

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, FARIDKOT HOUSE, NEW DELHI

(11)

O.A. No. 1469/93

Dated *29th October, 1994*

Munesh Kumar

Applicant

Vs.

Union of India & Ors.

Respondents

Present: 1. Shri A.K. Behera counsel for the applicant.
2. Shri V.P. Uppal, counsel for the respondents.

CORAM: 1. Hon'ble Mr. J.P. Sharma, Member (J)

2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT

(Delivered by Hon'ble Mr. B.K. Singh, Member (A))

This O.A. No.1469 of 1993, Shri Munesh Kumar Vs. Union of India & Ors., has been filed under Section 19 of the C.A.T. Act 1985 against withdrawal of the offer of appointment and refusing permission to undergo the training to the applicant w.e.f. 5th January 1993 and for non-payment of salary and allowances from that date. The applicant is a B.Tech (Civil). The applicant was appointed as Management Trainee in National Building Construction Corporation Ltd. w.e.f. 7th August, 1986. The copies of offer of appointment dated 4th August 1986 and order of appointment dated 15th September 1986 are annexures A-1 and A-2 of the case record. On completion of the training he was appointed as Assistant Engineer w.e.f. 7th August 1987. He appeared in the Civil Services Examination 1990 after permission of the Revenue Department, Ministry of Finance. He got 359th position in the Civil Service and was allocated to Indian Revenue Service vide letter dated 9th December 1991. The

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applicant informed Respondent No.1 of his intention to appear at C.S.E. of 1991 who informed him that he could join the next Foundational Course beginning from 12th October and ending on 25th December, 1992. Annexure A-3 is the letter dated 21st September 1992 received by the applicant from the respondent No.1 to this effect. Annexure A-4 is the copy of the letter of the applicant intimating his inability to join the Foundational Course beginning on 12th October and ending on 25th December 1992. Annexure A-5 is a reminder dated 25th November 1992 to respondent No.1. The applicant received a reply dated 26th November 1992 from the respondent No.1 exempting him from the Foundational Course training beginning from 12th October 1992 and directing him to be ready to join the induction training from early January 1993. This is annexure A-5 of the paper-book. On 28th December 1992 he was directed to join the National Academy of Direct Taxes (NADT), Nagpur for training beginning from 5th January 1993. This is Annexure A-6 of the paper-book. The applicant was relieved by N.B.C.C. on 31st December 1992 (A.N.) to join the NADT at Nagpur. He joined the NADT and was allotted Room No.D-39 in the Nalanda Hostel. On 5th January 1993 the allotment of room in his favour was cancelled and he was asked to vacate the room and hand over the keys to the caretaker. This is annexure A-9. Being aggrieved by this order he filed a representation on 5th January 1993. This is annexure A-10 of the paper book. He returned to Delhi on 8th January and submitted a detailed representation to the Chairman, Central Board of Direct Taxes on 11th January with copies to the Member, CBDT, Joint Secretary (Adm.) and Under Secretary (Adm.) CBDT, Ministry of Finance as also to the Director General of Income Tax, NADT, Nagpur. This is annexure A-11 of the paper-book. There are averments that the applicant met the authorities concerned. He also submitted a

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representation to MOS(Finance) in the first week of March 1993. This is annexure A-12. He also sent a reminder on 10th June regarding his representation submitted on 11th January 1993. This is annexure A-13 of the paper-book. A period of six months from the date of filing the representation expired on 11th July 1993 and being aggrieved by the total silence maintained by the respondents, the applicant approached this Hon'ble Tribunal and on the basis of interim relief granted to him he joined the training.

2. The reliefs prayed for are for quashing the order of withdrawal of offer of appointment, permitting the applicant to join the IRS and undergo the training, to allow him pay and allowances with interest and to maintain his seniority and continuity in service and also to call for the record of his case for inspection by the hon'ble Supreme Court.

3. Heard the learned counsels, Shri A.K. Behera for the applicant and Shri V.P. Uppal for the respondents on the interim relief as well as final relief since grant of interim relief itself disposes of the main relief prayed for in the O.A.. Both the learned counsels have agreed that the matter be finally disposed of on the basis of arguments advanced by both of them.

