

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 06.05.2015.

Pronounced on 19.05.2015.

Original Application No.5/2011

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

Hon'ble Ms. Jayati Chandra, Member (A)

Kamran Zaki, aged about 26 years, S/o late Sri Syed Zaki Mehdi, R/o 59-Biarooni Khandak, K.B. Road, Lucknow.

-Applicant.

By Advocate: Sri Manish Mishra.

Versus.

1. Union of India, through the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. Director Census Operation, Uttar Pradesh, Govt. of India, Ministry of Home Affairs, Lekhraj Market-II, Indira Nagar, Lucknow.
3. Deputy Director (H.O.), Census Operation, Uttar Pradesh, Govt. of India, Ministry of Home Affairs, Lekhraj Market-II, Indira Nagar, Lucknow.
4. Staff Selection Commission, through its Regional Director, 8A-B, Beli Road, Allahabad.

-Respondents.

By Advocate: Sri P.K. Singh.

ORDER

By Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

- (i). *Quash the impugned notice dated 13.12.2010 issued by opposite party no.3 as contained in Annexure No.1 to the application.*

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(ii). Issue appropriate order or direction directing the opposite parties not to terminate the services of the applicant.

(iii). Issue appropriate order or direction directing the opposite parties to permit the applicant to appear in the typing test.

(iv). Pass any other order or direction which may be deemed just and proper in the circumstances of the present case.

(v). Allow the original application with cost.”

2. The facts of the case which are averred by the applicant are that the applicant was offered appointment on compassionate ground vide letter dated 31.10.2006 (Annexure-2) in which, a condition was stipulated that he will have to pass the typing test and computer test within a period of one year failing which the annual increment will not be available to the applicant. He was appointed by letter dated 15.11.2006 as Assistant Compiler w.e.f. 09.11.2006. The applicant appeared in the typing test held on 31.01.2009, 02.05.2009 and 26.07.2009 but he could not succeed in the typing test held on 31.01.2009 and 02.05.2009 whereas, the result of the typing test held on 26.07.2009 was never communicated till date. He was issued with a notice dated 10.12.2009 that if he did not pass the typing test his services will be terminated. Thereafter, he was issued with termination notice dated 13.12.2010 impugned in the OA. The applicant had thereafter moved to this Tribunal and the Tribunal vide its interim order dated 06.01.2011 stayed the termination order.

3. The respondents have contested the claim of the applicants by filing their Counter Affidavit denying the averments so made by the applicants stating therein that the applicant was initially issued with a letter dated 31.10.2006 (Annexure-2), which stipulated certain

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conditionalies being that he will have to appear in the typing test organized by Staff Selection Commission and pass the test at the prescribed speed of 30 words per minute in English or 25 words in Hindi within a year from the date of appointment failing which he will not be granted annual increments and b). he was required to learn computer within 6 months from the date of appointment and produce certificate from a reputed institute. It was further stipulated that if he did not pass the typing test within 2 years from the date of appointment and learn to operate the computer, his services will be terminated. He accepted such conditionality and hence an appointment letter dated 15.11.2006 was issued in his favour. The said appointment was temporary in nature. Thereafter, he did not pass the typing test within 2 years of his appointment. He was given further extension of time for one year for passing the typing test. In fact, he appeared in the typing test 12 times in the month of January, April, July, October, 2007, January, April, July and October, 2008 and January, April, July and October, 2009 but, he could not pass the typing test. Hence, he was given notice under Rule 5 (1) of the CCS (Temporary Service) Rules, 1965 vide Notice dated 13.12.2010. In view of the aforesaid order interim order dated 06.01.2011 of this Tribunal, he was additionally given permission twice in the months of April and July, 2011 to attend the typing tests but, he had failed to pass the test.

4. The applicants have filed Rejoinder Affidavit to the Counter Affidavit filed by the respondents more or less reiterating their contentions as raised in the OA and denying the contention of the respondents. The applicant

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quoted an example of some persons in his rejoinder affidavit that the opposite party no.3 has recommended for relaxation for passing the typing test for six persons vide his letter dated 15.03.2012.

5. Through the Supplementary Counter Affidavit, the respondents have states that out of 9 cases mentioned one has already retired and services of such another official has been already terminated. Six other officials have surpassed the age of 35 years and all of them have successfully cleared the typing test/operational competency of running calculation machine by the Directorate of Census Operation and the applicant, who is age of 28 years, and who is required to appear and pass the typing test conducted by Staff Selection Commission, but he could not pass the typing test despite giving many opportunities to him. Through his rejoinder affidavit the applicant has taken the additional plea that the compassionate appointment cannot be made under any conditionality.

6. During the course of the hearing the learned counsel for the applicant placed reliance on the following case laws:-

1. **(1999) 3 UPLBEC 2263 (DB)-Ravi Karan Singh Vs. State of U.P. and Others.**
2. **2002 (20) LCD-1079 -Smt. Anju Tiwari v.s District Magistrate, Ettawh.**
3. **2008 Legal Eagle (ALD) 2600-Akhtar Husain vs. S.D.M. Saidpur, Ghazipur and others.**
4. **2009 (27) LCD-695-Smt. Neelam Shukla vs. State of U.P. & others.**

5. 2011 (8) ADJ page-217 (DB)-Jagdish Narain vs. Union of India & Others.

