

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.18 OF 2020

DISTRICT : THANE

Smt. Snehal Avinash Salunkhe.)
Age : 29 Yrs., Occu.: Nil, R/o. Shri Laxmi)
Apartment, 3rd Floor, Room No.305,)
Koli Wada, Thane (W) – 400 610.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary, Home Dept.,)
Mantralaya, Mumbai – 400 032.)
2. The Commissioner of Police)
(Railways), Area Manager Building,)
4th Floor, P.Demelo Road,)
Wadibandar, Mumbai – 400 010.)...**Respondents**

Mr. C.T. Chandratre, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : 18.12.2020

JUDGMENT

1. The Applicant has challenged the communication dated 23rd September, 2019 whereby her request for appointment on compassionate ground stands rejected invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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2. Following are the undisputed facts necessary to be borne in mind for deciding the present O.A.

- (i) The Applicant is daughter of deceased Avinash, who was in service on the establishment of Respondent No.2.
- (ii) Avinash died in harness on 29.05.1995 leaving behind his widow Smt. Mangal and two daughters including the Applicant.
- (iii) After the death of Avinash, the name of his widow Smt. Mangal was enrolled in the waiting list for providing appointment on compassionate ground (waiting list dated 08.06.1998 is at Page No.25 of Paper Book).
- (iv) Though the name of Smt. Mangal was taken in waiting list, no actual appointment was provided to her and ultimately, she died on 23.07.2007.
- (v) Before the death, Smt. Mangal made an application on 25.05.2004 requesting Respondent No.2 that because of ill-health, in her place, the name of her elder daughter Snehal (Applicant) be taken on record for providing appointment on compassionate ground and also requested that the said application be kept pending till she attained the majority.
- (vi) In response to application dated 25.05.2004, the Respondent No.2 passed order on 02.06.2004 for taking the name of the Applicant in waiting list (Page No.32 of P.B.).
- (vii) After the death of mother, the Applicant herself made an application on 18.02.2010 stating that the family is in distress due to death of mother and she is in dire need of job, so as to maintain her younger sister.
- (viii) The Respondent No.2 forwarded the application dated 18.02.2010 to the Government (Respondent No.1) stating that the application made by the Applicant is delayed by two months and 12 days and forwarded the proposal to condone the delay in terms of G.R. dated 20.05.2015. However, the Respondent No.1 by impugned order dated 23.09.2019 rejected the request of the

Applicant stating that there is no provision for substitution of heir in the scheme of appointment on compassionate ground.

3. It is on the above background, the Applicant has challenged the communication dated 23.09.2019 contending that the decision denying appointment on compassionate ground is arbitrary and contrary to the spirit and object of Scheme of appointment on compassionate ground. Shri C.T. Chandratre, learned Advocate for the Applicant submits that after the death of her mother, the Applicant and her younger sister being totally helpless have taken shelter of relatives and they have no means of livelihood. He has further pointed out that even during minority of the Applicant, her mother made application to take the name of Applicant in waiting list and the said application ought to have kept alive till the Applicant attained majority, so that on attaining majority, necessary orders for appointment on compassionate ground would be issued. He, therefore, submits that it cannot be said that there is any delay on the part of Applicant to make an application for appointment on compassionate ground.

4. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned order contending that there is no provision for substitution of heir in waiting list in G.R. issued by the Government in this behalf from time to time governing the scheme for employment on compassionate ground.

5. Now turning to the impugned order dated 23.09.2019, the application has been rejected solely on the ground that there is no provision for substitution of heir. Except this ground, no other ground is mentioned in impugned communication. True, there is no specific provision in any of the G.R. issued by the Government from time to time governing the scheme for appointment on compassionate ground. However, absence of provision in G.R. cannot be the ground to concede the request of the heir in the circumstances which warrants the appointment on compassionate ground to one of the heir, so that very

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object of providing appointment on compassionate ground is fulfilled. The very concept of giving appointment to one of the heir of the deceased is to provide financial assistance to the family, who is in distress on account of death of sole bread earner of the family.

6. Admittedly, after the death of Avinash, the name of his widow Smt. Mangal was empaneled in waiting list, as seen from waiting list dated 08.06.1998. Admittedly, for a long period, she was not actually appointed on compassionate ground. Unfortunately, she died on 23.07.2007 leaving behind two daughters without any support. It is before her death, she by application dated 25.04.2004 requested Respondent No.2 to take the name of Applicant in waiting list in her place on the ground of her ill-health. That time, the Applicant was 15 years old and learning in 9th Standard. She has specifically requested that her application be kept alive till the Applicant attained the majority. The Applicant attained the majority on 05.12.2008. Thereafter again, the Applicant herself on attaining majority made an application on 18.02.2010.

7. True, in terms of G.R. dated 03.08.1996 in case of minority of the heir, the application was required to be made within one year from attaining majority. Material to note that by subsequent G.R. dated 20.05.2015, the limitation of one year has been extended upto three years subject to condonation of delay by the competent authority. Suffice to say, having regard to the object of the scheme, the conditions were relaxed so that needy and eligible candidate should get the appointment on compassionate ground and to maintain the dependents of the deceased.

8. Thus, the Applicant attained majority on 05.12.2008 and she personally applied though with some short delay on 18.02.2010. However, the fact remains that during her minority itself, her mother had made an application on 25.05.2004 for appointment to applicant instead of providing appointment to her. This being the position, the

Respondents ought to have kept the application made by mother alive, so as to consider the same on attaining the majority of the Applicant.

