

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 793 OF 2017  
(Subject :- Compassionate Appointment)**

**DISTRICT : PARBHANI**

**Shri Abdul Rahman s/o Abdul Rasheed Ansari,)**

Age : 19 years, Occu: Nil, )

R/o Jodkuwa, Pathari, Tq. Pathari, )

Dist. Parbhani. )

... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through it's Secretary, )  
Finance Department, )  
Mantralaya, Mumbai - 400032. )

2. **The Special Tax Commissioner,** )  
State Goods & Services, F-3, 9<sup>th</sup> Floor, )  
Vastu-va-Sevakar Bhavan, New building,)  
Majgaon, Mumbai. )

3. **The Additional State Goods &** )  
**Services Tax Commissioner,** )  
Nagpur Region, Vastu-va-Savakar )  
Bhavan, Civil Line, Nagpur. )

... **RESPONDENTS**

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**APPEARANCE** : Shri A.D. Gadekar, Advocate for the Applicant.

: Shri B.S. Deokar, Presenting Officer for the  
Respondents.

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**CORAM** : **B.P. PATIL, ACTING CHAIRMAN.**

**DATE** : **07.12.2019.**  
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**ORAL - ORDER**

1. The applicant has challenged the order/communication dated 05.07.2017 issued by the respondent No. 3 rejecting his application for appointment on compassionate ground by filing the present Original Application.

2. Deceased Abdul Rashid Ansari was father of the applicant. Abdul Rashid Ansari joined the Government service on 04.01.1975 in Sales Tax (old) State Goods and Services Tax Department on the post of Clerk in the pay scale of Rs. 115-215. His pay scale has been revised in the year 1978 in the pay scale of Rs. 260-495. In the year 1979, Abdul Rashid Ansari was promoted to the post of Senior Clerk in the pay scale of Rs. 335-680. In the year 1980, he was again promoted to the post of Sales Tax Inspector in the pay scale of Rs. 365-15-500-20-660. In the year 1986, his pay scale was revised in the pay scale of Rs. 1400-1800. Thereafter as per the 5<sup>th</sup> Pay Commission, his pay was revised in the pay scale of Rs. 4500-7000. Again in the year 2001, his pay scale was revised to Rs. 5500-9000. It is contention of the applicant that deceased Abdul Rashid Ansari was holding Group-C post i.e. Class-III post. Abdul Rashid

Ansari died on 28.04.2002, while in service. At the time of his death, he was serving on Class-III post.

3. At the time of death of Abdul Rashid Ansari, the applicant was minor. He was born on 15.02.1998. He attained the age of majority in the year 2016. After attaining the age of majority, he has filed an application dated 16.06.2016 with the respondent No. 3 for getting appointment on compassionate ground, as he has passed H.S.C. examination, Marathi Typing 30 W.P.M., English Typing 40 W.P.M. and M.S.C.I.T. examination. He attached the necessary documents along with his application. The respondent No. 3 by the communication dated 30.07.2016, rejected his claim on the basis of the G.R. dated 22.08.2005 stating that the post of Sales Tax Inspector is a Group B Non Gazetted post and scheme is applicable to the employees belonging to Group-C and Group-D category. It has also been mentioned therein that the application of his mother filed on earlier occasion has been rejected on the same ground.

4. Thereafter, on 15.10.2016, the applicant has made application to the respondent No. 3 stating that his father expired on 28.04.2002 and that time, he was serving on Group-III post and the G.R. dated 22.08.2005 is not applicable to his

case, as it has no retrospective effect. In response to the said application, the respondent No. 3 issued communication dated 27.02.2017 and communicated that his father died on 28.04.2002 and as per the G.R. dated 26.10.1994 the applicant had not applied within five years and therefore, his application cannot be considered.

5. On 23.03.2017, the applicant has made a representation with the respondent No. 3 pointing out the G.R. dated 11.09.1996 and stated that he was minor at the time of death of his father and as per the said G.R., the minor has to apply for the appointment on compassionate ground within one year from the date of attaining the age of majority and accordingly, he applied within time after attaining the age of majority and therefore, he requested to consider his claim afresh. On 29.03.2017, he made another representation with the respondent No. 3 narrating all these facts. The respondent No. 3 by its communication dated 18.05.2017 rejected his claim on the ground that his father was serving as Sales Tax Inspector and had drawn pay scale of Rs. 5500-9000 at the time of his death. As per the G.R. dated 02.07.2002, the post held by his father was Group-B non-Gazetted post and therefore, he is not entitled to claim appointment on compassionate ground.