6. 2014 (32) LCD -1035-Akhtarun Nisa vs. District Basic Education Officer, Ambedkar Nagar & Others.

7. [2012) 2 UPLBEC-1015] Smt. Puspa Devi vs. State of U.P. & Others.

8. Narsingh Pal Singh Vs. Union of India & Another reported in (2000) 2 Supreme Court Cases-588

7. We have heard the learned counsel for both the parties and perused the material available on record.

8. From the rival submissions and record submitted before us, it is clear that the applicant was issued with a letter dated 31.10.2006 incorporating certain conditions. He accepted these conditions in furtherance of the conditions, he was given appointment letter dated 15.11.2006 on the post of Assistant Compiler w.e.f. 09.11.2006. The appointment letter already said that the appointment was temporary in nature. Now, the applicant is turning around and saying that the compassionate appointment cannot be made under conditionality. Having once accepted the conditions such a ground raised by the applicant is barred by time. The respondents have been more than just and fair in having given sufficient number of opportunities to pass the stipulated qualification test.

9. The Hon'ble Supreme Court in Catena of decisions for example mentions only a few (a). **Life Insurance Corporation of India vs. Asha Ramchandra Ambekar, (1994) 2 SCC-718** has held that if rules or guidelines

have been framed regarding compassionate appointment it can only be given consistently with such rules. (b). **Kendriya Vidyalay Sangathan vs. Dharmendra Sharma (2007) 8 SCC-148** it has been held that compassionate appointment is a matter of policy of the employees, it cannot be compelled to make compassionate appointment contrary to its policy have laid down the guidelines for the compassionate appointment, one of them being that such appointment must be made in accordance of departmental scheme. The present appointment was made in accordance with the relevant scheme of the respondents and not under the Ü.P. Government Servant (Termination of Services) Rules, 1975 or any other scheme of the Govt. of U.P. All the citations listed at Sl.No.1 to 8 of para-6 above given by the learned counsel for the applicant with reference to the scheme of U.P., Govt., which is not applicable to an appointment given by the respondents. In so far as case of **Narsingh Pal Singh Vs. Union of India & Another reported in (2000) 2 Supreme Court Cases-588** is concerned, the same deals with the matter of termination of services of casual labour having acquired temporary status whereas, the applicant was given appointment vide order dated 15.11.2006, which states the following:-

“श्री कामरान जकी पुत्र स्व० श्री सैयद जकी मेहदी, सां० अन्वे० ग्रेड -II को अनुकम्पा के आधार पर सहायक संकलनकर्ता के पद वेतनमान रुपये ३०५० - ७५ - ३६५० - ८० - ४५६०/- में (समय - समय पर देय अन्य भत्तों सहित) अस्थई तौर से दिनांक ०६.११.२००६ पूर्वाह्न से निम्नलिखित शर्तों पर एतद्द्वारा नियुक्त किया जाता है:-

9. उन्हें कर्मचारी चयन आयोग द्वारा आयोजित टंकण परीक्षा निर्धारित ३० शब्द प्रति मिनट की गति से अंग्रेजी में अथवा २५ शब्द प्रति मिनट की गति से हिन्दी में, नियुक्ति की तिथि से एक वर्ष के अन्दर उत्तीर्ण करनी होगी। टंकण परीक्षा में असफल होने की दशा में उन्हे वार्षिक वेतन वृद्धि नहीं दी जायगी।

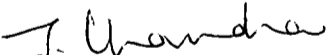
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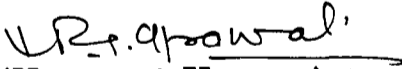
२. उन्हें नियुक्ति की तिथि से छः माह के अन्दर कम्प्यूटर चलाना सीखना होगा तथा इस सम्बन्ध में किसी प्रतिष्ठित (रिप्यूटेड) संस्थान का प्रमाण-पत्र प्रस्तुत करना होगा।

यदि श्री कामरान जकी नियुक्ति की तिथि से दो वर्षों की अवधि में टंकण की परीक्षा उत्तीर्ण नहीं करते हैं तथा कम्प्यूटर चलाना नहीं सीखते हैं तो उनकी सेवायें समाप्त की जा सकती हैं।”

Therefore, the above case law is not at all helpful in the instant case. The applicant has failed to show any provision of the scheme or rules for compassionate appointment that he is entitled any kind of relaxation of qualification. **The Hon'ble Supreme Court in I.G. (Karmik) vs. Prahalad Mani Tripathi 2007 (6) SCC-162** has held that the onus lies on a person seeking compassionate appointment to a post by invoking the provisions of relaxation of qualification must demonstrate that such a power is vested with the respondents.

10. In view of the discussions made above, the present OA does not require any interference by this Tribunal. The OA is dismissed. The interim order passed earlier stands vacated. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Amit/-