

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

Original Application Number. 04 OF 2003 (U).

HON'BLE MR.A.K. GAUR, MEMBER (J).

ALLAHABAD this the 9 day of 7, 2009.

Jhon Stefan Parson, aged about 28 years, S/o Late Shri Cicil Parson, R.O.- 45, Bakralwala, District- Dehradun.

.....Applicant.

VE R S U S

1. Union of India through Surveyor General of India, Survey of India, Dehradun.
2. Director, Northern Circle, Survey of India, 17, E.C. Road, Dehradun.

.....Respondents

Advocate for the applicant: Sri Ashish Srivastava

Advocate for the Respondents : Sri S. Singh
Sri S.C. Mishra

O R D E R

By this Original Application filed under section 19 of Administrative Tribunals' Act 1985, the applicant has prayed for setting aside the order dated 18.03.2002 coupled with prayer for a direction to the respondents to accord him all the benefits of privileges of the continuity of service and other consequential benefits.

2. The facts of the case, in brief, are that the applicant after death of his father, who was working as a Driver, applied for appointment on compassionate grounds on the post of Driver as he was having a Driving License of Heavy Vehicles and Light Vehicles. The request of the applicant was considered and he was appointed as Motor Driver-cum-Mechanic in Group 'C' vide order dated 02.01.1997/Annexure A-1 of O.A.

His services were confirmed vide order dated 25.02.1997 and he was posted in 23rd Party (Northern Circle), Massourie/Annexure A-2 of O.A. According to the applicant, after about 5 years, the respondents vide order dated 18.03.2002 terminated the services of the applicant under sub rule 1 of Rule 5 of C.C.S (Temporary Services) Rules, 1965. Aggrieved the applicant filed a detailed representation dated 15.06.2002/Annexure A-4 of O.A, but the respondents did not pay heed to the said representation, hence the present Original Application has been filed on the ground that as the applicant was appointed on compassionate grounds, therefore, his services could not have been terminated under Rule 5 of C.C.S (Temporary Services) Rules, 1965 because the compassionate appointment is a substantive and regular appointment. Learned counsel for the applicant further submitted that impugned order dated 18.03.2002 does not disclose any reason and has been passed without affording opportunity of hearing to the applicant. In support of his contention , learned counsel for the applicant placed reliance on the judgment dated 22.10.2002 passed by this Tribunal in O.A No. 37/2002 (Pawan Deep Kumar Vs. U.O.I & Ors.)/Annexure A-5 of O.A, and submitted that the grievance of the applicant is fully covered by the said judgment.

3. On notice, the respondents filed Counter Affidavit alleging that the applicant manipulated the appointment letter by changing the word 'Asthai' into 'Sthai' and submitted that for this act of forgery, the applicant is not liable to be retained in Government service. Learned counsel for the respondents further submitted that the applicant is habitual of consuming liquor during office hours and also remained absent without any leave or information to the office and for this habit, on several occasions, he was advised and warned to improve himself but

he failed to do so. It has been argued by the learned counsel for the respondents that the letter dated 25.02.1997 is not a letter of permanent appointment of the applicant but it is an appointment letter purely on temporary basis , therefore, his services are governed by CCS (Temporary Service) Rules, 1965 and the services of the applicant has rightly been terminated.

4. Applicant has filed Rejoinder Affidavit denying the allegations of the respondents and submitted that since the appointment was given on compassionate grounds , there is no provision for treating him as temporary employee and for terminating the services of appointee on compassionate grounds, the proper procedure has to be followed instead of exercising the power of sub rule 1 of Rule 5 of CCS (Temporary Service) Rules, 1965. Learned counsel for the applicant vehemently argued the impugned order of termination has been passed without assigning any reason and submitted that when a statutory functionary makes an order passed on certain grounds, its validity must be judged by the reasons so mentioned in the order and it cannot be supplemented by fresh reasons in the shape of Counter Affidavit, or otherwise. This Principle of law gets support from the decision reported in **AIR 1978 (SC) - Mohinder Singh Gill and Another Vs. The Chief Election Commissioner , New Delhi and Others.**

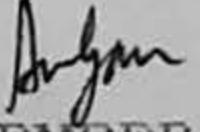
5. I have heard learned counsel for parties and perused the pleading as well as the Written Submissions filed by the learned counsel for the respondents. Counsel for applicant has not filed Written Submissions within stipulated period.

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6. Having heard learned counsel for the parties and after going through the impugned order dated 18.03.2002, I am satisfied that the impugned order does not contain any reason and has been passed without affording any opportunity to the applicant. The various reasons of terminating the services of the applicant given by the respondents in the Counter Affidavit cannot be appreciated and in view of the judgment rendered by the Apex Court in Mohinder Singh Gill's case (Supra), the reasons must be recorded in the impugned order and it cannot be supplemented by fresh reasons in the shape of Counter Affidavit , or otherwise. The arguments advanced by the learned counsel for the respondents is that the appointment of the applicant was temporary and can be terminated under sub rule 1 of Rule 5 of CCS (Temporary Service) Rules, 1965 is also not convincing as the compassionate appointment is always permanent in nature. This view finds support from the judgments reported in **1999 Vol. 2 ESC 972 (Alld) - R.K. Singh Vs. State of U.P.** and **2004 Vol 3 ESC (Patna) 1667 - Meena Devi Vs. U.O.I & Ors** and such an order could not be passed without affording opportunity of hearing to the applicant as the termination from service was not simplicitor but it was based on allegations. I have also gone through the judgment relied on by the learned counsel for the applicant in Pawan Deep Kumar's case (Supra), which has been passed after referring the judgment of Hon'ble Allahabad High Court in the case of **'Satish Kumar Shukla Vs. U.O.I and Ors' - 2002 (1) LBESR-92 (Alld)**, which also contains various judgments of Hon'ble Supreme Court and other High Court. I am fully satisfied that the order terminating the services of the applicant without serving a show cause notice and giving him an opportunity of hearing cannot be justified and the applicant is entitled for relief.

7. In view of the observations made above, the O.A is allowed. The order dated 18.03.2002 is hereby quashed and set aside. The respondents are directed to reinstate the applicant in service forthwith preferably within one month from the date of receipt of certified copy of the order. It is made clear that the applicant will not be entitled for any back wages but the intervening period will be reckoned for continuity of service. However, it shall be open to the respondents to pass fresh order, if any, after giving opportunity of hearing to the applicant.

3. There will be no order as to costs.



MEMBER- J.

/Anand/