

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.87 OF 2019**

DISTRICT : SOLAPUR

Shri Mujahid Mohammad Yusuf Daruwala,)
Age 36 years, occ. Nil,)
R/at A-37, Karnik Nagar, Solapur)..Applicant

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)
Food, Civil Supplies & Consumer Protection)
Department, Mantralaya, Mumbai 400032)
2. The District Collector, Solapur)
3. Division Commissioner (Supply),)
Sadhu Vaswani Council Hall, Pune Camp Pune,)
Vidhan Bhavan, (Marathi) M.G. Road, Pune)..Respondents

Shri M.B. Kadam – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)

RESERVED ON : 15th July, 2019

PRONOUNCED ON : 17th July, 2019

J U D G M E N T

1. Heard Shri M.B. Kadam, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

Admitted facts:

2. The applicant's father Shri Mohammed Yusuf Daruwala was working in the office of respondent no.2 in the rank of Naib Tahsildar. He died in service on 8.7.2008. The applicant, son of the deceased, applied for appointment on compassionate ground on 24.7.2008. The same was rejected on 3.10.2008 (Exhibit E). After receiving information about the judgments of persons situated similarly, the applicant made a fresh representation and the same was rejected by respondent no.3 by impugned order dated 14.12.2018.

3. The applicant has challenged the impugned order dated 14.12.2018 rejecting his application (Exhibit A page 15 of OA). The impugned order reads as under:

“सदर विषयाच्या अनुषंगाने सामान्य प्रशासन विभाग यांचेकडील शासन निर्णय क्रमांक:अकंपा-1004/प्र.क्र. 51/2004/आठ दिनांक 22 ऑगस्ट 2005 मधील मुद्या क्र.2(1) नुसार शासकीय सेवेत असताना दिवंगत झालेल्या गट क व ड च्या कर्मचा-यांच्या पात्र कुटुंबियांनाच अनुकंपा तत्वावर नियुक्ती अनुज्ञेय असलेने व पुरवठा निरीक्षण हे पद गट ब संवर्गात येत असल्याने अनुकंपा तत्वावर नोकरी देता येता नसलेबाबत तुम्हांस कळविणेत आलेले होते तथापी परत तुम्ही शासन निर्णय क्र.अकंपा-1099/766/सीआर-2572/15 दिनांक 21 जून 2000 रोजीचे शाससन निर्णयाचा व वडीलांचे गट क या सेवेचा विचार करून शासन अटीस शिथलता देऊन अनुकंपा तत्वावर नियुक्ती मिळावी म्हणून विनंती केलेली आहे. परंतु सामान्य प्रशासन विभाग यांचेकडील शासन निर्णय क्रमांक:अकंपा-1004/प्र.क्र.51/2004/आठ दिनांक 22 ऑगस्ट 2005 अन्वये अनुकंपा योजनेच्या प्रचलित तरतुदीत सुधारणा करणेत आलेली असून गट क व ड मधील कर्मचारी कर्कराग, पक्षाघात किंवा अपघात यामुळे सेवेसाठी कायमचा असमर्थ ठरून रुग्णता निवृ-त झाल्यास त्याच्या कुटुंबियांना गट क व ड मधील पदांवर नियुक्ती देण्याची सवलत रद्द करण्यात येऊन केवळ सेवेत असतांना दिवंगत झालेल्या गट क व ड च्या कर्मचा-यांच्या पात्र कुटुंबियांनाच अनुकंपा नियुक्ती अनुज्ञेय राहिल असे निर्देश असलेने आपले अर्ज निकाली काढणेत आलेले आहेत.”

(Quoted from page 15 of OA)

4. The Ld. Advocate for the applicant has relied on the judgment dated 18.2.2015 passed by this Tribunal in OA No.1093 of 2012 (Shri Abhijeet V. Mulik Vs. The District Collector, Kolhapur). In this judgment the Tribunal has referred and quoted a judgment of Division Bench of the Aurangabad Bench of High Court in Writ Petition No.5440 of 2009 (Dinesh Vs. The State of Maharashtra dated 5.2.2010). It was confirmed in Spl. Leave to Appeal CC No.16998 of 2011 dated 3.11.2011 (State of Maharashtra and Others Vs. Dinesh) by the Hon'ble Supreme Court. The relevant portion reads as under:

“In so far as Group-C category is concerned, it stipulates that in cases where by 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 upto 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 as much as, a person with the pay scale 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.”

(Quoted from page 45-46 of OA)

5. In view of the foregoing, by the above referred judgment the said OA was allowed and respondents were directed to consider the claim of the

applicant for appointment on compassionate ground as per the extant Scheme or Regulations and Government Resolutions subject to other eligibility.

