

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 970 OF 2022

DISTRICT : AURANGABAD

Raju s/o Prabhakar Korde,)
Age : 29 Years, Occ. : education,)
R/o. Savkheda, Tq. Gangapur, Dist. Aurangabad.)

.... APPLICANT

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary irrigation,)
(command area development),)
Mantralaya, Mumbai-32.)
2. **The Collector Aurangabad,**)
at Aurangabad.)
3. **The Chief Engineer,**)
Command Area Development Authority (CADA),)
Garkheda Parisar, Near Gajanan)
Maharaj Temple, Aurangabad,)
Tq. and Dist. Aurangabad.)
4. **The Supt. Engineer & Administrator,**)
Command Area Development Authority (CADA),)
Garkheda Parisar, Near Gajanan)
Maharaj Temple, Aurangabad,)
Tq. and Dist. Aurangabad.)
5. **The Executive Engineer,**)
Jayakwadi Irrigation Division,)
Nathnagar (North), Parithan,)
Aurangabad, Tq. and Dist. Aurangabad.)
6. **The Sub-Divisional Engineer,**)
Dagadi Dam, Sub Division No. 1,)
Nathnagar (North), Parithan,)
Aurangabad, Tq. and Dist. Aurangabad.)

... RESPONDENTS

APPEARANCE : Shri N.P. Bangar, Counsel for Applicant.

: Shri D.M. Hange, Presenting Officer for
respondent authorities.

: Shri S.B. Mene, counsel for respondent Nos. 3
to 6

CORAM : **Shri A.N. Karmarkar, Member (J)**

RESERVED ON : **07.03.2025**

PRONOUNCED ON : **22.04.2025**

ORDER

1. By filing present Original Application, the applicant has prayed for directions to place his name in the wait list of candidates for appointment on compassionate ground and has also prayed to quash and set aside the communication dated 07.12.2016 issued by respondent authorities.

2. The father of the applicant was working as employee in the office of respondent No. 6. He died on 01.03.2008 while discharging his duties. The mother of the applicant has submitted application for appointment on compassionate ground on 22.04.2008. Subsequently on 22.06.2009, the mother of the applicant has moved an application to respondent No. 4 about her health issues and informed to give compassionate appointment to her son in her place on his attaining the age of

majority. Another application on similar lines was filed on 22.09.2009, wherein the authority was requested to give benefits of scheme to the applicant. On 05.03.2010, respondent No. 4 solicited guidance from respondent No. 1 about interpretation of policy. On 04.06.2012, the present applicant has filed formal application to respondent No. 5 for appointment on compassionate ground. The birth date of the present applicant is 15.06.1992. The respondent No. 5 has forwarded the said application of applicant on 27.08.2012 to respondent No. 4 for further action. Since the mother of the applicant did not get the benefits of scheme, the present applicant has again filed applications dated 10.03.2015, 10.04.2015 and 10.05.2015. The respondent No. 4 has forwarded the application of the applicant to respondent No. 1 on 18.04.2016 and requested to take decision on the basis of G.Rs. which empowers the authority to relax the age criteria.

The Desk Officer, Mantralaya issued communication dated 08.11.2016 to respondent No. 4 thereby directing to take decision as per law on the application of the applicant. Accordingly respondent No. 4 on 07.12.2016 has communicated to the applicant that his claim cannot be considered. Subsequently, the applicant has forwarded another application

dated 09.04.2017 for reconsideration of his claim. It was forwarded to respondent No. 1. Since mother of the applicant was not offered job, the applicant is entitled to get the benefits of scheme of compassionate appointment. Thus the applicant has prayed to allow the present Original Application.

