

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXXXXXDXXXKK

NEW BOMBAY BENCH

O.A. No. 474/87 198
XXXXXX22.2.1988
DATE OF DECISION

1. Smt. Yashoda W/o C. Bansode,
 2. Shri Jitendra S/o C. Bansode. Petitioners

Shri M.A. Mahalle Advocate for the Petitioners)

Versus

The Chief Commissioner of Income-tax & Ors. Respondents

Shri S.R. Atre (for Shri P.M. Pradhan)
for respondents nos. 1, 2 and 4.

Shri J.D. Desai (for Shri M.I. Sethna) Advocate for the Respondent(s)
for Respondent No. 3.

CORAM :

The Hon'ble Mr. J.G. Rajadhyaksha, Member (A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

No

J. 26/2/88

(9)

(60)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 474/87.

1. Smt. Yashoda W/o Changdeo Bansode
2. Shri Jitendra S/o Changdeo Bansode

... Applicants

V/s.

1. The Chief Commissioner of
Income-tax, Bombay City,
Bombay.
2. The Secretary,
Govt. of India, Department
of Revenue, Ministry of
Finance, New Delhi.
3. The Estate Manager, Govt.
of India, Bombay.
4. The Secretary, Central Board of
Direct Taxes, North Block,
New Delhi.

... Respondents

Coram: Hon'ble Member(A), Shri J.G.Rajadhyaksha.

Appearances:

Shri M.A.Mahalle, advocate
for the applicants.
Shri S.R.Atre (for Shri P.M.Pradhan)
for the Respondents Nos.1,2 and 4.
Shri J.D.Desai (for Shri M.I.Sethna)
for Respondent No.3.

JUDGMENT:

(Per Shri J.G.Rajadhyaksha, Member(A)) Dt. 22.2.1988

This application filed on 22.7.1987 against the first three respondents was amended by amendment application No.272/87 to add Respondents Nos.4 and 5. The application was granted only so far as Respondent No.4 the Secretary, Central Board of Direct Taxes was concerned. The Tribunal held that there was no occasion to add Respondent No.5.

2. The application is mainly against the failure of the Respondents to employ applicant No.2 on compassionate grounds after the demise of his father the late Shri Changdeo Bansode who was an Inspector of Income-tax and was in occupation of Govt. Quarters No.19/195, Type-B-Special in C.G.S. Quarters at Ghatkopar (West).

3. The application was resisted by the respondents by filing their reply on behalf of the Respondents Nos.1, 2 and 4 stating that the Central Board of Direct Taxes i.e. Government of India had turned down the request of applicant for employment on compassionate grounds after considering all aspects and the standing orders on the subject. They also added that the question of occupation of quarters or eviction therefrom fell within the purview of the Public Premises (Unauthorised Occupants) Eviction Act and this Tribunal was not seized with jurisdiction over that aspect.

4. There was no reply filed on behalf of Respondent No.3.

5. The facts briefly are that Shri Changdeo Bansode was working as an Inspector of Income-tax and after rendering 33 years of service, he expired on the 3rd February, 1986. The applicant No.2 applied for a job on compassionate grounds and gave all particulars adding that he had passed the S.S.C. Examination and had appeared for the H.S.C. Examination in March, 1986. The applicants relied upon Government of India orders dt. 25th November, 1978 which enable departments to employ dependents of a deceased government employee on compassionate grounds. The respondents had turned down the request on the 24th July, 1987 and, therefore, apprehending both this reply and eviction for the quarters applicants had come to the Tribunal.

6. The Learned advocate for the applicant Shri Mahalle argues that the late Shri Changdeo Bansode expired and left behind a widow and 3 sons. The elder son

was separated from the family and was already in employment with a Bank. Since the family could not depend upon him for their sustenance, applicant No.2 applied for employment on compassionate grounds. The discretion vests with the Commissioner of Income-tax who can consider the assets and liabilities of the deceased government servant and decide the question. He further argues that the policy decision on the subject says that if one member of the family is already employed and is earning, the Secretary to Government of India can grant permission and it is Shri Mahalle's contention that the Chief Commissioner of Income-tax having the status of an Additional Secretary and having already recommended the case of the applicant No.2 was fully empowered to order employment of the applicant No.2 on compassionate grounds. Shri Mahalle however concedes that Chief Commissioner of Income-tax is not Secretary to Government of India. It is Shri Atre's reply to this contention that there was some documentary evidence in the shape of the Ration Card and an inquiry held by an official of the Respondents to show that the eldest son Mahendra had rejoined the family on the demise of his father, but he was proposing to stay separately from the family having been posted at Pune. He stated that the Chief Commissioner of Income-tax had indeed sent 3 proposals for employment on compassionate considerations but the request of the applicant No.2 had been turned down though the Chief Commissioner had recommended sympathetic consideration.

7. Shri Mahalle's contention next was that for

turning down the application of applicant No.2, Government had resorted to a non-speaking order, whereas they should have actually passed a speaking order on the subject. He also produced xerox copies of communications dt. 6.12.1987, 30.6.1987 and 30.7.1987. He also cited a few cases in support of his contention that applicant No.2 should get employment and should also get allotment of Government Quarters on out of turn basis. Shri Atre points out that strictly speaking the question of quarters would fall outside the jurisdiction of the Central Administrative Tribunal and after extending all concessions to the applicants, proceedings for eviction had been started by the Estate Office and it was not possible for Respondents Nos. 1, 2 and 4 to interfere in the matter or file a reply on behalf of Respondent No.3. Shri J.D.Desai states however, that quarters are allotted to persons in service. Both the applicants not being Government servants had not been permitted to retain quarters beyond the extended period, since the quarters are required for other people.

