

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 248 OF 2019

DISTRICT : AHMEDNAGAR

- | | | | |
|----|----------------------------------------|-----|-------------------|
| 1) | Vikram S/o Bansi Mate, |) | |
| | Age: 30 years, Occu. : Daftar Karkoon, |) | |
| | R/o: Gogalgaon, Post Galnimb, |) | |
| | Tq. Newasa, Dist. Ahmednagar. |) | |
| 2) | Salim S/o Shagir Shaikh, |) | |
| | Age: 30 years, Occu. : Daftar Karkoon, |) | |
| | R/o: Tanpurwadi Road, Deshmukh Plot, |) | |
| | Dubicha Mala, Rahuri, Tq. Rahuri, |) | |
| | Dist. Ahmednagar. |).. | APPLICANTS |

V E R S U S

- | | | | |
|----|-------------------------------------|-----|--------------------|
| 1. | The State of Maharashtra, |) | |
| | Through Additional Chief Secretary, |) | |
| | General Administration Department, |) | |
| | Having office at Madam Kama Road, |) | |
| | Mantralaya, Mumbai – 400 032. |) | |
| 2. | The Secretary, |) | |
| | Water Resources Department, |) | |
| | Madam Kama Road, Mantralaya, |) | |
| | Mumbai – 400 032. |) | |
| 3. | The Superintending Engineer, |) | |
| | CADA, Commanding Area Development) |) | |
| | Authority, Nashik – 422 002. |) | |
| 4. | The Executive Engineer, |) | |
| | Mula Irrigation Division, |) | |
| | Ahmednagar -414 001. |).. | RESPONDENTS |

 Appearance : Smt. Sanjivani A. Ghate-Deshmukh,
 learned counsel for the applicants.

- : Shri V.R. Bhumkar, learned Presenting Officers for the respondent authorities.
- : Smt. Vidya Taksal, learned counsel holding for Shri Amit S. Dhongde, learned counsel for respondent no. 04.

CORAM : **Hon'ble Shri Justice V.K. Jadhav,**
Vice Chariman
AND
Hon'ble Shri Vinay Kargaonkar,
Member (A)

RESERVED ON : **10.03.2025**
PRONOUNCED ON : **22.04.2025**

ORDER

(Per : Justice V.K. Jadhav, Vice Chairman)

1. Smt. Sanjivani A. Ghate-Deshmukh, learned counsel for the applicants, Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities and Smt. Vidya Taksal, learned counsel holding for Shri Amit S. Dhongde, learned counsel for respondent no. 04.
2. The matter is finally heard with consent of both the sides.
3. By filing this Original Application the applicants are seeking directions to the respondents to give appointment to the applicants on the post of Civil Engineering Assistant from the year 2010 instead of Daftar Karkoon on compassionate ground

and also seeking quashing and setting aside the letters dated 22.01.2018 and 09.03.2018 respectively issued by the respondents. The applicants are also claiming all the consequential benefits with interest w.e.f. year 2010.

4. Brief facts giving rise to this Original Application are as under:-

(A) Both the applicants claim to be appointed on the post of Daftar Karkoon on 25.10.2010 on compassionate ground in Group-C cadre in terms of Government Resolution dated 26.10.1994. It is the case of the applicants that the said appointment should have been given to them by considering their educational qualification and age in terms of the aforesaid G.R. dated 26.10.1994.

(B) The applicants contend that they have completed Diploma in Civil Engineering in the year 2008 and 2009 respectively before their appointment on compassionate ground and the same was communicated by the applicants to the respondents immediately on 09.02.2009, 18.08.2009 and 01.11.2010 respectively before giving them appointment on compassionate ground. Copies of passing certificates are annexed to the present Original Application.

(C) According to the applicants, the respondent no. 03 had appointed one Smt. Rekha Dhondiba Golhar as a Civil

Engineering Assistant (for short CEA) on compassionate ground in the year 2008 in terms of her educational qualification. Her educational qualification is same i.e. Diploma in Civil Engineer as possessed by the applicants. Even on 17.03.2015 also one Shri Pankaj Dattatraya Kumbhkarna was given appointment on the post of CEA in the same circle on compassionate ground. According to the applicants, discriminatory treatment has been given to them.

(D) The applicants, thus, filed Original Application No. 872/2016 before this Tribunal. By order dated 03.01.2018, this Tribunal has disposed of the said O.A. No. 872/2016 with a direction to respondent no. 04 therein i.e. the Superintending Engineer, CADA, Nashik, to take a decision in the matter within a period of 4 months from the date of that order.

(E) By communication dated 22.01.2018 it was informed to both the applicants that their request has been turned down in view of clause 14 of the Government Circular dated 23.11.2007 (Annexure A-11).

(F) Similarly situated person approached to this Tribunal by filing Original Application No. 421/2015 (Saiyed Gaus Saiyed Pasha Vs. the State of Maharashtra & Ors.) and by order dated 23.08.2018 this Tribunal has directed the respondents therein to issue appointment order to the applicant therein as a Senior Clerk from the date of his initial appointment i.e. since 18.8.2009.

(G) According to the applicants, several times they have filed representations and request applications, however, those were not considered by the respondents. Hence, this Original Application.

5. The learned counsel for the applicants submits that in terms of G.R. dated 26.10.1994, it is incumbent upon the respondent authorities to give appointment to the eligible dependent of the deceased Government employee as per his/her educational qualification and age. Even though both the applicants have possessed the qualification of Diploma in Civil Engineering and passed it in the year 2008 and 2009 respectively and despite this fact was brought to the notice of the respondents, both of them have been given appointment on the posts of Daftar Karkoon instead of CEAs on compassionate ground.

