

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

ORIGINAL APPLICATION NO. 273 OF 2022

DISTRICT : BEED

Pradeep S/o Panditrao Jadhav,)
Age : 27 Years, Occ. : Education,)
R/o. Shivaji Nagar, Palvan Road, Beed,)
Tq. & Dist. Beed.)

.... APPLICANT

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Public Works Department,)
Mantralaya, Mumbai- 32.)
2. **The Divisional Commissioner,**)
Aurangabad Division, Aurangabad.)
3. **The Collector, Beed,**)
District Beed.)
4. **The Executive Engineer,**)
Public Works Department,)
Beed.)
5. **The Sub-Divisional Officer,**)
Public Works Department,)
Sub-Division, Beed.)

... RESPONDENTS

APPEARANCE : Shri H.P. Jadhav, learned counsel for
applicant.

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

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

RESERVED ON : **20.03.2025**

PRONOUNCED ON : **23.04.2025**

ORDER

1. By filing present Original Application, the applicant has prayed for quashing and setting aside impugned communication dated 12.07.2011 issued by respondent No. 4, thereby refusing his claim for appointment on compassionate ground. The applicant has also seeking direction to respondent No. 4 to include his name in the waiting list prepared by Public Works Department (PWD) for appointment on compassionate ground.

2. According to the applicant, his father was serving with respondent Nos. 4 and 5 on the post of Road Karkoon. His father died on 13.02.2004 while on duty. The applicant was minor at that time. The applicant's mother filed application on 14.07.2004 in the office of respondent No. 5 for compassionate appointment. The respondent No. 5 has called upon the applicant's mother vide letter dated 29.07.2004 to supply certain information. The respondent No. 4 was not taken decision on the application filed by the applicant's mother. The respondent No. 4 has communicated the applicant's mother after five years that her name was at Sr. No. 16 in the general seniority list prepared by the office of PWD. It was also informed that since the date of birth of applicant's mother is 14.04.1965, she has completed her

age of 40 years on 14.04.2005 and as per the G.Rs. dated 22.08.2005 and 23.04.2008, her name was deleted from the said list. The said order was communicated vide letter dated 12.03.2009 issued by respondent No. 4. Therefore, the present applicant has filed application for compassionate appointment instead of his mother. They have refused to accept it. The applicant sent letter for same relief on 29.09.2010 by speed post to the Collector and officials of PWD. In pursuance of application of the applicant, the Divisional Commissioner, Aurangabad communicated to the Collector, Beed as per application dated 29.12.2009 to take necessary decision.

The respondent No. 4 has informed the applicant vide communication dated 12.07.2011 that as per G.R. dated 27.06.2007, there is no provision to change the name of legal heir and to substitute the name of other legal heir in the wait list. The Divisional Commissioner vide letter dated 12.07.2011 communicated the applicant on the basis of report of Collector, Beed that the name of applicant's mother is deleted after crossing the age of 40 years from the wait list as per G.R. dated 22.08.2005 and there is no provision to insert the name of other legal heir. Since the financial condition of the applicant was weak, he approached the Hon'ble High Court of Bombay, Bench

at Aurangabad by filing W.P. No. 12767/2017. On the basis of submission of learned Assistant Government Pleader, the Hon'ble High Court was pleased to dispose of the said W.P. on 04.01.2018 with liberty to the applicant to avail alternate remedy to approach this Tribunal. So the applicant has filed the present Original Application.

3. Respondent Nos. 1, 4 & 5 have filed their affidavit in reply. According to the respondents, the claim of compassionate appointment is a concession and not a right. They have admitted that respondent No. 4 has communicated the applicant's mother about deletion of her name from the wait list in view of G.R. dated 22.08.2005 on 12.03.2009. The applicant has filed application on 29.12.2009 i.e. after 09 months from the date of communication about deletion of name of applicant's mother. Respondent Nos. 4 and 2 by its letter dated 12.07.2011 and 11.09.2011 respectively rejected the application for insertion / substitution of name of the applicant in place of his mother on compassionate ground. Once name is deleted from the waiting list, there is no provision to change or substitute the name. Thus the respondents have submitted that the present O.A. deserves to be dismissed.

