

A3

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION (OA) No.335/87

K.M.Srivastava applicant.

Versus

Chairman, Central Board of Direct Taxes
New Delhi/another ... Respondents.

CONNECTED WITH

1. REGISTRATION(OA) NO. 336/87

Pradeep Kumar Nigam applicant.

Versus

Chairman, Central Board of Direct Taxes
New Delhi, and another. ... Respondents.

2. REGISTRATION (OA) NO. 365/87

Km.Summeta Srivastava ... Applicant.

Versus

Chairman, Central Board of Direct Taxes,
New Delhi and another ... Respondents.

Hon'ble D.S.Misra, A.M.

Hon'ble G.S.Sharma, JM.

(Delivered by Hon'ble D.S.Misra)

In the above mentioned three applications under Section 19 of the A.T.Act XIII of 1985, the respondents are the same. The facts stated and the law points involved in all the applications being similar can be disposed of by a common order.

2. In all the three applications, the prayer is for seeking a direction to the Chairman, Central Board of Direct Taxes(respondent no.1) to post the applicants on the post of Inspector of Income Tax w.e.f.

A3
2

-2-

the date of initial appointment. The facts of each case are given below:

3. In OA no. 335/87, the applicant (K.M.Srivastava) was appointed as Upper Division Clerk vide order dated 19th November, 1969 on compassionate ground on the death of his father, who was an Income Tax Officer and expired on 14th August, 1969. The applicant had applied for the post of Income Tax Inspector, but he was offered the post of Upper Division Clerk only and he accepted the same as there was no earning member in the family; that the applicant submitted an application on 31st March, 1981 requesting that he may be posted as Inspector of Income Tax as he was educationally and otherwise fully qualified for appointment on the said post, but no orders were passed; that the applicant filed another application on 17th April, 1986 to the respondent no. 1 but the same has been rejected by the communication dated 9th October, 1986 (copy annexure 6); that the applicant has been grossly discriminated in the matter of his employment as one Smt. Shashi Mathur was appointed to the post of Income Tax Inspector on compassionate ground on the death of her husband Sri P.K.Mathur vide order dated 23.1.1986 (copy annexure 4). In OA no. 336/87, applicant Pradeep Kumar Nigam had applied for appointment to the post of Inspector Income Tax on compassionate ground on the death of his father but the applicant was given the appointment on the post of UDC vide appointment letter dated 18th August, 1981 and as the applicant was in dire need of employment to support his family, he joined the post of UDC on 27th August, 1981; that the applicant filed

~~A3~~
~~3~~

-3-

an application on 26th August, 1986 requesting therein that he may be given the post of Income Tax Inspector citing the example of Smt. Shasi Mathur, but his representation has been rejected by respondent no.1 vide communication dated 5th November, 1986 (copy annexure 6); that the applicant has been grossly discriminated in the matter of his employment inasmuch as that on the same facts Smt. Shasi Mathur has been appointed on the post of Income Tax Inspector on compassionate ground but the applicant has been denied the same advantage on no reasonable ground; that the applicant was fully qualified to be appointed on the post of Income Tax Inspector and that he was the son of Income Tax Officer. In OA no. 365/87 Km. Sumeeta Srivastava, applicant, applied for being appointed as Income Tax Inspector on compassionate ground on the death of her father Sri B.N. Srivastava, Income Tax Officer, who expired on 25th December, 78; that the applicant was fully qualified to be appointed to the post of Income Tax Inspector, /was given but the appointment on the post of UDC and she joined duty on 13.11.1978; that the applicant filed an application dated 30.1.1981 for appointment on the post of Inspector Income Tax and the same was rejected by Opp. party no.1 on 6th April, 1981; that the applicant filed another application on 2nd July, 1986 requesting therein that she may be given the post of Income Tax Inspector, but the same was rejected by respondent no.1 by a communication dt. 3rd October, 1986 (copy annexure 5); that the applicant has been grossly discriminated in the

bl

X
A3
4

-4-

matter of her employment inasmuch as that on the same facts Smt. Shashi Mathur has been appointed on the post of Income Tax Inspector on compassionate ground, but the applicant has been denied the same advantage on no reasonable grounds.

4. In the reply filed on behalf of the respondents, it is stated that the case of all the three applicants was examined in accordance with the instructions issued from time ~~xxxxxxxxxxxxxx~~ to time by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms and they were given appointment as UDC after considering the facts and circumstances of each case; that although the minimum educational qualification prescribed for the posts of UDC as well as Inspector, Income Tax is the same, but the posts of Inspector, Income Tax are usually filled by candidates who appear in a competitive examination and qualify for the same; that the quality of the person appointed as Inspector through competitive examination is superior to the quality of persons who being dependents of deceased employees of the department and being graduates apply for the post of Inspector; that the cadre of Inspector, Income Tax, has a fixed quota for direct recruitment and large scale induction of appointees on compassionate consideration will surely effect its constitution, character and effectiveness; that the applicants have ~~xxx~~ accepted the posts of UDC and the said set of circumstances which led to their initial appointments had ceased to exist and they have no right to claim appointment to the post of Inspector, Income Tax; that the representations of the three

bt

-5-

applicants were rejected in accordance with para 9 of the Ministry of Home Affairs Department of Personnel OM dated 25th November, 1978(AnnexVI) and that the case of the applicants is not similar to that of Smt. Shasi Mathur inasmuch as they had already accepted the appointment as UDC.

