

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.606 OF 2016**

**DISTRICT : NASHIK**

Shri Ashish Ramdas Kharat. )  
Age : 25 Yrs, Occu.: Nil, R/o. )  
"Sarayudarshan" Society, Behind Shelar )  
Mala, Jail Road, Canal Road, Nashik-01. )...**Applicant**

**Versus**

1. The Superintending Engineer. )  
Mechanical Circle, Irrigation Dept., )  
Pune – 1 and having Office at Central )  
Building, Pune. )
2. The Executive Engineer. )  
Mechanical Division, Irrigation Dept., )  
Nashik – 4. )
3. The State of Maharashtra. )  
Through Principal Secretary, )  
Water Resources Department, )  
Mantralaya, Mumbai - 400 032. )...**Respondents**

**Mr. B.A. Bandiwadekar, Advocate for Applicant.**

**Ms. S. Suryawanshi, Presenting Officer for Respondents.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**



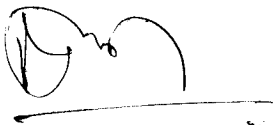
**DATE : 31.01.2017**

**JUDGMENT**

1. This Original Application (OA) is made by the son of deceased Government employee seeking appointment on compassionate ground because his father died on account of illness in harness.
2. I have perused and record and proceedings and heard Mr. B.A. Bandiwadekar, the learned Advocate for the Applicant and Ms. S. Suryawanshi, the learned Presenting Officer (PO) for the Respondents.
3. The deceased employee was an Assistant Store Keeper. The 1<sup>st</sup> Respondent is Superintending Engineer, Mechanical Circle of Irrigation Department, the 2<sup>nd</sup> Respondent is the Executive Engineer in the same Department at Nashik and the 3<sup>rd</sup> Respondent is the State of Maharashtra in Water Resources Department.
4. The deceased employee died on 15.10.2001 on account of illness in harness. He left behind his widow Ms. Maya Ramdas Kharat and the present Applicant being their son. The Applicant was born on 5.9.1990. Ms. Maya Kharat applied for compassionate appointment on



1.1.2002 that was within one year of the demise of her husband. Her date of birth is 15.1.1961 and in fact, she was already more than 40 years old at the time, her husband passed away. It is a matter of some significance, however, that it did not occur to those that were concerned herewith that as per the GR of 6.12.2010, this age limit had been enhanced to 45 years but from the correspondence intra-Respondents, it becomes quite clear that the name of the lady was included in the relevant list but it was then deleted on the ground that she had become disqualified after crossing the age of 40. I am very clearly of the view that till this time also, the proper grasp and comprehension of the position emanating from the various GRs was not manifested by the Respondents because as already mentioned above, the lady had already crossed 40 in fact when her husband died, and therefore, if a proper timely intimation was given to the family of the said deceased, they would have been in a much better position to do the needful as they say. Be it as it may, the name of the lady was deleted as already mentioned above, but much before that on 5.1.2006, by a communication addressed by her to the 1<sup>st</sup> Respondent – Superintending Engineer (Exh. 'C', Page 17 of the Paper Book (PB)), she had clarified that she had already applied for compassionate appointment and submitted necessary

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testimonials. However, as far as age aspect of the matter was concerned, she had crossed 40, and therefore, her son being the present Applicant be included in the list for compassionate appointment as his father's son. Soon thereafter, no communication was received from the Respondents. The Applicant attained majority on 5.9.2008. By then, the just referred communication of 2006 was made but that was not by him but by his mother.

5. It is a clearly an admitted position that within one year of attaining the majority, neither the Applicant nor his mother made the application for getting the Applicant enlisted. However, at the same time, the point remains that to the 2006 communication of Applicant's mother which is just referred to, the Respondents conveyed neither acceptance nor rejection of her claim and that was simply pending as it were. Here, it may also be noted that the limitation of one year for making the application for appointment on compassionate ground was introduced by the GR of 22<sup>nd</sup> August, 2005, but till then, the limitation was five years from the death of the said deceased. If the authorities were to be governed by the GR then prevalent, then the application made by the lady on 5.1.2006 was, in fact, within the time limit even as far as the Applicant was

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concerned and this aspect of the matter will have to be borne in mind.

6. By the GR of 11<sup>th</sup> September, 1996 it was provided that for the minor heir of the deceased, the limitation would be one year after attaining the majority and be it noted that at the first blush and subject to the discussion to follow, the Applicant would appear to be on a weaker wicket as it were. But as I mentioned just now, it will be subject to the discussion to follow.

7. It must, therefore, have become quite clear that the matter stood as it was for quite some time and in the meanwhile, the 2<sup>nd</sup> Division Bench of this Tribunal speaking through me rendered a Judgment in **OA 21/2013 (Smt. Archana R. Badmanji and one another Vs. Superintending Engineer, Sangli Irrigation Circle and one another, dated 20.8.2014)**. The Respondents were practically the same and the Applicants were mother and son. There also, the mother was initially enlisted after the demise of the employee as a claimant for compassionate appointment. Her situation and position is exactly like Applicant's mother in this OA. She made a move to get her son's name substituted for herself. From Para 8 of the said Judgment, a copy of which is at Exh. 'F'



(Page 23 of the PB), it would become clear that there was a delay in application being made initially by his mother for himself and then by himself also and that naturally must have been sought to be capitalized by the other side. The 2<sup>nd</sup> Division Bench relied upon the Judgment of the Hon'ble Supreme Court in the matter of **Smt. Sushma Gosain Vs. Union of India, AIR 1976 SC 1976**. Paras 4 and 9 from **Sushma Gosain** came to be reproduced by the 2<sup>nd</sup> Division Bench and I also can usefully do it here.

