

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.866 OF 2017**

DISTRICT : THANE

Shri Siddhesh Ravindra Zagade,)
Age 29 years, occ. Nil,)
R/o B/306, Suryas Smruti Complex, A/P Kalher,)
Tal. Bhiwandi, District Thane)..Applicant

Versus

1. The Director,)
Forensic Science Laboratories, Vidyanagari,)
Santacruz (E), Mumbai 400098)

2. The State of Maharashtra,)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400032)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

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

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
RESERVED ON : 5th August, 2019
PRONOUNCED ON : 8th August, 2019

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This matter pertains to compassionate appointment of the applicant which was rejected on the ground that the mother of the applicant is working in the Central Government at Postwoman. The applicant himself submitted to the respondents that his mother is working in the Indian Postal Service as Postwoman. The applicant further submits that he is living separately from his mother and is married and living separately with his family. The impugned order dated 9.9.2016 is at page Exhibit A page 15 of OA. The Ld. Advocate for the applicant has pleaded that the respondents needed to conduct an enquiry to find out whether the condition of the family is so difficult that they cannot survive properly, as per the judgment and order dated 26.4.2017 passed by this Tribunal in OA No.1040/2016 Shri Yogesh Hanumant Mane Vs. The State of Maharashtra & Anr. According to the Ld. Advocate for the applicant, no such enquiry was made to find out the legitimate source of earning and they have depended merely on the self proclamation by the applicant and rejected his consideration. The Ld. Advocate for the applicant has relied on the judgment of the Hon'ble Bombay High Court in Writ Petition No.1284 of 2011 Aparna Narendra Zambre & Anr. Vs. The State of Maharashtra & Ors. decided on 1.8.2011 wherein in para 7 it observed as follows:

“7. Suffice it to observe that the fact that Family Pension is being received by the widow or other eligible family members of the deceased employee can be no basis to deny them the benefit of appointment on compassionate ground. That concession is in addition to the relief of Family Pension, which is, essentially, intended to meet the immediate financial

hardship suffered by the members of the family due to the sudden demise of the deceased employee.”

3. The applicant has, therefore, prayed to issue suitable directions to set aside the impugned orders dated 9.9.2016 and 21.9.2016 (Exhibit A page 15-16 of OA).

4. The respondent no.1 has filed affidavit and contested the claim of the applicant on following grounds:

(1) The applicant has mentioned in OA that he is staying with his mother and brother at Kalwa. However, he claims, “he is staying separately with his wife and small child and away from his mother”. The applicant is making contradictory statements.

(2) Applicant’s mother made a representation on 28.7.2014. The applicant made a representation on 31.3.2016. The applicant was working with respondent no.1 from 18.5.2015 to 17.5.2016 on contract basis and earning Rs.15,000/- per month. On the day he made the representation viz. 31.3.2016 he was in the employment with respondent no.1.

(3) After the death of the applicant’s father, his mother who is gainfully employed as Postwoman has received following terminal benefits:

Sr. No.	Particulars	Date	Amount
1.	Gratuity	26.10.2015	1,06,153
2.	G.P.F.	11.08.2015	3,88,268

3.	G.I.S.	24.07.2015	1,20,000
4.	Saving Fund	24.07.2015	24,854
5.	Insurance	15.12.2016	60,000

6(ii) *The Applicant's mother is also receiving Family Pension @ Rs.8,015/- per month w.e.f. 5.3.2014 and, therefore, in these circumstances, it cannot be said that the Applicant / his mother had no other source of income to maintain his family.*

(Quoted from page 41 of OA)

5. The respondent further submits:

“10. With reference to contents of paragraph No. 6.8, I say as follows : The Applicant's mother is already in a government job and receiving family pension. It clearly shows that applicant is not entitled to claim for appointment by compassionate ground as per provisions of the G.R. dated 26.10.1994, which reads thus :

“एखादया कुटुंबात मृत कर्मचा-याचा नातेवाईक पूर्वीच सेवेत असेल, तथापि तो त्याच्या कुटुंबातल अन्य सदस्यांना आधार देत नसेल तर अशा प्रकरणात त्या कुटुंबाचा आर्थिक परिस्थित हलाखाय आहे किंवा कसे हे ठरविताना नियुक्त अधिकार्याने अत्याधिक दक्षता घ्याव जेणेकरून सेवेत असलेला सदस्य कुटुंबाचा उदरनिर्वाह करित नाही या नावाखाली अनुकंपा तत्वावरील नियुक्ता दुरुपयोग केला जाणार नाही”

11. With reference to contents of paragraph No. 6.9, I say as follows : It is further submitted that, the government resolution dated 26/10/1994 and 21/09/2017 regarding appointment on the compassionate ground clearly states that if the legal nominee of a deceased person is already in a

government job and receiving pension as a legal nominee in that case the applicant cannot claim appointment on compassionate ground.

(i) Moreover, there was no question of conducting inquiry to find out as to whether Applicant is staying with mother & brother, since the Applicant had stated in 1st and 2nd Affidavits dtd. 22.7.2014 and 10.5.2016 that he is staying with his mother and brother. It is only when the Respondent No.1 communicated the rejection of his claim for compassionate appointment on 21.9.2016, the Applicant by way of afterthought submitted representation dtd. 21.9.2016, which was received by the Respondent No.1 on 22.9.2016 for reconsideration for Applicant's appointment on compassionate ground.

(Quoted from page 43-44 of OA)

6. Issue for consideration:

(i) Whether the impugned order is arbitrary and illegal?

The reply is negative for following reasons.

Discussion and findings:

7. In the present case it is noticed that the applicant himself was in the employment of respondent no.1 on the date of his representation for compassionate appointment and receiving Rs.15,000/- per month. He has made contradictory statements regarding his stay with his mother and subsequently changed it by mentioning that he is staying separately with his family. His mother has received the terminal benefits of more than rupees five lakhs and is receiving family pension. In addition she is also serving as Postwoman in the Central Government. In the above circumstances, the economic condition of the family cannot be considered

as so bad that it cannot look after the family members. The applicant has not moved this Tribunal with clean hands, as per the facts mentioned above. The applicant does not demonstrate that the decision taken by the respondents to reject his claim is arbitrary and illegal.

8. For the above reasons, the Original Application is found to be without any merit and, therefore, rejected. No order as to costs.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
8.8.2019

Dictation taken by: S.G. Jawalkar.

G:\JAWALKAR\Judgements\2019\8 August 2019\OA.866.17.J.8.2019-SRZagade-Compassionate Appointment.doc