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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2119/2002

New Delhi this the 11th day of February, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Gambhir Singh S/O Binka Ram,
I-207, Sewa Nagar,
New Delhi-110002 ...Applicant

(By Advocate : Shri S. N. Anand)

-Versus-

1. Union of India through
Secretary, Ministry of Labour,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.
2. Under Secretary to the
Government of India,
Ministry of Labour,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.Respondents

(By Advocate : Ms. Harvinder Oberoi)

O R D E R

Respondents' orders dated 30.7.2002 and 31.7.2002 are impugned in this OA wherein services of applicant as Peon have been dispensed with. He has sought quashment of these orders and reinstatement with all consequential benefits.

2. Applicant on sudden demise of his father who was a Central Government employee, applied for compassionate appointment. He completed all the formalities and had tendered an undertaking to the effect that he would support the family members in case of appointment who were dependent on the deceased Government servant. Applicant was appointed as Peon on compassionate grounds as per the terms and conditions and had been drafted to National Commission on Labour whereby the appointment was co-terminus with the duration of the

Commission. During the course of employment he had earned increments.

3.. Consequent upon submission of the Report of the National Commission on Labour on expiry of its term on 30.6.2002 services of applicant have been dispensed with. He preferred a representation for adjusting him in some other organisation.

4.. Respondents by notification dated 12.7.2002 have prepared a panel of eligible Farash/Safaiwala for selection to the posts of Peon on transfer basis which has been kept in abeyance by a restraint order passed by this Tribunal on 12.8.2002.

5.. Learned counsel for applicant Shri S.N.Anand contended that the object of compassionate appointment as envisaged under the scheme formulated by the Government on 9.10.1998 is to grant appointment to a dependent family member of a Government servant who dies in harness to tide over the sudden financial crises. In this backdrop, by referring to clause 7(a) of the scheme, it is contended that appointment on compassionate ground should be made only on regular basis and against the regular vacancies meant for this purpose, i.e., 5% of the vacancies falling under the direct recruitment quota in any Group "C" or "D" post.

6.. It is stated that in the event sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is incumbent upon department/

office to take up the matter with other Ministries/departments to provide an early-date appointment to those who are in the waiting list.

7. Referring further to clause 13, it is stated that his appointment is on compassionate grounds. As per this clause, a person appointed on compassionate grounds has to give an undertaking to maintain properly other family members who were dependent on the deceased Government servant, which he accordingly filed. Further referring to paragraph 15(b) of the scheme, it is stated that date of joining of a person on compassionate grounds shall be treated as his date of regular appointment. In this backdrop, it is stated that the action of the respondents dispensing with services of applicant who was appointed on compassionate ground is illegal, arbitrary and discriminatory and to frustrate the object of the scheme. It is contended that after having found case of applicant well covered within the ambit of the scheme, respondents are estopped from dispensing with his services as the indigent condition still exists and the family is in dire need of financial assistance.

8. Shri Anand by referring to the terms and conditions on which the applicant was appointed in National Commission on Labour it is stated that the bargaining power rests with the respondents and applicant was constrained to accept the same as the family was in need of financial assistance, nothing prevented respondents to have repatriated applicant to Ministry of Labour where sufficient number of vacancies exists to accommodate him

under 5% quota meant for compassionate appointment. As such, the termination resorted to is not sustainable in the eyes of law.

9. On the other hand, learned counsel for respondents, Ms. Harvinder Oberoi, strongly rebutted the contentions of applicant and stated that his appointment was not on compassionate grounds but to meet the hardship on sympathetic consideration which was co-terminus with the term of the aforesaid Commission and on its being wound up, his services have come to an end which is neither illegal nor discriminatory. Ms. Oberoi further stated that neither any screening was held nor a board was set up to examining the deserving cases which is the pre-requisite for according compassionate appointment. Insofar as orders passed by the respondents transferring Farash to the post of peon are concerned, it is contended that the same pertained to promotional quota and cannot be utilized for direct recruitment to the extent of 5% for compassionate appointment.

10. Learned counsel for respondents further stated that National Commission on Labour being a temporary body wound up on 31.7.2002 the staff of NCL mostly drawn on deputation except group 'D' staff who were appointed on purely temporary basis for a limited period and once applicant has accepted the terms he cannot be allowed to challenge it and is bound by the doctrine of promissory estoppel. It is in this backdrop stated that the officials drawn on deputation have been repatriated to their parent departments. Applicant who was appointed on purely temporary basis upto the duration of the Commission his

services have been rightly dispensed with. She stated that compassionate appointment would not apply to the employees of Commission as no employee would have appointed at the initial appointment in the Commission and as per Scheme 5% in a year meant for direct recruitment can be made. No post of making compassionate appointment ever became available in the Commission.

11. In so far as increment is concerned, it is stated that after completion of one year's qualifying service it was an incentive given to the employees for their work and would not construe their regularisation.

12. In so far as Ministry is concerned, in absence of any vacancy under 5% quota and as no post is available appointment of applicant cannot be made on compassionate grounds.

13. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view if applicant who has applied on the death of his father for compassionate appointment his case has been dealt with in accordance with the Scheme of DOPT of 1998 and all the formalities adhered to, which conclusively points out towards appointment which has been done on compassionate basis. This, inter alia, include an undertaking and preparation of papers which is envisaged under clause 13 of the Scheme. Moreover, respondents' communication dated 11.7.2000 clearly shows the appointment as on compassionate grounds. Moreover, in one of their letters dated 5.3.2001 applicant has been shown to be

appointed on compassionate grounds. As such it is not open for the respondents now to take a stand that the appointment of applicant was not on compassionate grounds.

14. In so far as termination of applicant is concerned, he has been appointed only upto the duration of the Commission and services are liable to be terminated. Applicant on his own volition accepted the terms and conditions and continued till the Commission has been wound up on 31.7.2002, beyond which it was not legally permissible or feasible to continue applicant. As such there is no infirmity in the order passed by the respondents dispensing with the services of applicant. Moreover, another aspect of the case is that once the respondents have found the case of applicant in all four within the scheme of accord of compassionate appointment to the deceased and found the case deserving and the family indigent they should have deliberated and admitted to look for the possibility of adjusting applicant, which is permissible as per clause 7 (f) of the guidelines *ibid*. Even if sufficient vacancies are not available in the quota meant for compassionate appointment in Group 'C' or 'C' to the extent of 5% it is incumbent for the administrative machinery to take up the matter with other ministries/departments to provide an early date appointment. As dispensation of the services of applicant has frustrated the object of the scheme and the family which has been rendered financial assistance by termination of applicant's services family has come to square-I and is still indigent, as no change of circumstances have been highlighted to indicate that the conditions have improved upon. Moreover, as respondents have stated that at present

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they have no post available with them to make appointment I find that ends of justice would be duly met if directions are given to respondents to consider applicant for appointment on compassionate grounds against group 'D' post on availability of vacancies under 5% quota and would not reject the case as time barred.

15. In the result for the foregoing reasons, although I do not find any infirmity in the orders passed by respondents, dispensing with the services of applicant, yet OA is disposed of with the direction to respondents to consider applicant for compassionate appointment against 5% quota available in the Ministry in terms of clause 7 (f) of DOPT Scheme, 1998, on availability of vacancy in the quota. No costs. I.R. Vacated. ⁴


(Shanker Raju)
Member (J)

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