

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD  
\*\*\*\*

INDEX SHEET

208

CAUSE TITLE O.A 336 OF 1987

Name of the Parties Badarp Kumar Nigam

Versus

Chairman Central Board of Direct  
Taxes, New Delhi / Others.

Part A, B & C

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# CENTRAL ADMINISTRATIVE TRIBUNAL

## ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 336 of 1987

APPLICANT (s) Pradip Kumar Nigam

RESPONDENT(s) Chairman, Central Board of Direct Taxes, New Delhi

+ another

Particulars to be examined	Endorsement as to result of Examination
1. Is the appeal competent ?	48
2. (a) Is the application in the prescribed form ?	48
(b) Is the application in paper book form ?	48
(c) Have six complete sets of the application been filed ?	48, 4 sets filed
3. (a) Is the appeal in time ?	48
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5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-	48
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7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	48
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	48

336/87

23-8-88.

Hon. D. S. Misra, Am.

Hon. G. S. Sharma, Jm.

Sri B. P. Sirostana for applicant  
Sri Ashok Mondley for respondents

Arguments heard.

Judgment reserved.

Jm.

Am.

Am.

CM

Judgment signed, dated & pronounced  
in open court. 1428t + its records are  
sent herewith for N/A.

Am.

Am.  
9/9/88

Date of progress of proceedings and routine orders

Date to which case  
is adjourned

2

3

5<sup>1</sup>/<sub>8</sub> 88

Hon. S. Zahoor Hasan, V.C.

Hon. A. Johari, A.M.

The petitioner has filed rejoinder affidavit to say. Learned counsel for the respondents wants to verify certain allegations made therein.

Let this case for final hearing on 9.2.88 along with O.A. No. 335 of 1987.

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A.M.

V.C.

M.

9.2.88

Hon. S. Zahoor Hasan, V.C.

Hon. Ajay Dalmi, A.M.

Sri B.P. Srivastava for applicant.

Case No. 365/87 is fixed for hearing on 19-4-88. Connect this case with the aforesaid case and all other three cases will be heard on 19-4-88.

31

A.M.

V.C.

Ran

OR.

15.4.88

As per ~~order~~ Honorable Bench's order dated

9.2.88 the case is submitted for final hearing along with 335 & 365/87.

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	2	3
29/6/87	On the request of Counsel for applicant the case is adjourned to 22/7/87, Reply if any can be filed by that date. by order of DR	
22/7/87	<u>Deputy Registrar</u> On the request of Counsel for respdt, he is allowed to file reply by 19/8/87. by order of DR(J)	
19/8/87	<u>DR</u> On the request of Counsel for respdt he is allowed to file reply by 9/9/87. No more time will be allowed. by order of DR(J)	
9/9/87	<u>DR</u> Reply filed today. Rejoinder can be filed by 1-10-87 as prayed by Counsel for applicant. by order of DR(J)	

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION (OA) NO. 336/87

Pradeep Kumar Nigam

Versus

.... applicant.

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

... Respondent

CONNECTED WITH

1. REGISTRATION (OA) NO. 335/87

K.M. Srivastava

..... applicant.

Versus

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

.... Respondents.

A N D

2. REGISTRATION (OA) NO. 365 /87

Km. Sumeeta Srivastava

... applicant.

Versus

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

... Respondents

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

Hon'ble G.S. Sharma, J.M.

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

For orders see our judgment passed in OA no.  
335/87 ( K.M. Srivastava Vs. Chairman, Central Board  
of Direct Taxes, New Delhi and another).

  
J.M.

  
A.M.

JS/1.9.88

Reg. No 336 of 1987  
Central Administrative Tribunal

Additional Bench

ALLAHABAD, PATNA, AZALPUR

Date of Filing ..... 14.4.87 ..... OR

Date of Receipt by Post

*B. P. Srivastava*  
Deputy Registrar.

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1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL  
BENCH, ALLAHABAD

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INDEX

IN

REGISTRATION NO.

OF 1987

BETWEEN

Sri Pradeep Kumar Nigam .. .. Applicant

VERSUS

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

SI

No.	Particulars of documents	Annexures Pages.
1.	Petition	..1. to ..7.
2.	Annexure 'I' - true copy of application dated 20.1.1981	..8. to ..9.
3.	Annexure 'II' - true copy of order dt. 25.11.1980	..10 to ....
4.	Annexure 'III' - true copy of order dated 22.1.1986	..11. to ....
5.	Annexure 'IV' - true copy of application dt. 26.8.1980	12 to ..14
6.	Annexure 'V' - true copy of representation dt. 29.8.86.	..15 to ..16
7.	Annexure 'VI' - true copy of order dt. 5.11.86	..17 to ..19.
8.	Annexure 'VII' - true copy of office memorandum dt. 25.11.78	20. to ..23

note for 21.4.87  
*Ch. C. Pandey*  
Am

*R. K. Pandey*  
(R. K. Pandey)  
(Counsel for the petitioner)

*B. P. Srivastava*  
(B. P. Srivastava)  
Counsel for the applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL  
BENCH, ALLAHABAD

\*\*\*\*\*

Registration No. of 1987

BETWEEN

Sri Pradeep Kumar Nigam .. .. Applicant

Versus

1. The Chairman, Central Board of  
Direct Taxes, New Delhi
2. The Commissioner of Income-tax  
Lucknow .. .. Respondents.

Particulars of the applicant. Sri Pradeep Kumar Nigam, aged about 30 years son of Late Sri Bal Kishan Nigam, Upper Division Clerk (Confidential Section) Office of the Chief Commissioner of Income-tax (Administration) and Commissioner of Income-tax Lucknow.

(Residing at MMQ - 10A Sector 'Q'  
Aliganj Housing Scheme, Lucknow)

NB: The notices may be served on Sri B.P. Srivastava Advocate, 188-A, Alopi Bagh, Jawahar Lal Nehru Road, Allahabad.

2. Particulars of the Respondents (1) The Chairman, Central Board of Direct Taxes, New Delhi
- (b) The Commissioner of Income-tax, Lucknow.

NB: Notices for the respondents may be sent at the aforesaid addresses

*Pradeep*

*Pradeep*



3. That the application is against order No. Establishme

P. No. 47 - 1970 dated 5.11.86 passed  
by the Board <sup>and</sup> ~~on 25.11.78~~ as communic  
by the Chief Commissioner of Income-  
(Administration) letter dt.5.11.86

4. That by the virtue of the aforesaid order the  
petitioner's representation for appointment on the post  
of Inspector of Income-tax has been rejected.

5. That the applicant declares that the subject matter  
of the order against which he wants redressal is within  
the jurisdiction of this Tribunal. The applicant further  
declares that the application is within the limitation  
prescribed under section 21 of the Administrative Tribuna  
Act, 1985.

6. That the facts of the case are given as under:-

( i ) That the petitioner has passed B.Sc.  
examination with 57% marks and was doing Articleship for  
chartered accountancy course under M/s. Radha Shyam & Co.  
Chartered Accountant, 559, Muthiganj, Allahabad since 6.2.

7. (ii) That after death of the petitioner's father  
there was none to support his mother and, therefore, the  
petitioner was left with no alternative but to seek empl

(iii) That under the aforesaid circumstances, the  
petitioner filed an application dated 20.1.1981 for appe  
appointment on the post of Inspector of Income-tax on  
compassionate ground. A true copy of the said ~~app~~ appl  
ion is filed herewith as annexure 'I' to this petition.

(iii) That on 24th January, 1981 the Commission

*R. C. Pandey*

*R. C. Pandey*

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of Income-tax Allahabad, highly recommended the petitioner's case to the Commissioner of Income-tax Lucknow for his appointment on the post of Inspector of Income-tax.

(iv) That the petitioner was fully qualified to be appointed on the post of Inspector of Income-tax.

(v) That it appears that there was some dispute regarding the fact whether a candidate can be directly appointed on the post of Income-tax Inspector on compassionate grounds. A clarification was sought by the Central Board of Direct Taxes on 25th November 1980 in which it was clarified that there was no bar to making compassionate appointment on the post of Inspector of Income-tax. A true copy of the said order dated 25.11.1980 making said clarification is filed herewith as annexure 'II' to this petition.

(vi) That the petitioner was given the appointment on the post of Upper Division Clerk vide appointment letter dated 18th August, 1981.

(vii) That as the petitioner was in dire need of employment to support his family, therefore, he joined the post of Upper Division Clerk on 27th August, 1981.

(viii) That thereafter one Smt. Sashi Mathur was appointed on compassionate ground as Inspector of Income-tax on the death of her husband Shri P.K. Mathur who was holding the post of Inspector of Income-tax by order dt. 22.1.86. A true copy of the said order dt. 22.1.1986 <sup>regarding Smt. Sashi Mathur</sup> is filed herewith as annexure 'III' to this petition.

*R.C. Gandy*  
Ad

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(ix) That when the petitioner came to know candidate on the post of Inspector of Income-tax can be appointed directly and that the petitioner who was fully qualified should have been appointed on the said post but it appears that on some misapprehension he was not appointed on the post of Income-tax Inspector, therefore, the petitioner filed an application on 26th August, 1986 requesting therein that he may be given the post of Income tax Inspector and the petitioner also cited the example of Smt. Sashi Mathur. A true copy of application dated 26th August, 1986 is filed herewith as annexure 'IV' to this petition.

(x) That the aforesaid application of 26th August, 1986 was highly recommended by the Chief Commissioner and Commissioner of Income-tax of Income Tax (Administration) / on 29th August, 1986.

(xi) That the Chief Commissioner ~~xxx~~ (Administration) Income-tax had also recommended that the petitioner should have been appointed on the post of Inspector of Income-tax but somehow or the other he was not appointed on the said post and was appointed on the post of Upper Division Clerk. He had also mentioned that the petitioner is fully qualified to hold the above post of Inspector of Income-tax.

(xii) That inspite of the fact that the petitioner should have been appointed on the post of Inspector of Income-tax, yet he was given appointment of Upper Division Clerk.

