

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI  
BENCH AT AURANGABAD.**

**DIST.LATUR.**

**ORIGINAL APPLICATION NO.797/2015.**

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Mohnish s/o Kishor Khamitkar,  
Age 30 years, Occu.Private job,  
R/o Kalpana Nagar, Behind  
Usha Kiran Cinema, Barshi Road,  
Latur, Tq. & District Latur.

-- **APPLICANT**

**VERSUS**

1. The State of Maharashtra  
Through the Secretary,  
General Administrative Department,  
Mantralaya, (Maharashtra)
2. The Director,  
Vocational Education & Training,  
M.S. Mumbai 400 001.
3. The Dy. Director,  
Regional Office, Vocational  
Education & Training,  
Region, Aurangabad.
4. The Principal,  
Industrial Training Institute Centre,  
Latur Dist. Latur.

-- **RESPONDENTS.**

**APPEARANCE** : Shri P.R. Tandale, learned Advocate for the  
Applicant.

: Shri S.K. Shirse, learned Presenting Officer for the Respondents.

**CORAM** : **Hon'ble Shri JD Kulkarni, Member (J).**

**DATE** : 23.01.2017.

**JUDGMENT.**

**(Delivered on this 23<sup>rd</sup> day of January, 2017)**

1. Heard Shri P. R. Tandale, learned Advocate for the Applicant and Shri S. K. Shirse, learned Presenting Officer for the Respondents.

2. The applicant's father Kishor Khamitkar was working as Instructor in the pay scale of Rs.55000 – 9000 with the Respondent no.4. He was admitted in the service on 29.3.1985 in Group "C" category and at the time of his death also he was working in the same group. While in service Kishor Khamitkar died on 19.03.2009.

3. The applicant being son of the deceased Kishor Khamitkar files his application for appointment on compassionate ground on 18.5.2009. The applicant's case was forwarded by Respondent no.4 to Respondent no.3 for necessary action. Some compliances were carried out as per the instructions from time to time, but finally vide impugned order dated 7.11.2009 the applicant's claim for compassionate appointment was rejected on the ground that the

compassionate appointment can be given only to the legal representatives of deceased employees, who are working in Group-C & Group-D category. It was further stated that, since deceased Kishor Khamitkar was appointed on the post of Instructor in the pay scale of Rs.5500-9000 and since said pay scale comes in Group-B (Non Gazetted) the applicant's claim cannot be considered.

4. According to the applicant the impugned communication dated 7.11.2009 is absolutely illegal. As per various Govt. Resolutions the pay scale of Rs.5500-9000 comes within group "C" and therefore, the applicant is entitled to claim compassionate appointment.

5. The Respondents submitted that, the Respondent no.3 has taken decision on the representation dated 13.4.2009 of the applicant for seeking appointment on compassionate ground on 7.11.2009 and in the said communication it was wrongly mentioned that the applicant's father was drawing pay scale of Rs.5500-9000 at the relevant time. However, the correct position is that at the time of death of the father of the applicant his father was brought in the pay scale of Rs.6500-10,500 w.e.f. 1.1.1996 and the Officer drawing such pay scale belongs to Group "B" as per G.R. dated 2.7.2002. The applicant's father was therefore, drawing the pay scale of Rs.10,500, which was more than Rs.9000, and below

Rs.11,500 and therefore, being Group "B" employees the applicant is not entitled to claim compassionate appointment.

6. Learned P.O. placed reliance on the judgment delivered by this Tribunal in OA No.1208/2009 decided on 25.11.2010. In OA No.1208/2009 also this Tribunal has observed in paragraph no.10 as under :-

"10. However, all these details are not necessary to be referred. Once it is confirmed that as per G.R. dt. 2.7.02 deceased Dattatrya falls in group "B" that is drawing in a time scale of which upper limit is not below Rs.9000/- (in fact upper limit is Rs.10,500/-). By virtue of clause 1 (F) of the G.R. dated 28.03.2001, which is applicable, the applicant is not entitled to compassionate appointment."

