

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 120 of 2018

**Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. Anand Mathur, Member (A)**

Atul Robin Hans, aged about 39 years, S/o Late Cyril Hans, Ex-Sr. Auditor, MIG-II/273, Kanan Vihar, Phase-II/Patia, Bhubaneswar-751031.

.....Applicant

VERSUS

1. Union of India represented through its Comptroller & Auditor General of India, Pocket-9. Deendayal Upadhyaya Marg, New Delhi-110124.
2. The Accountant General (G&SSA) AG Square, Bhubaneswar, Khurda-751001.
3. The Sr. Deputy Accountant General (Admin), O/o The Accountant General (G&SSA) AG Square, Bhubaneswar, Khurda-751001.
4. The Sr. Audit Officer (Admin), O/o The Accountant General (G&SSA) AG Square, Bhubaneswar, Khurda-751001.

.....Respondents

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.G.K.Acharya, counsel

Heard & reserved on : 5.1.2021

Order on : 12.02.2021

O R D E R

Per Mr. Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- “(i) To quash the termination notice dt. 14.08.2017 under Annexure A/9;
- (ii) To direct the Respondents to give him appointment to his post i.e. auditor forthwith with consequential benefits like service and financial;
- (iii) To pass any other order/orders as deem fit and proper.”

2. The brief facts of the case are that the applicant is the third son of his father, who died prematurely on cardiac arrest on 27.8.1996 while working as Sr. Auditor under respondent No.2 leaving behind his wife and three sons. The mother of the applicant made representation before the respondent authorities for compassionate appointment of her second son because her first son was living separately and third son was in school. Vide letter dated 10.9.2014

(Annexure A/3) the respondents intimated that candidature of the second son for compassionate appointment could not be considered since he was married. However, there will be no bar to apply fresh in the subsequent years if any other dependant of the deceased employee is found otherwise suitable. Accordingly the mother of the applicant made representation on 22.9.2015 (Annexure A/4) for offering compassionate appointment to her third son as she has already attained the age of 67 years and the family is in indigent condition. The respondent No.3 vide letter dated 24.9.2015 (Annexure A/5) intimated that the candidature of her third son for compassionate appointment has been received and the evaluation is under process. The applicant's case was considered and he was duly selected for the post of Auditor on compassionate ground vide letter dated 15.2.2017 (Annexure A/6). Respondent No.4 on 28.3.2017 (Annexure A/7) issued the date of joining and unique ID number and on 3.4.2017 (Annexure A/8) respondent No.4 fixed the pay under 7th CPC. But on 14.8.2017 (Annexure A/9) respondent No.3 issued the letter for termination of applicant's service without affording any opportunity of being heard, on the ground that the competent authority has not accorded ex post facto approval to his compassionate appointment. Being aggrieved by such inaction on the part of the respondents, the applicant has approached this Tribunal in the present OA.

3. Respondents have filed their Counter stating therein that father of the applicant expired on 27.8.1996 while serving as Senior Auditor in the office of respondent No.2. At that time the eldest brother of the applicant was already employed as Senior Auditor in the same office. The representation made by the mother of the applicant for his compassionate appointment could not be considered immediately due to non-availability of vacancies. The mother of the applicant made representation for compassionate appointment of her third son i.e. applicant's brother. At this point of time, DOPT issued OM dated 5.5.2003 (Annexure R/1) extending the one year's time limit to three years for making compassionate appointment in deserving cases subject to availability of regular vacancies within the prescribed ceiling of 5% of the direct recruitment quota.

As per para 3 of the said OM the maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years and after three years the case will be finally closed. Hence the compassionate appointment of the applicant's brother and such others could not be considered as those cases were older than three years from the date of death of the Govt. servants concerned. The aforesaid three years' time limit for considering the cases of compassionate appointment stood withdrawn by DOPT's OM dated 26.7.2012. Hence the old time worn claims were re-opened and considered along with fresh claims for compassionate appointment as and when vacancies accumulated. On 16.1.2013 DOPT issued another OM on "consolidated instructions on compassionate appointment" in which para 9 contained the instructions regarding belated request for compassionate appointment, which reads as under :

"BELATED REQUESTS FOR COMPASSIONATE APPOINTMENT"

(a) Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned.

(b) Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical ground of a Government servant and not the age of the applicant at the time of consideration.

(c) The onus of examining the penurious condition of the dependent family will rest with the authority making compassionate appointment."

