No. 367/2021 under Section 2 of Bombay Regulation Act (VIII) 1827 r/w. Section 304 of Civil Manual for issue of Legal Heirship Certificate. The Legal Heirship Certificate was granted to them. However, it appears from the application itself that the applicant's mother is a pensioner, brother of the applicant is in business and his two sisters are already in service. It thus appears that they have their independent source of income and it is false claim of the applicant that there is no independent source of income to the family and as such after getting the compassionate appointment he would maintain the family.

15. It is settled that appointment on compassionate ground is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. In

view of same, I find no substance in the Original Application. The Original Application thus liable to be rejected. Hence, the following order:

ORDER

- (A) The Original Application No. 74 of 2022 is hereby rejected.
- (B) In the circumstances, there shall be no order as to costs.
- (C) Accordingly, the Original Application stands disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 07.12.2023

SAS O.A. 74/2022 (S.B.) VKJ Compassionate Appointment