

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

**Original Application No 475 of 2010
Order Reserved on 25.7.2014**

Order Pronounced on 08/08/2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

Gauri Shanker, aged about 36 years, Son of Late Panchu Ram Yadav, Resident of Village & Post Jamtali, District-Pratapgarh.

Applicant

By Advocate Sri Onkar Nath Singh.

Versus

1. Union of India through Secretary, Department of Communication, Postal New Delhi.
2. Post Master General, Allahabad.
3. Senior Superintendent of Post Officers, Postal Division Pratapgarh.

By Advocate None

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (a) The Impugned order dated 29.7.2008 passed by respondent No. 2 and 3 be set aside by this Hon'ble Court.
- (b) The opposite parties/respondent may be directed to permit the petitioner to continue as daily wager (Chowkidar) on which he had worked with effect from 6.1.1999 continuously with artificial break for more than 3 years by disengaging the person engaged subsequent to the applicant as daily wager and the applicant be considered for grant of temporary status in view of the law laid down by Hon'ble Apex Court against the existing Class IV vacancy in Pratapgarh Division and regular payment of salary be made as per Rules.
- (c) Any other order or direction, which this Hon'ble Tribunal deems just fit and proper under the facts and circumstances of the case may be passed.
- (d) Allow the original application with costs."

2. Since no one is present on behalf of the respondents, as such, after invoking Rule 16(1) of CAT (Procedure) Rules, 1987, the O.A. was heard finally. For ready reference, Rule 16(1) is quoted below:

"Where on the date fixed for hearing the application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the application is called for hearing, the Tribunal may, in its discretion adjourn the hearing or hear and decide the application ex-parte."

3. The brief facts of the case are that the applicant's father was working as Group D employee(C.P. Chowkidar) in Postal Department and died on 29.11.1997. The applicant's father had worked in the department for about 20 years and got temporary status and accordingly a list was prepared and circulated by the Senior Superintendent of the Post Offices Pratapgarh Division and the name of the applicant's father find place at serial No. 34 of the said list. The learned counsel for the applicant has categorically pointed out that after the death of the applicant's father, he moved an application before concerned authority and requested that since his father was C. P. Chowkidar having temporary status, as such, all the facilities were available to him as Regular Group D employee. Accordingly, he has moved an application for grant of compassionate appointment on the post of which his father was working. Keeping the poor economic condition of the applicant, the applicant was engaged by the Senior Superintendent of the Post Offices vide his letter dated 6.1.1999 on daily wage basis and the applicant started working from 6.1.1999 and continued till date by extension from time to time of the authorities concerned. However, some official break for one or two days were given by the authorities. It is also pointed out by the learned counsel for the applicant that the

requested the authorities to grant him an appointment in the respondents organization. The applicant has also prayed to the respondents that he may be treated as temporary status Group D Employee in terms of direction of the Hon'ble Apex Court as the daily wage who had worked for more than three years as casual worker, they shall be treated at par with temporary Group D employee in the department. It is also pointed out by the applicant that earlier he has filed an O.A. No. 238 of 2002 with a prayer that official respondents may be treated as regular Group D employee and the said O.A. was decided on 28.10.2005 through which, the respondents were directed to consider the applicant for granting temporary status and regularization in accordance with rules in case the post are available in Division. Undisputedly, the post of C.P. Chowkidar was abolished and finally the respondents without given any proper opportunity of hearing rejected the claim of the applicant vide order dated 29.7.2008. As such, the applicant preferred the present O.A. before this Tribunal. It is also indicated by the learned counsel for the applicant that the said order dated 29.7.2008 was passed without application of mind. As such it requires interference by this Tribunal.

4. The learned counsel for the applicant has also relied upon the decisions of this Tribunal passed in O.A. No. 243 of 2008 in the case of Smt. Amrawati Devi and others vs. Union of India and Others and submitted that since the applicant was granted temporary status, as such, the Tribunal quashed the order and directed the respondents to consider the claim of the applicant for appointment on compassionate ground.

5. Since no one is appeared on behalf of the respondents, as such, after invoking Rule 16(1) of CAT (Procedure) Rules 1987, the

counter reply. It was indicated by the respondents that the applicant's father died on 29.10.1997, who was appointed as Contingency Paid Chowkidar on 4.5.1965 and vide order dated 17.7.1991, he was granted temporary status of Group 'D'. The said post of C.P. Chowkidar was abolished due to being declared as dying cadre post w.e.f. 29.10.1997, the date Sri Panchu Ram Yadav expired. But subsequently, the applicant who is son of late Sri Panchu Ram Yadav was initially engaged @ Rs. 35/- per day by SDI (P) w.e.f 6.1.1999 with momentum breaks. The order of the engagement of the applicant clearly mentioned that the order of appointment was purely temporary and the said services can be terminated at any time without any notice. However, the applicant filed an O.A. in the said O.A. a direction was issued to the respondents to consider the claim of the applicant. It is also indicated by the respondents that the applicant has also filed an O.A. No. 493 of 2006 which was also disposed of by the Tribunal with a direction to the respondents to consider the claim of the applicant on compassionate ground in accordance with the relevant guidelines. In compliance of the said judgment, the case of the applicant was considered and the judgment and order passed by the Tribunal was fully complied with. The applicant feeling aggrieved by the said order, preferred the present O.A. On behalf of the respondents, through their counter reply, it is categorically pointed out that prior to the death of the applicant, the post of Contingency Paid Chowkidar was already abolished being dying cadre and the applicant was engaged on daily wager basis w.e.f. 6.1.1999. Not only this, it is also stated by the respondents that the appointment order of the applicant dated 6.1.1999 clearly provides that the engagement is purely temporary and liable to be terminated at any time without any intimation. As such, it is submitted by the respondent

