

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.367 OF 2018  
(Subject :- Compassionate Appointment)**

**DISTRICT : AHMEDNAGAR**

**Kunal s/o Bharat Shinde,** )  
Age: 26 years, Occu: Education, )  
R/o. Room No.23, Rabhaji Kotkar Nagar, )  
Bhagyoday Colony, Kedgaon, )  
Tq. & Dist. Ahmednagar. )...**Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Home Department, )  
Maharashtra State, )  
Mantralaya, Mumbai -32. )
2. **Superintendent of Police,** )  
Ahmednagar District, )  
Superintendent of Police Office )  
S.P. Chowk, Tq. & Dist. Ahmednagar. )
3. **Deputy Superintendent of Police,** )  
Superintendent of Police Office )  
S. P. Chowk, Tq. & Dist. Ahmednagar )...**Respondents.**

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**Shri S.S.Dixit, Advocate for the Applicant.**

**Smt. M.S.Patni, Presenting Officer for the Respondents.**

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**CORAM : B. P. PATIL, ACTING CHAIRMAN**

**RESERVED ON : 24.09.2019.**

**PRONOUNCED ON : 27.09.2019.**  
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**ORDER**

1. The Applicant has challenged the order dated 14.03.2018 issued by the Respondent No.3 rejecting his claim for appointment on compassionate ground by filing the present Original Application and prayed to quash and set aside the impugned order and to declare that he is eligible for the appointment on compassionate ground.

2. Deceased Bharat Keshav Shinde was father of the applicant. He was serving as Head Constable on the establishment of respondent no.2. He died on 12-06-2013 while in service. At the time of his death there was no fit person to look after the family of the deceased. The family of the applicant had no source of income. Therefore, the applicant filed an application dated 04-07-2013 with the respondent no.2 along with necessary documents for getting appointment on compassionate ground. His mother, sister and brother have also given consent to it by filing affidavit. The step mother of the applicant had also filed an application to the respondent no.2 for getting monetary benefits. Therefore, the respondent no.2 asked the applicant to produce succession certificate for getting appointment on compassionate ground. Therefore, the applicant

and other heirs filed Civil Miscellaneous Application No.07/2014 in the Civil Court for getting succession certificate. His step mother Asha had also filed Civil Miscellaneous Application No.109/2013 for getting succession certificate before the Civil Judge Senior Division, Ahmednagar. Both the applications were tried together and disposed of by common judgment by the learned Civil Judge Senior Division, Ahmednagar on 08-11-2016. After receiving succession certificate, the applicant had approached the respondent no.2 and filed the succession certificate. Since there was difference in the name of mother of the applicant in application dated 04-07-2013 and succession certificate, respondent no.2 orally asked him to file another application. Accordingly, the applicant moved another application along with necessary documents on 29-12-2017. His step mother Asha has also given no objection to his application for appointment on compassionate ground.

3. Thereafter, name of the applicant had been recorded in the waiting list of the eligible candidates to be appointed on ad-hoc basis. The respondents started recruitment process for appointment on compassionate ground for the post of Police Patil in the year 2018 since there were vacancies. Respondent no.3

issued letter dated 09-03-2018 and directed all the candidates who have filed application for compassionate appointment and whose names were appearing in the waiting list to remain present for physical test. Accordingly, the applicant appeared for physical test on 12-03-2018. On 14-03-2018, respondents published the list of the selected candidates who were to be appointed on the post of Police Constable and whose medical test is to be carried out. But the name of the applicant was excluded from the said list and he was served with communication dated 14-03-2018 informing that his application for compassionate appointment cannot be allowed since his brother is appointed on the post of Police Constable and he is in Government service. The respondent no.3 has relied on G.R. dated 26-10-1994 while rejecting the claim of the applicant.