4. It is admitted by both the parties that on the basis of Civil Services Examination (CSE) 1990 the applicant was allotted to Indian Revenue Service and was appointed to the service vide appointment letter No. F.A-12025/2/91-Ad.VI dated 19.12.91. It is also admitted that the applicant accepted the offer of appointment but informed the respondents that he would like to take up CSE of 1991 to better his prospects and thus he



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was exempted from the training course beginning 12th October and ending on 25th December 1992 at NADT, Nagpur, as per second proviso to Rule 4 of the CSE Rules:

"Provided further that a candidate who, on the basis of results of the previous Civil Services Examination, had been allotted to the IPS or Central Services, Group 'A' but who expressed his intention to appear in the next Civil Services Main Examination for competing for IAS, IFS, IPS or Central Services Group 'A' and who was permitted to abstain from the probationary training in order to so appear, shall be eligible to do so subject to the provisions of Rule 17. If the candidate is allocated to service on the basis of the next Civil Services Main Examination he shall join either that service or the previous Civil Examination failing which his allocation to the service based on one or both examinations, as the case may be, shall stand cancelled and, notwithstanding anything contained in Rule 8, a candidate who accepts allocation to a service and is appointed to a Service shall not be eligible to appear again in the Civil Services Examination unless he has first resigned from the service."

The implication is clear that in normal circumstances he would have joined the training beginning on 12th October 1992 since he had accepted the offer of appointment dated 19.12.91. If he would have joined the scheduled training he would have become ineligible for Civil Services Examination 1992 since he would have been required to resign his job before he could appear at this Examination. He was permitted to take up 1991 CSE which meant foregoing seniority of one year and being placed above the candidates allocated to IRS if he had gone in for the same service on the basis of 1991 CSE and if he had been successful, he would have joined IAS/IFS as per the grade made by him in the merit list of the CSE 1991. It is also admitted by both the parties that he failed to make any grade in 1991 CSE. It is here that the applicant plays foul game. Knowing fully well that he was ineligible for 1992 CSE he takes the plea of illness and submits medical certificate to his then employer, NBCC, and takes up the CSE 1992 by getting exemption from training beginning on 12th October 1992 at Nagpur without intimating the respondents about his real intentions. Even the grant of permission by a Court or Tribunal to appear at



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1992 CSE in the light of judgment of Hon'ble Supreme Court in Mohan Kumar Singhania Vs. Union of India supra would have been ab initio void and ultra vires.

5. It has been clearly held in STO Vs. Hanuman Prasad (1967) AIR SC 565; CIT Vs. Indo-Mercantile Bank IAR 1959 SC 730; Ram Naraian Vs. Assistant CST AIR 1955 SC 765; Kedar Nath Jute Co. Vs. CTO AIR 1966 SC 12, that a proviso is normally added to a principal clause with the objective of taking out of the scope of the clause that is included in it and what the rule making authority desires to be excluded. Rules are made under proviso to Art. 309 of the Constitution and notified in the name of the President of India and a proviso added to it is in the form of an exception clause though not an independent clause but the provision contained in the proviso has to be strictly construed. This has been clearly enunciated in Rajendran Vs. Union of India, (1968) 1 SC 721. It has been further elaborated by his Lordships of the Hon'ble Supreme Court in Tehsildar Singh Vs. State of U.P. AIR (1959) SC 1012; Indo Mercantile Bank supra; Jyoti Swarup Vs. Board of Revenue 1964 44 ATR 489; Abdul Zabbar Vs. State of J&K (AIR 1957) SC 281; Ajax Products (AIR 1965) SC 1358; CIT Vs. Krishna Warriar AIR (1965) SC 59; Dwarika Prasad Vs. Dwarika Das (1976) 1 SC 121.

In all the aforesaid cases, the hon'ble Supreme Court has laid down that to arrive at a correct ratio the proviso and the main clause should be read harmoniously and together and construed as a whole, each portion throwing light, if need be, on the rest.

6. The language of second proviso to Rule 4 of CSE Rules is unambiguous and crystal clear,

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"..... was permitted to abstain from the probationary training in order to so appear, shall be eligible to do so subject to the provisions of Rule 17. If the candidate is allocated to service on the basis of the next Civil Services Main Examination he shall join either that service or the previous Civil Examination failing which his allocation to the service based on one or both examinations, as the case may be, shall stand cancelled and, notwithstanding anything contained in Rule 8, a candidate who accepts allocation to a service and is appointed to a Service shall not be eligible to appear again in the Civil Services Examination unless he has first resigned from the service."