6. On 30.05.2017, the applicant has made another representation with the respondent No. 3 and pointed out that he is eligible and entitled to get appointment on compassionate ground. He has contended that the G.R. dated 02.07.2002 is not applicable to his case, as his father died on 28.04.2002. The respondent No. 3 by the letter dated 05.07.2017 rejected the claim of the applicant relying on the G.Rs. dated 28.03.2001 and 02.07.2002. Therefore, the applicant approached this Tribunal and challenged the impugned communication dated 05.07.2017. It is his contention that the respondents have wrongly relied upon the G.Rs. dated 28.03.2001 and 02.07.2002, though the same are not applicable to his case. It is his contention that his father was serving on Group-C post at the time of his death and therefore, his case is squarely covered under the scheme of compassionate ground and therefore, he has prayed to quash and set aside the impugned communication and prayed to direct the respondents to give employment on compassionate ground.

7. The respondents Nos. 1 and 2 have filed their affidavit in reply and resisted the contentions of the applicant. They have no dispute regarding the fact that the father of the applicant was serving as Sales Tax Inspector and he died on 28.04.2002 while in service. At the time of death of father of

the applicant, he was serving as Sales Tax Inspector, which is Group-B non-Gazetted post. It is their contention that after death of father of the applicant, the mother of the applicant had filed an application for getting appointment on compassionate ground on 13.02.2013. The said application was rejected by the Additional Commissioner of Sales Tax Nagpur Zone, Nagpur on 26.06.2013. The said decision was communicated to her. Therefore, the applicant has no right to claim employment on compassionate ground on the same ground. It is their contention that the applicant has made an application and it had been rightly rejected by the respondents on 15.10.2016, as the post of Sales Tax Inspect was Group-B non-Gazetted post as per the G.R. dated 02.07.2002, which has replaced the earlier G.R. dated 29.07.1993. It is their contention that as per the G.R. dated 16.10.1994, the applicant has to file an application for getting appointment on compassionate ground within five years from the date of death of deceased employee. The widow of deceased Abdul Rashid Ansari exhausted the said remedy by filing an application on 13.02.2013 and that application was rejected on 26.06.2013. Therefore, the applicant cannot file another application. They have no dispute regarding the fact that the applicant has filed an application after attaining the age

of majority in view of the G.R. dated 11.09.1996, but once the legal heir of the deceased Government employee i.e. his wife and the mother of the applicant had exhausted the said remedy by filing an application with the respondent No. 3 on 13.02.2013, the present subsequent application made by the applicant is not maintainable. It is their contention that in view of the G.R. dated 20.03.2001, the pay scale of Rs. 5500-9000 was made applicable to the post of Sales Tax Inspector. The employees getting the said pay scale are to be treated as Group-B Non-Gazetted cadre in view of the G.R. dated 02.07.2002. The deceased Abdul Rashid Ansari was getting pay scale of Rs. 5500-9000 at the time of his death and he was serving on Group-B post and therefore, the respondent No. 3 has rightly rejected the claim of the applicant. There is no illegality in the impugned communication and therefore, they justified the same.

8. I have heard Shri A.D. Gadekar, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondent. I have perused the documents placed on record by both the parties.

9. Admittedly, the father of the applicant viz. Abdul Rashid Ansari joined the service in Sales Tax (old) State Goods and Services Tax Department on the post of Clerk on

