

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1005 OF 2017

DISTRICT : RAIGAD

Sub.:- Appointment

Shri Prashant Bhaskar Dhanawade.)
Age : 33 Yrs, Occu.: Nil, R/o. D/402,)
Ashapura Regency CHS Ltd., Sector-6,)
Plot No.25, Kamothe, Panvel,)
District : Raigad.)...**Applicant**

Versus

1. The Commissioner of Police, Mumbai))
Having Office at Mumbai Police)
Commissionerate, L.T. Marg,)
L.T. Marg, Opp. Crawford Market,)
Fort, Mumbai – 400 001.)
2. The State of Maharashtra.))
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. S.P. Manchekar, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DEBASHISH CHAKRABARTY, MEMBER-A

DATE : 25.08.2023

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The challenge is to the impugned communication dated 02.12.2016 issued by Respondent No.1 – Commissioner of Police, Mumbai, thereby cancelling the appointment of the Applicant on the post

of Police Constable on the ground that the reservation for Police Child is applicable to Group 'C' and 'D' employees only, but his father who stands retired as PSI was in Group 'B' [Non-Gazetted] cadre, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. are as under :-

In pursuance of Advertisement dated 03.12.2016 issued by Respondent No.1 to fill-in 39 posts of Police Constables, the Applicant participated in the process claiming reservation as a Police Child in terms of G.R. dated 22.08.2014 and was selected. Admittedly, his father was PSI who retired on 31.05.2015. The Applicant therefore claimed reservation as a Police Child in terms of G.R. dated 22.08.2014. The Respondent No.1 issued letter of selection from reservation of Police Child dated 20.06.2016. However, later Respondent No.1 by communication dated 02.12.2016 cancelled his selection on the ground that his father was in Group 'B' [Non-Gazetted] and the reservation of Police Child is restricted to Group 'C' and 'D' only. Being aggrieved by it, the Applicant has filed the present O.A. challenging the legality of communication dated 02.12.2016.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the legality of communication dated 02.12.2016 *inter-alia* contending that Applicant's father was PSI and being in pay scale of 5500-9000, it falls in Group 'C' cadre in terms of G.R. dated 02.07.2002 read with G.R. dated 27.05.2016 both issued by General Administration Department (GAD). He has further pointed out that in absence of classification of post PSI as a Group 'B' in Recruitment Rules or in the order of creation of posts, the classification mentioned in G.R. dated 27.05.2016 prevails. In this behalf, he placed reliance on the decisions of Hon'ble High Court in **Writ Petition No.5440/2009 [Dinesh S. Sonawane Vs. State of Maharashtra] decided on 05.02.2009, Writ**

Petition No.8413/2018 [Director General of Police Vs. Riyaz Rafik Ahmed Patel] decided on 08.03.2019 and Writ Petition No.13166/2019 [Ramhari G. Sontakke Vs. State of Maharashtra & Ors.] decided on 25.10.2021.

4. Per contra, Smt. S.P. Manchekar, learned Chief Presenting Officer in reference to contention raised in Affidavit-in-reply urged that the post of PSI falls in Group 'B' [Non-Gazetted] cadre. She has further pointed out that as per G.R. dated 16.02.2016, the reservation for Police Child is applicable where retired Police Personnel belongs to Group 'C' or 'D' cadre. She, therefore, submits that the Applicant is not entitled for reservation as a Police Child and impugned communication rejecting Applicant's selection is legal and valid. In this behalf, reference is made to certain decisions and Office Orders issued by Director General of Police as well as G.R. dated 30.06.2023 whereby Government gave approval to the revised staffing pattern for the establishment of Commissioner of Police, Mumbai in which post of PSI is shown Group 'B' cadre.

5. In view of submissions, the issue posed for our consideration is whether the post of PSI falls in Group 'C' so as to claim reservation for Police Child or it falls in Group 'B' [Non-Gazette].

6. At the very outset, it needs to be stated that the classification of the post needs to be determined on the basis of classification of the post shown while creating posts by the Government or in reference to Recruitment Rules. In the present case, admittedly, Recruitment Rules of 1995 are silent about the classification of post of PSI. That apart, Respondents has not produced original orders of creation of post of PSI on the establishment of Commissioner of Police, Mumbai. What is tendered by the Respondents is G.R. dated 30.06.2023 whereby Government has given approval to the revised staffing pattern for the establishment of Commissioner of Police, Mumbai in which post of PSI is

shown Group 'B'. How far this G.R. dated 30.06.2023 is of any assistance to the Respondents will be dealt with a little later. Presently, suffice to say, no order of Government about original creation of post of PSI on the establishment of Commissioner of Police, Mumbai is forthcoming and Recruitment Rules of 1995 are also silent on the part of classification.

