

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.1077 OF 2014**

DISTRICT : PUNE

Mr. Riyaj Rafik Ahmed Patel,)
Age 28 years, occ. Nil,)
R/at Classis Khuba B-1, Flat No.127,)
Survey No.46, Near Sheetal Petrol Pump,)
Mitha Nagar, Kondhawa Khurd, Pune 48)..Applicant

Versus

1. The Director General of Police,)
S.B. Marg, Colaba, Mumbai)
2. The Superintendent of Police,)
Kolhapur Rural, Kolhapur)
3. The District Collector, Kolhapur)
4. The Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400032)



5. The Secretary,)
Home Department,)
Mantralaya, Mumbai 400032)
6. The Secretary,)
Finance Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

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

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 3rd May, 2016

J U D G M E N T


1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This OA has been filed by the Applicant seeking appointment to the post of Police Constable or any Group 'C' post in pursuance of judgment of Hon'ble Bombay High Court (Aurangabad Bench) dated 5.2.2010 in W.P. No.5440 of 2009 and OA No.No.971 of 2010 dated 30.10.2014.



3. Learned Counsel for the Applicant argued that the father of the Applicant was working as Police Sub-Inspector in the pay scale of Rs.5500-9000 when he died on 30.6.2011, while in service. The mother of the Applicant applied for compassionate appointment. On 9.8.2011, the Applicant's mother filed an affidavit and requested the Respondents to consider the Applicant for appointment on compassionate grounds. On 29.8.2011, the Applicant made a representation to the Respondent No.2 for appointment on compassionate ground. On 24.10.2011, the Applicant was informed that he was at Sr. No.26 in the waiting list for compassionate appointment. The Applicant was later informed on 13.12.2011 that he was not eligible for compassionate appointment as his father was a Group 'B' officer and compassionate appointment could be given to heirs of only Group 'C' and 'D' officers.

4. Learned Counsel for the Applicant argued that the father of the Applicant was in the pay scale of Rs.5500-9000. Hon'ble Bombay High Court (Aurangabad Bench) in W.P. No.5440 of 2009 by judgment dated 5.2.2010 has held that posts carrying pay scale of Rs.5500-9000 are in Group 'C' category as per GR dated 2.7.2002. This Tribunal by judgment dated 30.10.2014 in OA No.971 of 2010 and others has held that those getting pay in the scale up to 9000 maximum are in Group 'C' posts. Accordingly, the Applicant's father was a



Group 'C' employee and the Applicant is eligible for compassionate appointment.

5. Learned Presenting Officer (PO) argued that the post of Police Sub-Inspector is a Group 'B' post. He referred to letter from the Director General of Police, M.S., Mumbai dated 13.12.2011 addressed to the mother of the present Applicant, wherein it is stated that the post of Police Sub-Inspector is included in Group 'B'. Learned PO stated that the Applicant is not eligible for compassionate appointment as per GR dated 22.8.2005.

6. The outcome of this OA depends on the fact as to whether the post of PSI is a Group 'B' post or not. The Applicant claims that his late father was drawing his salary in the pay scale of Rs.5500-9000. Hon'ble High Court (Aurangabad Bench) in W.P. No.5440 of 2009 has clearly held that on the basis of GR dated 2.7.2002, which classify posts on the basis of pay scales. This Tribunal in OA No.971 of 2010 and others have decided in the matter of Craft Instructors of Vocational Education Department who were also in the pay scales of Rs.5500-9000 that this post is a Group 'C' post. This has been done as there is no instrument like GR or recruitment rules to show that these posts were in fact Group 'B' post. However, in another OA, this Tribunal has held that when a post is declared as Group 'B' post in the Recruitment Rules (like



in the case of Junior Engineers) the post will be treated as Group 'B' regardless of the pay scale attached to a post, as statutory rules will prevail over any GR. In the present case, the Respondents have not placed any material on record to show that the post of PSI is a Group 'B' post. Mere assertion of DGP in his letter dated 13.12.2011 in this regard is not sufficient to establish this fact. The Police Sub-Inspector (Recruitment) Rules, 1995 are also silent on this issue. The conclusion is inevitable that the post of PSI is a Group 'C' post as decided by Hon'ble High Court (Aurangabad Bench) by judgment dated 5.2.2010 in W.P. No.5440 of 2009.

7. The Respondent No.2 is directed to restore the position of the Applicant in the waiting list for compassionate appointment as it was reported by him by letter dated 24.10.2011 which is at Exhibit 'G' of the present OA and consider him for compassionate appointment as per Rules. This OA is allowed accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman
3.5.2016

Date : 3rd May, 2016

Dictation taken by: S.G. Jawalkar.