

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the 06th day of September 2018.

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER -A

HON'BLE MR.RAKESH SAGAR JAIN, MEMBER -J

Original Application No. 330/01567 of 2014

Shivam Singh, S/o Late Brijendra Pratap Singh, R/o House No. LIG 342, Preetam Nagar, Dhooman Ganj, Allahabad.

.... . Applicant

By Adv: Shri A.K. Pandey/Shri H. Singh/Shri P.K. Singh Chandel

V E R S U S

1. Union of India through Principal Accountant General, Daya Nand Marg, Allahabad.
2. Accountant General (Accounts & Entitlement) -1, Sarojni Naidu Marg, Allahabad.
3. Deputy Accountant General (Administration), Office of the Accountant General, Allahabad.

... . Respondents

By Adv: Shri R.K Rai

ORDER

BY HON'BLE MR.RAKESH SAGAR JAIN, MEMBER - J

1. Applicant Shivam Singh seeks the following reliefs:

"(i) *To issue a writ, order or direction in the nature of certiorari quashing the order No. Admin-1/Gr.IV/F-3112/11589 dated 19.11.2014 passed by respondent No.3 terminating the services of the applicant.*

(ii) *to issue a writ, order or direction in the nature of mandamus commanding the respondents not to give*

effect the order No. Admin-1/Gr.IV/F-3112/11589 dated 19.11.2014 passed by respondent No.3 terminating the services of the applicant.

- (iii) to issue such other and further order or direction which this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case.
- (iv) Award cost of the petition to the applicant".

2. Applicant's case is that on death of his father Brijendra Partap Singh was offered compassionate appointment vide order dated 19.05.2014 (Annexure-A4) on a probationary period of 2 years subject to confirmation letter of extension of probation period. The appointment was also subject to provision of Central Service Services (Temporary Service) Rules, 1965 (hereinafter referred to as 'CCS (TS) Rules' for short) which was against rules and regulation governing compassionate appointment. Applicant's further case is that he was served a show cause notice dated 30.09.2014 (Annexure-A6) by Accounts Officer (Administration) on the basis of some complaint to the effect that his mother is a teacher in Primary School and has a house in her name in Allahabad and that applicant has immovable property in his native village.
3. In reply to the show cause notice, applicant submitted that his mother during the lifetime was living separately from his father and was required to look after his grandmother, retarded uncle and unmarried sister. It is further case of applicant that without deciding the reply of the applicant, respondents issued termination order dated 19.11.2014 (Annexure A-1) under the provision of Sub Rule 1 of Rule 5 of CCS (TS) Rules on the complaint of his sister dated 21.10.2014 (Annexure A8).

4. In reply, respondents have filed counter reply where it has been stated that after the death of deceased employee, his wife received retiral dues a sum of Rs.7,24,135/- . Besides this she was granted family pension @ Rs.9855/- per month plus dearness relief. She submitted an application for appointment of her son (applicant of this O.A.) along with duly signed form. She was informed vide letter dated 18.01.2010 that her son had not completed the prescribed age of 18 years for appointment on compassionate ground as such it was not possible to consider his request. The mother of applicant again submitted an application on 12.09.2013 requesting for appointment of her son on the ground of poor condition of her family. Applicant' case for compassionate appointment was duly considered by the Departmental Selection Committee to examine the suitability of candidates. After considering all the departmental procedure for compassionate appointment, Departmental Promotion Committee recommended the name of applicant for appointment and issued offer of appointment for the post of Clerk/Typist on temporary basis under probation for two years. The applicant accepted all the condition as mentioned in the offer of appointment for appointment on compassionate ground and consequently on 23.5.2014, the applicant was appointed.
5. Further case of respondents is that a complaint was received in the office of respondents that applicant concealed the correct fact before the appointment that there is a house in his name in the village and also property in the name of applicant, therefore, after careful examination and investigation of complaint, respondent No.2 issued a show cause notice vide memo dated 30.09.2014 and directed that applicant should submit explanation in this regard and till further orders, his pay and allowances were kept withheld.