3. Respondent Nos. 3 to 6 have filed their affidavit in reply. According to them, the applicant's mother was communicated on 31.07.2009 about non-inclusion of the name of present applicant in the list. So the cause of action arose in the year 2009 and therefore, there is delay in approaching the Tribunal. The present applicant personally for first time applied on 04.06.2012. He has not filed application within one year after attaining the age of majority. Name of mother of the applicant was included in the waiting list and so there is no provision to change the name in waiting list. There is no provision in G.R. dated 20.05.2015 for considering the name after age bar of candidate in waiting list. The applicant was communicated on 07.12.2016 (page No. 34 of paper book) that in view of G.R. dated 20.05.2015, clause 1(c) claim of the applicant cannot be considered. Name of the applicant's mother was removed from the waiting list after attaining the age of 45 years.

4. Respondent Nos. 1 and 2 have not filed their affidavit in reply.

5. I have heard Shri N.P. Bangar, learned counsel for the applicant, Shri D.M. Hange, learned Presenting Officer for the respondent authorities and Shri S.B. Mene, learned counsel for respondent Nos. 3 to 6. All the parties have submitted as per their respective contentions.

6. Learned counsel for the applicant has submitted that the claim of the applicant is rejected on the ground that there is no provision for substitution in G.R. dated 20.05.2005. In support of his submissions, learned counsel has placed reliance on the recent judgment of Full Bench of Hon'ble High Court of Bombay, Nagpur Bench in **W.P. No. 3701/2022 (Kalpana Wd/o Vilas Taram & Anr. Vs. The State of Maharashtra and Ors.) and other connected W.Ps.** dated 28.05.2024.

7. Learned Presenting Officer has submitted that initially the name of applicant's mother was in waiting list. On 22.06.2009, the applicant's mother forwarded application for substitution of name of his son due to her ill-health, but that time the age of the present applicant was 16 years. According to him, it is not the case of applicant that name of his mother was

removed after crossing the age of 45 years. The case of the applicant is to be considered as per the policy, which was in existence at the relevant time. For that purpose, learned Presenting Officer has placed reliance on the decision of Hon'ble Supreme Court in **Civil Appeal No. 8540/2024 (Tinku Vs. State of Haryana and Ors.)**, dated 13.11.2024. Learned counsel for respondent Nos. 3 to 6 has also submitted in the same line.

8. It is undisputed fact that the applicant's mother has forwarded application for getting appointment on compassionate ground on 22.04.2008. It is also undisputed that the father of applicant died on 01.03.2008 in harness. It is also undisputed that on 22.06.2009, the mother of the applicant has forwarded application intimating about her illness and therefore, her son may be appointed on compassionate ground in her place.

9. Respondent Nos. 3 to 6 have come with a case that the applicant was communicated vide communications dated 08.11.2016 and 07.12.2016 (Page nos. 33 and 34 of paper book) that since there is no provision for substation in clause No. 1(c) of G.R. dated 20.05.2015, claim of the applicant cannot be considered.

10. Though the applicant's mother has filed application on 22.06.2009 for substitution of name of her son i.e. the present applicant who was minor, respondents have not taken any decision. It appears that this fact was communicated by the Assistant Superintending Engineer, CADA, Aurangabad to Secretary, CADA, Irrigation Department, Mantralaya, Mumbai on 05.03.2010 (Annexure A-3, page No. 19 of paper book). This communication shows that the name of applicant's mother was included in the proposal which was forwarded to the Collector, though it was incomplete. Actually, it is the specific contentions of the respondent Nos. 3 to 6 in para No. 10 of their affidavit in reply that name of mother of the applicant was included in the waiting list. Communication issued by the Assistant Superintending Engineer to the Secretary of Irrigation Department, Mantralaya dated 18.04.2016 (page No. 29 of paper book) also shows that the name of the applicant's mother was there in the waiting list. Respondent Nos. 3 to 6 have contended in para No. 8 of their affidavit in reply that name of applicant's mother was taken in wait list.