*[Signature]*

*R. C. Gandy*

(xiii) That the petitioner's representation dated 26th August, 1986 had been rejected by the Board and the same has been communicated to the petitioner by letter dated 5th November 1986 through the Commissioner of Income-Tax (Administration). A true copy of the said order dated 5th November, 1986 is filed herewith as annexure 'VI' to this petition. A perusal of the said order dated 5.11.86 would show that the petitioner's representation has been rejected under paragraph 9 of office memorandum dated 25.11.78. A photostat copy of the said office memorandum dated 25.11.78 is being filed herewith as annexure 'VII' to this petition. It may, however, be pointed out that the said paragraph 9 is not applicable in petitioner's case.

(xiv) That the petitioner has been grossly discriminated in the matter of his employment inasmuch as that on the same facts Smt. Sashi Mathur has been appointed on the post of Income-tax Inspector on compassionate grounds but the petitioner was denied the same advantages ~~on~~ on no reasonable grounds.

(xv) That the petitioner was fully qualified to be appointed on the post of Income-tax Inspector and that he was the son of Income-tax Officer yet he had given the lower post of Upper Division Clerk whereas similarly situated persons were given the appointments on the post of Income-tax Inspectors.

(xvi) That it appears that there was some confusion regarding appointing any candidate on compassionate grounds

*[Signature]*

*[Signature]*

directly on the post of Incometax Inspector but the said confusion had also been clarified by order dated 25.11.80, the petitioner should have been appointed on the post of Inspector of Income-tax.

(xvii) That great injustice has been done to the petitioner which will jeopardize his future service career.

7. That in view of the facts mentioned in para 6 above, the applicant prays for the following reliefs:

(i) That a declaration may be issued directing the opposite part No. 1 to post the applicant on the post of Inspector of Income-tax with effect from the date of initial appointment.

(ii) That any other favourable order, declaration or direction which this honourable Tribunal may deem fit and proper in the circumstances of the case may be issued.

8. That no interim relief is prayed for at present.

9. That the applicant declares that the said order had been passed by the Chairman of the Direct Taxes and as such there ~~was~~ is no further remedy available to him.

10. That the applicant further declares that he has not filed previously any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court of law nor any other authority or any other bench of the Tribunal, nor any such application, writ petition or suit is pending before any of them.

*P. P. P. P.*  
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11. Particulars of the Indian Postal order:

(i) No. of Indian Postal Order... 56,8006.....

(ii) Name of the issuing post office: Head post office

(iii) Date of issue of the postal order: 14, 4, 87

(iv) The post office at which payable.

12. That a list of enclosures has <sup>been</sup> already filed on the index of the paper book and as such no separate index is filed.

VERIFICATION

I, Pradeep Kumar Nigam son of Shri Bal Kishan Nigam (Late), aged about 30 years, working as Upper Division Clerk (Confidential Section) Office of the Chief Commissioner of Income-tax (Administration) and Commissioner of Income-tax Lucknow, residing at MMQ - 10A, Sector 'Q' Aliganj Housing Scheme, Lucknow do hereby verify that the contents of paragraph 1 to 12 of this petition are true to my personal knowledge and belief and that I have not suppressed any material fact.

Signature of the applicant.

Place of Verification:

Date of Verification.

P. C. Gaudy  
AC

P. C. Gaudy  
AC  
Counsel for petitioner

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL  
BENCH, ALLAHABAD

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Annexure 'I'

In  
Pradeep Kumar Nigam .. .. Petitioner  
Versus  
The Chairman, Central Board of  
Direct Taxes and others .. Respondents.

From

Pradeep Kumar Nigam,  
32, Kuch Rai Ganga Prasad Gate,  
Ahiyapur, Allahabad

To

The Commissioner of Income Tax,  
Allahabad

Sir,

Sub: Class III Staff - appointment on  
compassionate grounds

I have to bring to your kind notice that  
my father, Shri Bal Krishan Nigam, Tax Recovery Officer,  
Allahabad, unfortunately expired on 30th December 1980.

I am 23 years of age (born on 13th July, 1957) have  
already passed B.Sc. with 57% and was doing articleship  
for Chartered Accountancy course with M/s. Radhe Shyam  
& Co. Chartered Accountants, since 6th Feby'1972. However,  
owing to the death of my father and with no one to support  
my mother and myself, I have no alternative but to put an

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end to my proposed career as a Chartered Accountant and  
look for a job.

In these circumstances I have to request you that  
I may be considered for appointment as Inspector of  
Income-tax on compassionate grounds.

Thanking you in anticipation and assuring you that  
if appointed I will do my best to justify the appointment.

Yours faithfully,

*Pradeep*

Pradeep Kumar Nigam)

Allahabad:

Dated: 20th Jan'y 1981.

Attested

*R. C. Pandey*  
ACR



भारत सरकार  
कार्यालय मुख्य आयुक्त प्रशासन उ० प्र० एवं  
आयकर आयुक्त, लखनऊ ।

-----आदेश-----  
दिनांक 22-1-86

स्थापना-केन्द्रीय सेवाएँ-वर्ग "ग"-अनुकम्पामूलक आधार पर  
नियुक्ति सम्बन्धी आदेश-

संख्या 1 राजस्व विभाग के पृष्ठांकन एफ. संख्या ए-12012/3/78-समन्वय दिनांक 12-1-79 द्वारा परिचालित गृह मंत्रालय के कार्यालय ज्ञापन संख्या 14014/1/79/स्था.डी. दिनांक 25-11-78 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए व केन्द्रीय प्रत्यक्षर बोर्ड, नई दिल्ली के पत्र संख्या ए-12012/45/85-प्रशासन-7 दिनांक 20-12-85 के अनुसरण में श्रीमती शशि माथुर, पत्नी स्व० श्री पी०के० माथुर, आयकर निरीक्षक, इलाहाबाद प्रभार को आयकर निरीक्षक के पद पर रू० 500-900 के वेतनमान में कार्यभार ग्रहण करने की तारीख से व अगला आदेश जारी होने तक अस्थायी रूप से नियुक्ति के लिये अनुमोदित किया जाता है । उनकी नियुक्ति अनुकम्पामूलक आधार पर सेवायोजन भर्ती की प्रक्रिया को तथा उच्चतम आय सीमा को स्थिरीकरण करते हुए की जाती है । श्रीमती शशि माथुर, नवनि्युक्त आयकर निरीक्षक 2 वर्षों की अवधि तक परिवीक्षा पर रहेगी ।

संख्या 2 उपर्युक्त के परिणामस्वरूप श्रीमती शशि माथुर, नवनि्युक्त आयकर निरीक्षक की सेवाएँ आयकर आयुक्त, इलाहाबाद के अधीन सौंपी जाती हैं ।

ह०/-  
धरनी धर  
मुख्य आयुक्त प्रशासन उ० प्र० एवं  
आयकर आयुक्त, लखनऊ ।  
दिनांक 23 जनवरी, 1986

स्थापना सी० संख्या 27/60/7  
प्रतिलिपि प्रेषित:-

1. श्री रेवतीरमण झा, आयकर आयुक्त, इलाहाबाद को उनकी मुख्य आयुक्त से दूरभाष पर हुई बातों के सन्दर्भ में इस अनुरोध के साथ कि श्रीमती माथुर के सेनाती आदेश इस कार्यालय को सूचित करते हुए तुरन्त जारी करने का कष्ट करें । अभ्यर्थी को यह भी सूचित कर दिया जाय कि चूंकि उनकी उम्र 25 वर्ष से अधिक हो चुकी है अतः सेवा निवृत्त होने पर वे पूरी पेंशन के लिये हकदार नहीं होगी ।
2. श्री आर० आर० भारती, अवर सचिव, प्रशासन-7, केन्द्रीय प्रत्यक्षर बोर्ड, नई दिल्ली को उनके पत्र संख्या ए-12012/45/85-प्रशासन-7 दिनांक 20-12-85 के सन्दर्भ में ।
3. श्रीमती शशि माथुर, पत्नी स्व० श्री पी०के० माथुर, 2-बी-मुईर रोड, इलाहाबाद ।

आन्तरिक वितरण:  
अभिज्ञेपाल को 2 प्रतियां  
स्था० लि० 2 व 5

एस०के० वटजी  
आयकर अधिकारी प्रशासन  
मुख्य आयुक्त प्रशासन उ० प्र० एवं  
आयकर आयुक्त, लखनऊ ।  
दि. 20.1.86

स० जोशी/०

44 est  
R. C. Pandey  
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH, ALLAHABAD

\*\*\*\*\*  
ANNEXURE IV  
IV

Reg. No. of 1987

Pradeep Kumar Nigam .. .. Petitioner  
Versus

The Chairman of Central Board of  
Direct taxes and others .. .. Respondents.

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To

The Chairman,  
Central Board of Direct Taxes,  
New Delhi

Through Proper Channel

Sir,

With due respect and regards, I beg to submit as under  
for favour of your honour's sympathetic consideration and  
beneficent order :-

1. That my father late Shri B.K. Nigam, Income-tax  
Officer Group 'B' who was Tax Recovery Officer, Allahabad,  
had expired on 30.12.80.
2. That I was a science graduate with 57% marks and was  
doing Articleship for Chartered Accountancy course with M/s.  
Radhe Shyam & Co. Chartered Accountant. (Photo state copy of  
B.Sc. Marksheet & Certificate of training are attached herewith).
3. That owing to death of my father and with no one to  
support my mother and myself, I have no alternative but to put

*[Handwritten signature]*

an end to my proposed career as a chartered accountant and look for a job.

4. That I had applied to Commissioner of Income-tax, Allahabad for appointing me as Income-tax Inspector considering my additional qualification of two years (approx) experience as an Articled-clerk)

5. That for the reasons best known to the department I could not get the post of Income-tax Inspector and was offered the post of U.D.C. vide P.No.44/Estt/Transfer/Inspector/81 dated 9.7.81. In accordance with clarification issued by the C.B.D.T. vide P.No.A-12012/49/80-Ad.VII dated 25.11.80 the post of Inspector should have been offered to me, with the approval of the Board.

6. That I was equally eligible for the post of Income-tax Inspector but it was not done because there was no instance before the Department where any one was considered for the post of Income-tax Inspector on compassionate grounds.

