

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2730 OF 2021

Rahul s/o Popat Gadhave,
Age : 22 years, Occu.: Nil,
R/o.: Kaudgaon, Tq. Nagar,
District : Ahmednagar PETITIONER

VERSUS

1. The Union of India,
 Through Standing counsel of India,
 High Court, Bench at Aurangabad.
2. The Secretary,
 Ministry of Defence, New Delhi.
3. The Colonel,
 Commandant Armoured,
 Static Workshop, Ahmednagar. RESPONDENTS

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Advocate for Petitioner : Mr. S. D. Jaybhar h/f Mr. D. R. Jaybhar
ASG for Respondent Nos.1 to 3 : Mr. R. R. Bangar
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**CORAM : C. V. BHADANG &
 SANDIPKUMAR C. MORE, JJ.**

**RESERVED ON : 21/06/2022
PRONOUNCED ON : 29/06/2022**

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JUDGMENT : (Per : Sandipkumar C. More, J.) :

Rule. Rule made returnable forthwith. By consent, heard finally at admission stage.

2. The petitioner, under this writ petition, is seeking direction to the respondents to appoint him on the post of Choukidar, on compassionate ground. The petitioner has also prayed for quashing and setting aside letters dated 6 December 2018 and 14 March 2020.

3. According to the petitioner, his father Popat Eknath Gadhave was in service with respondents for more than 30 years. However, at the time of appointment, father of the petitioner was 40% disabled, but since after second accident, he became 85% disabled. Then his father retired on 31 July 2017 on medical ground. As there is no earning member in the family of the petitioner, he is seeking his appointment on compassionate ground. The petitioner has also claimed that though he made an application dated 26 November 2018 to the respondents, but the same was refused vide communication dated 6 December 2018.

4. Respondent No.3 vide his affidavit in reply dated 15 February 2021, strongly resisted the writ petition on the ground that father of the petitioner was not retired on medical ground but in fact he had applied

for voluntary retirement due to his poor health condition and consequently, got retired from service on his own accord on 31 July 2017. As such, respondent No.3 has claimed that as per the rules, the petitioner is not entitled for getting an appointment on compassionate ground.

5. We have carefully gone through the documents on record with the assistance of counsel for the parties. It is not disputed that the father of the petitioner was in service with the respondents as a Choukidar. Though the petitioner has claimed that his father got retired on 31 July 2017 on medical ground, however, the communication dated 6 December 2018 issued by respondent No.3, clearly indicates that father of the petitioner had in fact taken voluntary retirement.

6. The scheme for compassionate appointment clearly speaks as to whom it is applicable, which is as follows :

"2. TO WHOM APPLICABLE :

To a dependent family member--

(A) of a Government servant who ---

(a) dies while in service (including death by suicide); or

(b) is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil

Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or

(c) is retired on medical grounds under Rule 38 of the CCS(Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years of Group 'D' Government servants); or

(B) of a member of the Armed Forces who -

(a) dies during service; or

(b) is killed in action; or

(c) is medically boarded out and is unfit for civil employment.

Note I "*Dependent Family Member*" means :

(a) spouse; or

(b) son (including adopted son); or

(c) daughter (including adopted daughter); or

(d) brother or sister in the case of unmarried Government servant or

(e) member of the Armed Forces referred to in (A) or (B) of this para.

-- who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.

Note II "*Government servant*" for the purpose of these instructions means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad-hoc or contract or re-employment basis.

Note III "*Confirmed work-charged staff*" will also be covered by the term 'Government servant' mentioned in Note III above.

Note IV "*Service*" includes extension in service (but not re-employment) after attaining the normal age of retirement in a civil post.

Note V "*Re-employment*" does not include employment of ex-serviceman before the normal age of retirement in a civil post."

7. On going through the aforesaid criteria of the applicability for the scheme, it is evident that a person needs to be retired on medical grounds. However, in the instant case, the father of the petitioner himself had applied for voluntary retirement and therefore, as per the above criteria, the petitioner being his son, cannot be held eligible for an appointment in place of his retired father on compassionate ground.

8. The learned counsel for the petitioner placed reliance on the judgment of this Court dated 12 April 2022 in Writ Petition No. 2089 of

2021. However, on going through the aforesaid judgment, it is evident that the employee i.e. the father of the petitioner in that petition, was in fact relieved from his duty on health ground. It is not the case in the instant matter and therefore, the aforesaid judgment is not helpful to the petitioner. Therefore, when the father of the petitioner had in fact sought voluntary retirement, the petitioner cannot take the benefit of scheme for compassionate appointment. It appears that respondent No.3 has rightly refused the claim of the petitioner by observing that the petitioner is not covered under the aforesaid scheme. Hence, we find no merit in this writ petition and therefore, proceed to pass the following order.

O R D E R

- I) Writ petition is hereby dismissed
- II) Rule stands discharged.

(SANDIPKUMAR C. MORE, J.)

(C. V. BHADANG, J.)

VS Maind/-