7. To begin with, let us see the G.R. dated 02.07.2002 whereby Government made classification of the post in terms of pay scale of 5th Pay Commission superseding erstwhile G.R. dated 19.07.1993. The contents of G.R. dated 02.07.2002 are as under :-

“आता राज्य शासनाने पाचव्या वेतन आयोगाच्या अनुषंगाने सुधारित वेतनश्रेणी मंजूर केल्या असल्याने, उपरोलेखित दिनांक १९ जुलै, १९९३ च्या शासन निर्णय अधिकमीत करून, राज्य शासन सेवेतील पदांचे सुधारित वेतनश्रेणीनुसार खालीलप्रमाणे नव्याने वर्गीकरण करण्यात येत आहे.

अ.क्र.	पदांचा तपशील	पदांचे वर्गीकरण
१.	ज्या पदांचे वेतन किंवा पदांच्या वेतनश्रेणीची कमाल मर्यादा रु.११,५००/- पेक्षा कमी नाही, अशी पदे	गट- अ
२.	ज्या पदांचे वेतन किंवा पदांच्या वेतनश्रेणीची कमाल मर्यादा रु.९,०००/- पेक्षा कमी नाही, अशी पदे, आणि रु.११,५००/- पेक्षा कमी आहे, अशी पदे	गट- ब
३.	ज्या पदांचे वेतन किंवा पदांच्या वेतनश्रेणीची कमाल मर्यादा रु.४,४००/- पेक्षा कमी नाही, अशी पदे आणि रु.९,०००/- पेक्षा कमी आहे, अशी पदे	गट- क
४.	ज्या पदांचे वेतन किंवा पदांच्या वेतनश्रेणीची कमाल मर्यादा रु.४,४००/- पेक्षा कमी नाही, अशी पदे	गट - ड

8. Notably, later Government issued G.R. dated 27.05.2016 for clarification of G.R. dated 02.07.2002, which is as under :-

“प्रस्तावना :-

५ व्या वेतन आयोगाच्या अनुषंगाने राज्य शासन सेवेतील पदांचे गटनिहाय वर्गीकरण संदर्भाधीन शासन निर्णयान्वये करण्यात आलेले आहे. सदरहू शासन निर्णयातील पदांच्या वर्गीकरणाच्या अनुषंगाने रु.५५००-९००० या वेतनश्रेणीतील पदे गट-ब मध्ये की गट-क मध्ये येतात असा संभ्रम निर्माण झाला आहे. सदरहू संभ्रम दूर करण्याच्या अनुषंगाने दि.०२.०७.२००२ च्या शासन निर्णयातील तपशिलाबाबत व पदांच्या वर्गीकरणाबाबत स्पष्टीकरण करण्याचे शासनाच्या विचाराधीन होते.

शासन निर्णय :-

दि. २.७.२००२ च्या शासन निर्णयातील तपशिलाबाबत व पदांच्या वर्गीकरणाबाबत या शासन निर्णयात खालील प्रमाणे स्पष्टीकरण करण्यात येत आहे :-

अ. क्र.	पदांचा तपशील	स्पष्टीकरण	वेतनश्रेण्या	पदांचे वर्गीकरण
१.	ज्या पदांचे वेतन किंवा पदांच्या वेतनश्रेणीची कमाल मर्यादा रु.११,५००/- पेक्षा कमी नाही, अशी पदे	ज्या वेतनश्रेणीची कमाल मर्यादा रु.११,५००/- व त्यापेक्षा अधिक आहे, अशी पदे	रु.७४५०-११५०० व वरील वेतनश्रेणीच्या पेक्षा जास्त वेतनश्रेणी असलेली पदे	गट-अ
२.	ज्या पदांचे वेतन किंवा पदांच्या वेतनश्रेणीची कमाल मर्यादा रु.९,०००/- पेक्षा कमी नाही, अशी पदे, आणि रु.११,५००/- पेक्षा कमी आहे, अशी पदे	ज्या वेतनश्रेणीची कमाल मर्यादा रु.९००० ते रु. ११४९९ या दरम्यान आहे अशी पदे	१. ५५००-१७५-९००० २. ६०००-१७५-९८५०-१५०-१०००० ३. ६५००-२००-१०५०० ४. ७२२५-२२५-११०५० ५. ७४५०-२२५-११०५०	गट ब
३.	ज्या पदांचे वेतन किंवा पदांच्या वेतनश्रेणीची कमाल मर्यादा रु. ४४००/- पेक्षा कमी नाही आणि रु.९०००/- पेक्षा कमी आहे, अशी पदे	ज्या वेतनश्रेणीची कमाल मर्यादा रु. ४४०० ते रु. ८९९९ या दरम्यान आहे अशी पदे	१. २७५०-४४०० २. ३०५०-४५९० ३. ३२००-४९०० ४. ४०००-६००० ५. ४५००-१२५-७००० ६. ५०००-८०००	गट क
४.	ज्या पदांचे वेतन किंवा पदांच्या वेतनश्रेणीची कमाल मर्यादा रु.४४००/- पेक्षा कमी आहे, अशी पदे	ज्या वेतनश्रेणीची कमाल मर्यादा रु.४३९९ व त्यापेक्षा कमी आहे अशी पदे	१. २६५०-४००० २. २६१०-४००० व सदरहू वेतनश्रेणी पेक्षा कमी वेतनश्रेणी असलेली पदे	गट ड

