

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.44 OF 2020

DISTRICT : JALNA

Asha wd/o. Sandesh Gaikwad,
Age : 44 years, Occu. : Education,
R/o. Survey No.488, Yogesh Nagar,
Ambad Road, Jalna.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through: Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Director General of Police,
Shahid Bhagatsing Marg,
Culaba, Maharashtra State, Mumbai.
- 3) The Special Inspector General of Police,
Aurangabad Region, Aurangabad.
- 4) The Superintendent of Police, Jalna.
- 5) The District Collector, Jalna.

...RESPONDENTS

APPEARANCE : Shri Kakasaheb B. Jadhav, Advocate for
the Applicant.

: Shri M.P.Gude, Presenting Officer for
the Respondents.

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

DECIDED ON : **27.11.2021.**

ORDER

1. The O.A. is filed by invoking jurisdiction of this Tribunal under section 19 of the Administrative Tribunals Act, 1985 seeking appointment on compassionate ground.
2. The applicant's husband, namely, Sandesh Ankushrao Gaikwad was working with the respondent no.4 on the post of Police Naik since 10-12-1991.
3. While on duty with the respondent no.4 on the Government vehicle on the security of Hon'ble Minister, husband of the applicant died on 08-06-2010 in motor vehicle accident of the Government vehicle. Annexure A-2 is his death certificate.
4. In view of above, the applicant who is educationally qualified made application dated 25/26-08-2010 to the respondent nos.4 and 5 (Annexure A-3) collectively for appointment on compassionate ground on requisite post of Clerk. She has studied up to 11th standard. Subsequently, also she filed applications dated 10-03-2011, 04-02-2013 and 15-04-2013 (Annexure A-4 collectively) seeking appointment on compassionate ground.

5. Subsequently, respondent no.4 vide letter dated 18-11-2014 (Annexure A-5) informed the applicant that she was at Sr.No.1 in the waiting list. There are 24 sanctioned posts of Clerk Typist in the establishment of respondent no.4. As per G.R. dated 02-05-2014 as and when 10% of vacant posts are available she will be given appointment. However, the applicant did not get appointment till February, 2016. The applicant, therefore, filed application dated 15-02-2016 with the respondent no.4 to include the name of her son Ajinkya in her place in the waiting list for appointment on compassionate ground. The respondent no.4 vide letter dated 15-03-2016 informed that there is no provision for substitution of her name with the name of her son, and therefore, request was refused.

6. Thereafter, the applicant wrote letter dated 23-09-2016 (Annexure A-7) to respondent nos.3 and 4 pursuing her claim of appointment on compassionate ground. Thereafter, respondent no.4 issued letter dated 05-12-2016 (Annexure A-8) to the respondent no.5, the District Collector, Jalna forwarding the waiting list for giving appointment on compassionate ground in which the applicant is at Sr.No.1.

7. It is further contended that the Government has issued consolidated G.R. dated 21-09-2017 (Annexure A-9) laying

down guidelines for appointment on compassionate ground. In view of the said guidelines, the applicant would have been age barred of 45 years on 10-05-2020 as her date of birth is 10-05-1975. She, therefore, wrote letters dated 11-07-2017 and 09-08-2017 respectively (Annexure A-10 collectively) to respondent no.2 Director General of Police and respondent no.4 Superintendent of Police, Jalna to give her appointment and/or to include the name of her son Ajinkya in the waiting list. Respondent no.4 vide letter dated 11-08-2017 (Annexure A-11) rejected the application seeking substitution by the name of son of the applicant. Respondent no.4 further by another letter dated 11-08-2017 (Annexure A-12) communicated to the applicant that there is no post of Clerk vacant as per 10% quota of G.R. dated 02-05-2014 on the establishment of respondent no.4 and necessary action would be taken as and when vacant post is available.