The case of the applicant along with other cases was referred to the Departmental Screening Committee of the office of respondent No.2 for evaluation of penury of the dependant family in different parameters and after evaluation the Committee recommended the case of the applicant along with few others. Respondent No.3 provisionally appointed the applicant as Auditor basin on the approval by respondent No.2 on prima facie evaluation of penury by the Departmental Screening Committee. The applicant was communicated the terms and conditions of his provisional appointment in the letter dated

15.2.2017 (Annexure A/6) and the first condition was that his appointment would be purely temporary to be governed by the CCS (Temporary Service) Rules, 1965 during the period of probation. As per para 9 (a) of DOPT Om dated 16.1.2013 (Annexure R/2), the decision in all belated claims for compassionate appointment was to be taken at the level of Secretary of the Department/Ministry concerned. Since respondent No.2, Accountant General is not a Secretary level officer, Comptroller and Auditor of India vide letter dated 29.6.2017 directed respondent No.2 to forward the justification for appointment of the applicant on compassionate ground after 20 years of death of the government servant who died on 27.8.1996. The departmental higher authority had observed that the objective of Compassionate Appointment Scheme is to grant appointment in order to relieve the family of the deceased employee from financial destitution and held it to get over the emergency. Even through application of compassionate appointment is to be considered without any time limit, the decision taken must fulfill the basic objective of the scheme. Therefore the competent authority had not accorded ex post facto approval in the case of the applicant and directed respondent No.2 vide letter dated 14.8.2017 (Annexure R/3) to terminate the service of the applicant with immediate effect. Such termination order has been passed in terms of proviso to sub rule (1) of Rule 5 of the CCS (Temporary Services) Rules, 1965 which reads as under :

“5. Termination of temporary service.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.”

Therefore the allegations of the applicant regarding discrimination, victimization and harassment are baseless and the grounds taken by the

applicant are not sustainable in merit and law. The respondents have hence prayed for dismissal of the present OA.

4. Learned counsel for the applicant has relied on the decision of Hon'ble Supreme Court in the case of BCCI -vs- Cricket Association [AIR 2015 SC 3194] in support of his case. Learned counsel for the respondents has relied on the following decisions in support of his case :

- (i) Umesh Kumar Nagpal -vs- State of Haryana & Ors. [JT 1994 (3) SC 525]
- (ii) M.V.Bijlani -vs- UOI [2006 (5) SRJ 301]
- (iii) UOI -vs- v.r.Tripathy [2019 (5) Supreme 378]
- (iv) Local Administrative Department -vs- M.Selvanayagam @ Kumarvelu [Civil Appeal No. 2206 of 2006]
- (v) Municipal Council, Sujampur -vs- Surinder Kumar [2006 (7) SRJ 379]

5. We have heard both the learned counsels and perused the pleadings on record and the citations relied upon by the learned counsels for both parties.

6. The department screening committee had recommended the case of the applicant for appointment on compassionate ground. Respondent No.3 provisionally appointed the applicant as Auditor basing on the approval by respondent No.2 on prima facie evaluation of penury by the departmental screening committee. The applicant was communicated about the terms and conditions of the provisional appointment vide letter dated 15.2.2017 (Annexure A/6). It was mentioned therein that his appointment would be purely temporary and would be governed by CCS (Temporary Service) Rules, 1965 during the period of probation. Respondent No.2 was not authority of level of Secretary as per para 9 of DOPT OM dated 16.1.2013 (Annexure A/2). The decisions on all belated claims for compassionate appointment are to be taken up at the level of the Secretary of the Department/Ministry concerned. Hence the Comptroller and Auditor of India vide letter dated 29.6.2017 directed respondent No.2 to forward the justification of appointment of the applicant on compassionate ground, after 20 years of death of the Government servant i.e. the father of the applicant who died on 27.8.1996. Since the authorities found that the basic objective of the scheme i.e. to relieve the family of deceased

employee from financial destitution and to get over the emergency, was not fulfilled, therefore the competent authority did not accord post facto approval in the case of the applicant and hence directed respondent No.2 vide letter dated 14.8.2017 (Annexure R/3) to terminate the service of the applicant with immediate effect. The said termination order has been passed in terms of proviso of Sub Rule (1) of Rule 5 of the CCS (Temporary Service) Rules, 1965 which reads as under :

“5. Termination of temporary service.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month.”

7. The citations as relied upon by learned counsel for the applicant are not applicable to the facts and circumstances of the present case. The applicant has not been able to prove that there has been any discrimination, victimization or harassment. He has not been able to prove that any similarly situated person has been given such benefit. He has also not been able to prove that there has been any malafide or vindictiveness on the part of any particular authority of the respondent department for termination of his service. This Tribunal finds that no illegality or irregularity has been committed by respondents in terminating the service of the applicant while he was continuing in probation. However, the respondents may consider the applicant for appointment on compassionate ground in future, as per the extant rules, in accordance with law, by treating the earlier application of the applicant as pending.

8. Therefore the OA is disposed of with the above observation, but in the circumstances of the case, without any cost.

(ANAND MATHUR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)