6. Thereafter by letter dated 21.10.2014, applicant admitted the facts of service of his mother, ownership of a house in his mother's name but he denied the concealment of these facts in the verification form for compassionate appointment. Ultimately respondents passed order dated 19.11.2014, removing the services of the applicant under the provision of Sub Rule 1 of Rule 5 of CCS (TS) Rules.
7. Counter reply was filed to the amended O.A. wherein respondents No. 1 to 4 and 6 (hereinafter referred to as 'KVA' also) have stated that appointment of applicant was purely temporary and to be regulated by CCS (TS) Rules and conditions in offer of appointment were duly accepted by the applicant. As per Government of India, Department of Personnel and Training OM No. 11012/7/91-Estt. (A) dated 19.05.1993, wherever it is found that a Government Servant, who was not qualified or eligible in terms of the Recruitment Rules etc. for initial recruitment in service or had furnished/produced false information/certificate in order to secure appointment, he should not be retained in service. Respondents further averred that the action against the applicant has been taken as per provisions of the Rules and no violation of any rule or provision of the Constitution of India has been violated by the respondents. In support of their contentions, respondents relied upon Union of India Vs. Sukhen Chandra Das 2008 (17) SCC 125, Jainendra Singh Vs. State of UP 2012 (8) SCC 748, P. Balakotaiah V/s UOI, AIR 1958 SC 232 and Khem Chand Vs. UOI AIR 1958 SC 300.
8. In the rejoinder affidavit, the applicant has reiterated the same averments as has been mentioned in the O.A. It is further submitted that during the lifetime of deceased employee, his wife was living separately and she had no connection with his children as well as husband. It is further submitted that children

did not get anything from the retiral dues of the deceased employee. Applicant filed rejoinder to the counter reply filed against the amended OA and submitted that the respondents are trying to justify their illegal act by placing their reliance upon certain judgments though the same is not applicable in the present case. The applicant was not provided reasonable opportunity of hearing enshrined in Article 311 (2) of the Constitution of India. Now the respondents are trying to justify their act by taking aid of proviso of Sub Rule 1 of Rule 5 of CCS (TS) Rules.

9. We have heard the learned counsels for the parties and perused the pleadings and documents on file.
10. The gist of the case pleaded by the applicant is that he was appointed on compassionate grounds as clerk/typist as per Annexure A4 order dated 19.05.2014. He was on probation for a period of two years. He did not violate any of the terms and conditions of his appointment or the service rules applicable to him. All on a sudden Annexure A-1 order dated 19.11.2014 was issued terminating the applicant from service. Such a termination can be only for violation of any of the terms and conditions of the appointment order. Annexure A-1 order was passed by the appointing authority under the provisions of Central Civil Service (Temporary Service) Rules. The said rule is not applicable to the facts of this case. The action of the 3rd respondent is vitiated by malafides, arbitrariness and in violation of Office Memorandum Annexure A-3 issued by Government of India regarding compassionate appointment. Besides there was violation of the principles of natural justice as well. Hence the applicant has approached this Tribunal for a prayer to set aside Annexure A-1 order and to reinstate the applicant to service with all consequential benefits.

11. The respondents resisted the claim made by the applicant taking the view that the right to compassionate appointment is not a fundamental right nor a legal right. The object of compassionate appointment is only to provide immediate financial assistance to the family which had lost its bread winner. In the case of the applicant, it was noted that the deceased employee had no liability; the terminal benefits was disbursed to the family. The applicant has a house and land in his native village; besides his mother is a teacher by profession. While perusing the records leading to the appointment of the applicant, it was noticed that the instructions on the point were not followed and as such it was found that the appointment of the applicant was illegal and void ab initio. Accordingly the competent authority issued Annexure A1 the termination order. If the total income including the family pension and earning from terminal benefits exceeds a certain amount, the benefit for appointment on compassionate ground cannot be considered. The applicant does not satisfy the main parameters essential for being considered for appointment on compassionate grounds. The fact remains that there is another earning member in his family. In Annexure A 4, itself it was specifically stated that the appointment of the applicant on compassionate grounds was purely temporary and will be governed by the CCS (Temporary Service) Rules, 1965. The contention that the aforesaid rule is not applicable is denied by the respondents. The competent authority reviewed the compassionate appointment made and thus issued A 1 order terminating the service of the applicant for non compliance of conditions governing the scheme for compassionate appointment. Annexure A 1 order was neither issued with malafides nor to wreak vengeance as alleged by the applicant. When the appointments are made in violation of the rules such appointment cannot be treated as regular. Hence the respondents prayed for dismissal of the OA.