4. It is contention of the applicant that the brother of the applicant namely Rahul Shinde who is appointed on the post of Police Constable, has been given in adoption to his uncle namely, Ganesh Keshav Shinde in the year 1996 and since then he is residing with Ganesh Shinde. It is his further contention that Rahul i.e. brother of the applicant has no concern with the applicant's family and therefore he cannot be termed as family

member of the applicant. It is his contention that Rahul is not taking care of the family of the applicant. The applicant, his sister and mother are residing with his another uncle namely Sunil Keshav Shinde. It is his contention that the brother of the applicant Rahul is not taking care of his family and therefore the respondents ought to have considered his claim in view of the Clause 7(b) of the G.R. dated 26-10-1994 but the respondent no.3 has not considered the said aspect while rejecting his claim. It is his further contention that he moved an application for appointment on compassionate ground on 04-07-2013 much before the appointment of his brother Rahul as Police Constable. At the time of filing the application for compassionate appointment none from his family was in service. The respondent no.3 had not considered the said aspect while rejecting his application. It is his contention that the impugned order issued by the respondents is not in accordance with the provisions of the G.R. Therefore, he has prayed to quash the same.

5. It is his further contention that Rahul was appointed on the post of Police Constable from "Sports category" and not on compassionate ground but this fact is not considered by the

respondents. The order passed by the respondent no.3 is illegal. Therefore, he has prayed to quash the impugned order by allowing the O.A.

6. Respondent nos.2 and 3 have resisted the claim of the applicant by filing their affidavit in reply. They have not disputed the fact that the father of the applicant namely, Bharat Shinde was serving with the respondent no.2 and he died while in service. They have admitted the fact that after death of deceased Bharat Shinde, the applicant moved an application dated 04-07-2013 along with documents for appointment on compassionate ground. Admittedly, the applicant moved another application on 29-12-2017 along with documents claiming appointment on compassionate ground and filed the succession certificate and no objection of his step mother Asha along with the documents. It is their contention that step mother of the applicant namely Asha filed an application claiming monetary benefits after death of her husband. They have also admitted the fact that they started recruitment process for appointment on compassionate ground in 2018 and applicant appeared before them for physical test as the name of the applicant was enrolled in the waiting list. It is their contention that the applicant appeared for height and chest

test and thereafter by the impugned communication dated 14-03-2018 his application has been rejected. It is their contention that their office received information that the brother of the applicant has already been appointed on the post of Police Constable at Ahmednagar and he is in Government service.

7. It is their contention that as per the G.R. dated 26-10-1994 it is incumbent upon the applicant to submit true and correct information in the affidavit but the applicant has not submitted the correct representation and misrepresented the respondent no.2. Respondent no.2 after getting knowledge of the misrepresentation made by the applicant rejected the application claiming appointment on compassionate ground and informed the applicant accordingly by the impugned order dated 14-03-2018. It is their contention that thereafter a crime bearing CR.No.350/2018 for offences punishable u/s.200, 201, 420, 468, 471, r/w. 34 of IPC was registered against the applicant, his mother Asha Bharat Shinde, Smt. Zumberbai Keshav Shinde, Rahul Bharat Shinde and Ms. Alisha Bharat Shinde with Tophkhana Police Station, Ahmednagar. It is their contention that the claim of the applicant has been rightly rejected in view of the G.R. dated 26-10-1994 and there is no illegality in the same.

Therefore, they have supported the impugned order and prayed to reject the O.A.

8. I have heard Shri S.S.Dixit, learned Advocate for the Applicant and Smt. M.S.Patni, learned Presenting Officer for the Respondents. I have perused the documents placed on record by the parties.

