

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 243/2008**

**This the 28<sup>th</sup> day of February, 2012**

**Hon'ble Sri Justice Alok Kumar Singh, Member (J)**

1. Smt. Amrawati Devi, wife of late Shyam Lal yadav
2. Ajay Kumar , son of late Shyam Lal Yadav

(Both residents of village Mattua Ka Purwa (Raiyapur) Post Bhadri, District-Pratapgarh.

Petitioners

By Advocate: Sri P.K.Shakya brief holder for Sri R.K. Upadhyaya

Versus

1. Union of India through the Chief Post Master General, U.P.Circle, Lucknow.
2. Senior Superintendent of Post Offices, Pratapgarh.

Opposite Parties

By Advocate: Sri S.P.Singh

**(Reserved on 24.2.2012)**

**ORDER**

**By Hon'ble Sri Justice Alok Kumar Singh, Member (J)**

This O.A. has been filed for the following reliefs:-

- (i) to issue a suitable order or direction to the opposite parties thereby quashing the impugned order dated 27.2.2008 passed by opposite party No.2 as contained in Annexure No.1.
- (ii) to issue a suitable order or direction to the opposite parties thereby commanding the opposite parties to consider the petitioner No. 2 for appointment on any suitable post on compassionate basis.
- (iii) To issue any other order or direction , which this Hon'ble Tribunal deems fit and proper in the circumstances of the case.
- (iv) To allow the instant O.A. with costs.

2. The case of the applicant is that husband of petitioner No.1 late Shyam Lal Yadav was appointed on compassionate basis on 28.5.1993 after the death of his brother Meva Lal Yadav, who was working on the post of Contingency Paid (in short C.P.) Chowkidar at Sub Post Office, Bhadri, District- Pratapgarh. Sri Shyam Lal Yadav also died in harness on 12.7.2006. Therefore, the petitioner No.2, the son is entitled for compassionate appointment in his place. It is said that the petitioners are in great distress and in an indigent condition

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and under huge debts which was taken by the family for the treatment of late Shyam Lal Yadav at Mumbai. Late Shyam Lal Yadav had left behind him three unemployed sons and one unmarried daughter. They have one bigha of land which is not sufficient to carry on its bread and butter.. The petitioner filed O.A. No. 236/2007 before this Tribunal which was disposed of on 11.1.2008 with a direction to consider the claim of the applicant by passing a speaking order (Annexure -2). In furtherance of that judgment, the claim was considered and rejected on the ground that Shyam Lal Yadav was a C.P.Chowkidar on daily wage basis and he was given only a temporary status w.e.f. 1.6.1996. It is also pleaded that as per settled law, the compassionate appointment is always given on regular basis therefore, the act of denying the bonafide claim of the petitioners vide order dated 27.2.2008 is absolutely baseless . Hence this O.A.

3. The claim has been contested by filing a Counter Affidavit saying that in compliance of order in O.A. No. 194/92, Sri Shyam Lal Yadav was appointed as C.P.Chowkidar. who too expired on 12.7.2006. Since the post of C.P. Chowkidar has been declared as dying cadre as such on the post of C.P.Chowkidar (abolished) and no question arises for appointment. Earlier, Smt. Amrawati wife of late Shyam Lal Yadav filed O.A. No. 236/2007 which was decided on 11.1.2008. In compliance of that judgment, the claim of the second son, Ajay Kumar was considered and rejected on 27.2.2008. It is further said that Shyam Lal Yadav was never appointed on compassionate ground . He was appointed in compliance of order dated 12.2.1993 passed in O.A. No. 194/92. Therefore, O.A. is liable to be dismissed.

4. A Rejoinder Reply has also been filed reiterating all the averments made in the O.A. and also controverting the pleas taken in the Counter Affidavit.

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5. I have heard the learned counsel for the parties and perused the material on record.

6. The perusal of the impugned order (Annexure 1) dated 27.2.2008, by means of which , the claim for compassionate appointment in favour of petitioner's no.1 son Ajay Kumar has been rejected shows that late Mava Lal Yadav was working as C.P.Chowkidar since 20.11.82 and was murdered by some miscreants on 22.10.89. Then his mother filed O.A . No. 194/92 to get relief for appointment of her second son Shyam Lal Yadav which was decided on 12.2.1993. In compliance of that judgment/ order, Shyam Lal Yadav was ordered to work as C.P.Chowkidar on daily wage basis. Said Shyam Lal Yadav was also expired on 12.7.2006. His wife filed another O.A. No. 236/2007 for appointment of her son Ajay Kumar. This case was decided with a direction to consider the claim . The claim was considered and according to respondent, it was found that Shyam Lal Yadav was not posted as Group 'D'. He was only given temporary status as C.P.Chowkidar. Therefore, according to respondnets dependents of casual labour who was confirmed with temporary status only is not eligible for compassionate appointment.