7. That it has come to my notice a few days ago that the Board vide order P.No.A-12012/45/85-Ad.VII dated 20.12.85 appointed Smt. Shashi Mathur to the post of Income-tax Inspector, who is wife of late Shri P.K. Mathur, Inspector, Allahabad on compassionate grounds.

8. That Smt. Shashi Mathur's husband was inspector in the department, while my respected father was an income-tax officer and at least I should have been appointed to the post of Inspector also on same compassionate grounds as I was also qualified for the post of Inspector. In addition to the minimum qualification of graduation, I had an additional qualification of two years experience as a chartered accountancy trainee which is useful for the post of Inspector.

9. That inspite of the above facts, Smt. Shashi Mathur has been appointed as an Inspector and I was appointed as a U.D.C. resulting in discrimination against me.

In view of the aforesaid facts and with due respect, I pray your honour to consider my case sympathetically for appointment as Inspector in the Department on the same compassionate grounds on which Smt. Shashi Mathur was appointed as Inspector.

Thanking you in anticipation

Yours faithfully,

Sd/ 26th August 1986  
(Pradeep Kumar Nigam) U.D.C.  
O/o Chief Commissioner (Admn) U.P. &  
Commissioner of Income-tax, Lucknow

Dated: LKO: 26th August, 1986

Encl: Photostat copy of B.Sc. Marksheet  
and certificate of training as an  
articled clerk.

Attest

*Pradeep Kumar Nigam*  
Admn

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A4  
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दिष्टिमिनिस्ट्रेटिव सेन्ट्रल विनल एडिशनल वान्च इलाहाबाद।

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सनेक्चर नं० (६४) E

इन

रजिस्ट्रेशन नम्बर

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आपन १६८७

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पदीप कुमार निगम

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पिटीशनर

वनाम

दि चेरमैन सेन्ट्रल बोर्ड हाइरेक्ट टेक्स न्यू दिल्ली

एन्ड अइसै

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रेस्पॉन्स

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भारत सरकार,

कार्यालय मुख्य आयुक्त (प्रशा०) ऊप० एवं आयकर आयुक्त लखनऊ

स्थापना पी० सं० ४७।१६७० । दिनांक ५-११-८६।

सेवा में,

श्री पदीप कुमार निगम,

प्रवर श्रेणी लिपिक

गोपनीय अनुभाग,

कार्यालय मुख्य आयुक्त (प्रशा०) ऊप० एवं

आयकर आयुक्त लखनऊ

विषय :- अनुकम्पामुलक आधार पर आयकर निरीदाक के पद पर-

अ.र:-

प्रतिनियुक्ति :-

कृपया उपरि उक्त विषय पर अपने प्रतिवेदन दिनांक २६-८-८६ का अवलोकन करें।

२:- वॉर्ड ने कार्मिक तथा प्रशासनिक सुधार विभाग के दिनांक २२-११-७८ के कार्य (अलय जापन सं० १४०१४।१।७७ स्थापना। डी। के पैरा ६ में निहित अनुदेशों) को ध्यान में रखते हुए आपके उपरि उक्त प्रतिवेदन को अस्वीकार कर दिया है।

रक्षणी० सिंह)

आयकर अधिकारी मु० प्रशासन (

कृ० मुख्य आयुक्त (प्रशा०) ऊ० प्र० एवं

२-११-८६

आयकर आयुक्तलखनऊ।

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सत्य प्रतिलिपि

R. S. Singh  
for

R. S. Singh

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द्विसेन्ट्रल एडिमिनिस्ट्रेटिव टिक्कल एडिशिनल ब्रान्च इलाहाबाद।

सनेचरनं ~~५५~~ ५५

इन

रजिस्ट्रेशन नम्बर

आपन १६८७

श्री प्रदीप कुमार निगम

पिटीशन

वनाम

दि चेयरमैन सेन्ट्रल बोर्ड आपन डाइरेक्ट टेक्स

नई दिल्ली आदि

रिस्पॉन्स

भारतसरकार

कार्यालय मुख्य आयुक्त (प्रशासन) ऊपरसर्वो आयकर अख्तुत,

अशोक मार्ग

लखनऊ २२ ६००१

ऊपर।

स्थापना- पी०सो ५०-१६७०, दिनांक लखनऊ रट-८-१६८६,

सेवामें,

सचिव। प्रशासन-७।

केन्द्रीय प्रत्यक्षा का बोर्ड,

नई दिल्ली।

महोदय,

विषयक अनुकम्पामूलक आधार पर श्री प्रदीप कुमार निगम

पुत्र सर्वो श्री वी०के० निगम आयकर अधिकारों की

-२:-

निरीदाक के पद पर नियुक्ति:-

श्री प्रदीप क्लार निगम पुस्व ० श्री वाल कृष्ण निगम आयकर अधिकारी की नियुक्ति अपने पिता की मृत्यु के पश्चात प्रवा श्रेणी लिपिक के पद पर जुलाई १९८१ में की गयी थी। उन्होंने पहले आयकर निरीदाक के पद पर अनुकम्पामुलक आधार पर नियुक्ति हेतु अपना आवेदन पत्र दिया था। परन्तु वोर्ड के पत्रार्क ए-१२०१२।८।८१ प्रशासन अ७ दिनांक १२-६-१९८१ (प्रतिलिपि संलग्न) द्वारा यह निर्देश दिये गये थे कि इनकी नियुक्ति निरीदाक के पद पर नहीं की जा सकती है व इन्हें प्रवा श्रेणी लिपिक पद पर ही नियुक्ति किया जा सकता है। अतः श्री निगम की नियुक्ति प्रवा श्रेणी लिपिक के पद पर की गयी तब से वह इसी पद पर कार्यरत है। हालांकि वे निरीदाक के पद पर अनुकम्पामुलक आधार पर नियुक्त होने वाली सभी योग्यताएं रखते थे। अभी थोड़े समय पहले वोर्ड ने अपने आदेश क्र सं-१२०१२।४५।८५ प्रशासन। ७ दिनांक ०-१२-८५ के अन्तर्गत श्री मती शशी माथुर पत्नि स्व ० श्री पी० के माथुर आयकर निरीदाक की अनुकम्पा मुलक आधार पर निरीदाक के पद पर नियुक्ति की गयी है। अतः श्री निगम ने एक प्रतियोगिता दिनांक २६-८-१९८६ को दिया है जो कि संस्तुति सहित अग्रसारित किया जा रहा है।

अतः श्री निगम निरीदाक के पद पर नियुक्ति होने वाली योग्यताओं को पूरा करते हैं। अतः यदि उनको इस समय भी निरीदा



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के पद पर नियुक्ति दी जा सके। तो मुझे कोई आपत्ति नहीं है व मैं उसकी संतुति करता हूँ।

धन्यवाद:

भवदीय,

धरनी धर ।

मुख्य आयुक्त प्रशासन। ऊप०स्व०

संलग्नक- उपरोक्त :-

आयका आयुक्त लखनऊ

सत्य प्रतिलिपि

*R. C. Singh*  
*AC*

Copy of O.M.No.14014/1/77-Estt(D) dated 25.11.1978 of the Ministry of Home Affairs received with Department of Revenue and Estt.No.A-12012/3/78-Coord. dated 12.1.1979 (Circular No.11/79)

Sub:-Compassionate appointments of son/daughter/near relative of deceased Govt. Servant- Consolidated instructions-

The under-signed is directed to say that in supersession of this Department's O.M.No.14034/1/77-Estt(D) dated 23.5.1978 the following revised instructions are circulated for information and compliance:-

- |   |   |                   |     |                     |      |                                   |     |  |     |                |    |                      |                      |
|---|---|-------------------|-----|---------------------|------|-----------------------------------|-----|--|-----|----------------|----|----------------------|----------------------|
| 1.A.General Scheme                                | 1. Ministries/Depts. are competent to appoint in relaxation of the procedure of requirement through the Staff Selection Commission or Employment Exchange, but subject to the other requirements set out below, the son/daughter/near relative of a Govt. Servant, who dies in harness, leaving his family in immediate need of assistance in the event of there being no other earning member in the family, to a Group 'C' post or Group 'D' post, after the proposal for such appointment has been approved by the Joint Secretary Incharge of the Administration or Secretary in the Ministry/Deptt.concerned. In attached and subordinate offices the power of compassionate appointment may be exercised by the Head of the Deptt. under Supplementary Rule No.2(10). |                   |     |                     |      |                                   |     |  |     |                |    |                      |                      |
| 1.B. Authority competent to make the appointment. |   |                   |     |                     |      |                                   |     |  |     |                |    |                      |                      |
| 2. Filling of post                                | 2. While the restriction of the percentage 3% earlier laid down for making compassionate appointments is removed, the appointing authorities may exercise care so that the number of posts to be earmarked do not exceed substantially and significantly 50% of the vacancies in any calendar year after allowing for the following reservations, which will not be the same for all cadres:-   |                   |     |                     |      |                                   |     |  |     |                |    |                      |                      |
|   | <table border="0"> <tr> <td>i) Schedule Caste</td> <td>15%</td> </tr> <tr> <td>ii) Schedule Tribes</td> <td>7.5%</td> </tr> <tr> <td>iii) Ex-servicemen (Single posts)</td> <td>10%</td> </tr> <tr> <td>iv) Group 'D' employees (In LDC's posts)</td> <td>10%</td> </tr> <tr> <td>v) Handicapped</td> <td>3%</td> </tr> <tr> <td>vi) Other categories</td> <td>Under consideration.</td> </tr> </table>   | i) Schedule Caste | 15% | ii) Schedule Tribes | 7.5% | iii) Ex-servicemen (Single posts) | 10% | iv) Group 'D' employees (In LDC's posts) | 10% | v) Handicapped | 3% | vi) Other categories | Under consideration. |
| i) Schedule Caste                                 | 15%   |                   |     |                     |      |                                   |     |  |     |                |    |                      |                      |
| ii) Schedule Tribes                               | 7.5%  |                   |     |                     |      |                                   |     |  |     |                |    |                      |                      |
| iii) Ex-servicemen (Single posts)                 | 10%   |                   |     |                     |      |                                   |     |  |     |                |    |                      |                      |
| iv) Group 'D' employees (In LDC's posts)          | 10%   |                   |     |                     |      |                                   |     |  |     |                |    |                      |                      |
| v) Handicapped                                    | 3%  |                   |     |                     |      |                                   |     |  |     |                |    |                      |                      |
| vi) Other categories                              | Under consideration.  |                   |     |                     |      |                                   |     |  |     |                |    |                      |                      |
| 3. Eligibility                                    | 3. Ministries/Depts. are aware that applicants for compassionate appointment should be appointed only if they are eligible and suitable for the posts in all respects under the provisions of the Recruitment Rules.  |                   |     |                     |      |                                   |     |  |     |                |    |                      |                      |

Cases where the conditions of the family is a very hard and appointment can be made only by relaxation of educational qualifications. Department may relax educational qualifications in case of appointment at the lowest level, i.e. Group 'D' or L.D.C. post where a son/daughter/near relatives applying for the posts does not yet have the necessary qualification and has to be given an opportunity to acquire the requisite qualification. This relaxation will be permitted for a period of two years. Beyond this no relaxation of educational qualifications will be admissible and the services of the person concerned is still unqualified are liable to be terminated. Where the Ministries/Depts. deem it imperative in the context of the impecunious condition of the family they may relax the age limit in accordance with the general orders No.4/1/55-RPs dated 12.2.1955.