9. Admittedly, deceased Bharat Shinde was father of the applicant. Deceased Bharat Shinde was serving as Police Constable on the establishment of respondent no.2. He died on 12-06-2013 while in service. Admittedly, the applicant moved an application dated 04-07-2013 along with documents with the respondent no.2 for getting appointment on compassionate ground. His mother, sister, brother had filed an affidavit stating that they have no objection to give appointment to the applicant on compassionate ground. Admittedly, the step mother of the applicant namely, Asha had also filed an application with the respondent no.2 claiming monetary benefits. There is no dispute about the fact that the applicant, his mother, brother and sister filed Civil Misc. Application No.07/2014 and step mother of the applicant Asha Bharat Shinde filed another Civil Misc. Application No.109/2013 before the Civil Court at Ahmednagar



and claimed succession certificate. Both the applications have been tried together and disposed of by common judgment of Civil Judge Senior Division, Ahmednagar on 08-11-2016.

10. Admittedly, thereafter the applicant filed another application dated 29-12-2017 along with succession certificate and other documents and affidavit of his step mother Asha stating that she has no objection for appointment of the applicant on compassionate ground. On the basis of his application, name of the applicant has been enrolled in the waiting list of the eligible candidates to be appointed on compassionate ground by the respondent no.2. Respondent no.2 thereafter started recruitment process for appointment of Police Constable on compassionate ground and the applicant was also called for physical test. The applicant appeared for the physical test conducted on 12-03-2018. There is no dispute about the fact that meanwhile, brother of the applicant namely Rahul has been appointed as Police Constable at Ahmednagar. Respondent no.2 rejected the application of the applicant by the impugned order dated 14-03-2018 on the ground that the applicant is not eligible for appointment on compassionate ground in view of

provisions of G.R. dated 26-10-1994 as his brother is serving in Police Department as Police Constable.

11. Learned Advocate for the applicant has submitted that after the death of father of the applicant, his family consisting of applicant, his mother, brother Rahul and sister had no source of income. Therefore, the applicant filed an application dated 04-07-2013 for getting appointment on compassionate ground. He has submitted that as step mother of the applicant filed one application claiming monetary benefits, respondent no.2 orally asked him to obtain succession certificate and accordingly the applicant and his family members as well as his step mother approached to the Civil Court and obtained succession certificate. He has submitted that after obtaining succession certificate, the applicant moved another application dated 29-12-2017 along with no objection of his step mother and claimed appointment on compassionate ground. Accordingly, his name has been recorded in the waiting list and the applicant was called to participate in the recruitment process of 2018 for the recruitment of Police Constables. Accordingly, the applicant appeared for physical test but his name was not included in the list of the selected candidates.

12. He has further argued that the respondent no.3 rejected the application of the applicant on 14-03-2018 by the impugned order on the ground that his brother Rahul is in Government service. He has argued that Rahul has no concern with the family of the applicant as Rahul had been given in adoption to his uncle Ganesh Shinde in the year 1996. He has argued that Rahul is residing with Ganesh Shinde since then and he is not taking care of family of the applicant since then. He has submitted that the respondents had not considered the said aspect and wrongly rejected the claim of the applicant.

13. Learned Advocate of the applicant has further argued that Rahul is appointed in the year 2015. He was not in service when the applicant moved application initially for getting appointment on compassionate ground on 04-07-2013. The applicant was eligible at that time and therefore his name has been recorded in the waiting list. Rahul got employment subsequently therefore respondents ought to have considered the said aspect but the respondents have not considered the said aspect and rejected his application wrongly. It is his further submission that the respondent no.2 has not considered the provisions of G.R. dated

26-10-1994 with proper perspective. Therefore, he has prayed to quash the impugned order by allowing the present O.A.

14. Learned Advocate for the applicant has placed reliance on the judgment in case of **Virendra Kumar V/s. Union of India & Ors.** reported in [**2012 6 AWC 6056 ALL**].