8. Thereafter, the applicant made application dated 06-10-2018 under Right to Information Act, 2005 seeking information about the vacant posts and the respondent no.4 furnished the said information vide letter dated 06-11-2018 (Annexure A-13 collectively) stating that there are 24 sanctioned posts of Clerk on its establishment and 4 posts are vacant. In view of the same it is the contention of the applicant that she

being at Sr.No.1 at the waiting list was entitled for the compassionate appointment on the said vacant post before she becomes age barred on 10-05-2020. Meanwhile, the applicant and her son filed M.A.No.605/2019 in M.A.St.No.2350/2019 in O.A.St.No.2351/2019 before this Tribunal for seeking appointment on compassionate ground. However, by order dated 15-01-2020 (Annexure A-14) they were allowed to withdraw said proceeding with liberty to file fresh.

9. The applicant subsequently has filed present proceedings seeking compassionate appointment in January, 2020. It is contended that during the pendency of this O.A. COVID-19 pandemic situation started since April, 2020 and there was no progress in the O.A. due to lockdown. The applicant became age barred of 45 years. In view of the same, during the pendency of the O.A., the respondent no.4 vide letter dated 20-05-2020 (Annexure A-15) communicated to the applicant that her name from the waiting list is deleted as she has completed age of 45 years as on 10-05-2020 in terms of G.R. dated 06-12-2010 by which the earlier age bar of 40 years was increased to 45 years. It is contention of the applicant that during the pandemic situation due to lockdown, the pandemic period cannot be counted for the purpose of making the applicant age barred and as such in view of the said situation,

name of the applicant is still alive and the said communication dated 20-05-2020 (Annexure A-15) is liable to be set aside. Accordingly, the applicant has sought compassionate appointment at the earliest and has further sought to quash and set aside communication dated 20-05-2020 (Annexure A-15) issued by the respondent no.4 deleting name of the applicant from the waiting list.

10. Affidavit in reply on behalf of respondent nos.3 and 4 is filed by Abhay Bhaskar Deshpande working as Home Deputy Superintendent of Police, Jalna, Dist. Jalna. He denied all the adverse contentions raised in the O.A. It is specifically stated that the applicant's name was at Sr.No.1 at waiting list and there was no vacant post all these years, and therefore, her claim for compassionate appointment is not considered and is not granted. It is, however, admitted that 4 posts of Clerk cadre were vacant on the establishment of respondent no.4 as in the year 2018 as disclosed in RTI information by letter dated 06-11-2018 (Annexure A-13 collectively), but out of the same, there was no post vacant on which the applicant could have been appointed out of 20% of vacant posts in terms of requisite G.R. dated 11-09-2019. In the circumstances, the application is liable to be dismissed.

11. During the course of hearing of the matter, the respondents were directed to file a short affidavit explaining the vacancy position for the relevant period of October, 2015 to May, 2020. Accordingly, one Shalini Devrao Naik, Home Deputy Superintendent of Police, Jalna, District Jalna filed affidavit in reply on behalf of the respondent no.4 and annexed the vacancy position by way of Annexure R-1 (paper book page 107). Said information shows that there were 4 vacant posts in the clerical cadre in the year 2018.

12. The applicant in turn has filed a short affidavit and placed on record G.R. dated 11-09-2019 (paper book page 119) whereby it is provided that 20% of sanctioned posts have to be filled in by way of compassionate appointment.

13. I have heard arguments at length advanced by the learned Advocate for the applicant on one hand and of the learned P.O. on the other hand.

14. Learned Advocate for the applicant strenuously urged before me that from the vacancy position placed on record by the respondent no.4 it is evident that in the year 2018 when the applicant was at Sr.No.1 in the waiting list for compassionate appointment, 4 posts were vacant. According to him in terms of G.R. dated 11-09-2019 (paper book page 119) one post

definitely was available for the compassionate appointment as the decimal factor comes to 0.8. The respondents have illegally denied the claim of compassionate appointment of the applicant. He submitted that according to settled case laws on compassionate appointment such claims should be considered expeditiously by the respondents even by creating supernumerary posts. That has not been done by the respondents. To support his submissions, he has placed reliance on the following decisions of O.A. of co-ordinate benches of the Tribunal:

(a) O.A.No.327/2018 decided on 18-01-2021 in the matter of Pravin Subhash Shinde & Anr. V/s. The Superintending Engineer, Sangli Irrigation Circle, Sangli & Anr.