4. The applicant has filed rejoinder affidavit. According to him his application for condonation of delay is allowed by this Tribunal. The respondents have tried to deprive the present applicant from genuine claim. The applicant has repeatedly requested respondents even in the year 2014 and 2016 for compassionate appointment. The Hon'ble High Court has specifically observed in one W.P. and deleted the provisions of prohibition to substitute the name in place of legal heir. Thus the applicant has prayed to allow the present Original Application.

5. I have heard Shri H.P. Jadhav, learned counsel for applicant and Shri D.M. Hange, Presenting Officer for respondent authorities.

6. Learned counsel for the applicant has submitted as per the contentions in the Original Application. He has mainly relied on the decision of Hon'ble High Court of Bombay Bench at Aurangabad in a case of **Dnyaneshwar s/o Ramkishan Musane Vs. The State of Maharashtra and Ors. in W.P. No. 6267/2018** and submitted that Hon'ble High Court in the said matter has held that 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. Learned counsel for the applicant has also 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. Learned counsel has placed on record copies of several judgments, which are as under :-

- (i) W.P. No. 7793/2009 (Vinodkumar Khiru Chavan Vs. The State of Maharashtra and Ors.)
- (ii) Sushma Gosain V. Union of India, 1989 DGLS (SC) 411.
- (iii) O.A. No. 645/2017 (Shri Manoj Ashok Damale Vs. Superintending Engineer & Administrator, Nahsik and Anr.) (Mumbai)
- (iv) O.A. No. 239/2016 (Swati P. Khatavkar & Anr. Vs. The State of Maharashtra and Anr.) (Mumbai).
- (v) O.A. No. 503/2015 (Shri Piyush Mohan Shinde Vs. The State of Maharashtra and Ors.) (Mumbai).
- (vi) O.A. No. 870/2018 with C.A. No. 13/2021 (Saurabh Mohan Hamane & Anr. Vs. The State of Maharashtra and Ors.) (Nagpur Bench).
- (vii) O.A. No. 12/2020 (Vaibhav Venkat Chandle & Anr. Vs. The State of Maharashtra and Ors.) (Aurangabad Bench).
- (viii) O.A. No. 205/2019 (Vaijinath Mallikarjun Karadkhele Vs. The State of Maharashtra and Ors.) (Aurangabad Bench).

On the other hand, learned Presenting Officer has submitted that since the death of Govt. employee in the year 2004 now 20 years lapsed. So there could not have been financial crises. In support of his submissions, learned P.O. has relied on the decision of Hon'ble Supreme Court in a case of **Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138**. According to him at the relevant time, G.R. dated 20.05.2015 was applicable and as per the policy at that time, the impugned order was passed. He has also relied 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**.

7. It is undisputed that the applicant's father died on 13.02.2004. It is also undisputed that the applicant's mother initially filed application 14.07.2004. The applicant has also placed on record said letter at Annexure -2 (page No. 15 of paper book). Subsequently, communication dated 29.07.2004 shows that application of applicant's mother is forwarded along with documents to the respondent- Executive Engineer, PWD, Beed. The respondents have admitted in written statement that in view of G.R. dated 22.08.2005, the name of applicant's mother was taken in the waiting list at Sr. No. 16. It is also undisputed that the applicant's mother was communicated on 12.03.2009 about

removal of her name from the wait list on crossing the age of 40 years. It is undisputed fact that after nine months of the said communication, the present applicant has filed application for compassionate appointment. The applicant has placed on record a copy of his application forwarded on 29.12.2009 (Annexure A-6, page No. 20 of paper book).

It appears from the letter of Revenue Commissioner, Aurangabad dated 02.01.2010 addressed to the Collector, Beed that he has forwarded the application of the present applicant for necessary action. The respondents have also accepted in their affidavit in reply the contention of the applicant that no action was taken by respondent No. 4 in respect of application of applicant's mother. So after 4-5 years, name of the applicant's mother came to be deleted in view of G.R. dated 22.08.2005.