6. The learned counsel for the applicants submits that the Government has issued the G.R. in connection with Irrigation Department on 21.03.2013 regarding appointment of Class-III and Class-IV employees on compassionate ground and in clause 7 of the said G.R. it is clearly mentioned that even if the claim of such eligible dependent is entered in the waiting list maintained for giving compassionate appointment and on the basis of the qualification possessed by said dependent at that

time, however, at the time of giving him appointment, if he acquired any higher qualification, then he be given appointment on compassionate ground on highest post in Group-C cadre.

7. The learned counsel for the applicants submits that apparently discriminatory treatment has been given to both the applicants for which no justification whatsoever has been tendered by the respondents. The learned counsel thus submits that this Original Application deserves to be allowed.

8. The learned Presenting Officer on the basis of the affidavit in reply on behalf of respondent nos. 01 and 02 submits that both the applicants have submitted their applications for appointment on compassionate ground for the posts of CEA, but at that time vacancy for the post of CEA was not available. Accordingly, the respondent no. 01 has given appointment to the applicants on compassionate ground on the posts of Daftar Karkoon. The applicants have also accepted the said appointments as Daftar Karkoon without any objection.

9. The learned Presenting Officer submits that so far as appointment of one Smt. Rekha Dhondiba Golhar as a Civil Engineering Assistant in the year 2008 on compassionate ground is concerned, at that time the said post was vacant and,

therefore, she was given appointment on the said post as per her educational qualification. However, at the time of appointment of the applicants on compassionate ground, posts of CEA were not vacant and as per the vacancy position, compassionate appointment was given to the applicants on the available vacant posts of Daaftar Karkoon.

10. The learned Presenting Officer submits that the Superintending Engineer, CADA, Nashik has rightly taken a decision in terms of clause 14 of the Government Circular dated 23.11.2017 and accordingly the impugned letters have been given to the applicants. The said decision has been taken by the respondent no. 03 as per the scheme for compassionate appointment and the guidelines issued by the Government from time to time in this regard. There is no substance in this Original Application and the same is liable to be dismissed.

11. The learned counsel for the applicants on the basis of the rejoinder affidavit of the applicants submits that the respondent authorities placed on record one letter dated 26.09.2011 (Annexure A-6), it clearly reveals from the said letter that at the end of August, 2011, 09 posts of CEA were vacant. The learned counsel submits that the respondents have taken totally baseless stand in the affidavit in reply and thus denied

the genuine claim of the applicants for appointment on the post of C.E.As. on compassionate ground.

12. Undisputedly, both the applicants before their appointment on compassionate ground in the year 2010 possessed the qualification of Diploma in Civil Engineering and the said fact was brought to the notice of the respondent authorities. In terms of clause no. (4) contained in Annexure-A of the G.R. dated 26.10.1994, it is incumbent upon the authorities to give compassionate appointment to the eligible dependent of the deceased Government employee by taking into consideration the educational qualification possessed by such eligible dependent and his age at the time of appointment on compassionate ground. In the G.R. dated 21.03.2013 it is specifically stated that the wait listed candidate for compassionate appointment if acquires the higher qualification at the time of his appointment, the same shall be considered and he/she be given the appointment on compassionate ground on the higher post in Group-C cadre.

13. In our considered opinion, without any justification, the respondents have flouted these directives. Apparently, discriminatory treatment seems to have been given to both the applicants. Even before compassionate appointments of the

applicants and even after appointment of these applicants as such, the candidates having possessed similar qualification i.e. Diploma in Civil Engineering have been appointed on compassionate ground to the post of CEAs. However, the applicants have been given appointment on compassionate ground to the post of Dafter Karkoons. In the impugned communications issued to the applicants dated 22.01.2018 and 09.03.2018 respectively a reference about clause 14 of the Government Circular dated 23.11.2007, however, in view of certain annexures filed by the applicants with their rejoinder affidavit speaks about vacancies of the post of CEA in the year 2011. The said clause 14 of Government Circular dated 23.11.2007 has become redundant. Even otherwise also, it is not possible to understand as to how said clause 14 of the Govt. Circular dated 23.11.2007 is applicable to the compassionate appointment.

14. In the case of similarly situated person this Tribunal in **Original Application No. 421/2015 (Saiyed Gaus Saiyed Pasha Vs. the State of Maharashtra & Ors.)** (cited supra) by order dated 23.08.2018 has given directions to the respondents therein to issue appointment order to the post of Sr. Clerk to the applicant therein from the date of his initial appointment, however, no

financial benefits have been given to the applicant in that case. We deem it appropriate to adopt the same course. Hence, this order:-

ORDER

- (i) The Original Application N. 248/2019 is hereby partly allowed.
- (ii) The respondents are hereby directed to issue appointment orders to the applicant no. 01 - Shri Vikram S/o Bansi Mate, and applicant no. 02 - Shri Salim S/o Shagir Shaikh on the posts of Civil Engineering Assistant from the date of their initial appointment on compassionate grounds i.e. since 25.10.2010.
- (iii) The seniority of the applicants in the cadre of Civil Engineering Assistants shall be reckoned from the date of initial date of appointment itself.
- (iv) The applicants, however, are not entitled for the financial benefits of the post of Civil Engineering Assistant from the date of initial appointments i.e. 25.10.2010 for the reason that they have not worked on the post of Civil Engineering Assistants from that date.
- (v) In the circumstances, there shall be no order as to costs.
- (vi) The Original Application is accordingly disposed of.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 22.04.2025

ARJ O.A. NO. 248 OF 2019 VKJ DB APPOINTMENT ON HIGHER POST