15. Learned P.O. has submitted that the applicant has suppressed the material fact regarding employment of his brother Rahul while making application dated 29-12-2017. The applicant, his mother, sister and step mother and brother Rahul filed false affidavit and misled and cheated the respondent no.2 while filing the application. On the basis of false affidavit, the applicant has claimed employment on compassionate ground. She has submitted that name of the applicant was enrolled in the waiting list and he was called for physical test at the time of recruitment of Police Constable in the year 2018. The applicant had not supplied the correct information but the respondent no.2 received the information regarding employment of his brother and after verifying the same he found that Rahul was serving as Police Constable at Ahmednagar. Therefore, the respondents have rejected the application of the applicant by the impugned communication as the applicant is not eligible to get appointment

on compassionate ground in view of the provisions of G.R. dated 26-10-1994.

16. She has further submitted that the applicant and his family members cheated the respondent no.2 by giving false information on oath and therefore a criminal case bearing C.R.No.350/2018 for offences punishable u/s.200, 201, 420, 468, 471, r/w. 34 of IPC has been registered against them with Tophkhana Police Station, Ahmednagar. She has argued that the respondent no.2 has rightly rejected the claim of the applicant and there is no illegality in the same. Therefore, she has prayed to reject the O.A.

17. On perusal of the record, it reveals initially the applicant moved an application dated 04-07-2013 for getting appointment but there was dispute amongst the applicant and his family members and his step mother Asha. They were directed to bring succession certificate and accordingly they approached the Civil Court. After receiving the succession certificate the applicant moved another application on 29-12-2017 along with affidavit of his mother, sister, brother Rahul and step mother Asha. Accordingly, his name has been included in the waiting list for appointment on compassionate ground. He was called for

physical test in the recruitment process of the year 2018. At that time, respondent no.2 found that the brother of the applicant namely Rahul is serving on his establishment as Police Constable. He found that the applicant and his family members misled the respondents by giving false information by giving false affidavit. Therefore, by the impugned communication he has rejected his claim on the ground that the brother of the applicant is in service and the family has sufficient income in view of the provisions of G.R. dated 26-10-1994.

18. On going through both the applications filed by the applicant, it reveals that in both the applications the applicant has mentioned that his family consisted of his mother, sister and brother Rahul. There was no whisper regarding adoption of Rahul by his uncle Ganesh Shinde. Had it been a fact that Rahul was given in adoption to his uncle in 1996 and he had no concern with the family of the applicant then the applicant would not have definitely mentioned name of Rahul as member of his family but the fact is different. The applicant has shown the name of his brother as one of his family members. Not only this but the applicant has also not produced a single document to show that his brother was given in adoption to his uncle Ganesh

Shinde. Therefore, the contention of the applicant in that regard is not be accepted.

19. It is also material to note here that, in the affidavit filed by the applicant and his family members, it has been specifically mentioned that they were depending on deceased Bharat Shinde, and therefore, Rahul has given no objection for appointment of the applicant on compassionate ground. It is also material to note here that the applicant has produced the appointment letter of Rahul wherein name of brother of the applicant is mentioned as "Rahul Bharat Shinde". Had it been a fact that Rahul has been adopted by his uncle Ganesh Shinde then he would have mentioned his father's name accordingly while getting appointment but the fact is different. This also falsifies the contention of the applicant in that regard.

20. The applicant, his family members including Rahul have suppressed the fact regarding employment of Rahul while making application dated 29-12-2017. At that time, Rahul was in service. This fact is evident from the appointment letter of Rahul produced at paper book page 104-105C. They intentionally avoided to disclose the said fact but the said fact has been noticed by the respondent no.2 after physical test of the

applicant. Therefore, he has passed the impugned order on the basis of provisions of G.R. dated 26-10-1994.

21. The Government has introduced the scheme for appointment of heirs of deceased Government employees died while in service on compassionate ground in the year 1976. Thereafter, the Government issued several G.Rs. and modified the scheme from time to time. The scheme has been further modified in the year 1994 and accordingly, G.R. dated 26-10-1994 has been issued. The rules are appended to the said G.R. as Appendix-A. Clause 7 (b) of the rules (paper book page 103-D) provides as follows:

“ ७(अ) .....