It has to be noted that the scheme for appointment on compassionate ground was firstly implemented by the Government of Maharashtra in the year 1976 with an object and purpose to provide succour to the family of deceased. Thereafter the revised Rules were issued vide Government Resolution dated 26.10.1994. Then, the Government decided to compile all the Government Resolutions and Circulars issued from time to time

after 26/10/1994, in a single order to facilitate the authorities while taking action and accordingly, the Government Resolution dated 21.09.2017 was issued. The respondents have not shown that prior to 22.08.2005 there is provision for deletion of name of legal heir on wait list. On the contrary, the respondents have come with a case that after the said communication of deletion of name of applicant's mother, the present applicant has filed application after nine months. It appears from the rejoinder affidavit that the date of birth of the present applicant is 12.11.1990. It seems that after attaining the age of majority, the present applicant has filed application for compassionate appointment on 29.12.2009. The Divisional Commissioner has already forwarded the said application of the applicant to the Collector, Beed on 02.01.2010 for necessary action on it.

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 eligible heir of deceased employee is minor, 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.

8. So the discussions above lead me to say that the name of applicant's mother was suddenly ordered to be deleted from the wait list. The respondents have also could not show that they have informed any time in respect of right of compassionate appointment to the applicant or his mother, though it was required right from the year 1994. The application of the present applicant seems to have been rejected vide order dated 12.07.2011 on the ground of absence of provisions of substitution. In the said order, it is mentioned that in view of the order of PWD, Mantralaya, Mumbai dated 27.06.2007, there is no provision for substitution.

9. Learned counsel for the applicant has relied on the decision 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 till the communication dated 12.03.2009.

10. There were similar facts in the judgment of Principal Seat of this Tribunal at Mumbai in a case of **Smt. Geeta Dinkar Johar & Anr. Vs. The State of Maharashtra and Ors. in O.A. No. 307/2023** that after crossing the age of 45 years on 19.05.2018, the applicant No. 1 became ineligible to get appointment on compassionate ground. She requested on 07.01.2021 for appointment to her son on compassionate ground. The said O.A.

was allowed by this Tribunal considering the judgment in a case of **Kalpana Wd/o Vilas Taram & Anr.** (cited supra).

Similarly reliance can be placed in a case of **Amol Navnath Lokhande Vs. The State of Maharashtra and Ors.** in **W.P. No. 7685/2022**, decided by the Hon'ble High Court of Bombay, Bench at Aurangabad dated 10.01.2025. In that matter also the name of mother of applicant was deleted. Then, the applicant has filed application for compassionate appointment. The said W.P. was allowed by the Hon'ble High Court of Bombay, Bench at Aurangabad.

11. 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. 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 <i>Umesh Kumar Nagpal (supra)</i> , <i>Nilima Raju</i>	The view taken in the case of <i>Dnyaneshwar Musane (supra)</i> by the Division Bench of this Court and other similar matters, is correct and is in consonance with the object of compassionate appointment

	<i>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>spelt out in Umesh Kumar Nagpal (supra), Nilima Raju Khapekar (supra) and Debabrata Tiwari (supra)</i>
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------

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 a 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 No. (i). 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 will be difficult to accept that the impugned communication is legal, proper and correct.

12. Learned Presenting Officer has tried to rely on the decision of Hon’ble Supreme Court in **Civil Appeal No. 8540/2024 (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.

Learned Presenting Officer has also relied on the decision of Hon'ble Supreme Court in a case of **Umesh Kumar Nagpal Vs. State of Haryana** (cited supra) on the ground that family of the applicant may not have financial crises because of lapse of several years. The Full Bench of Hon'ble High Court of Bombay, Bench at Aurangabad has considered the said judgment along with other judgments in a case of **Kalpana Wd/o Vilas Taram & Anr.** (cited supra) and answered the reference question No. (i), which is reproduced in para no. 11.

13. The application for condonation of delay in preferring the present Original Application is already allowed by this Tribunal on 11.03.2022.

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 12.07.2011 issued by respondent No. 4, thereby refusing the claim of applicant for appointment on compassionate ground is hereby quashed and set aside.
- (iii) The respondents shall include the name of 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 : 23.04.2025

KPB S.B. O.A. No. 273 of 2022 ANK Compassionate Appointment Substitution