२. दि.०२.०७.२००२ च्या शासन निर्णयातील परिच्छेद ३, ४ व ६ मधील आदेश जसेच्या तसे लागू राहतील. तसेच वरील आदेशामध्ये काही अंतर्भूत असले तरी पदनिर्मितीच्या आदेशामध्ये आकृतीबंध निश्चितीच्या आदेशामध्ये अथवा सेवा प्रवेश नियमांमध्ये ज्या पदांचा उल्लेख विवक्षितपणे गट अ/ब/क/ड आहे त्यांच्या वर्गीकरणांमध्ये बदल होणार नाही.

३. सदर शासन निर्णय वित्त विभागाच्या सहमतीने व त्या विभागाच्या अनौपचारिक संदर्भ क्र. ६९/२०१६/सेवा-९, दि. ०४.०४.२०१६ अन्वये दिलेल्या सहमतीनुसार निर्गमित करण्यात येत आहे.”

9. Thus, from the contents of G.R. dated 27.05.2016, it is manifest that irrespective of issuance of clarification dated 27.05.2016, classification will be in tact in terms of G.R. dated 02.07.2002.

10. Admittedly, Applicant's father was in the pay scale of RS.5500-9000 which falls in Group 'C' in terms of Serial No.3 of G.R. dated 02.07.2002, which states that the post having minimum pay of Rs.4400 and not more than 9000 falls in Group 'C'. Indeed, G.R. dated 02.07.2002 was subject matter of adjudication before Hon'ble High Court in **Dinesh Sonawane's** case. In that case, compassionate appointment was claimed on the ground that deceased employee was Craft Instructor in the pay scale of Rs.5500-9000 and falls in Group 'C'. Whereas Government contended that the employee carrying that pay scale falls in Group 'B' in terms of G.R. dated 12.07.2002 itself. Hon'ble High Court

allowed the Writ Petition giving direction for appointment on compassionate ground holding that the post carrying pay scale of RS.5500-9000 falls in Group 'C'. Para No. 5 of the Judgment is important, which is as under :-

“5. To examine the correctness of this submission, we would straightway refer to Government Resolution dated 02-07-2002. Clause 1 of the said Government Resolution defines the Group –A category. We are not concerned with the said definition. According to the petitioner, the petitioner would be covered by Group C category, whereas according to the respondents, the petitioner would be covered by Group B category. Insofar as Group – B category is concerned, it stipulates that in cases where the Pay Scale is not less than Rs.9000/- and not more than Rs.11500/-, the same will be covered by Group B category. Insofar as Group C category is concerned, it stipulates that in cases where the Pay Scale is not less than Rs.4400/- and not more than Rs.9000/-, the same will be covered by Group C category. As aforesaid, it is not in dispute that the Pay Scale of late Smt. T.D. Sonawane was Rs.5500-9000/-. The natural meaning to be assigned to the above Clauses, in our opinion, is that if the Pay Scale is between Rs.4400/- up to Rs. 9000/-, such cases would be covered by Group C category, whereas if the Pay Scale is between Rs.9001/- up to Rs.11500/-, the same will be covered by Group B category. If any other interpretation is given to the said clauses, it would create anomalous situation. In much as, a person with the Pay Scale of Rs.9000/- will be covered in Group B category as well as Group C category since Pay Scale of Rs.9000/- is mentioned in both categories. Such interpretation cannot be countenanced. Thus understood, the stand taken by the respondents that the petitioner is ineligible as his case is covered in Group B category, cannot be sustained. That stand will have to be stated to be rejected since admittedly the Pay Scale of the petitioner's predecessor was Rs.5500-9000.”

11. Then again, this issue came up before Hon'ble High Court in **Riyaz Patel's** case (cited supra) in which Judgment delivered in **Dinesh Sonawane's** case (cited supra) was followed. Pertinently, being aggrieved by the decision of Hon'ble High Court in **Dinesh Sonawane's** case, the Government preferred SLP before Hon'ble Supreme Court, but it was dismissed. Thus, the Judgment in **Dinesh Sonawane's** case now holds the field. Later again, same issue came up before Hon'ble High Court in **Ramhari Sontakke's** case (cited supra) in which Hon'ble High Court considered both G.R. dated 02.07.2002 and clarificatory G.R. dated 27.05.2016 and hold that the post of PSI comes in Group 'C' and

directions were issued to appoint the Petitioner on compassionate ground.