12. It was argued by the learned counsel for applicant that since, the applicant has not violated the procedure for compassionate appointment and since he had not misled the officials or suppressed information and as the appointment was not obtained by fraud, the order of appointment given to him is not ab initio void as contended by the respondents. As such the termination order (Annexure A1) terminating the service of the applicant without giving notice and without hearing the applicant cannot be sustained. Reasons which are not mentioned in the impugned order cannot be supplemented by adding fresh reasons in the form of affidavit. Learned counsel for the applicant had further argued that as per OM dated 16.01.2013 (Annexure A-3), the respondent No.3 has no authority to terminate the services of the applicant as the power to terminate the services vested only in the Secretary of concerned Ministry as per OM dated 24.11.2000. Para 7 of the said OM also provides that appointment on compassionate ground should be made only on regular basis against the regular vacancies meant for that purpose. And that CCS (Temporary Service) Rules, 1965 in pursuance of which Rules, the termination order has been passed is not applicable to the case of applicant and the impugned order has been passed in violation of law.
13. The point for consideration is whether Annexure A 1 whereby respondent No. 3 cancelled the appointment of the applicant is illegal and liable to be set aside and whether the applicant is entitled to get consequential order of reinstatement in service?
14. Perusal of the offer of appointment dated 19.5.2014 lays down the conditions and terms whereupon applicant was offered the compassionate appointment to the post of Clerk/Typist on adhoc basis for the period of 2 years on probation. The other

conditions mentioned in the offer are (i) his appointment is governed by Central Civil Services (Temporary Service) Rules 1965 whereby his services will be terminated under Rule 5 without prior notice; (ii) the new pension scheme will be applicable to him.

15. The main ground that has been argued by the learned counsel for the applicant challenging the termination order, is that it was issued without following the procedure prescribed by Annexure- A3 since his appointment cannot be governed by Central Civil Services (Temporary Service) Rules 1965 and which condition in the appointment order is non est. The main thrust of the argument advanced by the counsel for the applicant is that though the CCS (TS) Rules was mentioned in the appointment, that is no reason for the competent authority to issue order of termination without following the procedure prescribed under the relevant scheme.
16. That contention has been countered by the learned counsel appearing for the respondents pointing out that the offer of appointment given to the applicant was only on temporary basis. In fact it was specifically stated that his appointment is on a temporary post of clerk/typist. It was repeatedly mentioned in Annexure A4 (appointment order) that his appointment is purely temporary and governed by the CCS (TS) Rules 1965.
17. Annexure A3 is the office memorandum dated 16.1.2013, as per, which the new scheme of compassionate appointment was introduced. Since the appointment order was issued subsequent to Annexure A3, the provisions contained in that scheme have to be scrupulously followed, the applicant contends. It is submitted by the learned counsel for the applicant that since the issue involved is regarding the illegal termination (Annexure A1) issued by the third respondent, the

question whether the procedure contemplated under the CCS (TS) Rules, 1965 is followed or not does not arise for consideration at all.

18. It is submitted by the learned counsel appearing for the respondents that when it was brought to the notice of the appointing authority that certain vital information was withheld by the applicant while filing application for compassionate appointment and the same coming to the notice of respondents subsequently, the competent authority cancelled the appointment. Since the appointment was only temporary governed by the provisions of the CCS (TS) Rules, 1965 the procedure prescribed under that Rule alone need be followed by the competent authority to terminate the service of the employee.
19. Rule 5 reads as :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.

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20. The learned counsel appearing for the applicant pressed into service OMs to contend for the position that the power granted to the authority to terminate the service as per the scheme should not be misused. He referred to OM (Annexure A-3) issued by the DOP&T which holds that compassionate appointees can be terminated on the ground of non-compliance of any condition stated in the offer of appointment after providing an opportunity to the compassionate appointee by way of issue of show cause notice asking him/her to explain why his/her services should not be terminated for non-compliance of the condition(s) in the offer of appointment and it is not necessary to follow the procedure prescribed in the Disciplinary Rules/Temporary Services Rules for this purpose. It was further stated that in order to check its misuse it is laid down that this power of termination of service for non compliance of the condition(s) in the offer of compassionate appointment should vest only with the Secretary in the concerned administrative Ministry/Department not only in respect of persons working in the Ministry/Department proper but also in respect of Attached/Subordinate offices under that Ministry/Department. Clause 17 of Annexure A3 scheme which deals with the termination of service says: 'The compassionate appointments can be terminated on the ground of non-compliance of any condition stated in the offer of appointment after providing an opportunity to the compassionate appointee by way of issue of show cause notice asking him/her to explain why his/her services should not be terminated for non-compliance of the condition(s) in the offer of appointment and it is not necessary to follow the procedure prescribed in the Disciplinary Rules/Temporary Services Rules for this purpose.'
21. Elaborating further, the learned counsel for applicant argued that since Annexure A3 is a self contained scheme which itself provides for termination of service of compassionate

