

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1091 OF 2017**

**DISTRICT : PUNE**

- |    |                                     |               |
|----|-------------------------------------|---------------|
| 1. | Smt. Rehana Akbar Shaikh.           | )             |
|    | Age : 55 Yrs., Occu.: Nil,          | )             |
|    | R/o. Flat No.102, Razia Manzil,     | )             |
|    | Opposite to New Court Building,     | )             |
|    | At & Post : Daund, District : Pune. | )             |
| 2. | Shri Anis Akbar Shaikh.             | )             |
|    | Age : 22 Yrs., Occu.: Nil,          | )             |
|    | R/o. Flat No.102, Razia manzil,     | )             |
|    | Opposite to New Court Building,     | )             |
|    | At & Post : Daund, District : Pune. | )...Applicant |

**Versus**

- |    |                                |                 |
|----|--------------------------------|-----------------|
| 1. | The State of Maharashtra.      | )               |
|    | Through Addl. Chief Secretary, | )               |
|    | Home Department, Mantralaya,   | )               |
|    | Mumbai – 400 032.              | )               |
| 2. | The Superintendent of Police.  | )               |
|    | Pune Rural, Chavan Nagar,      | )               |
|    | Pashan Road, Pune – 5.         | )...Respondents |

**Mr. R.M. Kolge, Advocate for Applicants.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 09.05.2019**

**JUDGMENT**

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1. This is an application for direction to the Respondents to consider the name of the Applicant No.2 for appointment on compassionate ground invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as under :-

The Applicant No.1 – Smt. Rehana Akbar Shaikh is the widow and the Applicant No.2 – Shri Anis Akbar Shaikh is the son of deceased Akbar Shaikh, who died in harness on 05.07.2000. He was serving on the post of Police Constable on the establishment of Respondent No.2 (Superintendent of Police, Pune Rural). After his death, his elder daughter viz. Sherifa made an application on 24.12.2004 for appointment on compassionate ground. Accordingly, her name was included in the waiting list in the year 2008. The Respondent No.2 by his letter dated 08.11.2010 informed to Sherifa to remain present in the office on 15.11.2010 along with necessary documents in connection with her appointment on compassionate ground. However, since Sherifa in the meantime got married, the Applicant No.1 – Smt. Rehana (widow of deceased) approached Respondent No.2 and made an application on 06.12.2010 that in place of Sherifa, the name of Applicant No.2, who was minor at that time be taken on record for appointment on compassionate ground. She explained that, in view of marriage of Sherifa, she would not be in a position to look after the family and to maintain her, and therefore, the Applicant No.2 being only her son would be able to maintain the family. That time, the Applicant No.2 was minor, and therefore, her application was not considered and kept pending by Respondent No.2. The Applicant No.2 – Anis, who was born on 23.10.1995 attained 18 years of age on 23.10.2013. He had passed H.S.C. Examination in 2014. Therefore, on attaining majority, the Applicant No.2 again made an application with Respondent No.2 for appointment on compassionate ground on 02.03.2015. However, the Respondent No.2 did not respond to the applications made by Applicant No.1 on 06.12.2010 as well as

application made by Applicant No.2 on 02.03.2015. It is on this background, the Applicants filed this O.A. seeking direction to the Respondents to consider the name of Applicant No.2 for appointment on compassionate ground.

3. The Respondent No.2 resisted the application by filing Affidavit-in-reply (Page Nos.53 to 60 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondent No.2 admits that, earlier, the name of Sherifa was taken in waiting list for the appointment on compassionate ground. As regard entitlement of Applicant No.2 in place of Sherifa, it is the contention of the Respondent that once the name of one of the heir of the deceased is taken in waiting list, there is no provision for substitution of another heir, and therefore, the Applicants claim for substitution of the name of Applicant No.2 in place of Sherifa is not tenable. The Respondent further contends that the application made by Applicant No.2 on 02.03.2015 was not made within limitation of one year, and therefore, it was barred by limitation. The Applicant No.2, admittedly, attained majority on 23.10.2013, and therefore, the application made by Applicant No.2 on 10.03.2015 was not within limitation.

4. For the first time in reply, the Respondent No.2 comes with the defence that the request of the Applicants for substitution of name of Applicant No.2 in place of Sherifa has been rejected for want of any such provision for substitution of heir and the same was communicated to Applicant No.2 by letter dated 10.03.2017. The Respondent No.2 has tendered a copy of letter dated 10.03.2017 along with reply. The Respondent further contends that the present O.A. filed by the Applicants is also barred by limitation and prayed to dismiss the same.

