

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 837/2019(S.B.)

Shri Jayant S/o. Bhivaji Shende,
Age 44 yrs, Occ. Nil,
R/o Mukam Post. Tah. Lakhandur,
Dist : Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest,
Mantralaya, Mumbai- 32.
- 2) Principal Chief Conservator of
Forest, Administration,
Civil Lines, Nagpur.
- 3) Deputy Conservator of Forest,
Gondia Division,
Vanbhavan, Kundva Naka,
Near Gayatri Mandir, Gondia.
- 4) Ku. Niteshwari Bahulal Hirankhede,
Age: Major, Occupation : Service (Class- IV employee),
C/o Deputy Conservator of Forest,
Gondia Division, Van- Bhawan, Kundva Naka,
Near Gayatri Mandir, Gondia.
- 5) Kuldin s/o Shamrao Rahile,
Age: Major, Occupation : Service (Junior Clerk),
C/o Deputy Conservator of Forest,
Gondia Division, Van- Bhawan, Kundva Naka,
Near Gayatri Mandir, Gondia.

- 6) Hemant s/o Ulhas Kanhekar,
Age: Major, Occupation: Service, (Junior Clerk),
C/o Forest Office, Amgaon, Dist. Gondia.
- 7) Rajesh Dhok, Age: Major, Occupation: Service,
Forest Guard, C/o Forest Department,
Arjuni (Morgaon), Dist. Gondia.

Respondents

Shri M.R.Khan, Ld. Counsel for the applicants.
Shri A.M.Ghogre, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).
Dated: - 17th July 2023.

JUDGMENT

Judgment is reserved on 12th July, 2023.

Judgment is pronounced on 17th July, 2023.

Heard Shri M.R.Khan, learned counsel for the applicant and Shri A.M.Ghogre, learned P.O. for the respondents.

2. Case of the applicant is as follows.

Father of the applicant was serving in the respondent department. He died in harness on 01.09.2008. On 14.10.2008 the applicant submitted application (Annexure A-1) for appointment on compassionate ground. In waiting list as on 30.06.2017 (Annexure A-2) the applicant was at Sr.No.32 & respondents 4 to 7 were at Sr.Nos.33,

34, 35 & 37, respectively. By letter dated 12.09.2019 (Annexure A-3) the applicant (who was at Sr.No.8), respondent no.4 (who was at Sr.No.9) and 7 others were asked to remain present in person with necessary documents. By communication dated 19.09.2019 (Annexure A-4) 9 persons including the applicant and respondents 4 to 6 were called upon to swear affidavit that they would take care of other dependents left behind by the deceased. In this communication the applicant was at Sr.No.6 and respondents 4 to 6 were at Sr.Nos.7, 8 & 9, respectively. On 19.09.2019 the applicant swore the affidavit (Annexure A-5) that he would take care of the other dependents of his father. The applicant was to complete 45 years of age on 14.10.2019 whereupon his name could be deleted from the waiting list. Hence, this O.A. seeking direction to the respondents to appoint him on compassionate ground.

3. Respondent no.3 does not dispute that in the waiting list the applicant stood above respondents 4 to 7. It is also not disputed that pursuant to communication dated 12.09.2019 the applicant had remained present in the office with necessary documents. It is the contention of respondent no.3 that to fill 5 vacant posts of Forest Guard 5 eligible candidates, as per their seniority, were called for physical measurements. As per report dated 26.12.2019 (Annexure R-4) only one

candidate was found to be fit for appointment. In the meantime, on 14.10.2019 the applicant attained 45 years of age. Hence, as per G.R. dated 21.09.2017 (Annexure R-5) his name was deleted from the waiting list.

4. It is not disputed that 5 persons who were shortlisted for the post of Forest Guard stood above the applicant in the waiting list.

5. In his rejoinder the applicant has asserted that respondent no.4 who was below him in the waiting list was given appointment to Class-IV post. Further contention of the applicant is that respondents 5 & 6 have been appointed as Clerk and respondent no.7 has been appointed as Guard – on compassionate ground though all of them stood below him in the waiting list.

6. The issue which goes to the root of the matter is whether, in the facts and circumstances of the case, name of the applicant could have been deleted from the waiting list on his attaining 45 years of age-

7. The applicant has relied on "***Nikhil Maruti Gosarade Vs District Collector, Sangli and Others [2022 (1) Mh.L.J.] Page 348***"

In this case it is held-

In cases of compassionate appointment, not only the authorities but also the tribunal is required to be more careful, sensitive and live to the human considerations and adopt a

cautious approach before denying benefit under the compassionate appointment provisions.

8. The applicant has further relied on “***Nitin s/o Yohan Arawade Vs. Central Bank of India, Mumbai [2022(2) Mh.L.J] page 269***”. wherein it is observed-

It is unheard of that the compassionate appointment could be refused to an eligible member of the family which has lost a sole bread-earner, if the family was not indigent.

9. The applicant has also relied on “***Yogita w/o Shivsing Nikam Vs State of Maharashtra and Others [2022(2) Mh.L.J. page 370***”.

In this case it was found that the Education Officers had denied approval to compassionate appointments. The reason for not according approval was most inappropriate interpretation put by them on the relevant Government Resolutions despite crystallised position of law. Heavy costs were imposed on the concerned Education Officers and it was directed that the same be recovered from their salaries.

10. The applicant has further relied on Judgment of Principal Bench of this Tribunal dated 04.08.2022 in O.A.No.996/2021 wherein it is observed-

G.R., dated 21.09.2017 is consolidated G.R. whereby all earlier G.Rs. regulating terms and conditions of the scheme of compassionate appointment are again reiterated. Indeed, the stipulation of deleting name of heir from the waiting list on attaining the age of 45 years was initially incorporated in earlier various G.RS including G.R. dated 20.05.2015.

The stipulation in G.R. that the name of heir shall be deleted from the waiting list on attaining the age of 45 years seems to have no rational much less justifiable. Indeed, having regard to the aim and object of the scheme of compassionate appointment, the Respondents ought to have provided appointment immediately so as to mitigate the hardship faced by the dependent of the deceased even by creating supernumerary post, if no suitable post is available as mandated by the Hon'ble Supreme Court in Sushma Gosain's case (cited supra).

11. The applicant has also relied on Judgment of the Hon'ble Supreme Court ***Malaya Nanda Sethi Vs. State of Orrisa and Others (Judgment dated 20.05.2022 in Civil Appeal No.4103 of 2022)***. In this case it is held that applications for appointment on compassionate ground must be considered at an earliest point of time and such applications should not be rejected for frivolous, extraneous reasons.

12. Having regard to facts of the case and the law applicable thereto, I pass the following order.

ORDER

The O.A. is allowed in the following terms.

Respondent no.3 is directed to revive and restore the name of the applicant in the waiting list for issuance of appointment order to a suitable post subject to fulfilment of eligibility criteria, and in accordance with Rules. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 17/07/2023
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 17/07/2023.
and pronounced on