7. The learned Advocate for the applicant has placed reliance on one judgment delivered by this Tribunal at Mumbai Bench in Group of OA Nos.971, 972, 973, 1030, 1031 & 1220 of 2010 decided on 30.10.2014. In the said O.As. the issue involved was whether those employees who were working in the pay scale of Rs.5500-9000 were in Class III or Class II ? In OA No.1030/10 and OA No.1220/10 the issue involved was whether the appointment can be given on compassionate grounds to the Wards of Class II employees based on

the pay scale in which they were working at the time of death. The Hon'ble Tribunal has observed in the said judgment as under :-

“6. We find that the outcome of these Original Applications depend on the interpretation of G.R. dated 22.8.2005, which is regarding compassionate appoints and G.R. dated 2.7.2002 which is regarding classification of posts in the Government. Clause 2(1) of the G.R. dated 22.8.2005 reads as under :-

“गट 'क' 'ड' मधील कर्मचारी कर्करोग, पक्षाघात किंवा अपघात यामुळे सेवेसाठी कायमचा असमर्थ ठरून रुग्णाला निवृत्त झाल्यास त्याच्या कुटूंबियांना 'क' 'ड' मधील पदांवर नियुक्ती देण्याची सवलत रद्द करण्यात येत आहे. त्यामुळे केवळ सेवेत असतांना दिवंगत झालेल्या गट 'क' 'ड' च्या कर्मचा-यांच्या पात्र कुटूंबियांनाच अनुकंपा नियुक्ती अनुज्ञेय राहिल.”

This G.R. is made applicable from the date of issue, i.e. 22.8.2005. All the Applicants were appointed on compassionate basis after that date and the aforesaid G.R. is applicable. This G.R. is issued by General Administration Department of the Government, as it is the nodal department in service matters. G.A. D. had also issued G.R. dated 2.7.2002 regarding the classification of posts in the Government based on the pay scales attached to each post. The Applicants (in OA No.971/2010, 972/2010, 973/2010) claim that the post in the pay scale of Rs.5500-9000 is a Class III post while the Respondents claim that it is a Class II post as per G.R. dated 2.7.2002. This G.R. has been interpreted by Aurangabad Bench of Bombay High Court in Writ Petition No.5440/2009. In para 5 of the judgment dated 5.2.2010, it is mentioned that :-

“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.9001-11,500/- the same will be covered by Group “B” category.”

Hon’ble High Court held that the posts in the pay scale of Rs.5500-9000 were in Group “C”. This decision was confirmed by the Hon’ble Supreme Court in Special Leave to Appeal (Civil) CC 16998/2011 by order dated 3.11.2011. It is, therefore, clear that the Applicants in OA No.971/2010, 972/2010 and 973/2010 are eligible to be appointed in Group “C” post of Junior Clerk as their deceased fathers were working in Group “C” posts at the time of their death.

7. In O.A.No.1220/2010, the Applicant is appointed in Group ‘C’ post but his father was admittedly working in Group ‘B’ post carrying the pay scale of Rs.6500-10500. He is clearly ineligible to be appointed on compassionate ground as per G.R. dated 22.8.2005.

8. In O.A. No.1030/2010 and 1031/2010, the Applicant’s fathers were admittedly working in Group ‘C’ posts. They are therefore entitled to be considered for appointment to Group ‘C’ or Group ‘D’ post. They are appointed as Group-Instructor in the post carrying pay scale of Rs.6500-10500. The Applicants claim that the Department of Higher & Technical Education Department has been treating these posts as Group ‘C’ posts and they are, therefore, entitled to be appointed as Group-Instructor on compassionate basis. This argument cannot be

accepted. The nodal department in the service matter is the General Administration Department. The G.R. dated 2.7.2002 issued by G.A.D. makes it crystal clear that post carrying pay scale of Rs.6500-10500 is a Group 'B' post. This is the view of Hon'ble High Court also. Classification of these posts as Group 'C' by the Department of Higher & Technical Education Department is irrelevant. In fact, the Respondent no.1 should ensure that such mistakes do not occur and take suitable action against those who have flouted express provision of G.R. dated 2.7.2002 and 22.8.2005. The Applicants in O.A. No.330/2010 and 331/2010 are not entitled to be appointed in the posts carrying pay scale of Rs.6500-10500."

8. From the aforesaid discussions it will be clear that at the time of death the applicant's father was drawing the pay scale of Rs.6500-10500 w.e.f. 1.1.1996 and therefore, as per G.R. dated 2.7.2002 deceased Kishor Khamitkar falls in Group 'B'. The upper limit of which pay scale is not below Rs.9000/- and therefore, the applicant is not entitled to claim appointment on compassionate ground.

9. From the aforesaid facts, it will be clear that, even though in the impugned communication it has been mentioned that the applicant's father was drawing pay scale of Rs.5500-9000, the said communication is legal since it is found that, the applicant's father was drawing pay scale of Rs.6500-10,500 and not Rs.5500-9000.

10. In the result, there is no merit in the O.A. Hence the following order.

ORDER.

- i) The original application is dismissed.
- ii) No order as to costs.

**MEMBER (J)**

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