8. Shri Mahalle's contention ultimately was that there are percentages prescribed for employing Schedule Caste candidates and as the applicant No.2 belongs to a SC and possess qualification at the date of the application, the Government should have granted employment to him on compassionate grounds.

9. From the records and proceedings, it is seen that the Chief Commissioner of Income-tax had indeed

considered the question of giving employment to the applicant No.2 on compassionate grounds. The inquiry held by officials of Income-tax department and report whereof is to be found at annexure.R-2, showed that in the case of applicant No.2 when ^{the} official visited the address of the applicant at Ghatkopar he found Mahendra, the eldest brother, available in the premises. He, however, was ambiguous in his report as to whether Mahendra lived with the family or was indeed separated from the family. It also seems that the Chief Commissioner of Income-tax had sent applicant's particulars to the Central Board of Direct Taxes but that authority rejected the request of the applicant No.2 for appointment in the Income-tax Department. I had asked Shri Mahalle to state whether in the event of a Group 'C' post not being available, applicant No.2 would be willing to accept a Group 'D' post. Shri Mahalle's reply was that since at the time of application the applicant was qualified to become a Group 'C' employee, having passed his S.S.C. examination there should be no question of his being offered a lower post and therefore, he would not normally be willing to accept such a lower position.

10. After going through all the records and particularly documents brought on record by Shri Mahalle through Miscellaneous Petition No.387/87 filed at the time of hearing, I find that the Chief Commissioner of Income-tax was inclined to recommend the case of the applicant No.2 for sympathetic consideration though he had specifically stated that Mahendra the eldest son could not possibly be treated as an earning member of

the family because he was doing his job in Pune and had to all intents and purposes separated from the family. It is not impossible that if the Chief Commissioner's recommendation was more positive the Central Board of Direct Taxes might have been persuaded to grant employment on compassionate grounds to applicant No.2. I find that normally if the report of the Income-tax Official who went for spot inquiry to the residence of the applicant was not ambiguous, the reports would have been positive and the applicant No.2 would have been employed. This is a question of employment on compassionate grounds. It is true that the applicants cannot claim employment on compassionate grounds as of right. Nor is it necessary and possible for them at this stage when asking for employment on compassionate grounds to rely upon percentages prescribed for employment of SC and ST candidates because strictly speaking that would not be relevant to the issue at hand. The only conclusion that can be drawn however, is that the discretion used by the Government of India against the applicant No.2 is not fully supportable in the light of the local inquiry and the recommendations of the Chief Commissioner of Income-tax. A mere short reply saying that Government do not think that employment on compassionate grounds is justified does not seem to be adequate in the circumstances. I therefore, feel that ends of justice would be met if respondents are directed to offer to applicant No.2 employment in a Group 'C' post on compassionate grounds with immediate effect. I would hasten to add that since such employment would be on the basis of there

being no other earning member of the family, if at any later point of time it becomes clear that the averments made by the applicant that Mahendra Bansode is separated from the family and is not in a position to support the family are proved to be incorrect, the Respondents would be at liberty to terminate the services of applicant No.2 on that ground after appropriate enquiry in that respect.

11. As for eviction from quarters it is clear that by themselves the applicants have no right to continue in the quarters as long as applicant No.2 is not employed by the Department. Again, if ultimately he is granted employment, he would be in a position to apply for the allotment of quarters on the ground that he had been living with his parents, though he could not have been sharing the Government Quarters with his late father, for the obvious reason that he was not then a Government employee. All the same, it would be proper and just to direct that the applicant should not be evicted from the quarters for a period of 3 months from the date of this order. If in the meanwhile the applicant No.2 is granted employment in a Group 'C' post on compassionate grounds, his application for allotment of quarters may be placed before the Director of Estates with appropriate recommendations of the employing department for out of turn allotment, and the Director of Estates shall consider the question of allotment of quarters to the applicant No.2 on an out of turn basis. They are of course at liberty to retain the applicants i.e. applicant No.2 in the Type-B-Spl Quarters or grant, according to the

seniority and status of applicant No.2, even a lower type of quarter that may be readily available for such out of turn allotment. With these directions, I pass the following orders, in the peculiar facts of this case.

O R D E R

1. The application is partly allowed.
2. The Respondents are directed to grant employment on compassionate grounds to applicant No.2 in a Group C, post if he is otherwise found suitable on educational and other considerations.
3. The Respondents shall complete this process within a period of 2 months from the date of this order.
4. So far as the quarters No.19/195, Type-B-Spl, Ghatkopar (West) are concerned, the applicants shall not be evicted therefrom for a period of 3 months from the date of this order.
5. If on being employed on compassionate grounds in a Group 'C' post, the applicant submits an application for out of turn allotment on the ground that he was staying in the quarters with his deceased father, the Director of Estates shall consider that application on merits and grant an out of turn allotment of quarters either in the same type i.e. Type-B-Spl or if there is any other type meant for Group 'C' personnel then in that type of quarter, on out of turn basis.
6. The parties shall bear their own costs.

(J.G.RAJADHYAKSHA)
MEMBER(A).