04.01.1975. He was promoted to the post of Senior Clerk in the year 1978. In the year 1980, he was promoted to the post of Sales Tax Inspector. He died on 28.04.2002, while in service leaving behind his widow and the applicant as his legal heirs. Admittedly, at the time of death of deceased Abdul Rashid Ansari, the applicant was minor and aged about four years. After death of Abdul Rashid Ansari, the mother of the applicant has filed an application dated 13.02.2013 for getting appointment on compassionate ground to the applicant. Her application was rejected by the communication dated 26.06.2013 by the respondent No. 3 on the ground that deceased was serving on Group-B non-Gazetted post and therefore, she is not entitled to get appointment on compassionate ground. Thereafter, in the year 2016, for the first time on 16.06.2016 the applicant has filed an application for getting appointment on compassionate ground after attaining the age of majority. His application was also rejected on the same ground by the communication dated 30.07.2016. The applicant thereafter moved another application dated 15.10.2016, but it was also rejected by the respondent No. 3 by the communication dated 27.02.2017. Thereafter, the applicant made representations dated 27.03.2017 and 29.03.2017, but the said representations have been rejected by



the respondent No. 3 by the communication dated 18.05.2017. Thereafter, the applicant filed another representation dated 30.05.2017 with the respondent No. 3, but it was also rejected by the impugned communication dated 05.07.2017.

10. Learned Advocate for the applicant has submitted that the father of the applicant died on 28.04.2002 while in service as Sales Tax Inspector and that time he was getting pay scale of Rs. 5500-9000 as per the 5<sup>th</sup> Pay Commission. He has submitted that at the time of death of father of the applicant, the post of Sales Tax Inspector was Group-C post in view of the G.R. dated 29.07.1993. He has submitted that as the father of the applicant died on 28.04.2002, the G.R. dated 02.07.2002 is not applicable, as it has no retrospective effect and the case of the applicant is governed by the G.R. dated 29.07.1993. But the respondent No. 3 has wrongly relied on the G.R. dated 02.07.2002 and rejected the representation of the applicant by the impugned communication. He has argued that the G.R. dated 29.07.1993 has been issued by the Government of Maharashtra on the basis of the decision taken by the State Government after 4<sup>th</sup> Pay Commission. As per the said G.R, the posts having pay scale of Rs. 1640-2900 are falling under the Group-C category. He has submitted that as per the 4<sup>th</sup> Pay

Commission, the deceased Abdul Rashid Ansari was getting pay scale of Rs. 1640-2900. In support of his submissions he has relied on the comparative chart of pay scales recommended in 3<sup>rd</sup> to 7<sup>th</sup> Pay Commission. He has submitted that deceased Abdul Rashid Ansari was getting pay scale of Rs. 1640-60-2300-EB-75-2900 and therefore, his post falls under Group-C category in view of the provisions of G.R. dated 29.07.1993. The respondents had not considered the said aspect and therefore, he has prayed to quash and set aside the impugned communication by allowing the Original Application.

11. Learned Advocate for the applicant has submitted that the Hon'ble High Court in **W.P. No. 5440 of 2009** in case of **Dinesh Shamrao Sonawane Vs. The State of Maharashtra and Ors.** decided on 05.02.2010 dealt with the said issue, wherein it has considered pay scale falling under Group-B and Group-C and analyzed the G.R. dated 02.07.2002. He has submitted that the principles laid down in the said decision are applicable in the instant case also. In view of the said decision, the pay scale of Rs. 1640-2900 falls under Group-C category in view of the G.R. dated 29.07.1993.

12. Learned Advocate for the applicant has further relied on the judgment of this Tribunal in **O.A. No. 39/2019** in case of

**Smt. Aaparna Pramod Thakur Vs. The State of Maharashtra and Ors.** decided on 18.06.2019 and the judgment in **O.A. No. 456/2018** in case of **Adhinata Shivaji Bharaskar Vs. The State of Maharashtra and Ors.** decided on 19.10.2018 and submitted that the similar issue has been decided by this Tribunal in case of similarly situated persons. He has submitted that the present case of the applicant is squarely covered by the said decisions and therefore, he has prayed to quash and set aside the impugned communication.