(b) O.A.No.203/2018 decided on 09-02-2021 in the matter of Sanket K. Devkar V/s. The Superintending Engineer, Kukari Irrigation Circle, Pune and 2 Ors.

15. On the other hand, learned P.O. resisted the arguments advanced on behalf of the applicant and contended that as per the vacancy position, the applicant could not have been given compassionate appointment. Moreover, the applicant has become age barred in terms of G.R. dated 06-10-2010 as the

applicant has completed 45 years' age on 10-05-2020. Therefore, by communication dated 20-05-2020 (Annexure A-15), name of the applicant is deleted from the waiting list, and therefore, the claim of the applicant cannot be considered and granted. In view of the same, he submits that the Original Application is liable to be dismissed.

16. After having taken into consideration rival facts on record, undisputedly, the applicant is widow of the deceased Government servant, namely, Sandesh Ankushrao Gaikwad who died in harness on 08-06-2010 in a vehicular accident. The deceased was serving on the post of Police Naik which is a Class-III post. As per the relevant G.R. applicable to compassionate appointment, applicant who is widow of the deceased Government servant made application dated 25/26-08-2010 to the respondent nos.4 and 5 (Annexure A-3 collectively) for appointment on compassionate ground on requisite post of Clerk. She has studied up to 11th standard. Said application was made within a prescribed period of limitation of one year from the date of death of the deceased Government servant. Further, undisputedly, the respondent no.4 vide letter dated 18-11-2014 (Annexure A-5) informed the applicant that her name was at Sr.No.1 at the waiting list. At that time 10% vacant posts of the vacant posts were allotted for

compassionate appointment as per G.R. dated 02-05-2014. As per subsequent G.R. dated 11-09-2019 (paper book page 19), number of posts are increased from 10% to 20% of the total vacant posts from the calendar year of 2019.

17. It is a fact that though name of the applicant was at Sr.No.1 in the waiting list, she was not given appointment on compassionate ground till February, 2016. In view of that, applicant made application dated 15-02-2016 to the respondent no.4 for substituting name of her son Ajinkya in her place in the waiting list. Respondent no.4 by letter dated 15-03-2016 (Annexure A-6) refused the said demand of the applicant stating that there was no provision for substitution. She again made that exercise by writing letters dated 11-07-2017 and 09-08-2017, respectively (Annexure A-10 collectively) to respondent no.2 Director General of Police and Superintendent of Police, Jalna. However, respondent no.4 rejected the said requests vide letter dated 11-08-2017 (Annexure A-11). Record shows that inspite of repeated requests made by the applicant no appointment was given either to the applicant or to her son on compassionate ground.

18. Record further shows that the applicant thereafter made application dated 06-10-2018 under the Right to Information

Act, 2005 seeking information regarding vacant posts. Respondent no.4 furnished the said information vide letter dated 06-11-2018 (Annexure A-13 collectively) stating that there are 24 sanctioned posts of Clerk on its establishment and 4 posts are vacant. Said fact is affirmed by the respondent no.4 by filing a short affidavit (paper book page 109-112). The chart of vacancies and sanctioned posts is there at paper book page 107. That shows vacancies from January, 2015 to May, 2020. As per the said chart, in November, 2017 4 posts were vacant, in September, 2018 4 posts were vacant, in January, 2019 5 posts were vacant, in July, 2019 there were 3 vacant posts and in August, 2019 there were 4 vacant posts.