4. Where the death took place long ago. 4. It will no longer be necessary for Depts. to refer the Deptt. of Personnel & A.R. cases of Compassionate appointments of wards of Govt. servants merely because a long time, say 5 years lapsed since the death of the Govt. servant. The Ministries/Depts. may consider such cases themselves on merit but while admitting claims of such applications. Ministries/Depts. may please keep in view the important fact that the concept of compassionate appointment is largely related to the need for immediate assistance to the family on the passing away of the Govt. servant, in harness. When several years have passed after the death of a Govt. servant, it would appear ~~be~~ *primo facie* that the family has been able to manage somehow all these years and had some means of subsistence, Ministries/Depts. will no double deal with such requests with a great deal of circumspection in order to give due allocation to more deserving cases, if any. The decision in such case of belated appointments may be taken after the Secretary has approved of the proposal.
5. When there is an earning member. 5. In deserving cases even where there is an earning member in the family a son/daughter/near relative of a Govt. servant, who dies in harness leaving his family in indigent circumstances, may be considered for appointment to the post. All such appointments are, however, to be made with the prior approval of the Secretary of the Ministries/Deptt. concerned, who before approving the appointment will satisfy himself that the grant of the concession is justified, having regard to the number dependents left by the deceased Govt. servant, the assets and liabilities left by him, the income of the earning member as also his liabilities whether the earning member is residing with the family of the deceased Govt. servant and whether he should not be a source of support to the other members of the family.

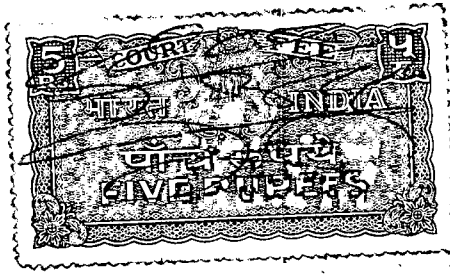
6. Govt. servants retired on medical grounds
6. In exceptional cases when a Deptt. is satisfied that the condition of the family is indigent and in great distress, the benefit of compassionate appointment may be extended to the son/daughter/near relative of Govt. servant retired on medical grounds under Rule 38 of the Central Civil Services (Pension Rule) 1972 or corresponding provisions in the Central Civil Regulations.
7. Appointment to the post of Peon etc.
7. In view of the existing ban on filling up posts of Peons and Jemadars, as long as the ban exists, compassionate appointments should be made only against Group 'D' posts for the filling up of which there is no ban at present. Where however, there are no vacancies in such posts compassionate appointments could be made against posts of Peon/Messengers, provided that regular vacancies exist and persons concerned are eligible and suitable for the job.
8. Death during re-employment or extension in service.
8. It is hereby clarified that a son/daughter/near relative of Govt. servant, who dies during the period of extension in service are eligible for the concession under the scheme of compassionate appointments. However, the benefit of this scheme is not admissible to those Govt. servants who pass away during re-employment.
9. Request for change in post.
9. When a person has accepted a compassionate appointment to a particular post, who the set of circumstances which led to his initial appointment should be deemed to have ceased to exist and thereafter the person who has accepted compassionate appointment in a particular post should strive in his career like his colleagues for future advancement and claims for appointment to higher post on consideration of compassionate should invariably be rejected.
10. Recruitment Rules.
10. Ministries/Depts. may please take steps to amend Recruitment Rules in order to make specific provisions in the Rules for Compassionate appointments under the scheme.
11. Selective approach.
11. It is necessary to emphasise that even though the quota for such appointment has been abolished, Ministries/Depts. may kindly adopt a highly selective approach in view of the following considerations:-
- The appointments made on grounds of compassionate should be done in such a way that persons appointed to the post do have the essential educational and technical qualifications required for the post consistent with the requirement of the maintenance of efficiency of administration;
  - These instructions do not restrict employment of son/daughter/near relative of deceased Group 'D' employee to a Group 'D' post only.

near  
As such a son/daughter/relative of a deceased employee can be appointed to a Group 'C' post for which he is educationally qualified, provided a vacancy in Group 'C' exists.

- c) As the appointments have to be cleared at the Head of Deptt. level, and as all the vacancies are to be pooled for compassionate appointment it may be ensured that subordinate and field offices get an equitable share in the compassionate appointments.

12. General 12. The general proforma as in annexure may continue to be used by Ministries/Depts. for processing the cases of Compassionate appointments.

Attest  
R. C. G. and  
K. S.



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Before the Central Administrative Tribunal Lucknow Bench  
अभिभाषक पत्र (वकालतनामा)

~~हस्ताक्षर~~ ~~आप~~ ~~जुहोवर~~, ~~इलाहाबाद~~

Registration नं० ..... सन् १९८७

By Pranod Kumar Negam

वादी/प्रतिवादी  
अपीलान्त

बनाम

The Chairman, Central Board of Direct Taxes

वादी/प्रतिवादी  
रेस्पान्डेन्ट

मैं कि Pranod Kumar Negam, Officer of the

हम

Chief Commissioner of Income Tax (Administration)

and Commissioner of Income Tax Lucknow

उपरोक्त प्रकरण में मैं अपनी ओर के पक्ष समर्थन के हेतु

श्री बी० पी० श्रीवास्तव व श्रीमती उमा श्रीवास्तव, एडवोकेट हाईकोर्ट

१८८ ए, अलोपीबाग, जवाहरलाल नेहरू मार्ग, इलाहाबाद

को कानूनी  
निश्चित

शुल्क (मेहनताना) नियत करके अपना अभिभाषक वकील (वकील) नियुक्त

करता हूँ  
करते हूँ

यह स्वीकार करता है कि उक्त सज्जन हमारी ओर से वाद-पत्र (अर्जी दावा), प्रतिवाद-पत्र (बयान तहरीरी), वाद स्वीकार पत्र, विवाद पत्र पुनरवलोकन एवं पुनर्निर्णय प्रार्थना पत्र (दरखास्त), शापथिक कथन (हलफनामा इजराय) प्रवर्तन पत्र (दरखास्त), मूजवात अपील, निगरानी इत्यादि हर प्रकार के अन्य प्रार्थना आदि एवं लेखादि की प्रतिलिपियाँ अपने हस्ताक्षर करके न्यायालय में प्रस्तुत करें अथवा किसी पत्र पर आवश्यकतानुसार शापथिक पुष्टीकरण करें और आवश्यक सवाल जबाब करें और लेखादि की प्रतिलिपियाँ एवं हमारे प्राप्यधन को अपने हस्ताक्षरी पावती देकर प्राप्त करें। हमारी ओर से किसी को मध्य पत्र, तथा साक्षी (गवाह माने और उससे सम्बन्धित प्रार्थना-पत्र प्रस्तुत करें तथा उसका समर्थन करें तथा तसदीक करें, वाद-पत्र उठावें, छोड़े अथवा समझौता करें तथा सुलहनामा दाखिल करें तथा उसके सम्बन्ध में प्रार्थना-पत्र दाखिल करके उसका समर्थन करें अर्थात् प्रकरण से सम्बन्ध करने वाली कुल कार्यवाही डिग्री के भर पाई होने के समय तक स्वतः या संयुक्त कर आवश्यकता होने पर किसी अन्य वकील महोदय को वकील करें। उक्त सभी कार्यवाही जो उक्त सज्जन करेंगे प्रत्येक दशा में अपने किये की भांति हमको सर्वथा स्वीकार होगी अगर मैं कानूनी शुल्क उक्त सज्जन को न दूँ तो उनको अधिकार होगा कि वह हमारी ओर से मुकदमा की पैरवी न करें। उपरोक्त दशा में उक्त सज्जन का कोई उत्तरदायित्व न रहेगा।

