

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.672 OF 2018

(Subject :- Compassionate Appointment)

DISTRICT : LATUR

Ramhari s/o Govind Sontakke,)
Age:33 years, Occu: Education,)
R/o Khadgaon Road, Latur,)
Tq. & Dist. Latur.)...**Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Home Department,)
Maharashtra State,)
Mantralaya, Mumbai -32.)
2. **Special Inspector General of Police,**)
Nanded Range, Nanded.)
3. **The Superintendent of Police,**)
Latur, Dist. Latur.) ...**Respondents.**

Shri K.G. Salunke, Advocate for the Applicant.

Shri M.P. Gude, Presenting Officer for the Respondents.

CORAM : B. P. PATIL, ACTING CHAIRMAN

RESERVED ON : 20.08.2019.

PRONOUNCED ON : 25.09.2019.

ORDER

1. The Applicant has challenged the orders dated 06.07.2017 and 24.11.2017 issued by the Respondent No.3 rejecting his claim for appointment on compassionate ground by filing the present Original Application.

2. The Applicant belongs to backward class i.e. N.T.(C) category. He studied upto 12th standard. His father Shri Govind Gangaram Sontakke was serving with the Respondents. His father was initially appointed as Police Constable in the year 1987. Thereafter, he was promoted as Police Naik. His father was further promoted on the post of Police Sub Inspector (PSI) temporarily. When he was in service, he expired on 11.04.2017. At the time of death of his father, he was not confirmed on the post of PSI. After the death of his father, the Applicant moved an application dated 13.06.2017 with the Respondent No.3 seeking appointment on compassionate ground and provided the required documents along with the application.

3. The Respondent No.3 without considering the application of the Applicant rejected his claim on 06.07.2017 by giving reference of one circular dated 09.09.2011 issued by the

Respondent No.1. The Applicant immediately moved another application to the Respondent No.2 for issuance of appointment order in his favour. The Respondent No.2 issued the letter dated 14.09.2017 to the Respondent No.3 and forwarded the application of the Applicant with directions to take appropriate decision on the same. But the Respondent No.3 formally considered the application of the Applicant and passed the impugned order dated 24.11.2017 and rejected the application of the Applicant.

4. It is contention of the Applicant that the State of Maharashtra in its General Administrative Department (GAD) has issued the Government Resolution dated 21.09.2017 for appointment on compassionate ground and issued guidelines. The reference to the G.R. issued in that regard from time to time i.e. on 26.10.1994 and 21.09.2017 has been made therein.

5. It is his contention that his father was working on the post of Police Sub Inspector temporarily. It is his contention that the post of Police Naik as well as Police Sub Inspector falls under group 'C' category and therefore he is entitled to get appointment on compassionate ground. But the Respondent No.3 has wrongly rejected his application by the impugned orders. It is further

contention of the Applicant that the Accountant General (A & E)-II, Maharashtra State, Nagpur, while granting family pension to the mother of the Applicant had observed that father of the Applicant was temporarily promoted on 22.05.2014 and as such he would not be entitled to get the grade pay of Rs.4300/- and fixed the pension of the mother of the Applicant considering that the father of the Applicant was serving on the post of Police Naik.

6. It is further contention of the Applicant that the wards of PSI and PI namely Vishal Pravin Khajekar, Sunil Wamanrao Dastgir and Shaikh Javed Rashid were appointed on compassionate ground but his claim has been wrongly rejected by the Respondents. It is his contention that the impugned orders issued by the Respondents are in contravention of the G.Rs. issued by the Government from time to time. The Respondents have held that the post of PSI falls under group 'B' category and therefore he has prayed to quash and set aside the impugned orders and to direct the Respondents to reconsider his application for appointment on compassionate ground by allowing the present Original Application.

7. The Respondent Nos.2 and 3 have filed their affidavit-in-reply and resisted the contention of the Applicant. They have

not disputed the fact that the deceased father of the Applicant was serving as Police Sub Inspector at the time of his death. They have denied that at the time of his death, he was given temporary promotion on the post of PSI and he was not confirmed on that post till his death. They have denied that the deceased father of the Applicant was serving as Police Naik i.e. group 'C' category and therefore he is entitled to get appointment on compassionate ground. They have denied that the post of Police Sup Inspector falls under group 'C' category. It is their contention that the Applicant is taking the undue benefit of the mistake committed by the office of the Respondent No.3 due to oversight while sending pension papers. It is their further contention that the deceased Govind Sontakke (father of the Applicant) was serving on the post of Police Naik in the year 2013. The Police department particularly the Divisional office of the Respondent Nos.2 and 3 had conducted the divisional qualification test of the candidates including the father of the Applicant deceased Govind Sontakke for the post of Police Sup Inspector. Deceased Govind Sontakke qualified and accordingly he was temporarily promoted on the post of PSI by order dated 24.03.2017.

