

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.35 OF 2019**

DISTRICT : THANE

Shri Yogesh Laxman Dharavane,)
Age 28 years, Occ. Farmer,)
R/at Khaire, Post Shenave, Tal. Shahapur, Dist. Thane)..Applicant

Versus

1. The Superintending Engineer,)
Thane Irrigation Circle, Sinchan Bhavan,)
3rd Floor, Kopri Colony, Thane (E), 400603)
2. The Executive Engineer,)
Bhatsa Dam Department No.1, Bhatsanagar,)
Taluka Shahapur, District Thane)
3. The Principal Secretary, Maharashtra State,)
Water Resources Department, Mantralaya,)
Mumbai)
4. The Additional Chief Secretary,)
Maharashtra State,)
General Administration Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri U.V. Bhosle – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)

RESERVED ON : 15th July, 2019

PRONOUNCED ON : 17th July, 2019

J U D G M E N T

1. Heard Shri U.V. Bhosle, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This OA is for compassionate appointment of the applicant. After demise of the applicant's father viz. Shri Laxman Ganpat Dharavane on 10.12.2005, mother of the applicant viz. Smt. Asha Laxman Dharavane had submitted her application for compassionate appointment on 26.6.2006. Her name was accordingly included in the waiting list of candidates for compassionate appointment. The wife of the deceased crossed the age of 45 years and therefore her name was removed from the waiting list of Group D employees (Exhibit M page 41). As the name of the mother was included, the respondents informed the applicant that same cannot be substituted by including applicant's name by the impugned order dated 10.9.2018. The applicant has challenged this impugned order and prayed to quash and set aside the same. The applicant has further prayed to consider his case for compassionate appointment in any Group C post.

3. The applicant has submitted that the deceased Government servant had two wives and four children including the applicant. After the applicant became major on 3.9.2008 the applicant requested on 29.1.2009 to respondent no.1 to include his name for compassionate

appointment in place of his mother. He made representation from time to time and received the impugned order rejecting his representation on 10.9.2018 from respondent no.1.

4. The Ld. Advocate for the applicant relies on the judgment and order dated 21.10.2016 passed by this Tribunal in OA. No.239 of 2016 (Swati P. Khatavkar & Anr. Vs. The State of Maharashtra & Anr) (Exhibit L of OA). The relevant portion of the same reads as under:

“6. It will be erroneous to contend that the GR of 20.5.2015 places difficulty and it is not as if unless enlisted heir was to die another heir cannot be enlisted. In my view, the said GR in that behalf incorporates only an enabling provision to take care of a particular contingency i.e. death. It is, therefore, very clear from the forgoing that the issue involved herein as already mentioned above is fully governed by the above referred cases and the respondents will have to act in accordance with that. I reject their case that so called substitution is impermissible and I hold that the applicant no.2’s name will have to be enlisted in place of the applicant no.1 and consider him for appointment on compassionate ground.”

(Quoted from page 39-40 of OA)

5. The respondents no.1 and 2 have filed affidavit. The affidavit mentions that wife of the deceased employee completed 55 years of age and was not capable of job. After the death of the employee only one eligible family member is entitled to be considered for the waiting list and as such no other family member can be considered on compassionate ground.

6. The Ld. Presenting Officer relies on the judgment and order dated 6.11.2017 passed by this Tribunal in OA No.381 of 2017 (Mr. Amanulla S. Mahaldar Vs. The State of Maharashtra & Ors.). In identical circumstances this Bench has observed as under:

