

**Reserved on 14.08.2018**

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

This the **21<sup>st</sup>** day of **August, 2018.**

**PRESENT:**

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

**ORIGINAL APPLICATION NO. 330/257/2012**

Mohammad Areef, Son of Late Mohd. Aliraja, Resident of Village and Post  
– Kaula Jakhaniya, District - Ghazipur.

...Applicant

**V E R S U S**

1. Union of India through Surveyor General, Survey of India, Hathi Badkala Bhawan, Dehradun..
2. Director, East Uttar Pradesh Geospatial Data Centre B-2, 2<sup>nd</sup> Floor Pickup Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow.
3. Indian Survey Department, Office No. 92, Party (Eastern Sector), Post Box No. 2121, Ardali Bazar, Varanasi.

.... Respondents

Advocate for Applicant : Shri S.N. Yadav  
Advocate for the respondents : Shri Vikas Goswami  
Shri R.P. Maurya

**O R D E R**

This applicant has filed this OA seeking the following main relief:-

“(a). issue a writ order or direction in the nature of certiorari quashing the letter dated 24.2.2010 passed by respondents.

(b) issue a writ order or direction in the nature of mandamus directing the respondents to consider the appointment of the applicant on the compassionate ground.”

2. The applicant's father died while in service under the respondents, after which, the applicant's mother was given compassionate appointment on 4.12.2001. On 1.6.2003, the applicant's mother also died and then the applicant had submitted his application for compassionate appointment in 2009, after he became major. This application has been rejected by the respondents vide order dated 24.2.2010 (Annexure A-1) on the ground that his mother was a temporary employee and she died before regularization of her service after completion of two years of service.

3. Being aggrieved by the order dated 24.2.2010, the applicant has filed the OA mainly on the following grounds:-

(i) The appointment under compassionate appointment is permanent, not temporary as per the decision of Hon'ble Apex Court and High Court.

(ii) The applicant was a minor at the time of death of his mother and applied after he became major. He has a younger sister to support. They are living in penury and living on hand to mouth.

(iii) Applicant's father died on 19.11.1999 and then mother also died on 1.6.2003 leaving behind two minor children, including the applicant.

After filing the OA, the applicant filed a Supplementary Affidavit enclosing copy of the orders showing that his mother was appointed as a contingent khalasi under compassionate appointment.

4. respondents have filed Counter Reply, stating that as per the Department circular No. 438 dated 2.4.1955, which is corrected from time to time, all appointments at the first instance be made on purely temporary basis and after completing at least 2 years of continuous service, they can be brought to regular establishment. Copy of the said circular was annexed. Hence, it was submitted that the applicant's claim has been rightly rejected and OA has no merit.

5. The applicant has filed the Rejoinder denying the averments in the Counter and reiterated the contention that the appointment under compassionate ground is a regular and permanent appointment, stating that the departmental circular referred by the respondents is applicable for direct recruitment and will not apply for compassionate appointment. He has also attached copy of the following judgments in support of his case:-

- i. Jagdish Narain Vs. Union of India and others - 2011 Law Suit (All) 2300
- ii. Maya Lal Vs. State of U.P. and others - [2012 (8) ADJ 408 (DB) (LB)]

6. Heard learned counsels for the applicant and for the respondents who reiterated the averments in the pleadings. The issue to be decided in this case is whether the departmental circular no. 438 dated 2.4.1955 will apply for compassionate appointment or not.

7. In the case of Jagdish Narain (supra) cited by the applicant's counsel, the petitioner was appointed on compassionate appointment on probation for two years and his services were terminated for unsatisfactory work. The OA filed before the Tribunal was dismissed. In that case, Hon'ble Allahabad High Court has held as under:-

"19. Learned counsel for the petitioner has placed before us Scheme for Compassionate Appointment, 1998. Although the said Scheme is not very much relevant for the present case as the petitioner's appointment was made in the year 1992, but certainly it reflects light on the intention of the employer for making an appointment on compassionate ground.

20. Paragraph 7 of the aforesaid Scheme talks about the determination and availability of the vacancies which runs as under:-

"7. DETERMINATION / AVAILABILITY OF VACANCIES.

(a) Appointment on compassionate grounds should be made only on regular basis and that too only if regular vacancies meant for that purpose are available.

(b) Compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. The appointing authority may hold back upto 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz. SC/ST/OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category he will be adjusted against the SC reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and if he belongs to General category he will be adjusted against the vacancy point meant for General category.

(c) While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual/daily wage/ad hoc/contract basis against regular vacancies, there is no bar to considering him for such appointment if he is eligible as per the normal rules/orders governing such appointments.

(d) The ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by utilizing any other vacancy e.g. sports quota vacancy.

(e) Employment under the scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.

(f) If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list.”