The Secretary of Irrigation Department was also informed by this communication that this applicant has attained the age of majority on 15.10.2010 and this applicant has

submitted application individually on 04.06.2012. It was also informed that if the application is filed after one year of attaining the age of majority as per G.R. dated 20.05.2015, then the concerned authority at Mantralaya is empowered to take decision on it. It doesn't reveal from the communication dated 08.11.2016 (page No. 33 of paper book) that any decision of condonation of delay in filing application by this applicant was taken. Though the mother has communicated on 22.06.2009 for considering the claim of her son after attaining the age of his majority, the respondents have not removed the name of applicant's mother from the waiting list immediately. The respondents have not come with a case that they have informed the applicant about provision of filing application and policy on attaining the age of majority by applicant, as given in G.R. dated 20.05.2015.

There is a provision in G.R. dated 23.08.1996 that the concerned official on the establishment has to give information regarding the policy of compassionate appointment to the relative of deceased employee. The same provision is appearing in G.Rs. dated 20.05.2015 and 21.09.2017. It is specifically contended in G.R. dated 20.05.2015 that if deceased employee has no legal heir, who is major, then the concerned department will have to

inform the said heir after attaining the age of majority about the policy of compassionate appointment and his entitlement to apply for the same. This Tribunal in O.A. No. 597/2020 (**Amol Sopan Shidore Vs. The State of Maharashtra and Ors.**) has held in para No. 17 that it was responsibility of the respondent authorities to intimate the family, after 15 days of the death, the eligibility of any member of the family for compassionate appointment and details of the rights of the family members. In this judgment one of the citation of the Hon'ble High Court of Bombay, Bench at Aurangabad in a case of **Gopal Dayanand Ghate Vs. the State of Maharashtra & Ors., 2021 DGLS (Bom.) 1412** is referred by this Tribunal. It does not reveal from the affidavit in reply of respondents that they have brought to the notice of application or family members about details of policy of compassionate appointment.

The respondent Nos. 3 to 6 have raised the contention in para No. 10 of their affidavit in reply that the name of applicant's mother is removed after crossing the age of 45 years. Nothing is placed on record by respondents to substantiate this fact. The date of birth of applicant's mother is 05.07.1972 as mentioned in her initial application dated 16.04.2008. So naturally, the mother of the applicant might have crossed the age

of 45 years in July, 2017. It is apparent that the applicant's mother was never offered job till the year 2016-17 nor her name was removed from the waiting list immediately after her application dated 22.06.2009. Now it is to be seen as to whether rejection of claim of the applicant on the ground of absence of provisions as per Clause No. 1(c) of G.R. dated 20.05.2015 can be said to be legal. For that purpose, reliance can be placed in a case of **Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra and Ors. in W.P. No. 6267/2018**, in which the Hon'ble High Court of Bombay, Bench at Aurangabad has held that *the restriction imposed by the Government Resolution dated 20.05.2015 that if name of one legal representative of deceased employee is in the waiting list of persons seeking appointment on compassionate ground, then that person cannot request for substitution of name of another legal representative of that deceased employee, is unjustified and it is directed to be deleted.*

In the present matter also no job was offered to the applicant's mother for a long time, though her name was on wait list.

11. For the reasons stated above, the ground raised by the respondents for non-consideration of claim of the applicant

cannot be said to be legal. Learned counsel for respondent Nos. 3 to 6 has relied on the decision of Hon'ble Supreme Court in a case of **the State Of West Bengal Vs. Debabrata Tiwari in Civil Appeal No. 8842-8855/2022**, wherein the question was about held to consider the claim of compassionate appointment after several years of filing such application. Learned counsel for the applicant has relied on the recent judgment of Full Bench of Hon'ble High Court of Bombay, Nagpur Bench in **W.P. No. 3701/2022 (Kalpana Wd/o Vilas Taram & Anr. Vs. The State of Maharashtra and Ors.) and other connected W.Ps.** dated 28.05.2024. In this case, the judgment in case of **The State of West Bengal Vs. Debabrata Tiwari** (cited supra) was referred. The Hon'ble High Court has answered the reference question No. (i) as under :-

