

RESERVED

CENTRAL ADMINISTRATAIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 12 day of January 2008.

Original Application No. 1383 of 2004

Hon'ble Mr. A. K. Gaur, Member (J)

Tikam Singh, S/o late Mahendra Singh, R/o 43/170,
Sikandra, Agra.

. . . Applicant

By Adv: Sri S.S. Chauhan

V E R S U S

1. Union of India through the Secretary, of Finance,
Ministry of Finance, New Delhi.
2. Chief Income Tax Commissioner, Income Tax Bhawan,
Civil Lines, Kanpur.
3. Additional Income Tax Commissioner, Range IV,
Aaya Kar Vibhag, Sanjai Place, Agra.

. . . Respondents

By Adv: Sri S. Singh

O R D E R

The applicant has claimed appointment on
compassionate grounds on the allegation that his
father, while working on the post of Lower Division
Clerk in the office of Income Tax Commissioner Range
IV, Agra, died on 07.02.2003. The mother of the
applicant Smt. Prabhawati moved an application on
20.02.2003 to the Chief Commissioner Income Tax Kanpur
for providing appointment to the applicant on
compassionate ground after the death of her husband on
07.02.2003. The mother of the applicant, thereafter,
made several representations to the Competent
Authority, but no heed was paid to the same. Under
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compelling circumstances the applicant filed OA No. 1624/03 before this Tribunal, which was finally disposed of on 19.01.2004 with a direction to the respondents to decide the representation of the applicant by a reasoned and speaking order (Annexure A-1 to the OA). Further the grievance of the applicant is that Chief Income Tax Commissioner had already made appointment of Smt. Raj Kumari Mishra, W/o late Ram Naresh who died on 18.11.1997 and Smt. Kusum Devi whose husband died on 01.03.1999. It is alleged that while deciding the representation of the applicant certain incorrect facts have been mentioned and the order passed to the effect that since 1997 no one has been appointed due to reason of non availability of vacancies, which is wholly wrong and outcome of malafide.

2. The respondents filed their reply and submitted that in compliance to the order of the Tribunal dated 19.01.2004 speaking order was passed on 16.04.2004 by the respondents. It was decided that the case of the applicant for compassionate appointment has not been considered at present due to non availability of vacancies and will be considered in due course. It is further mentioned in the reply that the scheme for compassionate appointment has been devised by the Department of Personnel and Training, Government of India and is applicable to dependent of family member of a Government Servant who dies while in service or

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is retired on Medical Grounds under the relevant rules. Only Group 'C' and Group 'D' posts against the direct recruitment quota are available for compassionate appointment. Appointments on compassionate grounds are made only on regular basis and that too only if regular vacancy meant for that purpose are available. Compassionate appointments can be made upto a maximum of 5% of the vacancies falling under direct recruitment quota in any Group 'C' and 'D' post. Once the applications in prescribed proforma are received, they are sent to the Committee for approval for suitable post i.e. Group 'C' and 'D'. Thereafter, if the vacancies are available, the appointments are made by CCIT (CCA), Kanpur. In case of non availability of vacancies, the applications are kept pending and the appointments are made as and when the vacancies arise. It is further submitted by the respondents that appointments are made in chronological order on the basis of receipt of applications and the case of the applicant could also be considered on chronological order as and when his turn comes. It was never decided in the order dated 16.04.2004 that the applicant would be considered for compassionate appointment. Photocopy of the order dated 16.04.2004 is annexed as Annexure 1 to the CA). With regard to the case of Smt. Raj Kumari Mishra and Smt. Kusum Devi, the respondents have stated that both of them were appointed as Chowkidar (Group 'D' post) on the basis of their applications dated 25.09.1998

and 06.07.1999 on 10.04.2002. The case of the applicant is pending for consideration and he has to wait for his turn. The application received earlier than the applicant are also pending for want of vacancies. Compassionate appointments are made on the basis of 5% of the vacancies falling under direct recruitment quota arise in the recruitment year.

3. Denying the averments made in the counter affidavit the applicant has filed Rejoinder Affidavit and reiterated the same facts as submitted in the OA.

4. I have heard Shri Kuldeep Singh brief holder of Shri S.S. Chauhan, learned counsel for the applicant and Shri R.C. Shukla brief holder of Shri S. Singh, learned counsel for the respondents.

5. Learned counsel for the applicant has placed reliance on the cases of appointment on compassionate ground of Smt. Raj Kumari Mishra and Smt. Kusum Devi, vide order dated 10.04.2002 (Annexure A2 to the OA). On the other hand learned counsel for the respondents would contend that Article 14 could not be extended to illegal order notwithstanding that in certain cases such order had been passed earlier. In support of this contention he has placed reliance on the decision of Hon'ble Supreme Court in the case of **2006 (7) SCC 350 Union Bank of India Vs. M.T. Latheesh.** I have carefully seen the decision rendered in case of M.T.

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Latheesh (supra) and found that where the application for compassionate appointment has been considered in terms of scheme framed by the respondents and the applicant was found not eligible for appointment due to any reason the Hon'ble Supreme Court held that the Hon'ble High Court erred in holding otherwise. I have also carefully seen the record and found that the case of the applicant can only be considered on availability of vacancies and that too in chronological order only. In CCIT (CCA), Kanpur region over forty applications are pending since 1997 for appointment on Group 'C' and 'D' posts on compassionate grounds. As regards appointments vide order dated 10.04.2002, I may observe that these two cases were the cases of the year 1997 and 1999 which were much prior to the case of the applicant. I have also seen the decision rendered by the Hon'ble Supreme Court in **2007 (1) SCC (L&S) 668 : National Institute of Technology Vs. Neeraj Kumar Singh** and **2007 (2) SCC (L&S) 417 : I.G. (Karmic) and others Vs. Prahalad Mani Tripathi**. In both these cases Hon'ble Apex Court held that compassionate appointment can be granted only under the scheme to widow or son and should not be granted after a long lapse of death of an employee. In the judgment of Hon'ble Supreme Court in **JT 2007 (3) SC 398 : State Bank Of India Vs. Som Vir Singh** it has been held that financial position of the family of the deceased employee did not warrant compassionate appointment. The Hon'ble Supreme Court set aside the

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order of Hon'ble High Court and held that High Court has not decided that what would be the reasonable income.

6. In support of his argument **2002 SCC (L&S) 1111** : **Union of India and other Vs. Joginder Sharma** has been relied upon by the respondents. Learned counsel for the respondents also submitted that compassionate appointment is exception to general rule. Normally employment in the Government or Public Sector should be open to all eligible candidates who can come forward to apply and compete with each other. This general rule should be departed only in compelling circumstances such as sole breadwinner and likelihood of the family suffering because of set back. Once it is provided that **inspite of death of breadwinner the family survived for several years, there is no necessity to say good bye to the normal rule of appointment and show favour to one at the cost, save others ignoring the mandate of Article 14 of the Constitution of India.** The idea behind compassionate appointment is not to provide endless compassion to the dependent.

7. In my considered view the applicant has failed to make out any case warranting interference. The OA is accordingly dismissed. No cost.

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Member (J)

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