13. Learned Advocate for the applicant has submitted that the father of the applicant died on 28.04.2002 and therefore, the provisions of G.R. dated 02.07.2002 are not attracted in this case, as it has no retrospective effect. But, the respondent No. 3 has wrongly rejected the claim of the applicant in view of the G.R. dated 02.07.2002. In support of his submissions he has placed reliance on judgment delivered by the Hon'ble Supreme Court in case of **Canara Bank and another Vs. M. Mahesh Kumar** in **Civil Appeal No. 260 of 2008** decided on 15.05.2015 reported in **2015 (5) JT 156 .**

14. Learned Presenting Officer has submitted that in view of the scheme framed by the Maharashtra Government, the

legal heirs of the Group-C and Group-D employees are eligible to get employment on compassionate ground. He has submitted that the said scheme provides that the eligible legal heir has to file an application within five years after death of deceased employee in view of the G.R. dated 16.10.1994. He has submitted that on the basis of the said G.R., the mother of the applicant has filed an application dated 13.02.2013 for getting appointment to the applicant on compassionate ground. That application was not filed within time in view of the G.R. dated 16.10.1994 and therefore, the competent authority i.e. the respondent No. 3 rejected the said application on 26.06.2013. At time, it was also mentioned that the deceased Abdul Rashid Ansari was Group-B employee and therefore, on that count they were not entitled to get appointment on compassionate ground. He has submitted that the said decision has not been challenged by the mother of the applicant or applicant thereafter. In the year 2016, the applicant moved an application claiming appointment on compassionate ground after attaining the age of majority as he is eligible to get employment. He has submitted that the respondent No. 3 again and again informed the applicant that he is not entitled to get appointment on compassionate ground, as his father was serving on the post of

Sales Tax Inspect, which falls under Group-B non-Gazetted post and therefore, he is not entitled to get appointment on compassionate ground on the basis of G.R. dated 02.07.2002. He has submitted that there is no illegality in the impugned order. He has further argued that there was confusion regarding classification of pay scale and in which class the pay scale falls and therefore, Government issued the G.R. dated 27.05.2016 and clarified it and specifically mentioned that the employee getting/having pay scale of Rs. 5500-9000 falls under Group-B category. He has submitted that in view of the said G.R., the respondents rejected the claim of the applicant by the impugned communication. There is no illegality in the impugned communication and therefore, he has prayed to reject the O.A.

15. On going through the documents on record, it is crystal clear that the father of the applicant died on 28.04.2002 and he was serving as Sales Tax Inspector in the pay scale of Rs. 5500-9000 as per the recommendation of 5<sup>th</sup> Pay Commission. After his death, his widow, i.e. mother of the applicant had moved an application for getting appointment on compassionate ground to the applicant on 13.02.2013. But it was rejected by the respondent No. 3 on 26.06.2013 on the ground that deceased was Group 'B' employee. The mother of the applicant

had not challenged the said decision till today. The applicant was minor at the time of death of his father. He attained the age of majority on 15.02.2016. After attaining the age of majority, he moved an application for getting employment on compassionate ground. But his application was rejected by recording similar reasons by the respondent No. 3. Thereafter, the applicant made several representations. But those representations were rejected by the respondents, and lastly by the impugned order the respondents rejected the claim of the applicant stating that his father was Group-B employee and therefore, he is not entitled to get appointment on compassionate ground.

16. Abdul Rashid Ansari died on 28.04.2002. The G.R. dated 02.07.2002 has been issued by the Government of Maharashtra thereafter superseding the earlier G.R. dated 29.07.1993. There is no dispute about the legal position that the G.R. dated 02.07.2002 has no retrospective effect. Since the father of the applicant died on 28.04.2002 and the said G.R. has been issued on 02.07.2002, the said G.R. is not applicable in the instant case. The case of applicant has to be governed by the provisions of G.R. dated 29.07.1993 issued by the Government after implementation of the 4<sup>th</sup> Pay Commission. As per the chart provided by the learned Advocate for the applicant, the



धेतला आहे. त्यानुसार शासन सेवेतील विद्यमान श्रेणीचे खालीलप्रमाणे नव्याने वर्गीकरण करण्यात येत आहे.

विद्यमान वर्गीकरण	वेतनमर्यादा	सुधारित वर्गीकरण
वर्ग - १	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रूपये ३,७००/- पेक्षा कमी नाही अशी पदे	अ
वर्ग - २	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रूपये २,९००/- पेक्षा कमी नाही आणि रूपये ३,७००/- पेक्षा कमी आहे अशी पदे	ब
वर्ग - ३	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रूपये १,४००/- पेक्षा कमी नाही आणि रूपये २,९००/- पेक्षा कमी आहे अशी पदे	क
वर्ग - ४	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रूपये १,४००/- पेक्षा कमी आहे अशी पदे	ड

३. सुधारीत वर्गीकरणानुसार “अ” व “ब” गटातील पदे राजपत्रित आणि “क” व “ड” गटातील पदे अराजपत्रित समजण्यात येतील.