5. In view of defence of rejection of claim of Applicant No.2 by order dated 10.03.2017 and production of copy of order, the Applicants amended the O.A. and sought the relief of setting aside the communication dated 10.03.2017. The

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amendment was allowed having noticed that there is no service of communication dated 10.03.2017 to the Applicants and for the first time, the same has been filed along with reply.

6. Shri R.M. Kolge, learned Advocate for the Applicants has pointed out the objection raised by the Respondents on the point of limitation for filing O.A. is without any substance, as there was no cause of cause of action to file the present O.A. for want of communication of the rejection of claim of Applicant No.2. He has pointed out that, for the first time, the communication dated 10.03.2017 is placed on record along with reply, and therefore, the question of limitation does not survive. As regard delay on the part of Applicant No.2 to file application for appointment on compassionate ground within one year from the date of attaining majority, he has pointed out that, in terms of G.R. dated 20.05.2015, the competent authority is empowered to condone the delay of two years, and therefore, the Respondent No.2 ought to have referred the matter to the Government for condonation of delay, of any. In respect of substitution of name of Applicant No.2 in place of Sherifa, he referred to the various decisions passed by this Tribunal in this regard and urged that the directions be given to the Respondents to consider the name of Applicant No.2 for appointment on compassionate ground.

7. Per contra, Shri A.J. Chougule, learned Advocate for the Respondents submitted that, after the name of Sherifa was taken in waiting list in absence of any provision, the name of Applicant No.2 cannot be considered, and therefore, rejection of application of Applicant No.2 is correct. As regard limitation, he submits that the application made by Applicant No.2 was belated by five months, and therefore, it cannot be considered. On this line of submission, he opposed the application and prayed to dismiss the O.A.

8. In view of the pleadings and submissions advanced by the learned Counsels, the following factors emerges as uncontroverted.

- (i) Husband of Applicant No.1 and father of Applicant No.2 viz. Akbar Shaikh died in harness on 05.07.2000.
- (ii) After his death, the name of his elder daughter Sherifa was included in the waiting list for appointment on compassionate ground.
- (iii) By letter dated 08.11.2010, the Respondent No.2 called upon Sherifa to remain present in the Office on 15.11.2010 along with documents in connection with the appointment on compassionate ground (Page No.21 of P.B.).
- (iv) On 06.12.2010, the Applicant No.1 made an application with Respondent No.2 requesting him, since Sherifa got married, the name of Applicant No.2 being the only male member in the family be substituted in place of Sherifa. She has also specifically mentioned in the application that the Applicant No.2 is 15 years old, and therefore, he will again apply independently on attaining the age of majority, but till then, the entry be made in their register about the claim of Applicant No.2 (Page No.20 of P.B.).
- (v) On 02.03.2015, the Applicant No.2 on attaining majority again made an application to Respondent No.2 for appointment on compassionate ground and submitted necessary documents along with the application (Page No.23 of P.B.).
- (vi) It is for the first time, by communication dated 10.03.2017, the Respondent No.2 was informed that his name cannot be substituted in place of Sherifa for want of any provision in G.R. dated 22.05.2015 for substitution of heir.
- (vii) The date of birth of Applicant No.2 is 23.10.1995 and he attained majority on 23.10.2013.

*Noted*

9. At this juncture, it would be apposite to refer the decisions relied by the learned Advocate for the Applicant rendered by this Tribunal as well as by Hon'ble High Court which have bearing over the issue in the present O.A.

10. Needless to mention that the concept of compassionate employment is intended to alleviate to distress of the family and rigid or two technical approaches should be avoided, as it would defeat very object of this scheme. As such, the Courts cannot ignore the very purpose of providing employment on compassionate ground to the defendant of Government servant died in harness. Only because after the death of deceased Government servant, his family managed to survive for long period, that should not be the reason for rejection.

11. As regard the aim and object of this scheme for appointment on compassionate ground, it would be useful to refer the observations made by Hon'ble Supreme Court in **AIR 1989 SC 1976 (Smt. Sushma Gosain & Ors. Vs. Union of India)** wherein in Para No.9, it has been held as follows :

*"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."*

12. The learned Advocate for the Applicant referred to various decisions, which are as follows :-

(i) **O.A.No.432/2013 (Shivprasad U. Wadnere Vs. State of Maharashtra and 2 Ors.) decided on 01.12.2014.** In this matter, in similar situation, the substitution of the name of son in place of mother's name was rejected. However, the order of rejection has been quashed. In this judgment, the Tribunal has referred its earlier decision in

O.A.No.184/2005 decided on 03.05.2006 wherein substitution was allowed and the said order has been confirmed by Hon'ble High Court.