अतएव यह अभिभाषक पत्र लिख दिया कि प्रमाण रूप से समय पर काम आये।

वकालतनामा मन्जूर है।

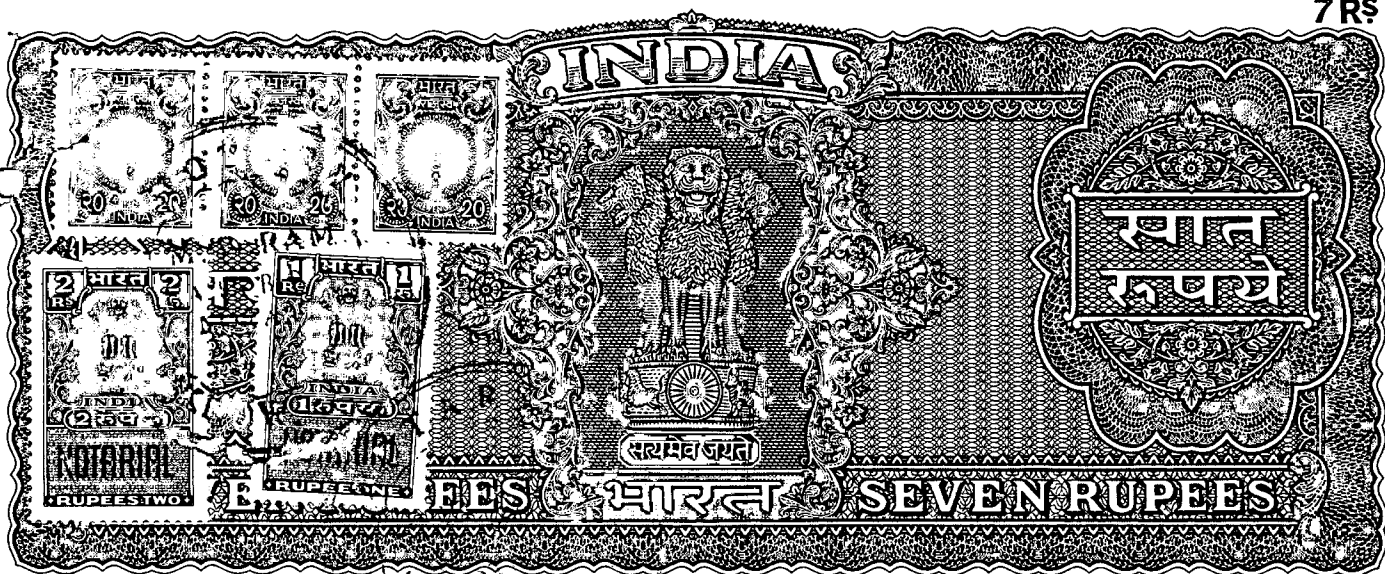
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
 ADDITIONAL BENCH  
 ALLAHABAD

AS  
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COUNTER AFFIDAVIT

IN

REGISTRATION NO.336 OF 1987

Pradeep Kumar Nigam .. .. . APPLICANT

Versus

1. The Chairman,  
 Central Board of Direct Taxes,  
 New Delhi.

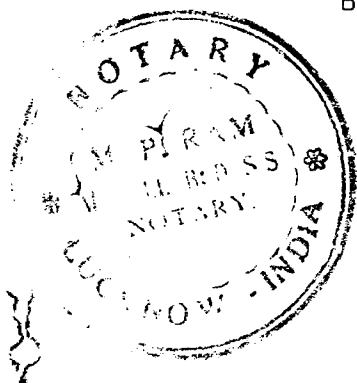
2. Commissioner of Income Tax,  
 Lucknow .. .. . RESPONDENTS

Affidavit of

H.P. Singh, aged about  
 years, son of Sri Late S. Nand Singh  
 Income Tax Officer, Head  
 Quarter, Office of the  
 Chief Commissioner (Admn.)  
 U.P., Commissioner of  
 Income Tax, Lucknow.

- : DEPONENT : -

*[Signature]*



*Recd copy  
 19/9/87*

**M. P. RAM.**  
 M.A., LL.B., D.S.S.  
 ADVOCATE, NOTARY  
 FREEDOM FIGHTER  
 1 Gola Cant. LUCKNOW

*7th Sept 87*

**M. P. RAM.**  
 M.A., LL.B., D.S.S.  
 ADVOCATE, NOTARY  
 FREEDOM FIGHTER  
 1 Gola Cant. LUCKNOW



I, the deponent named above, do hereby solemnly affirm and state as follows:-

1. That the deponent is working as the Income Tax Officer (Head Quarter)(Admn.), Office of the Chief Commissioner(Admn.) U.P., cum-Commissioner of Income Tax, Lucknow and has been authorised to look after the case and to file the present counter affidavit on behalf of the respondents. He is, as such fully acquainted with the facts of the case deposed to below:
2. That the deponent has read the contents of the application filed under Section 19 of the Central Administrative Tribunal Act, 1985 by the applicant Sri Pradeep Kumar Nigam working as Upper Division Clerk (Confidential Section) Office of the Chief Commissioner of Income Tax (Administration) and Commissioner of Income Tax, Lucknow before this Hon'ble Tribunal and has fully understood their contents.
3. That the contents of paragraphs 1 to 5 of the application are matters of record and as such require no reply by means of this affidavit.
4. That in reply to the contents of paragraph 6 (i) of the application it is stated that the deponent has no personal knowledge about the facts stated therein, and as such are not admitted. The applicant is put to strict proof to prove the same.
5. That the contents of paragraph 6 (ii) of the application are correct as per records. It is further submitted that the applicant is son of Sri Bal Krishan Nigam, who was working as the Tax Recovery Officer, Allahabad. In his application for employment dated 20th of January, 1981 he has mentioned that after the death of his father there is no one to support him and his mother.
6. That the contents of paragraph 6(iii) of the application are matters of record and require no reply by means of this affidavit. Further it is submitted that the applicant had applied on the 20th of January, 1981 for appointment to the post of Income Tax Inspector on compassionate ground but his case was examined in accordance with the instructions contained in office Memorandum No.14014/4/1/77/Estt(D) dated 25th of November 1978, issued by the Ministry of Home Affairs Department of Personnel and Administrative Reforms and the applicant was given appointment as Upper Division Clerk rightly considering the facts and circumstances of his case and other qualifications.

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*pride*

7th Sept 07

M. P. RAM  
M.A.L.B.D.S.S.  
NOTARY  
LUCKNOW





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7. That the contents of paragraph 6(iii) (this number '3' has been repeated) are matters of record and require no reply by means of this affidavit. However, it is submitted that the recommendations made by the Commissioner of Income Tax, Allahabad is of no consequence as every case has to be examined along with the norms laid down in office Memorandum No.14014/1/77-Estt(D) dated 25th of November, 1978 issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms, New Delhi.

8. That the contents of paragraph 6(iv) of the application are not admitted. It is submitted that the applicant's case was fully examined and he was given the appointment on the post of Upper Division Clerk vide appointment letter dated 18th of August, 1981 which was acceptable to the applicant and he had joined the services. But it is submitted that the appointment on compassionate ground is not a matter of right.

It is given only in those cases where the deceased Government servant has left his/her family in indigent circumstances. The Government has absolutely discretion to refuse an appointment on compassionate ground, according to the facts and circumstances of each case. In the instant case the applicant was given appointment to the post of Upper Division Clerk which was commensurate with his qualifications.

9. That the contents of paragraph 6(v) of the application are matters of record and require no reply by means of this affidavit. However, it is submitted that the clarifications sought from the Central Board of Direct Taxes is not final as every individual case has to be examined along with the norms laid down in Office Memorandum No.140141/77-Estt(D) dated 25th of November, 1978, issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms, New Delhi.

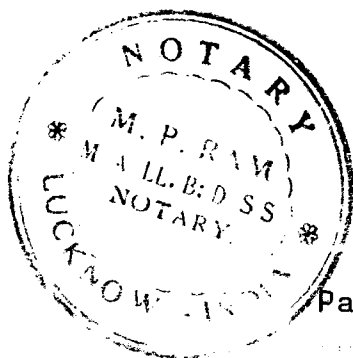
10. That the contents of paragraph 6(vi) of the application are admitted. The applicant was given appointment on the post of Upper Division Clerk in pursuance of his application on compassionate ground as per norms laid down

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M. P. RAM,  
M.A., LL.B., D.S.S.,  
ADVOCATE, NOTARY  
FREEDOM FIGHTER  
Q. Gola Cant LUCKNOW

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Page-4

by the office Memorandum dated 26th of November, 1978 issued by the Ministry of Home Affairs, New Delhi.

11. That in reply to the contents of paragraph 6(vii) of the application only this much is admitted that the applicant joined the post of Upper Division Clerk on the 27th of August, 1981. Rest of the averments contained in the paragraph under reply are not admitted.

The Government has considered the case of the applicant and considering the facts and circumstances of his case gave him the appointment to the post of Upper Division Clerk which was commensurate with his qualifications and the applicant accepted the aforesaid appointment and joined his duty.

12. That it is further submitted that the appointment on compassionate ground is not as a matter of right but it is absolute discretion of the Government and the Government has discretion to refuse the appointment on compassionate ground when in the opinion of the Government the family is not badly off.

However, it is further submitted that Ministry of Home Affairs Office Memorandum No.14014/1/7/Estt(D) dated 25th of November, 1978, Column No.9 clearly declared that when a person has accepted a compassionate appointment to a particular post, the set of circumstances which led to initial appointment should be deemed to have ceased to exist and thereafter the person ~~who~~ who has accepted the compassionate appointment in a particular post should strive in his career like his colleagues, for future advancement and claims for appointment to higher post on consideration of compassionate should invariably be rejected.

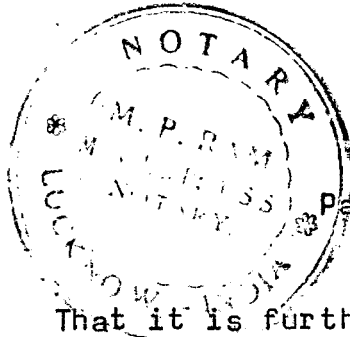
13. That it is further submitted that a graduate is normally appointed to the post of Upper Division Clerk in the Income Tax Department. For higher Executive posts such as Inspector, candidate has to qualify in competitive examination. To appoint all dependants who are simply graduates to Inspector post would not only be detrimental to the Income Tax Department but also to the interest of more deserving candidates who are appearing in the competitive examination.

Contd.....

*M. P. Rawat*  
M. P. RAWAT  
ADVOCATE, LUCKNOW  
FREEDOM FIGHTER  
3. Gold Medal LUCKNOW

*M. P. Rawat*

*apna*



Page-5

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14. That it is further submitted that the quality of the Inspector who come through competitive examination after achieving the required standard of intelligence, aptitude etc. as desired of him cannot be expected of the candidates coming through compassionate appointment. The cadre has quota for direct recruitment and large compassionate consideration will surely effect its constitution, character and effectiveness.

15. That in reply to the contents of paragraph 6(viii) of the application it is admitted that Smt. Shashi Mathur was appointed on compassionate ground as the Inspector of Income Tax on temporary basis.