8. It is contention of the respondent Nos.2 and 3 that deceased Govind G. Sontakke was regularized on the post of PSI w.e.f. 01.07.2015 by the order dated 24.03.2017 issued by the office of Director General of Police (DGP), Mumbai. The said order was served on deceased Govind Sontakke and accordingly salary has been paid to him from time to time. It is their contention that the post of Police Sup Inspector falls under group on 'B' category and not group 'C' category. The scheme of giving appointment to heirs of deceased Government employee on compassionate ground is made applicable to only Group 'C' and Group 'D' category and it is not applicable to the employee of the group 'B' category. It is their contention that the family members of the deceased Govind Sontakke have received the benefits of pension after his death. There is no financial crisis in the family of the deceased. Therefore, the Applicant is not entitled to get appointment on compassionate ground.

9. It is further contention of the Respondent Nos.2 and 3 that the so called alleged orders regarding appointment on compassionate ground to the heirs of the PSI and PI as contended by the Applicant are of the year 2005. It is their contention that in the year 2011, the Government of

Maharashtra issued letter cum circular dated 09.09.2011 and clarified that the family members of the deceased employees working on the post of Group 'B' category cannot be eligible for appointment on compassionate ground. The father of the Applicant was serving on the Group 'B' post and therefore the Applicant is not entitled to get appointment on compassionate ground. Therefore, his claim has been rejected by the Respondent Nos.2 and 3 as per the rules. It is their contention that there is no illegality in the impugned order. Therefore, they have prayed to reject the Original Application.

10. I have heard Shri K.G. Salunke, learned Advocate for the Applicant and Shri M.P.Gude, learned Presenting Officer for the Respondents. I have perused the documents placed on record by the parties.

11. Admittedly, deceased Govind Sontakke was father of the Applicant. He joined the service in the Police department as Police Constable in the year 1987. Thereafter, he was promoted as Police Naik. He was working on the post of Police Naik till the year 2013. He was promoted on the post of PSI temporarily. Thereafter, he was regularized on the post of PSI w.e.f. 01.07.2015 by order dated 24.03.2017 issued by the Director

General of Police (DGP), Mumbai. Admittedly, deceased Govind Sontakke (the father of the Applicant) died on 11.04.2017, while in service.

12. Admittedly, after the death of father of the applicant, the Applicant filed an application dated 13.06.2017 claiming appointment on compassionate ground with the Respondent No.3. But it was rejected by the Respondent No.3 by communications dated 06.07.2017 and 24-11-2017 by giving reference of one Circular dated 09.09.2011. Thereafter, the Applicant filed another application with the Respondent No.2 which was forwarded by the Respondent No.2 to the Respondent No.3. The Respondent No.3 rejected the said application of the Applicant on 24.11.2017. Both the applications are rejected on the ground that deceased Govind Sontakke was serving as PSI and the post of PSI falls under group 'B' category and scheme to give appointment on compassionate ground to the family members of the deceased Government employees was not applicable to the heirs of deceased employees serving on the post of Group 'B' category.

13. Learned Advocate for the applicant has submitted that deceased Govind Sontakke was promoted on the post of PSI

temporarily at the time of his death and he was not regularized in the cadre of PSI. Therefore, Grade Pay of Rs.4300/- was not granted to him in view of the communication of A.G. dated 18-04-2018. He has submitted that the post of PSI falls under Group-C category but the respondents had not considered the said aspect and rejected the application of the applicant. He has further submitted that the deceased was getting pay scale of Rs.5500-175-9000 at the time of his death. The post getting the said pay scale falls under the Group-C category.