(ii) **O.A.No.184/2005 (Smt. Nirmala Doijad Vs. State of Maharashtra) decided on 03.05.2006.** In this matter, while allowing the substitution, this Tribunal held that where there is no specific provision for substitution, justice requires that the policy of Government should be implemented and interpreted in its spirit for giving its benefit to the legal representative of the person who died in harness. It has been held that, there is no specific rule prohibiting the substitution, and therefore, the directions were issued for substitution of the heir and appointment subject to eligibility.

(iii) **O.A.No.503/2015 (Piyush Shinde Vs. State of Maharashtra ) decided on 05.04.2016.** In this matter arising from similar situation, this Tribunal relying on its various earlier decisions rendered in O.A.No.184/2005 (cited supra), O.A.No.432/2013 (cited supra), O.A.No.1043/2014 (cited supra) and Judgment of Hon'ble High Court in Writ Petition No.7793/2009 (Vinodkumar Chavan Vs. State of Maharashtra) decided on 09.12.2009, directions were given to replace the name of the Applicant for appointment on compassionate ground.

(iv) **O.A.604/2016 (Anusaya More Vs. State of Maharashtra) decided by this Tribunal on 24.10.2016,** wherein the name of one of the heir of the deceased employee was taken on record, but having attained the age of 40 years, her name was deleted. In her place, her son seeks substitution, which came to be rejected. The Tribunal held that it would be equitable that son's name is included in waiting list where his mother's name was placed and O.A. was allowed. This Judgment was challenged in Writ Petition No.13932/2017. The Hon'ble High Court by Judgment dated 18.07.2018 maintained the order of Tribunal with modification that the name of son be included in waiting list from the date of application made by son w.e.f.11.02.2014 and not from the date of mother's application.

(v) **O.A.No.370/2017 (Smt. Vanita Shitole Vs. State of Maharashtra) decided on 7<sup>th</sup> August, 2017, O.A.636/2016 (Sagar B. Raikar Vs. Superintending Engineer) decided on 21.03.2017, O.A.239/2016 (Swati Khatavkar Vs. State of Maharashtra) decided on 21.10.2016, O.A.884/2016 (Mayur Gurav Vs. State of Maharashtra) decided on 30.03.2017 and O.A. 1126/2017 (Siddhesh N. Jagde Vs. State of Maharashtra) decided on 04.06.2018.** In all these O.As, the name of one of the heir was taken on record for the appointment on compassionate ground, but having crossed 40 years of age, the name came to be deleted

See Annex

and second heir son seeks substitution, which was rejected by the Government. However, the Tribunal turned down the defence of the Government that in absence of specific provision, the substitution is not permissible. The Tribunal issued direction to consider the name of the Applicant for appointment on compassionate ground.

13. In this behalf, reference of one more decision of Hon'ble High Court in ***Writ Petition No.877/2015 (Dhulaji Kharat Vs. State of Maharashtra) decided on 12<sup>th</sup> December, 2018*** would be very useful as it is directly on the point involved in the present matter about the composite application for grant of appointment on compassionate ground to widow or her son. In this matter, the Government servant died in harness in 2008 and that time, the Petitioner Dhulaji was minor. His mother made an application for appointment to Dhulaji on compassionate ground on attaining the age of majority. However, it was not considered. Then again, the Petitioner Dhulaji made application in 2013 to consider the application made by his mother in 2008. The Government, however, declined to consider the request on the ground that the Applicant Dhulaji had not filed an application within one year from the date of attaining majority. In that context, the Hon'ble High Court held that the request for appointment of Petitioner Shri Dhulaji was already made by her mother well within one year from the death of deceased, and therefore, that application ought to have been considered for giving appointment on compassionate ground to Petitioner Shri Dhulaji and the contention that the application was not made within one year from the date of attaining majority was rejected. Accordingly, directions were issued to consider the application made by mother in 2008 for appointment on compassionate ground.

14. Now, turning to the facts of the present case, material to note that, admittedly, the name of Sherifa was taken in waiting list for appointment on compassionate ground and it is in that context, the Respondent No.2 by his letter dated 08.11.2010 asked Sherifa to remain present in the office on 15.11.2010.