16. That the contents of paragraph 6(ix) of the application are admitted. The applicant moved an application for appointment to the post of Income Tax Inspector on the 26th of August 1986. However, it is submitted that the applicant's case is not similar to that of Smt. Shashi Mathur in as much as the appointment as Upper Division Clerk and he joined the services on 27th of August, 1981 and the set of circumstances which existed at his initial appointment had ceased to exist.

It is submitted that the applicant was appointed on compassionate ground and he should strive with other colleagues for future advancement/promotion by qualifying in competitive examination. The applicant cannot claim appointment on compassionate ground as a matter of right.

It is absolute discretion of the Government. There was no misapprehension when the appointment of Upper Division Clerk was offered to the applicant in the year 1981. His case was considered in accordance with the norms laid down in the office Memorandum dated 25th of November, 1978 issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms, New Delhi.

17. That in reply to the contents of paragraphs 6(x), 6(xi) and 6(xii) of the application it is stated that the applicant can not claim appointment on compassionate ground as a matter of right. The Government has absolute discretion to refuse

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M. P. RAM.  
B.A., LL.B., D.S.S.  
ADVOCATE, NOTARY  
FREEDOM FIGHTER  
Gold Medalist

24 Sept 87

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Page.6

appointment on compassionate ground when the family is not badly off. However, it is submitted that the graduates are normally appointed to the post of Upper Division Clerk in the Income Tax Department. For Higher executive post, such as Inspector, the candidate has to qualify in competitive examination.

It is submitted that the applicant's case was thoroughly considered and he was given appointment as Upper Division Clerk which was accepted by him and he has been working since then. It is stated that to appoint all dependants who are simply graduates to the Inspector's post will not only be detrimental to the Income Tax Department but also to the interest of some deserving candidates who are appearing in the competitive examination.

Further more the quality of the Inspectors who come through competitive examination after achieving the required standard of intelligence, aptitude etc. as desired of him cannot be ~~expected~~ expected of the candidates coming through compassionate appointment. The cadre of Inspector has quota for direct recruitment and large scale induction of appointees on compassionate consideration will surely effect its constitution, character and effectiveness.

It is with this perspective in view that the appointment to the post of Inspector on compassionate ground has subsequently been completely stopped by the Government.

18. That it is further submitted that it is incorrect to say that there was some misapprehension that the applicant was not appointed on the post of Income Tax Inspector. The recommendations by the Commissioner of Income Tax or the Chief Commissioner of Income Tax are routine matters but the cases are thoroughly examined by the Government in the light of the Government of India instructions contained in office Memorandum No.14014/1/7/Estt(D) dated 25th of November, 1978.

It is submitted that if the applicant was not satisfied with his appointment to the post of Upper Division Clerk he was free not to accept the same but he cannot claim the post of Inspector of Income Tax as a matter of

right.

M. P. RAM.  
M.A., LL.B., D.S.S.  
ADVOCATE, NOTARY  
FREEDOM FIGHTER  
D. P. G. G. LUCKNOW

7th Sept 1977

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19. That the contents of paragraph 6(xiii) and 6(xiv) of the application are admitted to the extent that the representation dated 26th of August, 1986 of the applicant was rejected. But it is submitted that his application was rightly rejected in consonance with the office Memorandum No.14014/1/7-Estt(D) dated 25th of November, 1978. The applicant cannot claim appointment as Income Tax Inspector as a matter of right.

It is absolute discretion of the Government to be exercised looking into the facts and circumstances of each case. It is submitted that the applicant's case was considered and he was offered an appointment to the post of Upper Division Clerk which was accepted and there is no justification for his claim to be appointed as the Income Tax Inspector. It is wrong to say that the applicant has been grossly discriminated, as alleged.

20. That in reply to the contents of paragraph 6(xv) of the application it is stated that firstly the applicant cannot claim appointment on compassionate ground as a matter of right. It is absolute discretion of the Government to refuse an appointment on compassionate ground when the family is not badly off.

It is submitted that the applicant's case was thoroughly examined and he was given appointment to the post of Upper Division Clerk. If the applicant was not satisfied he was free not to accept the post of Upper Division Clerk.

21. That it is further submitted that the clarification given by the Central Board of Direct Taxes is not final but it has to be done in accordance with the norms laid down by the Ministry of Home Affairs.

It is stated that the central Board of Direct Taxes had rightly rejected the request of the applicant. As already stated in the preceeding paragraphs of this affidavit the appointment cannot be claimed on compassionate ground as a matter of right. His case was considered and he was given appointment on compassionate ground in the year 1981.

M. P. RAM.  
M.A., L.L.B., D.A.  
ADVOCATE, NOTARY  
FREEDOM FIGHTER  
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2/10/87

The set of circumstances which led to his appointment on compassionate ground in the year 1981 did not exist in the year 1986 and he is liable to strive in his career like his colleagues for future advancement by appearing in the competitive examinations etc.

22. That the contents of paragraph 6(xvi) of the application are not admitted. It is submitted that no injustice has been done to the applicant nor his future services career will be jeopardised. For appointment to the post of Inspector of Income Tax a competitive examination is held. The applicant is free to appear in the competitive examination like his other colleagues and qualify for the said appointment.

It is submitted that if a person is appointed on compassionate ground this will surely effect the constitution, character and effectiveness of the cadre. Moreover, the cadre of Income Tax Inspector has quota for direct recruitment and everyone cannot be considered for appointment on compassionate ground on the said post.

23. That the contents of paragraph 7 of the application are not admitted. The applicant is not entitled to any declaration as prayed for. Relief '1' cannot be claimed by the applicant as a matter of right. It is absolute discretion of the Government.

24. That the contents of paragraphs 9 to 12 of the application are matters of record and require no reply by means of this affidavit.

25. That in view of the facts and circumstances stated in the preceeding paragraphs of this affidavit the application of the applicant moved under Section 19 of the Central Administrative Tribunal Act, 1985 is devoid of merit and is liable to be rejected with costs.

I, the deponent named above do hereby swear that the contents of paragraphs no. 1, 2 \_\_\_\_\_

\_\_\_\_\_ of this affidavit are true to my personal knowledge, that the contents of paragraphs 3 to 25 \_\_\_\_\_

MA: L.L.B; D.S.L.  
ADVOCATE, NOT A B  
FREEDOM FIGHTER  
7th Feb 1987



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of this affidavit are based on perusal of the records;  
that the contents of paragraphs-----

of this affidavit are based on legal advice which all I  
believe to be true; that the nothing material has been  
concealed and no part of it is false.

So help me God.

Deponent.

I, Ashok Mohiley, Advocate, High Court, Allahabad  
declare that the person making this affidavit and alleging  
himself to be Sri H.P.Singh is the same person and is  
personally known to me.

Advocate.

Solemnly affirmed before me on this 7th, th  
day of Sept, 1987 at 3.5 a.m/p.m. by the deponent who  
has been indentified as above. Sri H.P. Tewari of the Office  
of Command Officer of the Police

I have satisfied myself by examining the  
deponent that he has fully understood the contents of  
this affidavit.

NOTARY COMMISSIONER

M. P. RAM.

M.A.; L.L.B.; D.S.S.

ADVOCATE, NOTARY

FREEDOM FIGHTER

Q. Golz Cant. LUCKNOW

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3.50 PM.

Solemnly affirmed by Sri H.P. Singh

who is identified by H.P. Tewari

I am the deponent

under states the Contents, which

has been read out.

Fee Rs. 2.50 M. P. RAM NOTARY

LUCKNOW.

M. P. RAM.

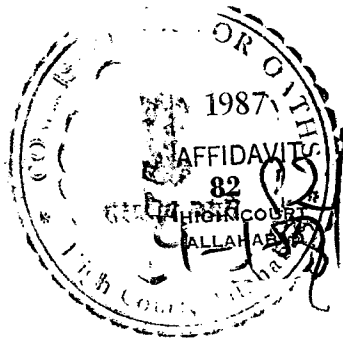
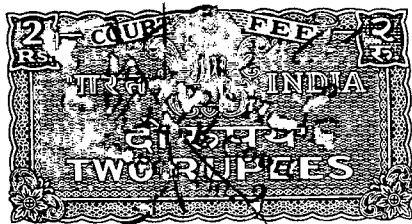
M.A.; L.L.B.; D.S.S.

ADVOCATE, NOTARY

FREEDOM FIGHTER

Q. Golz Cant. LUCKNOW

I know the deponent executing  
who has signed-out T.I.



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5/11/88

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: ADDITIONAL BENCH  
ALLAHABAD

Rejoinder Affidavit

In

Registration No. 336 of 1987

Pradeep Kumar Nigam .. .. .Petitioner

Vs.

The Chairman, Central Board of  
Direct Taxes and others.. .. .opp. parties.

Affidavit of Pradeep Kumar Nigam,  
aged about 30 years, son of late  
Sri Bal Krishan Nigam, Upper Division  
Clerk, Confidential Section B, Office  
of the Chief Commissioner of  
Income-tax (Administration) and  
Commissioner of Income-tax, Lucknow.

(Deponent)

I, the deponent above named do hereby solemnly  
affirm and state on oath as under:

1. That I am the petitioner in the above noted case and  
as such I am acquainted with full facts of the case deposed  
to below:

2. That I have gone through the counter affidavit of  
Shri H.P. Singh, and have understood the contents thereof.



R.C. Yadav  
for Ashok Mohilay  
Presenting Officer  
Central Board  
of Direct Taxes  
Allahabad

Signature



: 2 :

3. That in reply to contents of paragraph no. 4 of the counter affidavit, the contents of paragraph no. 6.1 of the writ petition are ~~xx~~ reaffirmed as correct. It is further submitted that the opposite parties very well knew about the details given in paragraph no. 6.1 of the petition.

4. That in reply to contents of paragraphs no. 6 and 7 of the counter affidavit it is submitted that the petitioner ought to have been appointed on the post of Inspector of Income-tax. The copy of the office memorandum dated 25th November, 1978 has not been annexed by the opposite parties and as such the petitioner is unable to give reply to the same.