(ब) अनुकंपा तत्वावर नियुक्ती देताना असे प्रस्ताव शासन सेवेतील रोजगारावर असलेली मर्यादा, च्या योजनेच्या मागील भूमिका लक्षात घेऊन जो कर्मचारी मृत झाला त्याच्या कुटूंबियांना तात्काळ उदभवणा-या पेचप्रसंगावर मात करण्याच्या उद्देशाने विचारात घ्यावेत.

एखाद्या कुटूंबात मृत कर्मचा-यांच्या नातेवाईक पूर्वीच सेवेत असेल, तथापि तो त्याच्या कुटूंबातील अन्य सदस्यांना आधार देत नसेल तर अशा प्रकरणात त्या कुटूंबाची आर्थिक परिस्थिती हलाखाची आहे किंवा कसे हे ठरवितांना नियुक्ती अधिका-याने अत्याधिक दक्षता घ्यावी, जेणेकरून सेवेत असलेला सदस्य कुटूंबाचा उदरनिर्वाह करीत नाही या नावाखाली अनुकंपा तत्वावरील नियुक्तीचा दुरुपयोग केला जाणार नाही.

या संदर्भात नियुक्ती अधिका-याने मिळणा-या निवृत्तीवेतनाची रक्कम, कुटूंबातील व्यक्तींची संख्या, त्याची मालमत्ता, ....., गंभीर आजारामुळे किंवा



अपघातामुळे मृत झाला असल्यास त्यासाठी करण्यात आलेला वैद्यकीय खर्च, कुटुंबातील मिळवल्या व्यक्ती इत्यादी बाबी विचारात घेणे अपेक्षित आहे.’’

22. The object behind framing the scheme is to give an opportunity to the members of the deceased Government employee and to help them in their financial crisis. It has been specifically mentioned in the abovesaid rule that if any member in the family is in Government service and the financial condition of the family is sound then the other members of the family of the deceased employee are not entitled to get appointment on compassionate ground. It has been specifically mentioned therein that nobody should misuse the provisions of the scheme on the ground that the member of the family who is in Government service is not maintaining other members in the family.

23. Respondent no.3 has rightly considered the said provisions and rejected the application of the applicant for appointment on compassionate ground on the ground that brother of the applicant, namely, Rahul is in service and the financial position of the family is sound. Not only this but respondent no.2 has filed a criminal case against the applicant with Tophkhana Police Station which was registered under u/s.200, 201, 420, 468, 471, r/w. 34 of IPC against the applicant and his family members

including his brother Rahul and his step mother Asha. All these facts show that the applicant has suppressed the material facts before the respondent no.2 while filing the application and he intentionally avoided to supply the information regarding service of his brother Rahul. Not only this but the applicant and his family members filed false affidavit in that regard. Therefore, the respondent no.2 has rightly rejected the application of the applicant in view of the provisions of G.R. dated 16-10-1994. I find no illegality in the impugned order. Therefore, no interference in it is called for.

24. I have gone through the decision relied on by the learned Advocate for the applicant in case of **Virendra Kumar V/s. Union of India & Ors.** reported in [2012 6 AWC 6056 ALL]. Facts in that case are different than the facts in the present case. In that case, the petitioner was appointed on compassionate ground but the appointment letter has been subsequently withdrawn on the ground that criminal case is pending against the petitioner. The Hon'ble High Court of Allahabad has held that the appointment of the petitioner shall be subject to final decision in the criminal case. The facts in the present case are

different. Therefore, principle laid down in the said decision is not attracted in the instant case.

25. Considering the above facts, in my view there is no illegality in the impugned order. No interference in the impugned order is called for. There is no merit in the O.A. Consequently, it deserves to be dismissed.

26. In view of the discussion in the foregoing paragraphs O.A. stands dismissed without any order as to costs.

**PLACE :- AURANGABAD.**  
**DATE :- 27.09.2019**

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

YUK SB O.A.NO.367 of 2018 Compassionate Appointment