appointees, the respondents are not justified in banking upon CCS (TS) Rules which is the rule in general applicable to all categories of temporary services but it cannot be made applicable to a compassionate appointee in view of the special provision in Annexure A3 Scheme. When there is a special provision, general provisions pertaining to the same cannot be resorted to.

22. It would be profitable to refer to the judgment dated 12.02.2016 of the Hon'ble Full Bench of Hon'ble High Court, Allahabad in Writ – A No. 43622 of 2015 titled Sr. General Manager, Ordnance Factory v/s Central Administrative Tribunal wherein it has been held that "Since an appointment on compassionate grounds on probation is also a regular appointment and a person appointed as such is not offered a temporary appointment, such an appointee can be placed on probation in the first instance."
23. The appointment of applicant having been made on compassionate ground, the same cannot be treated to be a temporary appointment, as such, the order dated 19.11.2014 terminating his services under Central Civil Services (Temporary Service) Rules of 1965, cannot be sustained. It was incumbent upon the respondents to follow the procedure laid down by Annexure A3 scheme for appointment on compassionate grounds.
24. In the present case, no notice to show cause (a requirement in terms of paragraph 17) was issued and that the termination could not have been brought about except in accordance with paragraph 17 and the same is manifestly indefensible. This also shows that before termination of the appointment, the appointee should be given notice and he should have been heard in the matter. Applicant was sent a communicating

asking him to explain the allegation of concealment levelled against him and he did submit his explanation but thereafter, the procedure for issuance of a show cause notice withdrawing the order of compassionate appointment was ignored.

25. And, even if, as argued by the learned counsel for respondents that since the applicant is a probationer, the impugned order can be construed to be terminating the service of a probationer for which no reasons are to be given. This has been countered and rightly so, by the learned counsel for applicant arguing that the impugned order also mentions that "As per the order of Deptt. of Personnel & Training OM No. 11012/7/91-Estt. (A) dated 19.05.1993, termination from service would, however, be without prejudice to the right of the Government to prosecute such Government servants", the same attaches a stigma to the applicant and therefore, attract the protection of Article 311 of the Constitution of India to the applicant.
26. However, we may refer to the following case law cited by the applicant in support of his case:

(A)[Deputy Director General \(Ncc\) And Another v. Sanjay Kumar And Another](#) decided by Hon'ble High Court, Allahabad on 16.07.2002 wherein the appeal against the judgment of learned single Judge allowing the writ petition, where the learned single Judge held that the appointment of writ petitioner having been made on compassionate ground, the same cannot be treated to be a temporary appointment and as such, the order dated 5.12.1996 terminating his services under U.P Temporary Government Servants (Termination of Service) Rules of 1975, was upheld;

(B) Division Bench Judgment of Hon'ble High Court, Allahabad in [Ravi Karan Singh v. State of U.P.](#), 1999 (2) AWC 976 wherein it was held that an appointment under the Dying-in-Hamess Rules has to be treated as permanent appointment otherwise if such appointment is treated to be a temporary appointment, then it will be followed that soon after appointment, the services can be permanent and this will nullify the very purpose of Dying-in-Harness Rules;

(C) Kamlesh Kumar Pandey v. State Of U.P, decided by Hon'ble High Court, Allahabad on 16.08.2001 that "10. The second submission of the Petitioner should not be treated as a 'temporary employee' on the basis of his appointment letter dated 18-4-2000. Annexure-6 to the writ petition. The contention of the petitioner has substance and deserves to be accepted for the following reasons:

The appointment letter itself shows that Petitioner offered appointment on the probation of one year. Earlier recital in the appointment letter to the effect that petitioner's services were temporary and liable to be determined without prior notice gets nullified by subsequent recital providing for appointment on probation. Even otherwise, it is now well settled through several decisions of this Court that appointment under Dying in Harness Rules on compassionate ground should not be for short term or on temporary basis. This Court has held time and again that compassionate-appointee is not to be left on the mercy of the authorities offering employment, refer to 1999 (2) ESC 972 : (1999 All LJ 1475) (DB)"

