

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

**ORIGINAL APPLICATION NO. 543 OF 2019**

**DISTRICT : AURANGABAD**

1. **Shivprasad s/o Chandulal Potpalliwar,** )  
Age : 31 Years, Occ. : Service, )  
R/o B-103, Deepal Apartment, In front )  
Of Union Bank, Fulpada Road, Virat (E))  
Mumbai-05. )
2. **Rekha d/o Chandulal Potpalliwar,** )  
Age : 29 years, Occ.: Nil, )  
R/o. Savitri Nagar, Near Weekly Bazar, )  
Chikalthana, Aurangabad. )
3. **Lata w/o Chandulal Potpalliwar,** )  
Age : 60 years, Occ.: Nil, )  
R/o. Savitri Nagar, Near Weekly Bazar, )  
Chikalthana, Aurangabad. ) .... **APPLICANTS**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Irrigation Department, )  
Mantralaya, Mumbai- 400 032. )
2. **The Superintending Engineer,** )  
Jaikwadi Project Mandal, Sneha Nagar, )  
Aurangabad. )
3. **The Sub-Divisional Officer,** )  
Paithan, Hydro-Electrical Water Energy )  
Project, KADA, Gajanan Maharaj )  
Mandir Road, Aurangabad. ) ... **RESPONDENTS**

**APPEARANCE** : Shri G.J. Karne, learned counsel for  
Applicants.

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

: Shri S.B. Mene, learned counsel for  
respondent Nos. 2 & 3.

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**CORAM** : **Shri A.N. Karmarkar, Member (J)**  
**RESERVED ON** : **23.04.2025**  
**PRONOUNCED ON** : **24.04.2025**  
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**O R D E R**

1. By filing present Original Application, the applicants have prayed for quashing and setting aside impugned letter dated 07.08.2018 denying the claim of applicant No. 2-Rekha regarding inclusion of her name in the waiting list of compassionate appointment seekers. They have also prayed to respondents to include the name of applicant No. 2-Rekha in the wait list and to consider her claim for appointment on compassionate ground.

2. Father of the applicant Nos. 1 and 2 Chandulal was serving as 'Peon' at Sub-Divisional Office, Paithan Hydro Electrical Water Energy Project. He died while in service on 21.12.2007 leaving behind him the present applicants and three sisters. The son of deceased i.e. the applicant No. 1-Shivprasad is married and residing separately at Mumbai. The applicant No. 2-Rekha is residing with her mother i.e. applicant No. 3 at Aurangabad.

The applicant No. 1-Shivprasad applied on 28.02.2008 for getting appointment on compassionate ground and his name was included in the seniority list at Sr. No. 15. Since then the applicant No. 1 could not get compassionate appointment and his application was pending, due to which he was shifted to Mumbai. His sister i.e. the applicant No. 2 is residing with her mother i.e. applicant No. 3. The applicant No. 2-Rekha was married, but her husband driven her out of house. So nobody is in the family of applicant No. 3 to maintain widow – applicant No. 2. The applicant No. 2 requested the applicant Nos. 1 and 3 for giving consent so as to get compassionate appointment to her. Accordingly, both have given consent on 31.12.2015. The applicant No. 1 has submitted application to respondent No. 2 for substitution of name of his sister i.e. the applicant No. 2 in his place. This fact was informed by Sub-Divisional Officer, Paithan to Executive Engineer, Majalgaon Project Division. The respondent No. 2 informed the Executive Engineer, Majalgaon Project Kesapurti about absence of provisions of substitution. The respondent No. 2 informed the applicant No. 1 to attend on 27.07.2018 in the office of respondent No. 2 along with documents for consideration of his claim for compassionate appointment. He did not remain present. On 03.10.2018

respondent No. 2 informed the applicant No. 1 that they are giving last opportunity and the applicant No. 1 called upon to remain present on 06.10.2018. On 29.11.2018, the applicant No. 2 filed application to respondent No. 2 to get compassionate appointment. She has contended that she is divorcee.

3. The action of respondents in not considering the claim of applicants is illegal. There is no legal bar to consider the claim of substitution. The impugned order is challenged on the ground that prayer of applicant No. 2 is rejected on flimsy grounds. The applicant No. 1 is residing at Mumbai separately with his family and the applicant No. 1 is taking care of widow of deceased i.e. applicant No. 3. The act of not giving compassionate appointment immediately is contrary to the law laid down by the Hon'ble Supreme Court. The wife of deceased is in need of financial aid. Thus the applicants have prayed to allow the present Original Application.