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29. Another question would arise that if an appointment made on compassionate ground is permanent in nature, can his service be terminated <sup>12</sup> treating it to be on probation in terms of the appointment letter. For deciding this question, another question would arise whether the respondents were justified in appointing the petitioner on probation basis on compassionate grounds, and even if it is so, whether this condition can be binding upon the employee/petitioner and that cannot be challenged treating it as it was accepted by the appointee with open eyes without any protest.

30. As would reveal from the foregoing discussions and the Circular relied upon by the respondents, meant for appointment on compassionate grounds, there is no provision for appointment on probation/temporary basis and in absence of any such provision under the relevant circular/rule under which petitioner's appointment was made, the respondents' stand cannot be justified in putting the condition of appointment on probation basis. It is settled law that if a statute provides to do a thing in a particular manner then that thing has to be performed in that very manner and in not doing so it leads towards futility having no avail and void. Therefore, we are of the considered opinion that in absence of any such provision under the relevant Circular governing the appointment on compassionate grounds, for making appointment on probation basis, the respondent's putting a rider on probation basis in appointment letter is totally misplaced, arbitrary and unsustainable in the eye of law.

31. The Tribunal's finding while dismissing the Original Application of the petitioner observing that the petitioner's appointment was on probation basis and he has accepted the same with open eyes, therefore he could not challenge the same, to our mind is not correct as the estoppel does not operate against law and if any condition has been put in contrary to the law governing the field, or in absence of any provision, the law of estoppel will not come into play and that can always be challenged. Otherwise also, any contract contrary to the legal provision cannot be enforced in the court of law.

32. In view of the foregoing discussions, we are of the view that the respondents were not justified in terminating the services of the petitioner treating him as a probationer as his appointment on compassionate ground should have been made on permanent basis. The Tribunal has failed to consider this aspect of the matter and illegally held that it was not open for the petitioner to challenge the conditions of appointment letter and in terms of the appointment letter, the termination of the petitioner was justified. We are of the opinion that <sup>13</sup> once the petitioner's appointment was found

permanent in nature, the putting of conditions on probation basis in appointment letter is unjustified. The respondents could not have terminated the petitioner's services treating him as a probationer and only course open to the respondents was to take recourse of law as contemplated under the Civil Services (Classification Control and Appeals) Rules, 1965 for his absence from duty which may amount misconduct. The respondent's act is also hit by Article 311(2) of the Constitution of India.

33. In the result, writ petition succeeds and is allowed. The impugned judgment and order dated 21.01.2002, passed by Central Administrative Tribunal, Allahabad in Original Application No. 844 of 1995 is hereby quashed. Normally, we would have remanded the matter to the Tribunal after quashing the same to consider the nature of petitioner's appointment as the Tribunal has not considered that aspect of the matter, but looking into the pendency of the matter for about 16 years from the date of the termination order and nature of the urgency in compassionate appointment, we also quash the termination order dated 22.09.1994, passed by the respondents with a direction to the respondents to reinstate the petitioner forthwith in his services. We also provide as the petitioner has not worked during this period, therefore he will not be entitled to full salary. The respondents are directed to pay only 50% of the salary to the petitioner with all other consequential benefits, like treating the petitioner in service during this period. However, this judgment will not preclude the respondents to proceed in accordance with law for the petitioner's absence from duty.”

8. In the case of Maya Lal (supra), the respondents are State of U.P. and the rules of the Central Government is not applicable. Hence, this case will not be helpful for the applicant.

9. As discussed in the judgment of Hon'ble Allahabad High Court in the case of Jagdish Narain (supra), the para 7 of the Scheme for Compassionate Appointment, 1998 clearly states that compassionate appointments have to be given on regular basis against regular basis. As this circular has been issued by the Department of Personnel and Training (in short DOPT), it will have precedence over the circular no. 438 refereed by the respondents.

10. In view of the provisions in the DOPT's circular of Scheme for Compassionate Appointment, 1998 and the observations of Hon'ble High Court in the case of Jagdish Narain (supra), I am of the considered opinion that the appointment of the applicant's mother on compassionate ground on 4.12.2001 is to be treated as regular as per the above circular of the DOPT. Hence, the rejection of the applicant's application for

compassionate appointment only on the ground that his mother's appointment was temporary is not tenable.

11. accordingly, the impugned order dated 24.2.2010 (Annexure A-1) is set aside and quashed and the matter is remitted to the respondents to re-consider the application for compassionate appointment of the applicant on merit in accordance with the circular of the DOPT and relevant rules and guidelines of the Government as applicable and take an appropriate decision which shall be communicated to the applicant within six months.

12. The OA is allowed as above. No costs.

**(GOKUL CHANDRA PATI)**  
**MEMBER-A**

**Anand...**