reply that the applicant is not entitled to get any relief and the present O.A. is liable to be dismissed.

6. On behalf of the applicant, rejoinder is filed and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

7. Heard the learned counsel for the applicant and perused the record.

8. The applicant is a son of ex-employee who was initially appointed as Contingency Paid Chowkidar in 1965 and was granted temporary status vide order dated 17.7.1991. The said post of Contingency Paid Chowkidar was abolished due to being declared as dying cadre. It is also indicated by the respondents that the applicant's father died on 29.10.1997 and applicant being a son of late Sri Panchu Ram Yadav was given temporary engagement @ 35/- per day w.e.f. 6.1.1999. The order dated 6.1.1999 clearly provides that without any prior intimation, the services can be terminated at any time. It is also to be pointed out that the applicant filed an O.A. 238 of 2002 for grant of compassionate appointment as regular Group 'D' Chowkidar w.e.f. 6.1.1999 and this Tribunal disposed of the O.A. with a direction to the respondents to consider the case of the applicant for grant of temporary status and regularization in accordance with rules. The applicant has also preferred an O.A. No. 493 of 2006 with a prayer to issue a direction to the respondents to allow the applicant to continue as daily wager (Chowkidar) and to consider the conferment of temporary status. The said O.A. was also disposed of with a direction to the respondent No. 2 and 3 to consider the request of the applicant for compassionate appointment under dying in harness rules. It is also to be pointed out that in pursuance of the said direction of the Tribunal, the respondents have rejected the application.

vide order dated 29.7.2008 which is impugned in the O.A., wherein, it is categorically pointed out that in the light of instructions, it is clear that the applicant is not entitled to get the benefit of compassionate appointment and there is also a complete ban on engagement of casual labour also. The respondents have also referred to the instructions dated 12.4.1991 and as per the clause of the instruction, it is categorically mentioned that "**the conferment of temporary status has no relation to availability of sanctioned regular Group 'D' Post**" and as per **the instructions, dated 21.10.1998, it is pointed out by the respondents that "the dependents of casual labour confirmed with temporary status not eligible for appointment on compassionate ground."** It is also mentioned by the respondents that the father of the applicant, namely late Sri Panchu Ram Yadav was not posted as a Group D, but was merely given temporary status as C. P. Chowkidar, hence the benefit of compassionate appointment does not arise to the applicant. It is also to be pointed out that earlier two O.As were preferred by the applicant one for regularization on Group D post and another for continuing as daily wager and to consider the temporary status, the respondents after considering the directions issued by the Tribunal passed the impugned order and has also mentioned the two circulars of postal department vide circular dated 12.4.1991 as well as circular dated 21.10.1998 and categorically pointed out that the dependents of casual labour confirmed with temporary status are not eligible for compassionate appointment. The case law cited by the learned counsel for the applicant passed by this Tribunal is not applicable in the present case as the facts of the case in that O.A. and the present O.A. is different.

9. Since the respondents have passed detailed order indicting there in that the applicant is not entitled to get benefit of compassionate appointment . It is also to be pointed out that the respondents have also indicated that there is a complete ban on engagement of casual labour as such, the name of the applicant can not be considered for grant of compassionate appointment under the departmental rules/procedure.

10. Not only this, as observed by the Hon'ble Apex Court in the case of **State Bank of India and another Vs. Raj Kumar (2010) 11 SCC 661**, the Hon'ble Apex Court has been pleased to observe as under:

“8. It is well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand, it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.”

11. Further in the case of State of Chhattisgarh and Others Vs. Dhiroj Kumar Sengar reported in 2009 (13) SCC 600, the Hon'ble Apex Court has been pleased to observe as under:

10. Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. Nobody can claim appointment by way of inheritance. IN SAIL Vs. Madhusudan Das this Court held:

“15. This Court in a large number of decisions has held that the appointment

ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefore viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme must be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."

12. This Court, times without number, has held that appointment on compassionate ground should not be granted as a matter of course. It should be granted only when dependants of the deceased employee who expired all of a sudden while being in service and by reason thereof his dependants have been living in penury."

12. Considering the observations made by the Hon'ble Apex Court as well as the arguments advanced by the learned counsel for the applicant, and also after perusal of the record, we do not find any reason to interfere in the present O.A.

13. Accordingly, the O.A. is dismissed. No orders as to costs.

VR. Arora
(Navneet Kumar)
Member (J)

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