Sr. No.	Questions	Answer
(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 <u>Umesh Kumar Nagpal (supra)</u> , <u>Nilima Raju Khapekar (supra)</u> and <u>Debabrata Tiwari (supra)</u> whether the view taken in <u>Dnyaneshwar Musane</u> and other similar matters as indicated above would be correct ?	The view taken in the case of <u>Dnyaneshwar Musane (supra)</u> 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 <u>Umesh Kumar Nagpal (supra)</u> , <u>Nilima Raju Khapekar (supra)</u> and <u>Debabrata Tiwari (supra)</u>

The Hon'ble High Court in a case of **Kalpana Wd/o Vilas Taram & Anr.** (cited supra) in para Nos. 41 and 42 has held as under :-

"41. It may be noted there may be n number of reasons justifying the request for substitution of name in consonance with the object of compassionate employment. Though, it is difficult to anticipate every such situation, few are stated hereunder as illustrations:

- i) The widow of the employee, aged 41 years or more applies with an expectation that before she attains age of 45 years, she would get employment. However, because of delay in appointment, her son/daughter attains the minimum age of 18 years*
- ii) If the member who is beyond 18 years of age and is pursuing his studies, applies for appointment but because no appointment is made immediately he may have reached a particular stage in his academic career where pursuing further academic course is far more important for future prospects and consequently, the family members instead of him, seek employment in favour of any other member of the family.*
- iii) On making an application by one of the members of the family and before the appointment is made, family realizes that for certain reasons another member is more appropriate and suitable for an appointment.*
- iv) On making the application such member of the family becomes incapacitated physically or medically.*
- v) The widow of the deceased employee applies as the son/daughter is a minor. But, before the appointment is made, the son/daughter attains age of 18 years and the family takes a decision that it would be more appropriate to seek employment for the son/daughter.*

42. In any of the above eventuality denial to substitute the name amounts to denial to grant compassionate appointment contrary to the scheme.”

The case of the present applicant can be said to be covered by the illustration Nos. (iii), (iv) and (v). So in view of the judgment of Full Bench of Hon’ble High Court of Bombay, Nagpur Bench in a case of **Kalpana Wd/o Vilas Taram & Anr.** (cited supra), it cannot be said that there is any substance in the submissions or contentions of the respondents that they have rightly rejected the claim of the applicant for compassionate appointment due to absence of provision for substitution. Hon’ble Bombay High Court has held that the substitution is permissible.

12. Learned Presenting Officer has tried to rely on the decision in a case of **Tinku Vs. State of Haryana and Ors.** (cited supra). This matter appears to be pertaining to Haryana Compassionate Assistance to the Dependents of Deceased Government Employee, Rules 2006. The rejection of claim for appointment on compassionate ground in that matter was that from the date of death of the Appellant’s father till he having become major, 11 years had passed rendering the claim time barred. For this purpose reliance was placed on the Government

instructions dated 22.03.1999 where a minor dependent of a deceased government employee gets the benefit provided he/she attains age of majority within a period of three years from the date of death of the government employee. So this judgment can be distinguished on facts and cannot be made applicable to the case of the applicant.

13. The respondents have taken a stand about delay in preferring the present Original Application. It appears that the application for condonation of delay in preferring the present Original Application is already allowed by this Tribunal on 29.09.2022.

14. For the reasons stated above, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) The Original Application is allowed.
- (ii) Impugned communication dated 07.12.2016 is hereby quashed and set aside.
- (iii) The respondents shall include the name of the applicant in the waiting list prepared for compassionate appointment

within a period of one month from the date of this order
and shall take further steps in accordance with law.

(iv) There shall be no order as to costs.

(A.N. Karmarkar)
Member (J)

PLACE : Aurangabad
DATE : 22.04.2025

KPB S.B. O.A. No. 970 of 2022 ANK Compassionate Appointment