12. Despite the aforesaid decisions directly on the point involved in the issue, the learned CPO tried to contend that in view of G.R. dated 30.06.2023 issued by Government giving approval to the revised staffing pattern on the establishment of Commissioner of Police, Mumbai, the post of PSI falls in Group 'B'. True, in G.R. dated 30.06.2023, the post of PSI is classified as Group 'B'. However, notably, it is approved revised/modified staffing pattern. In the first place, it has no retrospective effect and Applicant being retired on 31.05.2015, this G.R. is of little assistance to the Respondents. Secondly, Respondents have not brought on record what of the classification of the post of PSI in original sanctioned staffing pattern and it is withheld from the Tribunal. Needless to mention, the classification of the post has to be determined in reference to Recruitment Rules, the order of creation of posts and Recruitment Rules. Admittedly, Recruitment Rules are silent about the classification of the post of PSI and the order of creation of post has not seen the day of light. This being the position, the G.R. dated 30.06.2023 is hardly relevant, particularly when the issue that the employee carrying pay scale of Rs.5500-9000 falls in Group 'C' is already adjudicated in the decisions rendered by Hon'ble High Court referred to above.

13. Reliance placed by learned CPO on communication dated 24.08.2016 issued by Director General of Police stating that the post of PSI is Group 'B' [Non-Gazetted] because of pay scale of Rs.5000-9000 pales into insignificance, since the issue is no more *res-integra* in view of decisions of Hon'ble High Court referred to above. Similarly, reliance placed on the decision rendered by the Tribunal in **O.A.18/2016 [Ravindra D. Suryawanshi Vs. State of Maharashtra] decided on 18.11.2016** is totally misplaced. It was a case of transfer under the provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005

(hereinafter referred to as 'Transfer Act 2005' for brevity) and issue was competency to transfer the PSI. There was Notification dated 30.04.2007 issued under Section 6 of 'Transfer Act 2005' delegating the powers of transfer and in that context, the transfer order was upheld. Therefore, this Judgment is of little assistance to the Respondents. Likewise, reliance on the decision of the Tribunal in **O.A.797/2015 [Mohnish K. Khamitkar Vs. State of Maharashtra] decided on 23.01.2017** is also misplaced, since in that case, the concerned employee was carrying higher pay scale of Rs.6500-10500 and not 5500-9000.

14. At this juncture, it would be further apposite to see the classification of post mentioned in Rule 2(e)(f) of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as 'Conduct Rules of 1979' for brevity), which is as under :-

(e) "Class III posts" means all non-gazetted posts other than Class IV posts;

(f) "Class II posts" means all gazette posts other than Class I posts."

15. Thus, the harmonious construction of definition of Group 'C' post and Group 'B' post is that, all non-gazetted posts other than Group 'D' falls in Group 'C' classification. Admittedly, even as per Respondents' case, the post of PSI is not classified as Group 'B' gazetted. According to Respondents themselves, it is Group 'B' (Non-Gazetted). Thus, applying the classification even in 'Conduct Rules of 1979, it will have to be held that Applicant's father was Group 'C' employee.

16. Indeed, the controversy that the employee carrying pay scale of Rs.5500-9000 falls in Group 'C' is not more open to debate in view of various Judgments of Hon'ble High Court referred to above and it is complete answer to the contentions raised by the Respondents.

17. The totality of aforesaid discussion leads us to sum-up that the impugned communication dated 02.12.2016 cancelling the selection of

the Applicant for the post of Police Constable is totally arbitrary, unsustainable in law and liable to be quashed and set aside. The Respondents ought to have appointed the Applicant on the post of Police Constable as Police Child in terms of G.R. dated 22.08.2014. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) Impugned communication dated 02.12.2016 issued by Respondent No.1 is quashed and set aside.
- (C) Respondent No.1 is directed to appoint the Applicant on the post of Police Constable from reserved category for Police Child within two months from today.
- (D) If there is no such vacancy for the post of Police Constable from the category of Police Child, the Applicant be appointed immediately after creation of vacancy within one month from the date of creation of vacancy.
- (E) It is clarified that Applicant will be entitled to seniority from the date of joining.
- (F) No order as to costs.

Sd/-
(DEBASHISH CHAKRABARTI)
Member-A

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 25.08.2023
Dictation taken by :
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2023\August, 2023\O.A.1005.17.w.8.2023.Appointment.doc

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