5. That in reply to the contents of paragraph no. 8 of the counter affidavit, the contents of paragraph no. 6.4 of the petition are reaffirmed as correct. It is further submitted that the petitioner had not joined the post of Upper Division Clerk voluntarily, but as he was not fully conversant with the correct ~~facts~~ approach and that he had to support a big family, therefore, he was left with no option but to accept the said post. It is wrong to say that the government has absolute right to refuse appointment on compassionate grounds. It is also wrong to say that the appointment given to the petitioner on the post of U.D.C. which was commensurate with his qualification. The petitioner was fully qualified for the post of Income-tax Inspector.

6. That in reply to contents of paragraph 9 of the counter affidavit, the contents of Paragraph no. <sup>6.5</sup> 6.5 of the writ petition are reaffirmed as correct. It would be presumed by

*[Signature]*

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the virtue of the clarification <sup>in</sup> ~~made~~ made by opposite party that a candidate could have been appointed on the post of Inspector of Income-tax on compassionate ground.

7. That a reply of paragraph no. 10 of the counter affidavit has already been given earlier and as such they are not repeated again.

8. That in reply to contents of paragraph no. 11 of the counter affidavit, the contents of paragraph no. 6.7 of the petition are reaffirmed as correct. A reply has also been given earlier.

9. That in reply to contents of paragraph no. 12 of the counter affidavit, it is denied that the appointment on compassionate ground is in the absolute discretion of the government. No person can be discriminated by any authority.

10. That the contents of Paragraph no. 13 of the counter affidavit deal with the interpretation of the office memorandum dated 25.11.78. The petitioner has been advised that the contentions raised therein are not correct. The present was not the case of future advancement. The petitioner has claimed that his initial appointment was wrongly made on the ~~basis~~ of post of U.D.C. whereas he ought to have been appointed on the post of Income-tax Inspector. It is further submitted that the petitioner has been grossly discriminated as in the same circumstances Smt. Sashi Mathur was appointed on the post on which her late husband was working, namely she has been appointed, in similar circumstances as



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that of the petitioner, on the post of Inspector of Income-tax.

11. That the contents of paragraphs no. 13 and 14 of the counteraffidavit are not admitted. The Income-tax Inspectors are appointed:

1. By direct appointment,
2. By promotion.

The petitioner's case is of compassionate appointment. Smt. Sashi Mathur was similarly appointed on compassionate grounds as Inspector of Income-tax. The petitioner is claiming the appointment on the post of Inspector of Income-tax as he was fully qualified for appointment on the said post. The petitioner has been advised that there cannot be any discrimination on the ground of Sex.

12. That the contents of paragraph no. 15 of the counter affidavit are denied and those of paragraphs no. 6.8 of the petition are reaffirmed as correct. A perusal of Annexure-III to the petition dt. 22.1.1986 would show that the petitioner was appointed under the aforesaid memorandum dated 25.11.1978 in which appointments on compassionate grounds are made.

13. That ~~the~~ in the contents of paragraph no. 16 of the counter affidavit, it is wrong to say that the petitioner's case ~~was~~ is not similar to that of Smt Sashi Mathur. The petitioner was appointed as UDC on misapprehension by the department as the department was of the view that an appointment on the post of



*Signature*

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Inspector of Income-tax cannot be made on compassionate grounds. In fact the petitioner could have been appointed on the post of Inspector of Income-tax if <sup>Q</sup> ~~that~~ the said misapprehension would not have been there.

14. That the contents of paragraph no. 16 of the counter affidavit are denied. It is wrong to say that it is absolute discretion of opposite party to appoint a person or not to appoint a person on compassionate grounds.

15. That the contents of paragraph no. 17 of the counter affidavit are denied and those of paragraphs no. 6, 10, 11 and 12 of the petition are reaffirmed as correct. For other allegations a reply has already been given earlier and as such they are not repeated again. It has been no where laid down that ~~that~~ a candidate cannot be appointed as Inspector of Income-tax on compassionate grounds. The glaring example of appointment of Smt. Sashi Mathur on the post of Inspector of Income-tax on compassionate grounds nullifies the stand taken by opposite parties.

16. That the contents of paragraph no. 18 of the counter affidavit are denied. The petitioner, who was fully qualified, ought to have been appointed on the post of



*Q. 14*

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Inspector of Income-tax. The petitioner has been advised that the opposite parties cannot be given an arbitrary power to appoint candidates according to their whims.

17. That in reply to contents of paragraph no. 19 of the counter affidavit, it is submitted that the petitioner's application has been illegally and arbitrarily rejected and the contents of paragraphs no. 6(13) and 6(14) of the petition are reaffirmed as correct. With regard to other allegations, made in the paragraphs under reply, a reply has already been given earlier and as such they are not repeated again.

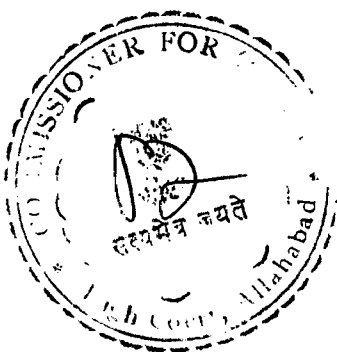
18. That the contents of paragraph no. 20 of the counter affidavit are denied and those of paragraphs no. 6.15 of the petition are reaffirmed as correct.

19. That the contents of paragraph no. 21 of the counter affidavit are not admitted. ~~It is~~

20. That the contents of paragraph no. 22 of the counter affidavit are denied and those of paragraph no. 6.16 of the petition are reaffirmed as correct.

21. That the contents of paragraph no. 23 of the counter affidavit are denied and the petitioner has been advised that he is entitled for the reliefs claimed by him.

22. That the contents of paragraph no. 26 of the counter affidavit are denied and the petitioner has been advised that

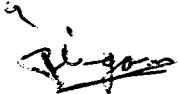


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his petition is liable to be allowed with cost.

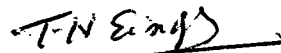
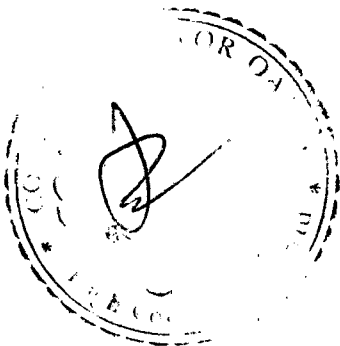
That the contents of paragraphs 6 1 to 22 of this affidavit are true to the personal knowledge of the deponent and those of paragraphs                      of this affidavit are based on perusal of papers                      on record and those of paragraphs No.                      of the affidavit are based on legal advice, which all I believe to be true, and nothing material has been concealed in it, no part of this ~~xx~~ affidavit are false and incorrect.

SO HELP ME GOD

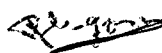


(DEPONENT)

I, T.N. Singh, Clerk to Shri B.P. Srivastava, Advocate, High Court, Allahabad, do hereby declare that the person making this affidavit and ~~xxx~~ alleging himself to be above named deponent is the same person who is known to me from the perusal of papers produced by him.



T.N. SINGH,  
Clerk.

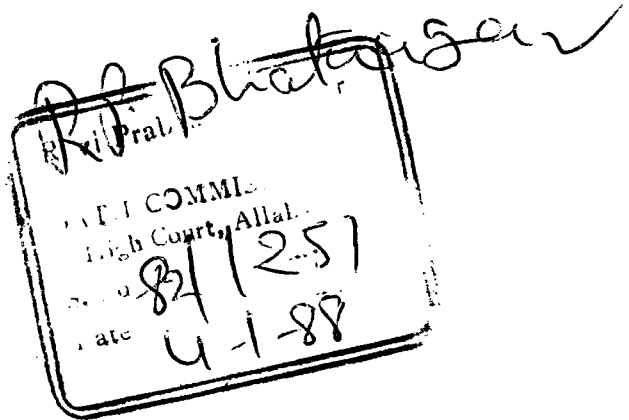


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Solemnly affirmed before me on this <sup>4th</sup>  
day of January, 1988 at about 9-05 a.m./~~p.m.~~ by the  
deponent who is identified by the aforesaid clerk.

I have satisfied myself by examining the  
deponent that he understands the contents of this  
affidavit which have been read over and explained by me  
to him.

OATH COMMISSIONER.



*Signature*

Annexure - A  
CAT - 82

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD  
\*\*\*\*

INDEX-SHEET

CAUSE TITLE \_\_\_\_\_ OF 198 .

Name of the Parties \_\_\_\_\_

Versus  
\_\_\_\_\_

Part A, B & C

S.No.	DESCRIPTION OF DOCUMENTS	PAGE



(A2)  
1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT LUCKNOW

\*\*\*\*

O.A./T.A. No 336 198

P. K. Nigam Applicant(s)

Versus

U.O.A. Respondent(s)

Sr.No.	Date	Orders
	16.11.08	<p><u>OR</u></p> <p>The main claim petition against which the prepet review petition has been filed was decided at Allahabad &amp; the original record is lying there.</p> <p>Submitted.</p> <p><u>OR</u></p> <p>Copy of review petition served on Sri Ashok Moulik, Counsel for respondent.</p> <p>16/11/08</p>
25/11/08		<p>Hon. D.S. Mishra AM.</p> <p>Hon. G.S. Sharma JM.</p> <p>The applicant in person is present and heard. orders reserved.</p> <p>AM</p> <p>AM</p>

Judgment 28.12.08  
6-12-88

B/II

Annexure - A  
CAT - 82

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Circuit CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD  
LUCKNOW

INDEX-SHEET  
Review Application No. 11 of 88(L) in  
CAUSE TITLE O.A. 336 OF 1987.

Name of the Parties P. K. Nigam

Versus

U. O. India & others

Part A, B & C

S.No.	DESCRIPTION OF DOCUMENTS	PAGE
A1	General Index	1
A2	Order Sheet	1
A3	Judgment on - 2-12-88	2
A4	Review Application Dt. 22-9-88	4
A5	Review Application Dt. 1-9-88	8
	<del>File Bench - copy</del> <del>Review Application</del>	

File B1 weeded out / destroyed

So(5)

Lal Chand Prajapati

25-1-89

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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
Circuit Bench at Lucknow.  
CIVIL MISC.(REVIEW) APPN.NO.11 OF 1988 (L)

In

Registration O.A.No.336 of 1987

P.K. Nigam ..... Applicant

Versus

Union of India & Others ..... Respondents.

