

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 175 OF 2023
(Subject – Compassionate Appointment)**

DISTRICT :- JALNA

Ramesh Bansi Tekale,)
Age 45 years, Occu. Unemployed,)
R/o Harpala, Tq. Jafrabad, Dist. Jalna.) .. **APPLICANT**

V E R S U S

- 1) **The Secretary,**)
General Administration Department,)
Mantralaya, Mumbai-32.)
- 2) **The District Collector,**)
Jalna.)
- 3) **The Executive Engineer,**)
Public Works Department, Old Jalna.)
- 4) **The Sub Divisional Officer,**)
Public Works Department, Sub Division,)
Jafrabad, Dist. Jalna.).. **RESPONDENTS**

APPEARANCE : Shri D.R. Irale Patil, counsel for the
applicant.

: Shri A.P. Basarkar, Presenting Officer for the
respondent authorities.

CORAM : **JUSTICE SHRI V.K. JADHAV, MEMBER (J)**

DATE : **12.09.2024**

O R D E R

1. Heard Shri D.R. Irale Patil, learned counsel
appearing for the applicant and Shri A.P. Basarkar, learned
Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the sides.

3. By filing the present Original Application, the applicant is seeking direction to respondents to consider the application dated 13.08.2012 filed by the applicant and his placement in the seniority list maintained by the Collector at Sr. No. 15 and to issue appointment order on compassionate ground. The applicant is also seeking quashment of order dated 25.02.2022 passed by respondent No. 3.

4. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

(i) The father of the applicant viz. Bansi Jayaji Tekale was working under Public Works Sub Division at Jafrabad in category-D employee. Further while in service, he met with an accident on 08.09.2012 and died. In terms of G.R. dated 22.08.2005, the applicant, being a son, has submitted an application within one year from the date of death of Government servant and as per the said G.R., he would be entitled to get appointment till he attain the age of 40 years.

(ii) It is the further case of the applicant that since 2012 the name of the applicant is kept in waiting list at Sr. No.

15. More than 11 years has been passed. In between 2012-2022, at the level of respondent authorities number of vacancies has been filled in category-D. The applicant however has been deprived from the appointment.

(iii) The applicant further contends that by impugned order dated 25.02.2022 issued by respondent No. 3, the applicant's name was removed from the waiting list solely on the ground that he has crossed the age of 45 years. Hence, the present Original Application.

5. Learned counsel for the applicant submits that in terms of Circular dated 05.02.2010, the Government has issued directions to the authorities that before filling the vacancies by nominations, the wait list candidates should be given priority. Further by issuing G.R. dated 21.09.2017, the Government has increased the percentage from 5% to 10% for appointment on compassionate ground and also age limit up to 45 years for appointment on compassionate ground.

6. Learned counsel for the applicant submits that respondent authorities by relying upon the G.R. dated 29.09.2017 informed to the applicant that he has now completed 45 years of age and therefore, he cannot be

continued in the waiting list. Learned counsel submits that said G.R. dated 29.09.2017 applied prospectively and not retrospectively. The applicant has filed application way back in the year 2012. The applicant is not at fault.

7. Learned counsel for the applicant further submits that impugned order dated 25.02.2022 was not communicated to the applicant at any point of time. His name was also included in the waiting list and as such, the duty is cast upon the respondents to grant him opportunity of being heard and applicant should have been placed under the special category. It is difficult to believe that the respondent authorities would not find out the vacancy in the other sister department of the Government in time. Learned counsel submits that in a case of **Kalpna Vilas Taram & Anr. Vs. The State of Maharashtra and Ors.**, the Full Bench of Hon'ble High Court of Bombay, Bench at Nagpur has held that policy framed for wait listing is not contrary to the very object and purpose of compassionate appointment. In view of the same, removing the name of the applicant from the wait list is contrary to the very object and purpose of compassionate appointment. Learned counsel thus submits that the present Original Application deserves to be allowed.

8. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 3 & 4 submits that as per clause No. 11(AA) of G.R. dated 21.09.2017, the age limit prescribed is 45 years of age and after completion of 45 years of age, the name of the candidate in the waiting list is required to be removed. Accordingly, respondent No. 3 on 25.02.2022 communicated to the applicant that the applicant has already completed 45 years of age and therefore, his name is removed from the waiting list prepared for appointment on compassionate basis.

9. Learned Presenting Officer submits that pursuant to the G.R. dated 11.09.2019 issued by the State of Maharashtra, the posts which were fallen for the appointment on compassionate ground in the ratio of 20% on the vacant posts since 2009 to 2012 are shown, in which the proposal of the applications received from the date of 31.07.2006 to 06.01.2012 are taken into consideration and accordingly, those candidates were given the appointment till the end of year 2022. In all 16 candidates have been appointed since 2019 to 2022 in the reciprocated ratio of 20% as per the G.R. dated 11.09.2019. Learned P.O. submits that in the aforesaid proposal, the name of the applicant was not appeared, as the applicant has

submitted his application on 13.08.2012. Meanwhile, the applicant has crossed the age of 45 years on 20.05.2021 and therefore, considering the clause 11(AA) of G.R. dated 21.09.2017; the applicant was found disentitled for the appointment on compassionate ground. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

10. Learned Presenting Officer submits that the ratio laid down in a case of **Kalpna Vilas Taram & Anr. Vs. The State of Maharashtra and Ors.** relied upon by learned counsel for the applicant is not applicable to the facts of the present case.