14. He has further submitted that the said issue has been decided by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **Writ Petition No.5440/2009** in case of **Dinesh s/o. Shamrao Sonawane V/s. The State of Maharashtra & Ors.** decided on 05-02-2010. The said issue has also been decided by this Tribunal in **O.A.No.39/2019** in case of **Smt. Urmila Pramod Thakur & Anr. V/s. The State of Maharashtra & Ors.** decided on 18-06-2019. He has further submitted that similar issue was involved in the matter before the Principal Bench of the Tribunal at Mumbai in **O.A.No.198/2016 with O.A.No.828/2017** in case of **Shri Chetan Vyavahare V/s. The Director of Medical Education**

and Research & Ors. decided on 02-01-2019 wherein it has been held that the post having pay scale of Rs.5500-9000 falls under the Group-C category. He has submitted that considering the principles laid down in the abovesaid decisions, it can be held that the post of PSI having pay scale of Rs.5500-9000 falls under the Group-C category. Therefore, heirs of the deceased PSI are entitled to get employment on compassionate ground. Therefore, he has prayed to quash the impugned orders and to direct the respondents to consider the application of the applicant afresh.

15. Learned Advocate for the applicant has further placed reliance on the documents i.e. Circular dated 28-06-2016 issued by the Special IG (Administration), on behalf of Director General of Police wherein the post of PSI has been shown as Group-C post.

16. Learned Advocate for the applicant has further placed reliance on the judgment in case of **Jyoti Partab Lalwani & Anr. V/s. Collector of Mumbai & Anr.** reported in [2004 (1) Mh. L. J. 955] wherein it is observed as follows:

“(a) Precedent – Law laid down by Single Judge of High Court – Till and until it is disturbed in any manner either by Division Bench or by Apex Court the point should be taken as settled.

Mere filing of the appeal or the admission thereof by the Division Bench against the decision of the Single Judge does not amount to stay of the order passed by the Single Judge. It is only when the decision of the Single Judge is stayed during the pendency of the appeal for final hearing, that the law laid down in the decision by the Single Judge could be said to be not settled. Till and until the Division Bench has not set aside the decision on the point of law delivered by the Single Judge, it cannot be said that the law settled by the decision of the Single Judge of the High Court can be ignored and it cannot be said that the law is not settled. High Court is a Court of record and it should be always borne in mind that once a law is explained by a decision of a Single Judge of this Court, till and until it is disturbed in any manner either by the Division Bench or by the Apex Court, the point should be taken as settled and it cannot be contended that the law is not settled merely because an appeal is pending against such decision.”

17. Learned P.O. has submitted that the Government issued the G.R. dated 02-07-2002 classifying the posts under different categories i.e. A, B, C and D on the basis of pay scale of the post. Accordingly, the posts having pay scale of Rs.9000 to 11500 are classified in Group-B category. He has submitted that in view of the said G.R., the post of PSI which is having pay scale of Rs.5500-9000 falls under the Group-B category. Therefore, he has submitted that the respondent no.3 has rightly rejected the application of the applicant.

18. Learned P.O. has further submitted that there was confusion regarding pay scale and classification made in the G.R.

dated 02-07-2002. Therefore, the Government has issued G.R. dated 27-05-2016 making clarification in that regard. By the said G.R. it has been clarified that the posts having pay scales of Rs.9000 to 11499 fall under the Group-B category while posts having pay scales of Rs.4400-8999 fall under Group-C category. He has submitted that in the said G.R. it has been specifically mentioned that posts having pay scale of Rs.5500-175-9000 fall under Group-B category.

19. He has argued that the decision of the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **Writ Petition No.5440/2009** in case of **Dinesh s/o. Shamrao Sonawane V/s. The State of Maharashtra & Ors.** delivered on 05-02-2010 is decided on the basis of earlier G.R. dated 02-07-2002. Thereafter, the recent G.R. dated 27-05-2016 came to be issued. Therefore, decision of the Hon'ble High Court is not attracted in this case. He has further submitted that the decision of the Tribunal in **O.A.No.39/2019** in case of **Smt. Urmila Pramod Thakur & Anr. V/s. The State of Maharashtra & Ors.** decided on 18-06-2019 is also not attracted in this case as G.R. dated 27-05-2016 had not been brought to the notice of the Tribunal while passing the order in

the abovesaid O.A. He has argued that the decision of the Principal Bench of the Tribunal at Mumbai in **O.A.No.198/2016 with O.A.No.828/2017** in case of **Shri Chetan Vyavahare V/s. The Director of Medical Education and Research & Ors.** decided on 02-01-2019 is also not attracted in this case as this Tribunal has not considered the paragraph no.1 of the G.R. dated 27-05-2016.