However, by that time, Sherifa got married, and therefore, the Applicant No.1 made an application on 06.12.2010 and brought to the notice of Respondent No.2 that, in view of marriage of Sherifa, now only male member in the family is Applicant No.2, and therefore, his name be substituted in place of Sherifa. At the time of making this application dated 08.11.2010, the Applicant No.2 was minor, and therefore, she has categorically requested to Respondent No.2 that the entry to that effect be taken in the register and the Applicant No.2 will again made an application independently for appointment on compassionate ground after attaining majority. What is important to note that, there was no communication or order on the request made by Applicant No.2 by application dated 08.11.2010 till the filing of this O.A. It is for the first time, the Respondent No.2 along with reply filed a communication dated 10.03.2017 wherein it is stated that, for want of any provision for substitution of heir, the name of Applicant No.2 cannot be considered. Thus, admittedly, there is no communication of order dated 10.03.2017 till the filing of O.A. It is on this background, the Applicants amended the O.A. and prayed to set aside the communication dated 10.03.2017. This O.A. has been filed on 20.11.2017. This being the position, the question of limitation does not survive. Suffice to say, there being no cause of action earlier available to the Applicants, the question of limitation did not arise. From impugned communication dated 10.03.2017, the O.A. has been filed within eight months, and therefore, cannot be said barred by limitation.

15. Pertinent to note that, by communication dated 10.03.2017, the Respondent No.2 all that conveyed to Applicant No.2 that there is no provision for substitution of heir, and therefore, his application cannot be considered. He has not rejected the application on the point of limitation. In fact, in terms of G.R. dated 20.05.2015, the provision is made empowering the Competent Authority to condone the delay if it is made within three years from the date of attaining majority. However, the Respondent No.2 instead of referring the matter to Competent Authority at his own rejected the application of Applicant

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No.2 that too, on the ground that the substitution is not permissible. In fact, in terms of G.R. dated 20.05.2015, he was obliged to refer the application of Applicant No.2 dated 02.03.2015 to the Competent Authority i.e. the Government for condonation of delay or passing appropriate orders. This being the position, the communication dated 10.03.2017 is premature and not sustainable in law.

16. Now, turning to the issue of substitution, significant to note that this is not a case where the name of one of the heir was taken on record, but deleted on attaining the age of 40 years in terms of G.R, which provides for deletion of name of heir on complete of age of 40 years. This is a case while the name of one of the heir viz. Sherifa was already in the list, the Applicant No.2 by her application dated 06.12.2010 had requested Respondent No.2 for substituting the name of Applicant No.2 in place of Sherifa, she being got married. Naturally, after marriage, Sherifa could not have taken care of the family of the deceased, and therefore, the Applicant No.2 being only male member in the family was to maintain the family. As such, the Respondent No.2 ought to have considered the matter in proper perspective and should have referred the application of Applicant No.2 dated 02.03.2015 to the competent authority for condonation of delay, if any.

17. In fact, the Applicant No.1 by her application dated 06.12.2010 even during the minority of Applicant No.2 had made an application to Respondent No.2 requesting him to substitute the name of Applicant No.2 in place of Sherifa. As such, this is a case where even before attaining majority, the mother of minor had requested Respondent No.2 and such request ought to have been considered by Respondent No.2 in appropriate manner. As such, this situation is covered by the decision of Hon'ble Bombay High Court in *Dhulaji Kharat's* case

(cited supra) and the claim of Applicant No.2 could have kept alive till he attained the majority.

18. Now, material question comes whether substitution is permissible. The Respondents have rejected the application solely on the ground that there is no provision in G.R. dated 22.08.2005 for substitution of another heir of the deceased. The learned P.O. sought to contend that, as per G.R. dated 22.05.2007, it is only in case of death of heir whose name is taken on waiting list, the substitution is permissible. True, there is no specific provision for substitution of heir in G.R. date 22.08.2005. Having regard to the aim and object of this scheme of appointment to provide financial assistance to the distressed family, the judicial approach is expected from the executive. As such, in view of Judgment of Hon'ble Supreme Court in **Sushma Gosain's** case, it was unjust on the part of Respondents to keep the issue of issuance of appointment order pending for years together. In fact, the Hon'ble Apex Court held that, if there is no suitable post for appointment, then supernumerary post should be created to accommodate the heir of the deceased. Suffice to say, the application of the Applicant on the ground that substitution is not permissible is contrary to the spirit and mandate of the Judgment of Hon'ble Supreme Court as well as scheme for the appointment on compassionate ground.