11. In terms of earlier G.R. dated 22.08.2005, age limit is prescribed for compassionate appointment to the eligible legal heirs of deceased Government employee as 40 years. Subsequently by issuing G.R. dated 21.09.2017, the said age limit is extended and instead of 40 years, it is now 45 years. It further appears from the affidavit in reply filed on behalf of respondent Nos. 3 and 4 that the appointments are made till the end of year 2022 and in all 16 candidates have been appointed since 2019 to 2022 in the reciprocated ratio of 20% as per the G.R. dated 11.09.2019. Unfortunately, name of the applicant was not included in the list, as the applicant has

submitted application on 13.08.2012 and the said list was exhausted to the extent, who has submitted application for appointment on compassionate ground till 06.01.2012. Meanwhile, the applicant has crossed the age of 45 years on 20.05.2021. There is no provision to extend the age in the scheme of compassionate appointment particularly in the consolidated G.R. dated 21.09.2017.

12. In a case of **Kalpna Vilas Taram & Anr. Vs. The State of Maharashtra and Ors. in W.P. No. 3701/2022 and other connected W.Ps.**, relied upon by learned counsel for the applicant in para No. 48, the Full Bench of the Hon'ble High Court of Bombay, Bench at Nagpur has observed that the purpose of the waiting list in relation to compassionate appointment is different. It is nothing but a list of aspirants who are in line, which is maintained on the basis of the date of application. Moreover, such list does not have any fixed life after which it would lapse. In para No. 49, the Hon'ble Full Bench has observed that compassionate appointment is a concession and not a vested right and also compassionate appointment is not to provide for endless compassion. Therefore, it cannot be said that it would add insult to the injury if such a person who has been waitlisted continues to be so waitlisted for decades

together and the policy of substitution of such a waitlisted person is permitted. The Full Bench of Hon'ble High Court of Bombay, Bench at Nagpur therefore does not find that the policy framed for wait listing would be contrary to the very object and purpose of the compassionate appointment.

13. The Full Bench of Hon'ble High Court of Bombay, Bench at Nagpur in the aforesaid W.P. No. 3701/2022 in para Nos. 48, 49 & 51 has made the following observations :-

“48. However, the purpose of the waiting list in relation to compassionate appointments is different than the purpose stated herein above. The waiting list in the matter of compassionate appointment is nothing but a list of aspirants who are in line, which is maintained on the basis of the date of application. Moreover, such list doesn't have any fixed life after which it would lapse. Such list infact provides transparency in the process of appointment and helps the aspirants to know their status as regards the appointment. Therefore, it would help to eliminate any possibility of arbitrariness in appointments, particularly when such appointments take long time to come into being for the reason that such appointments are permissible only on a fixed percentage of posts of total vacancy.

49. It is a settled law that compassionate appointment is a concession and not a vested right. It is also a settled law that the idea of compassionate appointment is not to provide for endless compassion. Moreover, in the G.R. dated 21/09/2017 it is specifically stated that compassionate appointment cannot be claimed by way of inheritance. Therefore, it cannot be said that it would add insult to the injury if such a person who has been waitlisted continues to be so waitlisted for decades together and the policy of substitution of such a waitlisted person is permitted.

51. In these circumstances and in the light of above discussion, we answer the reference as under :

Sr. No.	Questions	Answer
(i)	<i>Considering the object of compassionate appointment, to provide immediate succour to the family of the deceased employee who dies in harness, as is spelt out in Umesh Kumar Nagpal (supra), Nilima Raju Khapekar (supra) and Debabrata Tiwari (supra) whether the view taken in Dnyaneshwar Musane and other similar matters as indicated above would be correct ?</i>	<i>The view taken in the case of Dnyaneshwar Musane (supra) by the Division Bench of this Court and other similar matters, is correct and is in consonance with the object of compassionate appointment spelt out in Umesh Kumar Nagpal (supra), Nilima Raju Khapekar (supra) and Debabrata Tiwari (supra)</i>
(ii)	<i>Whether the policies of the State, which provide for creating a wait list of the candidates for compassionate appointment and in cases permits substitution, even on account of crossing a particular age limit of 45 years is contrary to the object and purpose for which a compassionate apportionment has to be granted?</i>	<p><i>a) Maintaining a wait list of the candidates for compassionate appointment is not contrary to the object and purpose for which a compassionate appointment has to be granted.</i></p> <p><i>b) Seeking substitution of the name of another member in place of a member who has applied, on account of crossing the age limit of 45 years is not contrary to the object and purpose for which compassionate appointment must be granted.</i></p>

14. In this context, the Full Bench has only ruled that there cannot be any bar for substitution after the candidate has crossed the age limit.

15. In view of above discussions, I do not find substance in the present O.A. It is not out of place to mention here that learned counsel for the applicant was directed to take

instructions from the applicant as to whether there is any another member in the family for substitution. On instructions, learned counsel for the applicant submits that there is no other member for substitution. Hence, the following order :-

ORDER

- (i) The Original Application is hereby dismissed.
- (ii) In the circumstance, there shall be no order as to costs.
- (iii) The Original Application is accordingly disposed of.

PLACE : Aurangabad.
DATE : 12.09.2024

(Justice V.K. Jadhav)
Member (J)

KPB S.B. OA 175 of 2023 VKJ Compassionate Appointment