4. Respondent Nos. 2 and 3 have filed their affidavit in reply. According to them, the name of applicant No. 1 was included in the wait list of candidates seeking compassionate appointment. The applicant No. 1 was informed vide letter dated 09.07.2018 to attend the office of respondent No. 2 on

25.07.2018 with documents. Similarly he was informed vide letters dated 07.08.2018, 11.09.2018 and 03.10.2018 for attending the office with documents. But the applicant No. 1 did not appear. So in view of the provisions of G.R. dated 20.05.2015, the name of applicant No. 1-Shivprasad was deleted from the wait list and was communicated vide letter dated 15.10.2018. In view of G.R. dated 20.05.2015, the claim of applicant No. 2-Rekha regarding substitution cannot be considered, as there is no specific provision. The application of applicant No. 2 is against the provisions of G.R. dated 20.05.2015. Thus the respondent Nos. 2 and 3 have prayed to reject the present Original Application.

5. Respondent No. 1 has not filed his affidavit in reply.

6. I have heard Shri G.J. Karne, learned counsel for the applicants, Shri D.M. Hange, learned counsel for respondent authorities and Shri S.M. Mene, learned counsel for respondent Nos. 2 and 3. All the parties have submitted as per their respective contentions.

7. Learned counsel for the applicants has submitted that immediately after the death of his father, the applicant No. 1 has applied for compassionate appointment and his name was

included in the waiting list. For that purpose, he has invited my attention to the said list at Annexure A-3 (page No. 22 of paper book), wherein the name of applicant No. 1 is appearing at Sr. No. 15. According to him, the applicant No. 1 has filed applications for substitution of name of his sister i.e. the applicant No. 2 in his place on 01.01.2016 (Annexure A-7, page No. 32 of paper book) and 25.07.2018 (Annexure A-10, page No. 36 of paper book). Learned counsel for the applicants has also invited my attention to one settlement deed with the applicant No. 2 and her husband, which shows that they are residing separately. The applicant No. 1 has requested for substitution, as he shifted to Mumbai. Learned counsel has relied on the decision of Hon'ble Supreme Court in a case of **Govinda Janardan Gaikwad Vs. State of Maharashtra and Ors. in Civil Appeal No. 7489/2023** and the decision of Hon'ble High Court of Bombay, Bench at Aurangabad in a case of **Amol Navnath Lokhande Vs. The State of Maharashtra and Ors. in W.P. No. 7685/2022.**

On the other hand, learned Presenting Officer has submitted that the applicant No. 1 was called upon to attend the office along with documents repeatedly, but he did not appear. So his name was deleted. His prayer for substitution cannot be accepted. For that purpose learned P.O. has placed reliance on

the judgment of Hon'ble High Court of Bombay, Bench at Aurangabad in **W.P. No. 11821/2019 (Akshaykumar Balaji Kesgire Vs. The State of Maharashtra and Ors.)** and 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. 2 and 3 has also submitted in the similar line.

8. It is undisputed fact that the applicant No. 1 has immediately filed application on 21.12.2007 for getting compassionate appointment after the death of his father and then his name was included in the wait list. The main contention of respondents is that the applicant No. 1 was repeatedly called by issuing letters dated 09.07.2018, 07.08.2018, 11.09.2018 and 03.10.2018 for documents verification, but he did not appear and so his name was deleted from the waiting list.

9. The applicants have placed on record a copy of application filed by applicant No. 1 dated 01.01.2016 (Annexure A-7, page no. 32 of paper book) requesting respondent authorities to substitute the name of his sister in his place. He has mentioned the ground that since last 8 years he did not get

compassionate appointment, due to which he was disappointed. Letter of respondent No. 2 (page No. 72 of paper book) shows that they have received application of applicant No. 1 dated 01.01.2016. It is clear that the respondents have not taken steps for considering the compassionate appointment of the applicant No. 1 for a long period i.e. from the year 2008 to 2018. The applicant No. 1 was called upon to attend for document verification for the first time on 25.07.2018. So it is clear that on getting the representation of applicant No. 1 for substitution of name of his sister in his place, the respondents have taken steps.