5. We have heard the arguments of the learned counsel for the parties. Sri B.P.Srivastava, learned counsel for the applicants contended that the three applicants had the same right of appointment as Inspector, Income Tax as Smt. Shasi Mathur and that the applicants had been discriminated in the matter of their appointment by the respondents; that the applicants had accepted their appointments as UDC because they had no option having no other source of income to support themselves and members of their families and this fact does not deprive them of their right to claim similar treatment by the respondents; that upto the year 1980 there was some confusion regarding the fact, whether a candidate can be directly appointed on the post of Income Tax Inspector on compassionate ground and that a clarification on this point became available to the applicants on the issue of a letter dated 25.11.1980 from the Central Board of Direct Taxes to the Commissioners of Income Tax and others; that the applicants had made representations regarding their appointments as Inspector Income Tax soon-after the knowledge of the issue of the letter dated 25.11.1980(AnnexII) and that their representations had been rejected in an arbitrary manner and on unreasonable grounds.

11

A3
C

6. ⁻⁶⁻ The instructions contained in the letter dated 25th November, 1980 of the Board of Direct Taxes does state that there was some doubt whether the appointment on compassionate ground could be made to the grade of Income Tax Inspector and that after getting clarification from the Department of Personnel and Administrative Reforms, ^{also} It is stated in this letter that as the post of Income Tax Inspector falls in grade C of the Central Services, there is no bar making compassionate appointments to the grade of Inspector. The letter further states that all such cases should be referred to the Board for approval. It is thus clear that appointment to the cadre of Inspector has to be made with the approval of the Central Board of Directot Taxes. The second point for consideration is, whether the instruction contained in para 9 of the OM dated 25th November, 78 (supra) of the Ministry of Home Affairs Department of Personnel and Administrative Reforms empowers the Board of Direct Taxes to treat each case of applicant for appointment on compassionate ground on the basis of facts and circumstances. Para 9 of the O.M. reads as under:

"that once a government servant has accepted the post on compassionate ground, then the set of circumstances which existed at the initial stage of appointment should be deemed to have ceased to exist and thereafter the person who has accepted the appointment on compassionate ground should strive in his career like his colleagues for future advancement."

The plain reading of this para would show that once a person has accepted the post on compassionate ground, the person is supposed to have exhausted the concession

JL

1A3
7

admissible to the dependent of a deceased employee. In view of the above instruction, the contention of the applicants that they have a right of appointment to the post of Inspector, Income Tax by virtue of possessing the minimum qualification of being a graduate is not sustainable.

7. The next point urged by the learned counsel for the applicants is that there is discrimination in the matter of appointment given to the applicants vis-a-vis Smt. Shasi Mathur, who was given an appointment on the post of Inspector Income Tax. Besides mentioning that the applicants were also graduates and thus qualified for appointment as Inspector Income Tax and that they had also applied for appointment as Inspector Income Tax, no other ground has been shown in the matter of discrimination vis a vis Smt. Shasi Mathur. Admittedly Smt. Shasi Mathur was the widow of a serving employee who died at a young age. In the case of the three applicants, they were the sons/daughter of employees, who had died after serving the department for periods over 20 years. The respondents have filed copy of OM dated 30th June, 1987 of the Government of India Ministry of Personnel, Public Grievance and Pension containing a special provision in respect of appointment of widows. Clause(d) of para 4 of the above mentioned OM reads as follows:

SL

A3
8

"Where a widow is appointed on a compassionate ground to a group-D post, she will be exempted from the requirements of educational qualifications, provided the duties of the post can be satisfactorily performed without having the educational qualification of Middle standard prescribed in the Recruitment Rules."

It would thus be seen that the OM provides for some special consideration for appointment of widows on compassionate grounds. Clause(e) of para 4 of the same OM states that competent authority, before approving the appointment will satisfy himself that the grant of concession is justified having regard to the number of dependents, the assets and liabilities left by the deceased government servant, the income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the deceased government servant and whether he should not be a source of support to the other members of the family. Para 9 of this OM provides for selective approach. Sub Clause(d) of para 9 also provides the guidelines that in doing so it should be borne in mind that the scheme of compassionate appointment was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made significant difference in the financial position of the families of government servants dying in harness. The benefits received by the family under these schemes may be kept in view while considering cases of compassionate appointment.

8. We have considered the matter and we are of the opinion that the guidelines provided by the

B2

A3
9

-9-

government of India in the OM dated 25th November, 1978, followed by the OM dated 30th June, 1987, do provide for taking into consideration several factors in considering the request for appointment on compassionate ground. We are also of the opinion that the case of the applicants is not at par with that of Smt. Shashi Mathur and the allegation of discrimination is not sustainable.

For the reasons mentioned above, we are of the opinion that there is no merit in the applications of the applicants and the same are dismissed without any order as to costs.

J. M.

J.M.

A. M.

A.M.

JS/ 1.9.1988