20. He has submitted the deceased Govind Gangaram Sontakke was serving as PSI at the time of his death and getting the pay scale of the said post. Initially, he was promoted temporarily but his promotion was regularized by order dated 24-03-2017. As he was serving in Group-B category, the provisions of G.R. dated 21-09-2017 and earlier G.Rs. regarding the appointment of the heirs of the deceased Government employees on compassionate ground are not attracted in the instant case as the said scheme was applicable to the heirs of the employees working in Group-C and Group-D category only. He has submitted that the respondent no.3 has rightly rejected the application of the applicant. There is no illegality in the same. Therefore, he has prayed to reject the O.A.

21. On perusal of the documents on record it is crystal clear that the Government introduced the scheme to provide the employment to the heirs of the deceased Government employees who died while in service. Thereafter, several modifications had been made in the scheme by the Government from time to time. The scheme has been modified in the year 1994 by the G.R. dated 26-10-1994 and thereafter several G.Rs. have been issued by the Government. The Government compiled all the G.Rs. and Circulars related to the scheme of compassionate appointment and issued G.R. dated 21-09-2017. As per the provisions of the said G.R., the scheme is applicable to the heirs of the deceased Government employees who died while serving on Group-C and Group-D post.

22. There is no dispute about the fact that father of the applicant i.e. deceased Govind Gangaram Sontakke died on 11-04-2017 while in service. At the time of death Govind Gangaram Sontakke was serving as PSI. Admittedly, he was initially promoted as PSI on temporary basis. Thereafter, he was promoted on regular basis by order dated 24-03-2017. It means at the time of death of Govind Gangaram Sontakke, he was serving as a PSI. Deceased Govind Gangaram Sontakke was

getting pay scale of Rs.5500-9000. The applicant, being a son of the deceased Govind Gangaram Sontakke, moved an application for getting appointment on compassionate ground to the respondent no.3 on 13-06-2017. Respondent no.3 rejected his application on 06-07-2017 and 24-11-2017 on the ground that the deceased Govind Gangaram Sontakke was Group-B officer and therefore his heirs are not entitled to get appointment on compassionate ground in view of the provisions of the G.Rs.

23. It is material to note here that in the year 2002 i.e. on 02-07-2002 the Government issued G.R. classifying several posts on the basis of pay scale in different Groups i.e Group-A to Group-D by superseding the earlier G.R. dated 29-07-1993. Provisions of said G.R. are relevant and material. Therefore, the relevant portion of the G.R. dated 02-07-2002 is reproduced as follows:

“शासन निर्णय

चौथ्या वेतन आयोगाच्या अनुषंगाने केंद्र शासनाने वेतनश्रेणीनुसार ज्याप्रमाणे पदांचे वर्गीकरण केले, त्या धर्तीवर राज्य शासनाने परिस्थितीनुरूप काही बदल करून, राज्य शासन सेवेतील पदांचे वर्गीकरण उपरोल्लेखित दि. २९ जुलै, १९९३ च्या शासन निर्णयानुसार केले.

२. आता राज्य शासनाने पाचव्या वेतन आयोगाच्या अनुषंगाने सुधारीत वेतनश्रेणी मंजूर केल्या असल्याने, उपरोल्लेखित दि.२९ जुलै, १९९३ चा शासन निर्णय अधिकमित करून, राज्य शासन सेवेतील पदांचे सुधारीत वेतनश्रेणीनुसार खालीलप्रमाणे नव्याने वर्गीकरण करण्यात येत आहे.

अ.क.	पदांचा तपशिल	पदांचे वर्गीकरण
१.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु.११,५००/- पेक्षा कमी नाही, अशी पदे,	गट - अ

२.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु.९,०००/- पेक्षा कमी नाही, आणि रु.११,५००/- पेक्षा कमी आहे, अशी पदे,	गट - ब
३.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु.४,४००/- पेक्षा कमी नाही आणि रु.९,०००/- पेक्षा कमी आहे, अशी पदे,	गट - क
४.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु.४,४००/- पेक्षा कमी आहे, अशी पदे,	गट - ड ”

24. Thereafter, there was confusion regarding the classification of the pay scales. In order to remove the confusion, the Government had issued another G.R. dated 27-05-2016 and clarified the position as follows:

“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.०२.०७.२००२ च्या शासन निर्णयातील तपशिलाबाबत व पदांच्या वर्गीकरणाबाबत या शासन निर्णयात खालीलप्रमाणे स्पष्टीकरण करण्यात येत आहे:-