“20. On going through the documents on record, it is crystal clear that, after the death of father of the present applicant, the mother of the applicant i.e. widow of deceased Salim filed an application/representation with the Respondents to appoint her on compassionate ground and accordingly, her name has been included in the waiting list of the candidates for compassionate appointment for the Group ‘D’ post. Thereafter, her name has been deleted by communication dated 18.06.2008 issued by the office of Respondent No.2 as per the provisions of the G.Rs. dated 22.08.2008 and 23.04.2008, as she crossed 40 years of her age. Admittedly, the applicant was minor when his father died. He was also minor when name of his mother has been deleted from the waiting list. The applicant attained the majority in the year 2011. After deleting the name of the mother of the applicant, she made several representations to the Respondents to consider the name of the applicant for the appointment on compassionate ground in her place, but her request was rejected in the year 2008 by the Respondents vide communication dated 06.10.2008 (Page 118 of the Paper Book (P.B) on the ground that, G.R. dated 22.08.2005 and 23.04.2008 do not provide such provision. It is also informed to her by the said communication that, as per the above said G.R, the name of the candidates whose name has been listed in the waiting list shall be deleted after crossing the age of 40 years. Thereafter, she filed another representation, but the Respondents have stick-up with the decision and communicated the decision again to her by communication dated 16.03.2009 (Page 119). Thereafter, the applicant moved an application and he persuaded the matter with the Respondents. By the communication dated 31.01.2017 (Page 207 of the P.B), the Respondents informed him that his name cannot be included in the waiting list after deletion of the name of her mother, as she has crossed 40 years of her age, as there is no provision in the G.Rs. dated 22.08.2005 and 23.04.2008. The copies of the G.Rs. dated 22.08.2005 and 23.04.2008 are placed on record at Page Nos.121 and 124 to 127 respectively. On careful perusal of the said G.R, it reveals that there is no provision to include the name of the wards in place of his guardian whose

name has been included in the waiting list of the eligible candidates for appointment on compassionate ground. Not only this but the above said G.Rs. do not provide to record the name of the wards in the waiting list after deletion of the name of guardian on crossing his or her age of 40 years. As there is no provision in the G.Rs in respect of the relief claimed by the applicant, the Respondents have rightly rejected the application/representation filed by the applicant. Therefore, I do not find illegality in the impugned order/communication issued by the Respondents rejecting the representation/application of the Applicant in that regard.

21. I have gone through the various decisions of the Hon'ble Bombay High Court and of this Tribunal relied on by the learned Advocate for the applicant. On going through the same, it reveals that, in all these decisions of the Hon'ble High Court as well as this Tribunal, the directions were given to the Respondents or the concerned authorities to consider the applications of the Petitioners in those matters and to take conscious decisions as per the Rules. In the present matter also, this Tribunal has given directions to the Respondents to decide the representation of the applicant within a stipulated time and accordingly, the earlier O.A. bearing No.700 of 2016 filed by the applicant in this regard has been disposed of accordingly.

22. As per the directions given by this Tribunal in O.A. No.700 of 2016, the Respondents considered the case of the applicant in view of the provisions of the aforesaid G.Rs and as there is no provision in the said G.Rs, they rejected the application of the applicant. Therefore, various decisions cited by the learned advocate for the applicant are not much useful to the applicant in the instant case. Therefore, I do not find any substance in the submissions advanced by the learned Advocate in that regard.

23. In view of the above said discussion, it is crystal clear that the Respondents have rejected the representation/application of the applicant, as there is no provision to replace the name of the person whose name has been entered in the waiting list and as there is no provision to record the

name of the ward after deletion of the name of the guardian from the waiting list after completion of 40 years. The Respondents have rightly rejected the claim of the applicant. Therefore, I found no fault in the decision taken by the Respondents in that regard. There is no illegality in the order/communication under challenge. Therefore, no interference is called for in the impugned communication/order issued by the Respondents rejecting the claim of the applicant. There is no merit in the O.A. Consequently it deserves to be dismissed.”

7. Ld. Presenting Officer, therefore, submits that the OA has no merit and deserves to be dismissed.

Discussion and findings:

8. After the death of father of the applicant, wife of the deceased Government servant and mother of the applicant viz. Asha Laxman Dharavane applied for compassionate appointment. Her name was accordingly included in the waiting list. As she completed 45 years of age her name was removed as per the provisions of GR dated 20.5.2015. As stipulated in the GR dated 20.5.2015 once the name of one of the dependent is taken on the waiting list, there is no provision to include the name of another heir in the waiting list. Request made by the applicant to replace the name of his mother and add his name in the waiting list has been, therefore, rejected by the respondents. The applicant has not demonstrated how the order issued by the respondents is bad in law and, therefore, his prayer to quash the same is without any merits.

9. Since the impugned order is in conformity with the GR dated 20.5.2015 and as there is no provision to substitute the name of the mother by son in the waiting list, OA is without any merits. The GR dated 20.5.2015 has not been challenged or set aside by any judicial

observation. The GR, therefore, has legal validity and cannot be discarded in deciding this matter.

10. For the above reasons there is no merit in the OA and, therefore, the same stands dismissed with no order as to costs.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
17.7.2019

Dictation taken by: S.G. Jawalkar.

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