19. As such consistent view has been taken by this Tribunal in various O.As referred to above as well as by Hon'ble High Court that having regard to spirit and object of this scheme for providing employment to the heir of the deceased employee on compassionate ground that purpose is to mitigate and obviate the difficulties faced by the deceased family due to loss of only earning member of the family and the State is under obligation to consider the application for substitution in proper perspective. Accordingly, directions were issued to consider the application for substitution and inclusion of the name in waiting list.

*Heir*

20. Lastly, the learned P.O. sought to contend that the father of the Applicant died in 2000, and therefore, compassionate appointment after such a long period is not permissible, as there is no proximity or dire need for the appointment on compassionate ground. He referred the Judgment in **(2009) 6 SCC 481 (Santosh Kumar Dubey Vs. State of Uttar Pradesh & Ors.)** wherein in Para Nos.11 and 12, the Hon'ble Supreme Court held as follows :

*11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that is faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.*

*12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bananza and also as a right to get an appointment in Government service.*

21. Whereas, the learned Advocate for the Applicant referred to the Judgment in **2018 (4) SLR 771 (Supriya S. Patil Vs. State of Maharashtra)** wherein the Hon'ble Supreme Court observed that, only because family had managed to survive for 10 years, it cannot be assumed that there was no immediate necessity and it cannot be a major reason for rejection. In the present matter, the father of the Applicant died in 2000 and the name of his daughter was included in waiting list, but later no employment was given to her. As such, in fact, there was inaction on the part of Respondents not to provide immediate relief by creating supernumerary post as per the mandate of Hon'ble Supreme Court in **Sushma Gosain's** case. Therefore, the Respondents cannot take the benefit of their own in-action.

22. The learned P.O. referred the Judgment passed by this Tribunal in ***O.A.381/2017 (Amanulla S. Mahaldar Vs. State of Maharashtra) decided on 06.11.2017*** is concerned, I have gone through the Judgment and found it is quite distinguishable and not applicable in the present situation. In that matter, it was second round of litigation. Prior to filing of O.A.381/2017, the Applicant Amanulla Mahaldar had filed O.A.No.700/2016 seeking the relief of direction, as the request of substitution was rejected in view of deletion of the name of one of the heir on attaining the age of 40 years from the waiting list. Accordingly, in O.A.700/2016, the Tribunal gave direction to the Government to consider the request of the Applicant afresh and to take appropriate decision. As per the direction given by the Tribunal, the Government reconsidered the request of the Applicant, but again rejected his claim for appointment on compassionate ground. It is in that context, this Tribunal rejected O.A.381/2017. This being the position, obviously, it has no application to the present situation. Apart, learned Advocate for the Applicant has pointed out that the decision rendered in O.A.381/2017 has been challenged and the matter is subjudice before the Hon'ble High Court.

23. The necessary corollary of aforesaid discussion leads me to conclude that the rejection of the request of Applicant No.2 by communication dated 10.03.2017 is arbitrary and not sustainable in law and facts, and therefore, the same is deserves to be quashed and set aside. The Respondent No.2 ought to have considered the request of Applicant No.2 in view of consistent decisions rendered by this Tribunal referred to above as well as the law laid down by Hon'ble High Court and Hon'ble Supreme Court. He ought to have referred the matter to the Government for condonation of delay, if any, and for further appropriate orders for substitution of heir. Strictly speaking, there is no delay in view of application made by Applicant No.2 dated 06.12.2010 which was made even during the minority of Applicant No.2. This aspect is now required to be

*W. S. Mahaldar*

considered by Respondent No.1 while passing appropriate order. The Original Application, therefore, deserves to be allowed partly. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 10.03.2017 is hereby quashed and set aside.
- (C) The Respondents are directed to consider the application made by Applicant No.1 dated 06.12.2010 as well as application made by Applicant No.2 dated 02.03.2015 for appointment to Applicant No.2 on compassionate ground and to condone the delay, if any, in terms of G.R. dated 20.05.2015.
- (D) It would be equitable as well as judicious that the name of Applicant No.2 is included in the waiting list for the issuance of appointment order, subject to fulfilling of eligibility criteria and in accordance to Rules.
- (E) This exercise be completed within three months from today.

Sd/-

(A.<sup>w</sup>P. KURHEKAR)  
Member-J

Mumbai

Date : 09.05.2019

Dictation taken by :

S.K. Wamanse.

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