४. महाराष्ट्र नागरी सेवा (सुधारित वेतन) नियम, १९८८ च्या सोबत असलेल्या परिशिष्टानुसार ज्या पदांना रु. १,६४०-२,९०० आणि रु. २,०००-३,२०० या सुधारित वेतनश्रेणी विहित केल्या आहेत, ती पदे सुधारित वर्गीकरणानुसार “ब” गटात अंतर्भूत होतील. जुन्या वर्गीकरणानुसार त्यांचा दर्जा “अराजपत्रित” म्हणून समजला जातो. तोच दर्जा सुधारित वर्गीकरणानंतरही कायम राहिल. म्हणजेच या वेतनश्रेणीतील जी पदे “ब” गटात समाविष्ट होणार असली तरी त्यांच्या विद्यमान अराजपत्रित दर्जामध्ये बदल होणार नाही. मात्र या वेतनश्रेणीतील ज्या पदांना अगोदरच राजपत्रित दर्जा घोषित केला आहे, त्या पदांचा तो दर्जा यापुढेही कायम राहिल. अराजपत्रित पदांना केवळ वेतनश्रेणीच्या आधारे किंवा विशिष्ट गटामधील समावेशनामुळे आपोआप राजपत्रित दर्जा प्राप्त होणार नाही. एखाद्या पदास राजपत्रित दर्जा द्यावयाचा झाल्यास त्या प्रकरणी स्वतंत्रपणे निर्णय घेणे आवश्यक राहिल.”

17. In view of the paragraph No. 4 of the said G.R. dated 29.07.1993, the post having pay scale of Rs. 1640-2900 falls under Group-B category. The deceased Abdul Rashid Ansari



was getting pay scale of Rs. 1640-2900 as per the 4<sup>th</sup> Pay Commission and therefore, the post of Sales Tax Inspector held by him falls under Group-B category. Therefore, the applicant being son of the deceased Government employee, who falls under Group-B category, is not entitled to get appointment on compassionate ground, as the said scheme is made applicable to the legal heirs of the Group- C and Group-D category employee only. The respondents had rightly rejected the claim of the applicant on that ground. They have committed mistake by relying on the G.R. dated 02.07.2002 instead of the G.R. dated 29.07.1993. But, I find no illegality in the decision of the respondent No. 3 in that regard.

18. I have gone through the decision of the Hon'ble High Court, Hon'ble Supreme Court and this Tribunal relied upon by the learned Advocate for the applicant. In the decision of the Hon'ble High Court and this Tribunal, the G.R. dated 02.07.2002 has been considered. The G.R. dated 29.07.1993 has not been considered by the Hon'ble High Court and this Tribunal while deciding those matters. In the G.R. dated 29.07.1993 there is specific provision regarding post having pay scale of Rs. 1640-2900 and those were classified under Group-B category. There is no such provision in the G.R. dated

02.07.2002 and therefore, those decisions are not much useful to the applicant in the instant case.

19. As discussed above, the father of the applicant was serving on Group-B post at the time of his death. In view of the provisions of G.R. dated 29.07.1993 scheme to give employment to the legal heirs of the deceased Government employee, who died while in service, is made applicable to the Group-C and Group-D categories employee only. Therefore, the applicant, being heir of deceased Group-B employee, is not entitled to claim appointment on compassionate ground. The respondent No. 3 has rightly rejected the claim of the applicant. There is no illegality in the impugned communication dated 05.07.2017. Therefore, no interference is called for in it. There is no merit in the present Original Application. Consequently, the Original Application deserves to be dismissed.

20. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

**PLACE :- AURANGABAD.**

**DATE :- 07.12.2019**

**(B.P. PATIL)  
ACTING CHAIRMAN**

kpb. O.A. No. 582 of 2018 Compassionate Appointment