27. Respondents relied upon the following citations in support of his contentions –

- (i) Jainendra Singh Vs. State of UP 2012 (8) SCC 748 it was held that "Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer." However, in the present case, the question is regarding the applicability of the procedure contemplated by the Scheme of compassionate appointment as per Annexure-A3 for withdrawing an order of compassionate appointment.
- (ii) Union of India v/s Sukhen Chandra, (2008) 17 SCC 125 dealt with a case of temporary appointment whereas in the present case, applicant being an appointee on compassionate grounds is not offered a temporary appointment.
- (iii) P. Balakotaiah V/s UOI, AIR 1958 SC 232 was a case where a show cause notice was issued and a enquiry was conducted unlike the present case where only explanation notice was issued.
- (iv) Khem Chand Vs. UOI AIR 1958 SC 300 was a case wherein [Art. 311\(2\)](#) had not been fully complied with and the appellant had not had the benefit of all the constitutional protection and accordingly his dismissal could not be upheld. In these facts, all the citation relied upon by the respondents are not applicable to the facts of the present case.

28. As discussed above, it was inappropriate for the respondents to have taken recourse to the CCS (TS) Rules for terminating the appointment of the applicant, as the compassionate appointment

cannot be treated to be a temporary appointment, although the appointee can be appointed on probation subject to confirmation after satisfactory completion of the probation period. The respondents were required to proceed in accordance with the guidelines of the DOPT vide the OM dated 16.1.2013 regarding compassionate appointment scheme. We quote below the para 11 and 17 of the aforesaid OM No. 14014/02/2012-Estt.(D) dated 16.01.2013 on the scheme for compassionate appointment, which are relevant for the case:-

"11. WHERE THERE IS AN EARNING MEMBER

(a) In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family.

(b) In cases where any member of the family of the deceased or medically retired Government servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family.

17. TERMINATION OF SERVICE

The compassionate appointments can be terminated on the ground of noncompliance of any condition stated in the offer of appointment after providing an opportunity to the compassionate appointee by way of issue of show cause notice asking him/her to explain why his/her services should not be terminated for non-compliance of the condition(s) in the offer of appointment and it is not necessary to follow the procedure prescribed in the Disciplinary Rules/Temporary Service Rules for his purpose.

In order to check its misuse, it has also been decided that this power of termination of services for non-compliance of the condition(s) in the offer of compassionate appointment should vest only with the Secretary in the concerned administrative Ministry/Department not only in respect of persons working in the Ministry/Department proper but also in respect of Attached/Sub-ordinate offices under that Ministry/Department.(O.M. No. 14014/19/2000-Estt(D) dated 24.11. 2000)."

It is noticed that in respect of the action to be taken under both the paragraphs 11 and 17 of the DOPT guidelines as extracted above, the competent authority is the Secretary of the Department to take a decision in the matter. It is not the case of the respondents that the approval of the Secretary/competent authority has been taken before issuing the impugned order to terminate the services of the applicant. Hence, the impugned order is not sustainable for this reason also.

29. In the circumstances as discussed above, the impugned order dated 19.11.2014 (Annexure A-1) is set aside and the matter is remitted to the respondent no.1, who is the representative of the Union of India in this case, to place the matter before the Secretary/competent authority to review the case of the applicant in terms of the guidelines of the Government on the scheme of compassionate appointment and to take an appropriate decision in the matter after giving a reasonable opportunity of hearing to the applicant to explain his case and after due inquiry about the genuineness of the complaints regarding the financial conditions of the family as well as the explanation of the applicant on the issue. Since the applicant is out of the employment since 2014, we direct the respondents to take a final decision in the matter within four months from the date of receipt of a certified copy of the order. The applicant will also have liberty to move a comprehensive representation before the respondent no. 1 alongwith a certified copy of this order within 15 days. It is made clear that if no decision is taken in the matter by the Secretary/competent authority within the

time as specified above, then the applicant shall be reinstated to his previous post by treating the period from the date of termination of his appointment till the date of reinstatement as continuity in service, with all consequential benefits except the salary for the aforesaid period under the circumstances of the case.

30. The OA is disposed of in terms of the directions in para 29 above. No costs.

[Rakesh Sagar Jain]

Member-J

[Gokul Chandra Pati]

Member-A

Manish/-