7. The applicant had accepted the offer of appointment dated 19.12.91 and had intimated his acceptance and was directed to join the Foundational Course training beginning on 12th October and ending 25th December 1992. He will thus be deemed to have resigned the service after he failed to make a grade on the basis of 1991 Civil Services Examination. He had a chance of his escaping withdrawal of offer if he had come out successful in CSE of 1991 which he could not. During interregnum he dupes both the NBCC and also the CBDT, Revenue Department, Ministry of Finance. He proceeds on medical leave. The medical petition was filed with NBCC so that he could draw his pay and allowances on medical ground and on the same grounds he approached the CBDT, Revenue Department, Ministry of Finance for exemption from Foundational Course beginning 12th October 1992. He could manage to get the exemption by suppressing facts that he was appearing at CSE 1992. Supposing for a moment he had joined the training beginning at NADT, Nagpur on 12th October 1992, he could not have appeared, being ineligible, at

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CSE 1992 in December 1992 without resigning his job. Since he failed to make a grade in 1991 CSE and CSE 1992 in which he appeared in a clandestine manner duping both the then employer and would-be employer on the plea of illness, he would have been in the present situation - a man without any job. If he had been in the NADT for the training beginning on 12th October, 1992, he could not have taken up CSE 1992 without resigning. If he had resigned and failed to make a grade, he would have been without a job. Secondly, if he had given a medical certificate to the NADT and would have appeared without resigning on the plea of illness and without intimating his controlling authorities an order simpliciter terminating his services would have been issued and in that case also he would have been without a job. Where the language is clear and no other view is possible, it is futile to go into the question whether the proviso operates as a substantive law or only by way of an exception. The word, 'notwithstanding anything' contained in rule 4 is a saving clause. 'Notwithstanding' is derived from Latin word 'non obstante' meaning that Rule 8 was not to apply to the provision contained in second proviso to Rule 4. The second proviso contained in Rule 4 overrides the provision contained in Rule 4/ 8 of CSE Rules. The Courts are not required to go beyond the terms of second proviso to Rule 4 and could not give a meaning to it which it does not bear. The meaning should not be extended beyond the field for which it has been created. Either we have to read the second proviso to Rule 4 with Rule 8 harmoniously to arrive at a correct interpretation or read the second proviso as a self-contained provision having overriding effect on Rule 4 and Rule 8 both. The second proviso to Rule 4 has a mandatory force and is a piece of subordinate legislation not to be tampered with by Courts.

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8. Whether the policy as expressed in second proviso to Rule 4 of CSE is good or bad is not for the Courts to judge. This is for the State to frame rules as pieces of subordinate legislation under proviso to Art. 309 of the Constitution and the Courts are duty-bound to confine themselves directly to the interpretation of these rules. Courts are not vested with rule making authority except the Hon'ble Supreme Court whose verdicts in interpreting an Act or laws or rules become an obiter dicta. The hon'ble Supreme Court has repeatedly held the view that Courts should interfere only in a case of such patent unreasonableness as goes against the fundamental rights or other constitutional or statutory rights guaranteed to the public servants. This has been held in Col. A.S. Sangwan Vs. Union of India (1980) supra SCC 554 AIR 1981 SC 1595.

9. A perusal of the case record speaks volumes about the conduct of the applicant. He was selected and appointed on the basis of results of CSE (Main) 1990. The offer of appointment to him was made vide letter No. F. A-12025/2/91/Ad.VI dated 19.12.91. He took the examination under second proviso to Rule 4 of the CSE Rules and took the CSE 1991 without success. He was asked by the CBDT letter dated 21.9.92 that he should join Foundational Course training beginning at NADT Nagpur on 12th October 1992. He made a representation on 8.10.92 and again on 25.11.92 that he was on medical leave from his then employer, NBCC, and so was unable to report for the Foundational Course training. On this representation of illness the Board granted him exemption from Foundational Course training vide letter dated 26.11.92. Vide letter dated 28.12.92 the Board informed him that he should report for the professional training starting from 5.1.93. It is evident from a perusal of the case record that though he

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sought exemption from the Board for the Foundational Course training on grounds of illness, he had been all through active in preparing and sitting for the CSE (Main) 1992 and in presenting an application and pursuing to get interim stay from the CAT principal Bench, New Delhi. The hon'ble CAT interim order is dated 3.11.92 in OA No.2830/92 and MP No.3391/92 which reads as follows:

"We direct that the respondents shall provisionally allow the applicants to appear in the CSE (Main) Examination 1992 without requiring them to resign from their respective services. The respondents are also directed to give to the applicants the necessary leave to prepare for and appear in the Examination."