In response to the letter of respondent dated 09.07.2018 intimating applicant No. 1 to attend the office of respondent No. 2 on 25.07.2018 with documents, the applicant No. 1 has informed vide letter dated 25.07.2018 (page No. 36 of paper book) that he has already filed application for substitution of name of his sister in his place and he did not get response to it. The applicant No. 1 has also mentioned in his subsequent application dated 20.08.2018 (page No. 39 of paper book) that since he did not get job from 8-10 years after the application, he shifted to Mumbai and since his representation for substitution is refused, he approached this Tribunal. He has mentioned the same ground in his application dated 03.09.2018.



10. Learned Presenting Officer has relied on the judgment in a case of **Akshaykumar Balaji Kesgire** (cites supra). In that matter, the claim of the applicant for compassionate appointment was rejected on the same ground of prohibition to change the name of applicant for compassionate appointment as per G.R. dated 20.05.2015. The petitioner in that matter had preferred Writ Petition No. 8285/2018 and when it came up for hearing on 23.07.2018, the petitioner therein made a statement that he would prosecute the application with the authority and the said writ petition was accordingly disposed of. So the petitioner in that matter has made fresh application dated 02.04.2019, which was rejected by letter dated 16.05.2019 referring to the earlier rejection letter dated 13.10.2016. So the petitioner in that matter has challenged the said subsequent order. In that matter the petitioner's mother was being offered compassionate appointment by respondent No. 2 in that matter and she voluntarily decided not to take up the same, for which no specific reason was assigned in her letter. But in the instant matter, the applicant No. 1 in his application dated 20.08.2018 has specifically mentioned the reason that since he did not get job from 8-10 years after the application, he shifted to Mumbai. Secondly, the applicant No. 1 has mentioned in his application

dated 03.09.2018 that his sister is residing separately from his husband and she is residing with his mother i.e. applicant No. 3 and she can take her care. So the above citation referred by the learned Presenting Officer cannot be made applicable to the present case.

11. Thus the applicant No. 2-Rekha has filed applications on 03.09.2018 (page no. 41 of paper book) and 29.11.2018 (page No. 47 of paper book) for allowing the request for substitution of her name in place of his brother. The consent letter of applicant Nos. 1 and 3 in favour of applicant No. 2 for getting compassionate appointment is also on record at Annexure A-6 dated 31.12.2015. So the applicant No. 2 has also applied for substitution of her name in place of applicant No. 1 on 03.09.2018.

12. According to the respondents there is no provision in the G.R. dated 20.05.2015 about substitution. So they have rejected the application of applicant No. 1 finally on 05.10.2018. Prior to it, on 07.08.2018 also respondent No. 2 informed applicant No. 1 that there is no provision for substitution in G.R. dated 20.05.2015.

13. Learned counsel for the applicants 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 No. 1 for a long time though his name was on wait list.

14. Learned counsel for the applicants 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)	<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</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</i>

(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 ?	compassionate appointment spelt out in Umesh Kumar Nagpal (supra), Nilima Raju Khapekar (supra) and Debabrata Tiwari (supra)
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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 applicants can be said to be covered by the illustration No. (iii). 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.

15. Learned counsel for the applicants has relied on the decision of Hon’ble High Court of Bombay, Bench at Aurangabad in a case of **Amol Navnath Lokhande Vs. The State of Maharashtra and Ors.** in **W.P. No. 7685/2022**. In that matter the mother of applicant crossed her age of 45 years, the application for substitution was filed, which was rejected. The Hon’ble High Court of Bombay Bench at Aurangabad has referred the judgment in a case of **Dnyaneshwar s/o Ramkishan Musane Vs.**

**The State of Maharashtra and Ors. in W.P. No. 6267/2018** and judgment of Larger Bench in a case of **Kalpana Wd/o Vilas Taram & Anr. Vs. The State of Maharashtra and Ors., AIR Online 2024 Bom 682**. The Hon'ble High Court has held that the issue in that matter is squarely covered by these two judgments and substitution is permissible.

16. 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.

17. 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 letter dated 07.08.2018 denying the claim of applicant No. 2-Rekha regarding substitution of her name in the waiting list of compassionate appointment seekers is hereby quashed and set aside.
- (iii) The respondents are directed to substitute the name of applicant No. 2 in place of her brother i.e. applicant No. 1 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 : 24.04.2025**