19. In the affidavit in reply on behalf of the respondent nos.3 and 4 (paper book page 66 to 74), it is contended that no compassionate appointment was given to the applicant as there was no requisite number of vacant posts either 10% or 20% as contemplated in G.R. dated 02-05-2014 and subsequent G.R. dated 11-09-2019. This contention is to some extent self-contradictory to the contentions raised in subsequent short affidavit filed on behalf of respondent no.4 (paper book page 103-106) as per the directions of this Bench.

20. No doubt, as the applicant attained age of 45 years on 10-05-2020 during the pandemic, the respondent no.4 vide letter dated 20-05-2020 (Annexure A-15) communicated to the applicant that her name from the waiting list is deleted. The applicant has sought to quash and set aside the said communication also stating that the limitation prescribed cannot be made applicable when the applicant has reached the age of 45 years during the pandemic. Learned Advocate for the applicant in this regard has stated that from April, 2020 onwards limitation period should be exempted in view of the requisite directions of the Hon'ble Supreme Court.

21. Considering the facts as above, it is evident that the applicant was below 45 years of age when the Covid-19 pandemic situation started in or about April, 2020. She attained the age of 45 years on 10-05-2020. In view of the same, I find substance in the arguments advanced on behalf of the applicant in this regard, and therefore, the said communication dated 20-05-2020 (Annexure A-15) is liable to be set aside.

22. From the citation relied upon by the learned Advocate for the applicant, it is evident that in [AIR 1989 SC 1976] in the case of Smt. Sushma Gosain & Ors. V/s. Union of India and

Ors., it is held that compassionate appointment is required to be provided immediately to redeem family in distress even by creating supernumerary posts so as to accommodate such person without loss of time. If the facts of the present case are considered, it can be seen that though the name of the applicant was at Sr.No.1 in the waiting list since 2014, no steps were taken to give her appointment. No any disability or otherwise disqualification of the applicant was communicated for not giving such appointment. Vacancies in the cadre of Clerical posts is evident from the chart at paper book page 107 attached with the short affidavit filed on behalf of the respondent no.4.

23. Perusal of the G.R. dated 11-09-2019 (paper book page 119) would show that the parameters of the compassionate appointment laid down in the said G.R. are made applicable from the beginning of calendar year of 2019. In January, 2019, there were 5 posts vacant whereas in August, 2019 in all 4 posts were vacant. If the decimal factor of 0.2, 0.4, 0.6 or 0.8 ratio is taken into consideration, at least one post was available for compassionate appointment. However, said G.R. is not made applicable for giving compassionate appointment to the applicant, who was legally entitled for it. Even otherwise, in order to give relief to the distressed family, such an

appointment can be given by creating supernumerary posts. Perusal of the decisions relied upon by the learned Advocate of the applicant, it is evident that consistent view is taken by this Tribunal about giving compassionate appointment in accordance with the law by construing the Government Resolution in its proper perspective. The applicant became 45 years of age on 10-05-2020 will not have bearing in the matter for the reason that she has crossed the said age limit during the pandemic. Before 10-05-2020 at least one post was available for compassionate appointment and considering that applicant was at Sr.No.1 in the waiting list she was entitled for such an appointment. However, she was not given appointment. The non-action on the part of the respondents in this regard is apparent.

24. In the circumstances, I hold that the applicant is entitled for getting compassionate appointment in accordance with the law. O.A., therefore, deserves to be allowed. I, therefore, pass following order:

- (a) O.A. is allowed in following terms.
- (b) Impugned communication dated 20-05-2020 issued by the respondent no.4 is hereby quashed and set aside.

- (c) Respondents are directed to consider the claim of the applicant for appointment on compassionate ground from the requisite vacant posts or even by creating supernumerary posts by taking into consideration the seniority in the waiting list.
- (d) Respondents to complete the entire exercise of appointing the applicant on compassionate ground in accordance with law within a period of 4 months from the date of this order.
- (e) There shall be no order as to costs.

(V. D. DONGRE)
MEMBER (J)

Place : Aurangabad
Date : 27.11.2021.