9. 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 12th 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.

10. In view of aforesaid decision, the application made by the Applicant herself on 18.02.2010 cannot be said belated or barred by limitation. She attained the majority on 05.12.2008 and application ought to have been made on 05.12.2009. However, she applied on 18.02.2010 which is belated hardly by two months and it should have been condoned.

11. Needless to mention that the concept of compassionate employment is intended to alleviate to distress of the family and rigid or

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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.

12. 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."

13. 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.

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(v) **O.A.No.327/2017 (Smt. Vanita Shitole Vs. State of Maharashtra) decided on 7th 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 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.

(vi) **O.A.No.445/2017 (Manoj Damale Vs. Superintending Engineer and Administrator) decided on 02.04.2019.** The facts of this O.A. are similar to the present O.A. In that O.A. also, the request was made by the mother to provide appointment on compassionate ground either to her or her son, who was minor at the time of making application. However, mother's name was taken in waiting list, but it was deleted on attaining the age of 40 years. Thereafter, again application was made by son on attaining majority. That application made by his mother was joint application and it should have been considered for substitution in the name of mother. The O.A. was allowed placing reliance on the decision of Hon'ble Bombay High Court in **Dhulaji Kharat's** case (cited supra). The defence taken by Respondents that the substitution is not permissible in policy was turned down and directions were issued to consider the name of the Applicant for appointment on compassionate ground.

14. Now the question comes whether the substitution is permissible. As stated above, the Respondents rejected the application solely on the ground that there is no provision in G.R. for substitution of another heir of the deceased. Indeed, in view of the Judgment of Hon'ble Supreme Court in **Sushma Gosain's** case (cited supra), it was unjust on the part of Respondents to keep the issue of issuance of appointment order pending for years together and it was obligatory on the part of Respondents to provide appointment by creating supernumerary post, so as to accommodate the heir of the deceased if there is no suitable post available for appointment. Therefore, the rejection of claim of the Applicant on the ground that there is no provision for substitution holds no water. This Tribunal has taken consistent view in various O.As that having regard with the spirit and object of the scheme, the State is under obligation to consider the application for substitution in proper perspective, so as to mitigate and obviate the difficulties faced by the family of the deceased. In the present case, after the death of father and mother, the Applicant and her sister are staying with their relatives being without any support and this aspect ought to have been considered by the Respondents. However, unfortunately, the Respondents adopted too rigid and technical stand which is in contravention of object and scheme of appointment on compassionate ground.

15. At this juncture, material to note one more development in terms of G.R. dated 20.05.2015. By this G.R, for the first time, the provision is made that where heir whose name is taken on waiting list died, then in that event, the name of another heir can be substituted and that substitution should relate back as per seniority of the original heir whose name is entered in the waiting list. The relevant Clause of G.R. is as under :-

“परंतु प्रतीक्षासूचीवरील उमेदवाराचेच निधन झाल्यास प्रतीक्षासूचीतील उमेदवाराऐवजी त्याच्या कुटुंबातील अन्य पात्र उमेदवाराचे नाव अनुकंपाधारकांच्या प्रतीक्षासूचीमध्ये मूळ उमेदवाराच्या प्रतीक्षासूचीतील दिनांकाला घेतले जाईल. मात्र नव्या उमेदवाराचे वय सदर दिनांकाला १८ वर्षांपेक्षा जास्त असावे. जर नव्या उमेदवाराचे वय मूळ उमेदवाराच्या प्रतीक्षासूचीतील

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दिनांकास १८ वर्षा पेक्षा कमी असेल तर, नव्या उमेदवाराचे नाव त्याला ज्या दिवशी १८ वर्षे पूर्ण होतील त्या दिनांकास घेण्यात यावे.”

16. As stated above, the Applicant's mother who was empaneled in the waiting list died on 23.05.2007. True, this subsequent G.R. has been issued on 20.05.2015 but the impugned order has been issued on 23.09.2019. This being the position, the Respondents ought to have considered this aspect and should have given the benefit of G.R. dated 20.05.2015 to the Applicant for taking her name in the waiting list. Indeed, as per this provision quoted above, even if the heir which is to be substituted if minor, in that event also, his or her name ought to have been taken in waiting list on the date on which he or she completes 18 years of age at their own, that too, in reference to seniority of original heir.

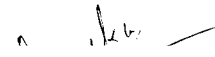
17. The totality of aforesaid discussion leads me to conclude that the impugned order is arbitrary and unsustainable in law. The Respondents ought to have taken the name of Applicant in waiting list in view of consistent decisions rendered by this Tribunal referred to above as well as law laid down by Hon'ble High Court and Hon'ble Supreme Court, particular in view of death of mother who was empaneled in waiting list. The O.A, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communication dated 23.09.2019 is hereby quashed and set aside.
- (C) The Respondents are directed to consider the application of the Applicant for appointment on compassionate ground and it is equitable as well as judicious that her name is included in the waiting list for the issuance of appointment order,

subject to fulfillment of eligible criteria in accordance to Rules.

- (D) This exercise be completed within three months from today.
- (E) No order as to costs.



Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 18.12.2020

Dictation taken by :

S.K. Wamanse.

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