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

Hon.G.S.Sharma, J.M.

(By Hon.D.S.Misra, A.M.)

This is a review petition against the judgement dated 1.9.1988 in O.A. No.336 of 1987 dismissing the claim petition. The only new ground taken by the applicant in this petition is that a copy of O.M. dated 30.6.87 of the Govt. of India, Ministry of Personnel, Public Grievance and Pension was not filed with the Counter Affidavit and was filed at the time of arguments. All other points mentioned in this application were raised in the claim petition.

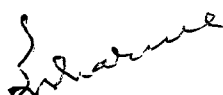
2. We have heard the applicant in person, who has contended that there has been discrimination in the matter vis-a-vis Smt. Shashi Mathur who has been given appointment as Inspector while the applicant was denied appointment as Inspector. On going through the record we find that Smt. Shashi Mathur was appointed as Inspector of Income Tax by an order dated 23.1.86 and the instructions contained in the O.M. dated 30.6.87 did not have any influence on the

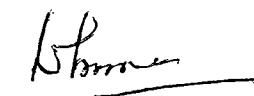
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decision taken earlier than the issue of this O.M. The reference in the judgement to the instructions contained in the O.M. dated 30.6.1987 (supra) was only with a view to mention the policy of the Government in regard to special consideration for widows of deceased employees in the matter of compassionate appointment. The appointment of Smt. Shashi Mathur was in accordance with the guidelines provided in the instructions dated 25.11.78 of the Ministry of Home Affairs, Department of Personnel and Administrative Reforms. We are of the opinion that the instructions contained in O.M. dated 30.6.1987 had no connection with the appointment of Smt. Shashi Mathur.

3. The contention of the applicant that there was discrimination in his appointment as Clerk vis-a-vis Smt. Shashi Mathur, has already been discussed and decided in the judgement dated 1.9.1988. We are of the opinion that the applicant has failed to point out any justification for review of the judgement dated 1.9.1988. Accordingly, the review petition is dismissed without any order as to cost.

  
J.M.

  
A.M.

Dated the 2nd Dec., 1988.

RKM

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Filed today  
15/11/88

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT  
ALLAHABAD, CIRCUIT BRANCH, GANDHI BHAWAN, LUCKNOW.

REVIEW APPLICATION No. 11 of 1988 (L)

Against Tribunal's Judgment in the case Registration No.  
No. (OA) 336/87.

Pradeep Kumar Nigam ..... Applicant.  
U.D.C.  
Office of Assistant  
Commissioner of Incometax,  
Investigation Circle-1,  
Lucknow.

VERSUS

Chairman, Central Board  
of Direct Taxes, New Delhi ..... Respondent.  
and others

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Noted  
for 24/11/88  
23.9.88  
Recd. Copy  
R.C. Yadava  
23.9.88  
Sd/- Ashok Mohan  
H. Nigam

Giving respect to the Hon'ble Members, it is submitted that the judgment under reference is not well founded, lacking justice and based on wrong conclusions derived at the result of misconceiving statements. This has also been delivered without considering para 10th of the rejoinder specially, in which <sup>true</sup> ~~the~~ state of affairs has been described removing doubt created due to misconceiving statements given in the Counter-affidavit. Further the respondents have filed a copy of O.M. dated 30th June, 1987 of the Govt. of India, Ministry of Personnel, Public Grievance & Pension which has not been contended in the Counter-affidavit and thus not brought in the knowledge of the applicant and no opportunity was allowed to rebut the same, as the said O.M. speaks about the compensate appointment of widows in Group 'D' Cadre and not the Group 'C' Cadre under consideration.

1. Brief facts in the foregoing paragraphs may be appreciated:

That in the Writ No. OA 336/87, the following main points were raised :-

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(i) That Smt. Shashi Mathur's husband was an Inspector in the Incometax Department while my respected father was an Incometax Officer and at least I should have been appointed to the post of Inspector of Incometax also on the similar compensate grounds, As rules regarding the appointments were the same.

(ii) That vide my application dated 26th August, 1986 ( Annexure iv filed originally). I had requested the Chairman, C.B.D.T., New Delhi to reconsider my case in the light of clarifications dated 25.11.1980 issued by C.B.D.T. where it was clarified that in the case of death of an Officer in harness, their sons, daughters and even near relatives could be consider for appointment to the post of Inspector of Incometax ( Copy of Board's letter dated 25.11.80 marked Annexure II filed originally ).

(iii) That the said representation dated 26th August, 1986 was rejected under Para ( 9 ) of the Circular dated 25.11.78 ( Annexure VII filed originally ).

(iv) That the aforesaid Para ( 9 ) of the Circular dated 25.11.78 ( Annexure VII filed originally ) is not applicable to the facts of my case. Para ( 9 ) reads as under :-

"That once a Govt. Servant has accepted the post on compensate grounds, then the set of circumstance that 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 compensate grounds should strive in the career like his colleagues for future advancement."

That the applicant is not covered under the Para (9) as it clearly speaks that no future promotion etc. will be made and the same will be dealt with ~~Case~~ <sup>when</sup> of other employees. ~~wherein~~ facts here the applicant is not claiming any future promotion but claiming for initial appointment ~~xxxx~~ to the post of Incometax Inspector. (Para 10 of the rejoinder)

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2. The Hon'ble Members of the Tribunal vide the judgment dated 1.9.88 have not discussed the aforesaid issues in length but relied on the copy of OM dated 30.6.87 of the Govt. of India, Ministry of Personnel, Public Grievance & Pension which gives certain specific consideration for appointment of widows on the compensate grounds in Group 'D' Cadres. The respondent have grossly misdirected the Tribunal by filing the aforesaid O.M. dated 30.6.87 during the course of arguments because the said O.M. relates to Group 'D' Employees and not Group 'C' under consideration. Further the O.M. dated 30.6.87 has only provided certain special concession regarding educational qualifications and nothing else relating to Group 'D' Employees even and is not the least applicable to Group 'C' Employees. Moreover, the said O.M. dated 30.6.87 was never brought to the knowledge of applicant even in Counter-affidavit filed on behalf of the Department, otherwise the same could have been rebutted in the rejoinder filed by the applicant, because the same is not at all applicable to the facts of the instant case. Moreover, without prejudice to the above Smt. Shashi Mathur was appointed vide Board's order F.No.A 12012/45/85-Ad.VII dated 20.12.1985 ( Annexure III originally filed ) and not with reference to O.M. dated 30.6.1987.(Supra).

3. That it is worthwhile to mention that the C.B.D.T., New Delhi has ~~announced~~ now totally stopped the appointment to the post of Inspector of Incometax on compensate grounds. This itself shows that it was earlier open for such appointment for the post of I.T.I. and the applicant was ~~xxxxxx~~ ignored in a grossly discriminatory manner as a consequence of which the applicant's future has been jeopardised.



P R A Y E R

Wherefore, it is humbly prayed that the judgment dated 1.9.88 delivered in the aforesaid case be revised and the applicant's case be reconsidered for favour of your Honours sympathetic consideration and benefilant orders, as the respondents have misdirected the Court by placing copy of O.M. dated 30.6.87 discussed in ~~Rxxxxxxx~~ Para.7 ( Page 7 ) of the judgment dated 1.9.88, applicable to Group 'D' employees and not Group 'C' Employees under consideration.

*Prigam*

( PRADEEP KUMAR NIGAM )  
U.D.C.  
OFFICE OF ASSTT. COMMISSIONER  
OF INCOMETAX, INVESTIGATION  
CIRCLE-1, AAYAKAR BHAWAN,  
ASHOK MARG, L U C K N O W.

Dt.Lko 22-9-1988.



(AS/1)

CENTRAL ADMINISTRATIVE TRIBUNAL ALIAHABAD.

....

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

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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. Shasi 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 22-1-1986 (copy annexure 4). In OA no.336/87, applicant Pradeep Kumar Nigam had applied for appointment to the post of Inspector of 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 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);

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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.Summeta 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 but was given 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 matter of her employment inasmuch as that on the 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 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 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 education 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

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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~~ character and effectiveness; that the applicants have accepted the posts of UDC and the said set of circumstances which led to their initial appointments had ceased to exist and they have not right ~~to~~ to claim appointment to the post of Inspector, Income Tax; that the representations of the three applicants were rejected in accordance with para 9 of the Ministry of Home Affairs Department of Personnel OM dated 25th November, 1978 (annexure VII) 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

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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:

" 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 on some posts. 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 government of India in the OM dated 25th November, 1978, followed by the OM dated 30th June, 1987, does 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. Shasi 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.

sd/-  
JM

sd/-  
A.M.

JS/ 1.9.1988

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Court fee remitted vide Notification No. M-1015/I-602(1)  
Dated August 5, 1946 published in U. P. Gazette  
Dated August 10, 1946 Part I, page 277.

*Central Administrative Tribunal Adl. Bench*  
IN THE HIGH COURT JUDICATURE AT ALLAHABAD.

*Registration* No.....336..... of 1987

District : Lucknow

Shri P. K. Nigam Petitioner/  
Appellant/  
Applicant/

V E R S U S

The Central Board of Direct Taxes Respondent/  
Opposite Party/

I, ASHOK MOHILEY Additional Standing Counsel for the  
Government of India(except Income Tax and Railways) at the  
High court of Judicature at Allahabad, appear on behalf of:

The Government of India/Union of India/Central Govern-  
ment (except Income Tax and Railways) and

*...Appearance on behalf of the...*

*...Respondent...*

.....

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Respondent (s)/Opposite Party (parties) Nos.....  
who is/are the Petitioner/Appellant/Applicant/Respon-  
dent/Opposite party in the aforesaid case.



ASHOK MOHILEY  
Additional Standing Counsel  
Government of India  
High Court, Allahabad.

Dated : 21-4-1987