6. The same was further confirmed by the Hon'ble Bombay High Court in Writ Petition No.12445 of 2015 by order dated 26.7.2016.

7. The respondents no.1 to 3 have filed affidavit in reply. The relevant portion of the affidavit reads as under:

“10. It is submitted that the record of this office shows that at the time of death, the applicant's father was working on gazette post i.e. Naib Tahsildar post. In view of GR dated 13.11.1998 of Revenue & Forest Department, Mantralaya, Mumbai the post of Naib Tahsildar has been declared as Group B post w.e.f. 13.11.1998. I say that application filed by the applicant before respondent no.2 on 24.7.2008 in respect of appointment of applicant on compassionate ground has been decided by respondent no.2 on 31.12.2011. It is specifically stated in the decision dated 31.12.2011 that the applicant's case will not be considered for appointment to the post of Clerk on compassionate ground that at the time of death, the father of the applicant was Naib Tahsildar i.e. Group B employee, which is already annexed by applicant along with petition. It is submitted that the decision dated 31.12.2011 has been intimated to the applicant. It is stated that the application filed by applicant before respondent no.2 has been considered by respondent no.2 according to Rules and Regulations and after considering all facts and circumstances as well as after considering all legal provisions and all circulars, G.R's for the time being in force, the respondent no.3 arrived to a conclusion that applicant is not eligible and entitled to get the appointment on compassionate ground, therefore respondent no.3 vide order dated 31.12.2011 rejected the application of the applicant.

22. applicant has interpreted MCS (Revised Pay) Rules, 2009 wrongly and as per his own convenience. It is submitted that applicant has annexed incomplete documents as Exhibit H. The record of this office shows that vide GR dated 13.11.1998 the post of Naib Tahsildar is gazette post, therefor, allegations made in this para are having no substance.

23. applicant has interpreted GR dated 2.7.2002 wrongly and as per his own convenience. In the present matter the MCS (Pay) Rules, 2009, Annexure-1 of the father of the applicant shows that his pay scale is Rs.9300-34800 Grade Pay Rs.4300. It means that in view of GR dated 2.7.2002 he comes within the category of Group B.

26.1 I further say that the record of this office show that the deceased Mohammad Yusuf Ibrahim Daruwala was promoted on regular post and his name figures at Sr. No.14 in order dated 29.5.2003. I say that he has been promoted and was drawing the salary in the new pay scale of Rs.9300-34800 with grade pay of Rs.4300 from the date of his promotion till his expiry. His last basic salary was Rs.13370-4300. His total period in this particular pay scale was for more than 6 years on a continuous basis without any break till he expired. He has also been given group insurance available to Group B category. This fact shows that the deceased Government servant was group B officer. The GR dated 22.8.2005 states that the legal heirs of Group C and D are entitled for compassionate appointment. Therefore the prayer made by the applicant be rejected.”

(Quoted from page 52-57 of OA)

8. The respondents have also enclosed Pay Verification of the deceased done on 1.1.2006 which mentions that the deceased was Naib Tahsildar in the pay band of Rs.9300-34800 with Grade Pay of Rs.4300/- and drew the salary accordingly (Exhibit R-2 page 63-64). This is also confirmed by the extract made available at page 66.

Discussion and findings:

9. I have perused the record of the deceased father of the applicant. The record confirms that the deceased Government servant was promoted in the rank of Naib Tahsildar and worked in the same capacity for a period of more than six years. He was drawing the salary in the pay band of Rs.9300-34800 with GP of Rs.4300/- from the date of his promotion till his expiry. He has also drawn group insurance available to Group B category. As stipulated in the GR dated 22.8.2005 legal heirs of Group C and D are entitled for compassionate appointment. The deceased, the record shows, was working in Group B since Naib Tahsildar has been declared as Group B officer vide GR dated 13.11.1998 (Exh.R-1 page 61). He was drawing the pay scale of Rs.9300-34800 with GP of Rs.4300/-. In view of the specific provisions in the GRs and as per record produced by the respondents, the impugned order does not require any interference from this Tribunal. The facts and circumstances relied on by the Ld. Advocate for the applicant and the judgments relied by him have different facts and therefore not relevant.

10. In view of the foregoing there is no merit in the OA and the Ld. Advocate for the applicant has failed to demonstrate any justification for interference in the impugned order. OA is, therefore, dismissed with no order as to costs.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
17.7.2019

Dictation taken by: S.G. Jawalkar.