

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 646 OF 2015

DISTRICT : KOLHAPUR

Shri Jitendra Subhash Rane,)
Occ : Nil, R/at Khanapur, Post Vite,)
Tal-Ajara, Dist-Kolhapur.)
Add for service of notice)
R/at Khanapur, Post Vite,)
Tal-Ajara, Dist-Kolhapur.)... Applicant

Versus

- | | | |
|----|------------------------------------|---|
| 1. | The Deputy Conservator of Forest |) |
| | Kolhapur Forest Division, Kolhapur |) |
| | Having office at 'Van Wardhan', |) |
| | Tarabai Park, Opp. Post Office, |) |
| | Kolhapur. |) |
| 2. | The Chief Conservator of Forest, |) |
| | [Regional], Kolhapur, |) |
| | Having office at 'Van Wardhan', |) |
| | Tarabai Park, Opp. Post Office, |) |
| | Kolhapur. |) |
| 3. | The State of Maharashtra, |) |

Through Principal Secretary,)
[Forest], Revenue & Forest Dept,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 16.09.2016

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 30.6.2015 issued by the Respondent no. 1 rejecting his application dated 8.10.2014 for inclusion of his name in the list of candidates eligible for compassionate appointment.

3. Learned Counsel for the Applicant argued that his late father Shri Subhash Shankar Rane, Forest Guard, died on 21.3.2005, while in service. The

Applicant's mother Smt Sushma applied for appointment on compassionate ground on 21.6.2005. The Applicant's mother was called to the office of the Respondent no. 1 on 27.9.2010 for verification of documents with a view to appoint her. However, she informed that she was not able to accept the offer of employment and instead her son should be appointed on attaining majority. The Applicant attained the age of majority on 15.7.2011 and applied to the Respondent no. 1 seeking employment on compassionate ground on 18.8.2011. It appears that the Respondent no. 1 forwarded the proposal to give compassionate appointment to the Applicant to the Respondent no. 2 on 19.6.2012. The Applicant was ultimately informed by the impugned order dated 30.6.2015, that his request for compassionate appointment has been rejected. Learned Counsel for the Applicant argued that this decision is arbitrary. The Respondents were required to give compassionate appointment to one member of the family of the Applicant's deceased father. Accordingly, the impugned order is not maintainable. Learned Counsel for the Applicant relied on the judgments of this Tribunal dated 16.3.2016 in O.A no 279/2015 and O.A no 442/2011 dated 22.1.2015.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that this Original Application is completely misconceived. The Applicant had clearly

admitted that his mother was offered appointment on compassionate basis, but she declined to accept the same. Once the appointment on compassionate basis was offered to the Applicant's mother, no further claim in this regard can survive. Learned P.O argued that the compassionate appointment is an exception of Constitutional provision enshrined in Article 16 of the Constitution about equal opportunity of employment under the State. It is granted to tide over immediate difficulties faced by family of a deceased Government servant. Here the Applicant is under the impression that it is a heritable right. Learned Presenting Officer stated that facts in the judgments cited by the Applicant are entirely different.

5. In para 6.4 of the Original Application, the Applicant has stated that:-

“The Petitioner states that considering the aforesaid application made by the mother of the Petitioner, that the Respondent no. 1 issued letter dated 18.9.2010, thereby asking her to attend his office on 27.9.2010 with original documents. That, however, on 27.9.2010 (Exhibit-B), the mother of the Petitioner informed the Conservator of Forest, Kolhapur Circle, Kolhapur, that because of her personal difficulties she would not be able to accept the employment and instead she pointed out that

when her son Jitendra would make an application for employment on attaining the majority, that his claim for appointment be considered.”

There is a clear admission by the Applicant that his mother had applied for compassionate appointment after the death of his father and was indeed offered appointment which she declined to accept. This is a very important fact. The Applicant’s mother in letter at Exhibit ‘B’ of O.A (page 20 of the Paper Book) stated that she did not want to accept the compassionate appointment, which should be offered to her minor son, the present Applicant when he attains majority. Schedule ‘A’ to G.R dated 26.10.1994 has clause 3(b), which reads:-

“ (ब) सदर नेमणूक शासकीय कर्मचा-याच्या फक्त एकाच नातेवाईकास देता येईल.”

The Applicant’s mother, widow of the deceased Government servant was admittedly offered such appointment, which she declined. There is no provision in any of the G.Rs regarding compassionate appointment, where once compassionate appointment is declined by one relative of a Government servant, it can be given to another of his relatives. Hon’ble Supreme Court in **DHALL RAM Vs. UNION OF INDIA (1997) 11 SCC 201** has held that:-

“The appointment on compassionate grounds is not a method of recruitment but is a facility for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution.”

In **STATE OF CHHATISGARH & ORS Vs. DHIRJO KUMAR SENGAR (2009) 13 SCC 600**, Hon’ble Supreme Court has held that:-

“12. This Court times without number, has held that appointment on compassionate ground should not be granted as a matter of course. It should be granted only when dependents of the deceased employee who expired all of a sudden while in service and by reason thereof his dependents have been living in penury.”

In **UMESH KUMAR NAGPAL Vs. STATE OF HARYANA & OTHERS, 1994 SCC (L & S) 930**, Hon’ble Supreme Court has held that:-

“6.....The consideration for such employment is not a vested right, which can be exercised at any time in future.”

In the present case, State has discharges its obligation by offering compassionate employment to the

mother of the present Applicant. The Applicant has no right to seek compassionate appointment.

6. Learned Counsel for the Applicant has relied on the following judgments of this Tribunal, viz:

(i) O.A no 21/2013, dated 20.8.2014. In this case, the widow had applied for compassionate appointment, which was not offered. It transpired that at the time of making application for compassionate appointment, the widow was age barred. As a result, her son, who was handicapped was allowed to apply for compassionate appointment. Facts are quite different here.

(ii) O.A no 279/2015 dated 16.3.2016. In this case, the widow of the deceased Government employee had applied for compassionate appointment. As she had crossed the age of 40 years, her name was deleted. Her son attained the age of majority sometime after that date. In the circumstances, the son's name was directed to be included in the list of eligible candidates for compassionate appointment. Facts are quite different here.

(iii) O.A no 442/2011 dated 22.1.2015. In this case also, the widow had applied for compassionate appointment. Her son was minor at that time. Well before the son attained majority, she withdrew her name

and represented that her son may be considered for compassionate appointment on attaining majority. G.R dated 16.10.1994 provides for appointment of a minor child on attaining majority. This Original Application was allowed. Facts in the present case are quite different.

7. It is quite clear that in the present case, compassionate appointment was offered to the widow of the deceased Government servant and she declined to accept the same. None of the judgments cited above is applicable in the facts of the present case.

8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 16.09.2016
Dictation taken by : A.K. Nair.