अ. क्र.	पदांचा तपशिल	स्पष्टीकरण	वेतनश्रेण्या	पदांचे वर्गीकरण
१.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु. ११५००/- पेक्षा कमी नाही, अशी पदे	ज्या वेतनश्रेणीची कमाल मर्यादा रु.११५००/- व त्यापेक्षा अधिक आहे अशी पदे	रु.७४५०-११५०० व वरील वेतनश्रेणीच्या पेक्षा जास्त वेतनश्रेणी असलेली पदे	गट-अ
२.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु. ९०००/- पेक्षा कमी नाही आणि रु.११५००/- पेक्षा कमी आहे,	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	गट-ब

	अशी पदे		५. ७४५०-२२५- ११०५०	
३.	ज्या पदांचे वेतन किंवा पदाच्या 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 पदाच्या 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

25. On going through the said G.Rs. it is crystal clear that the Government had classified the posts having different pay scales under 4 categories i.e. Group-A to Group-D. The posts having pay scale of Rs.5500-9000 and above are classified as Group-B posts in view of the G.R. dated 27-05-2016. Deceased Govind Gangaram Sontakke was receiving pay scale of Rs.5500-9000. Said G.R. itself shows that the posts having pay scale of Rs.5500-9000 fall under the Group-B category. Therefore, post of PSI which is having pay scale of Rs.5500-9000 falls under Group-B category. Therefore, heirs of the Group-B employees are not entitled to claim appointment on compassionate ground in view of the decision taken by the Government by the different G.Rs. which were compiled in G.R. dated 27-05-2016. Respondent no.3 has rightly interpreted the provisions in the

G.R. dated 27-05-2016 and rejected the application of the applicant by the impugned communications dated 06-07-2017 and 24-11-2017. I find no irregularity or illegality in the same. Therefore, in my view, no interference is called for in the impugned order.

26. I have gone through the decisions of the Hon'ble High Court and the Tribunal relied upon by the learned Advocate for the applicant. I have no dispute regarding the principles laid down therein. The Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **Writ Petition No.5440/2009** in case of **Dinesh s/o. Shamrao Sonawane V/s. The State of Maharashtra & Ors.** decided on 05-02-2010 has considered the G.R. dated 02-07-2002 but in the subsequent G.R. dated 27-05-2016, the Government has made clarification regarding the classification of the posts and different pay scales including the types of classifications. By the G.R. dated 27-05-2016, the Government has specifically clarified that the post having pay scale of Rs.5500-9000 falls under Group-B category. Therefore, the decision of the Hon'ble High Court based on the earlier G.R. is not useful to the applicant in the instant case. Decision of this Tribunal passed in **O.A.No.39/2019** in case of **Smt. Urmila**

Pramod Thakur & Anr. V/s. The State of Maharashtra & Ors.

decided on 18-06-2019 is also based on the earlier G.R. dated 02-07-2002 and at the time of decision of the Tribunal the G.R. dated 27-05-2016 was not brought to the notice of the Tribunal. Therefore, said decision is not much useful to the applicant in the instant case. The Principal Bench of the Tribunal at Mumbai decided **O.A.No.198/2016 with O.A.No.828/2017** in case of **Shri Chetan Vyavahare V/s. The Director of Medical Education and Research & Ors.** on 02-01-2019 considered the G.R. dated 02-07-2002 as well as the G.R. dated 27-05-2016 but the Tribunal has not specifically considered the classification of the posts and pay scales mentioned in the first paragraph of the G.R. Therefore, said decision is also not much useful to the applicant in the instant case.

27. The G.R. dated 27-05-2016 specifically provides that the post having pay scale of Rs.5500-9000 falls under Group-B category. Deceased Govind Gangaram Sontakke was receiving pay scale of Rs.5500-9000 at the time of his death. Said G.R. shows that the posts having pay scale of Rs.5500-9000 fall under the Group-B category. The heirs of the deceased Group-B employees are not entitled to claim appointment on

compassionate ground in view of the decision taken by the Government as well as the different G.Rs. which were compiled in G.R. dated 21-09-2017 and the scheme is applicable to the heirs of deceased Government employees died while serving on Group-C and Group-D posts. Therefore, I do not find any illegality in the impugned communications dated 06-07-2017 and 24-11-2017 issued by the respondent no.3. Therefore, no interference in the impugned orders is called for. There is no merit in the O.A. Consequently, it deserves to be dismissed.

28. In view of the discussion in the foregoing paragraphs O.A. stands dismissed without any order as to costs.

PLACE :- AURANGABAD.
DATE :- 25.09.2019

(B.P. PATIL)
ACTING CHAIRMAN

Sas/kpb/yuk O.A.No.672 of 2018 Compassionate Appointment