“4. She was said to have passed the trade test. But nonetheless she was not appointed. Whenever she approached DCDR, she was told that her case was under consideration”.

“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. It there is no suitable post for


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appointment supernumerary post should be created to accommodate the applicant.”

8. The Respondents in **Badmanji's** case relied upon three Judgments of the Hon'ble Supreme Court which the 2<sup>nd</sup> Division Bench discussed in Para 12 of the said Judgment. It needs to be noted quite carefully that just like here in this OA, in that OA also, the stand of the Respondents was that there was no provision for substituting the name of one heir for another. Here, from the correspondence *inter-partes* that took place in the year 2015, it would appear to be the case of the Respondents that there were no governmental directions with regard to the course of action to be adopted in such matters.

9. In **Badmanji's** matter, the 2<sup>nd</sup> Division Bench then relied upon an earlier Judgment of this Tribunal in **OA 884/2012 (Shri Dipak M. Naik Vs. The Commissioner of Police for Greater Mumbai, 24.12.2013)** and the following observations from that Judgment were quoted at Pages 16 & 17 of the said Judgment of this Tribunal.

“It is undoubtedly true that when the limitation is provided for even in the instruments like G.Rs, Circulars, etc, the said provision has to be strictly construed, but one cannot lose sight of the fact that

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in deserving cases, if enacted laws provide for condonation of delay a la Section 5 of the Limitation Act, then it is a far cry to suggest that a judicial body should sit by helplessly and let injustice prevail. Therefore, without causing any embarrassment to the Bench of the then Hon'ble Chairman on our own assessment on the facts at hand, we are so disposed as to apply the same course of action that they adopted in that particular matter."

10. On those reasons, the 2<sup>nd</sup> Division Bench while quashing and setting aside the impugned order directed the authorities to consider the case of the 2<sup>nd</sup> Applicant being the son ignoring the delay in making the application in that behalf. It needs to be noted that in **Naik's** case, this Tribunal had held that such a course of action as adopted therein could not be treated as a precedent, but at the same time, it also needs to be noted that the ultimate concern of a judicial forum would be to advance the cause of justice and more importantly, **Sushma Gosain's** Judgment of the Hon'ble Supreme Court was also referred to in extenso for guidance.

11. Before I proceed further, it needs to be noted that there was another Judgment rendered by me sitting singly in **OA 279/2015 (Shri Amol A. Suryawanshi Vs. Sub-Divisional Officer, Bhore and 2 others, dated 16.3.2016)** wherein relying upon **Sushma Gosain** (supra), **Badmanji** (supra) and **Dipak Naik** (supra) as well as two Judgments





of the Hon'ble Bombay High Court in Writ Petition No.7793/2009 (Vinodkumar K. Chavan Vs. State of Maharashtra and others, dated 9.12.2009) and Writ Petition No.8915/2011 (The Executive Engineer, PWD, Solapur and others Vs. Jijabai Chaudhari, dated 14.11.2011), I quashed and set aside the orders therein impugned and directed the authorities to consider the case of the Applicant for appointment on compassionate ground.

12. It apparently so happened that after Badmanji's case, the present Applicant and his mother in the manner of speaking became more active and as already mentioned above, the correspondence ensued. The stand of the authorities was that there were no governmental directions in such matters, and therefore, they declined to favourably consider the case of the Applicant. Exh. 'A' (Page 14 of the PB) is a communication from Assistant Engineer to Respondent No.2 stating therein the same fact. The Applicant and his mother were relying upon Badmanji (supra) which was apparently carried in the press. On 8<sup>th</sup> October, 2015, the 2<sup>nd</sup> Respondent informed rejection of Applicant's claim to him (Exh. 'B', Page 16 of the PB).



13. Now, it is no doubt true that the appointment on compassionate ground is not such right as in the case of usual appointments through public competition. It would be something strictly regulated by the Rules and Instruments, etc. But having said that once the instruments are there occupying the field, then faithful adherence will have to be ensured more particularly on behalf of the State Government through its employees. Quite pertinently in a recent GR of 20<sup>th</sup> May, 2015 pertaining to compassionate appointment to the post of Clerk Typists, it is clearly provided that in case the dependent of the deceased was a minor, then the fact that he could make an application for enlistment after attaining the majority was for the authorities to bring to his notice. Therefore, the right to compassionate appointment may be in the manner of speaking a weaker type of right but then it casts obligations on the State and its employees and they cannot abdicate their responsibility. It is no doubt true that strictly speaking, the Applicant did not move within time to get his name enlisted and he predominantly was spurred by this Tribunal's decision in **Badmanji's** case, but then, as already discussed above, the facts in **Badmanji** and the present facts are essentially similar and relying upon the case law hereinabove discussed, I do not think, there is any reason to treat this Applicant differently



than the Applicant of **Badmanji's** case. There is no document on record. But Mr. Bandiwadekar, the learned Advocate for the Applicant told me that **Badmanji's** case has been implemented also by the Respondents. Be it as it may, I am very clearly of the opinion that although there is some infirmity in the case of the Applicant for he having not made the application within one year, but in view of the foregoing and relying upon the above Judgments, I am of the opinion that this OA also will have to adopt the same course as that of the Applicant in **Badmanji's** matter.

14. The orders herein impugned stand hereby quashed and set aside. The Respondents shall consider the case of the Applicant on compassionate ground within a period of two months from today and convey the outcome thereof to the Applicant within one week thereafter. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**31.01.2017**

31-01-17

Mumbai

Date : 31.01.2017

Dictation taken by :

S.K. Wamanse.

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