7. The certified copy of the aforesaid judgment dated 12.2.93 passed in O.A. No.194/92 was submitted for perusal during the course of arguments which has been taken on record. It is pointed out that in the very beginning , it is mentioned that the above O.A. was filed for appointment on compassionate ground by the widow of Meva Lal Yadav,Chowkidar in favour of applicant No.2, the brother of Meva Lal. It was further pointed out that in respect of the post , it has been observed in this judgment that the post of C.P.Chowkidar, on which late Meva Lal Yadav was appointed was not abolished and it was a continuing post on which. Initially no body was prepared to work because late Meva Lal Yadav was murdered while he was on duty. Therefore, one Babu Lal, E.D.M.P. at another place was temporarily

asked to work as such for some time and thereafter, one Lalji Yadav was allowed to work as C.P.Chowkidar on the risk and responsibility of Ram Ahdar Driver and he took over charge on 12.12.1989 and was spared on 26.10.1990. It was also pointed out that said Lalji Yadav is none else but the brother of the driver of Post Master General. On the basis of it, this Tribunal in the above O.A. No. 194/92 observed that since this post was not abolished it was a continuing post. It was further observed that instead of giving preference to the second son of the widow, respondents gave preference to a man who otherwise in normal course could have been appointed. Therefore, the respondents were directed to rectify the error by giving appointment to the applicant No.2 of that O.A. either on the same post office by shifting Lalji Yadav elsewhere or at any other place within a period of 4 months.

8. In view of the above observations and directions, there remains no doubt that late Meva Lal Yadav was appointed on compassionate ground and it is not fair on the part of the respondents to deny that nature of compassionate appointment on the pretext that his appointment was made only in compliance of the aforesaid judgment in O.A. No. 194/92. That judgment also decided the point that post in question was a continuing post and it was not a post of dying cadre. The Division Bench of the Hon'ble High Court, Allahabad has also laid down as under in the case of ***Ravi Karan Singh Vs. State of U.P. and others reported in 1999 (17) LCD 641:-***

***"This petition has come up before us on a reference made by the learned single judge by his order dated 19.12.1997. The point involved is very simple, that is, whether an appointment under the Dying in Harness Rules is a permanent appointment or a temporary appointment. According to the learned Single Judge, this Court had earlier held that an appointment under Dying in Harness Rules is a permanent***

appointment vide *Budh Sagar Dubey Vs. D.I.O.S.*, 1993 *Education and Service Cases*, 21, *Gulab Yadav Vs. State of U.P. and others* 1991 (2) *UPLBEC* 995 and *Dhirendra Pratap Singh Vs. D.I.O.S. and others* 1991 (1) *UPLBEC* 427. The learned Single Judge who passed the referring order dated 19.12.1997 disagreed with the above mentioned decisions and hence has referred the matter to a larger Bench.

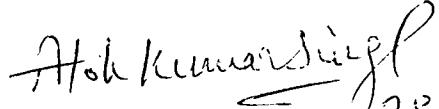
2. In our opinion, an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying in Harness Rule because such appointment is intended to provide immediate relief to the family on the sudden death of the bread earner. We, therefore, hold that the appointment under the Dying in Harness Rule is a permanent appointment and not a temporary appointment, and hence the provisions of U.P. Temporary Govt. Servant (Termination of Services) Rules, 1975 will not apply to such appointments.

3. The petition is disposed of accordingly."

9. In view of the above preposition of law also, the above contention of the respondents cannot be accepted because any appointment under Dying in Harness Rule has to be treated as permanent appointment.

10. In view of the above, the impugned order dated 27.2.2008 (Annexure No.1) passed by opposite party No. 2 deserves to be quashed. The second relief for directing the opposite parties to consider the claim of petitioner No. 2 for appointment on compassionate ground appears to be a natural corollary of the above and therefore, this relief also deserves to be allowed. The O.A. is

therefore, allowed with cost. The impugned order dated 27.2.2008 is hereby quashed. The respondents are directed to consider the claim of the petitioner No. 2 for appointment on compassionate ground expeditiously say within a period of 4 months from today by passing a speaking and well reasoned order.

  
(Justice Alok Kumar Singh) 28-2-12  
Member (J)

HLS/-