

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.**

ORIGINAL APPLICATION NO.86 OF ~~2006~~ 2002

ALLAHABAD THIS THE 6th DAY OF June 2007.

**HON'BLE MR. JUSTICE KHEM KARAN, V.C.**

Vishal Kamal.  
Son of Late Shri K.K. Saxena,  
Resident of 238 Karolon,  
Biharipur  
District Bareilly.

...Applicant.

(By Advocate : Shri A.V. Srivastava)

**Versus**

1. Union of India, Ministry of Finance Department of Revenue, Central Board of Direct Taxes, New Delhi.
2. Office of the Chief Commissioner of Income Tax, Ashok Marg, Lucknow.
3. Commissioner of Income Tax, Bareilly.

...Respondents.

(By Advocate :Shri S. Singh)

**ORDER**

It is prayed that order dated 20.12.2001 (A-16) be quashed and respondents be asked to give appointment to the applicant on compassionate ground in Group 'C'.

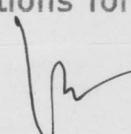
2. Admittedly, late Shri K.K. Saxena (father of the applicant) was working as Supervisor in Income Tax Office and he died in harness in the year 1992, leaving behind his widow and the applicant. At that time, applicant was just 10 years old. His mother gave an application on 19.4.1993 for giving compassionate appointment to the applicant, as and when, he attained majority. Application remained pending and in the meantime, applicant passed Intermediate examination and also attained majority and thereupon, he

Conceded by me today  
on being pointed out by  
the Counsel for Appellee. (J.M.)  
05-10-07

approached the Authorities for giving him compassionate appointment in Group 'C'. It transpires that he approached Secretary, Ministry of Finance, Chief Commissioner of Income Tax, Lucknow, Chairman, Central Board of Direct Taxes, by giving representations. It is stated in para 4.8 that Central Board of Direct Taxes, Ministry of Finance wrote a letter dated 13.10.2000 (Annexure 6) to Chief Commissioner of Income Tax, Lucknow directing, to consider the case of the applicant for compassionate appointment. Inspite of this, nothing was done. Applicant gave another application on 15.11.2000 (Annexure 7) to Chief Commissioner Income Tax (respondent NO.2). It was, vide impugned communication dated 20.11.2001 (Annexure 16), that the applicant was informed that his application was under consideration and matter will be considered on availability of vacancy. He is challenging this communication, mainly on the ground that respondents have recently appointed as many as 35 persons in group 'C' and reason of non-availability of vacancy was not well-founded. He says that purpose behind giving compassionate appointment is to help the family, and by keeping the matter pending to this way, that purpose is being defeated.

3. The respondents have contested the claim by filing the written reply. They say that such compassionate appointments are possible, only against the vacancy of 5% quota of Direct Recruitment and since there are number of such claims and vacancies are less, so it not possible to accommodate each and every such person. They say that there were more deserving candidates, than the applicant. As regards 35 appointments in Group III, it is said that those were promotion from Class IV to Class III and those were not by way of Direct Recruitment.

4. The applicant has filed supplementary affidavit. In para 5, which it is stated that in the month of OCTOBER 2003, Staff Selection Commission has invited applications for filling



10,000 posts in Income Tax Department and other Departments and copy of such notification, is annexed as SA-1. It is further stated that in para 6 that application have also been invited for filling in 318 posts of Tax Assistants in Income Tax and Central Excise Department, it will be evident from SA-2. It is also complained in para 8 of supplementary affidavit that one Dharmendra Gupta late Shri Ram Gupta has recently been given compassionate appointment, though his father died subsequent to the father of the applicant.

5. The respondents have also filed supplementary reply. It is stated in para 3 that on occurrence of vacancies in Recruitment year 2004-2005, matter has been reported to Central Board of Direct Taxes for clearance by Screening Committee and orders of the Board are awaited. In para 7, it has been stated that applicant's case will not be considered again, since the period of 3 years, as referred to in DOPT letter dated 5/5/2003, has elapsed.

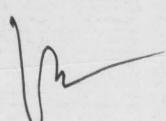
6. I have heard Shri A.V. Srivastava, learned counsel for the applicant and Shri S. Singh, learned counsel for the respondents.

7. Shri A.V. Srivastava has contended that inspite of Board's letter dated 13.10.2000 (Annexure 6), respondents have not given compassionate appointment to the applicant nor have considered objectively. What is stated in impugned letter dated 20.12.2001 is that vacancy for compassionate appointments are not available and applicant's case will be considered, as and when these vacancies become available? This is also evident from letter dated 30.3.2001 (Annexure 7) written by Dy. Commissioner of Income Tax, Lucknow to the Commissioner of Income Tax, Bareilly. This was the position upto the date, the original reply was filed in February 2003. In other words, upto filing of reply in February 2003, the case of the applicant was not considered or rejected but was kept



pending for want of vacancies of quota of compassionate appointment. It was, for the first time, stated in Supplementary reply of September 2006 that since the period of 3 years prescribed in DOPT's letter dated 5.5.2003 has elapsed, so case of the applicant will not be considered again. It can be referred from averments made in para 4 of the supplementary reply that no such consideration took place after 19.1.2001, as last compassionate appointment in Group 'C' was made on 19.1.2001.

8. I have not been able to find out from reply or from supplementary reply of the respondents that applicant's case was considered as per direction of the Central Board of Direct Taxes and in any case, after 20.12.2001. If the case was not to be considered again on availability of vacancies, then why the applicant was informed by this communication dated 20.12.2001 that on availability of vacancies, his case will be considered sympathetically. There appears no good reason with the respondents for saying that the case of the applicant will not be considered, in view of DOPT's letter dated 5.5.2001 as period of three years has elapsed. It appears that the respondents have kept applicant's request pending and have not considered it promptly after the letter of Central Board of Direct Taxes and now they are saying that time is over in view of DOPT letter dated 5.5.2003. Each and every such person, who applies for compassionate appointment has a right that his matter is considered in accordance with the relevant Rules or guidelines on the subject. One may not insist for frequent consideration unless the guidelines or Rules so direct but one has right that his request is considered. Here in the instant case, there is nothing on record to reveal that the request of the applicant was ever considered on merits after the recommendation of the Central Board of Direct Taxes or after the impugned communication of December 2001.



9. The question as to whether there were vacancy in Group 'C' or there are vacancy, now is the question of fact and I do not enter into that area. This much, however, appears to be true that those 35 appointments, referred to in O.A. were made, by way of promotion and not by way of Direct Recruitment. According to existing Guidelines/Rules on the subject of compassionate appointment, such request for appointment under Dying in Harness Rules are to be considered only against 5% quota of vacancies to be filled by way of Direct Recruitment.

10. In view of what has been stated above, O.A. is to be disposed of with a direction to the respondents NO.2 and 3 to ensure that the case of the applicant is considered for compassionate appointment within a period of 3 months.

11. So, the O.A. is accordingly disposed of and respondents No. 2 and 3 are directed to ensure that the case of the applicant for compassionate appointment is considered, in the light of relevant Rules, within a period of 3 months, from the date of certified copy of this order, is produced before them.

No order as to costs.

Vice-Chairman

Manish/-