10. As we have stated above, this interim order of CAT Principal Bench is without jurisdiction and is ultra vires in the light of second proviso to Rule 4 as has also been held by the Hon'ble Supreme Court in the case of Mohan Kumar Singhania Vs. Union of India. As regards the withdrawal of offer of appointment of the applicant, Munesh Kumar, it is valid and justified in terms of second proviso to Rule 4. The Munesh Kumar had accepted the offer of appointment dated 19.12.91 and applied for exemption under the second proviso to Rule 4. The same was granted to him. He sat for the CSE (Main) 1991. He was unsuccessful. He adopted subter fuges to circumvent the condition contained in second proviso to Rule 4 in order to take up the CSE 1992 for which he clearly was ineligible on the basis of correct interpretation of the said rules. He reported ill health and got exemption from the Foundational Course. The case record indicates that when he reported to the NADT Nagpur to join the induction course he kept them totally in dark about his having taken up the CSE 1992. The offer of appointment would have been extinguished in normal course when he failed to turn up for FC beginning on 12th October 1992. Obviously the applicant got it extended by misrepresenting the facts. The

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offer of appointment which in normal course should have lapsed on his not joining the FC got revived by him by resorting to falsehood and fraud. Firstly, appearing at CSE 1992 on the basis of an order of CAT, Principal Bench and not informing CBDT about the facts and circumstances in which he appeared are all subterfuges to contravene the terms of the second proviso to Rule 4. The interpretation makes it abundantly clear that its force is statutory and cannot be negated even by the interim orders of the CAT, but for the falsehood, manoeuvring and manipulations it would have been well nigh impossible to revive the offer which in normal course had lapsed as would be clear from the scrutiny of facts and circumstances of the case. The offer thus given was rightly and legally deemed to have expired when the applicant failed to turn up for Foundational Course beginning on 12th October, 1992.

11. In the above view of the matter the applicant was declined permission to join the induction course which started on 5th January 1993. The withdrawal of offer of appointment is well grounded in the terms and conditions of second proviso to Rule 4.

13. The case of Shri Mazhian and the applicant are distinguishable in the sense that the applicant had appeared in the CSE (M) 1992 before joining government service and thereby forfeited the offer of appointment whereas Shri Mazhian had not appeared in CSE(M) 1992 before joining of FC beginning on 12/10/92 and had instead appeared subsequently after joining under the shield of interim order of the Principal Bench of CAT, Delhi. Action in Mazhian's case is liable to be taken after disposal of OA No.2830/92 by the CAT. There is no discrimination since he joined after unsuccessful attempt in

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1991 and he appeared in 1992 on the basis of interim order of the Principal Bench of CAT after joining the FC. There is no contravention of provisions of Rules in the case of Muzhain. In case of the applicant the offer of appointment got extinguished by his not joining the Foundational Course beginning on 12.10.92 and it was revived on falsehood.

13. We have already said in the beginning that in construing a statutory provision the first and foremost construction is that of literal construction. The Rule 4 and second proviso to Rule 4 have to be read harmoniously. All that the Court is to see at the very outset is what does the main clause say and what does the proviso say? Does the proviso contain a substantive rule? If yes, we must interpret it accordingly. If the proviso contained is unambiguous and if from that the intention of the rule-making authorities is clear, the other rules of construction need not be called into aid. The other rules of construction of statutes are called into aid only when the intention of the rule-making authorities is not clear. Once the intention has been expressed in words which have a clear significance and meaning, the court is precluded from speculating. The words contained in second proviso are plain and unambiguous and need no interpretation. This has been fully established in Mohan Kumar Singhania Vs. Union of India by Hon'ble Supreme Court in one of the most recent judgments.

14. The applicant has no right to approach the hon'ble Tribunal for equity when he himself did not practise the same with his employer. The conduct of the applicant has not been honest, bonafide or reasonable. He has contravened the provisions of second proviso to Rule 4 by resorting to subterfuges of interim reliefs to appear at CSE(M) 1992

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and got the validity of offer of appointment based on 1990 CSE results extended on misrepresentation of ill health by getting exemption from joining the Foundational Course, without disclosing the facts of his having appeared at CSE 1992. He cannot be allowed to say that he contravened the provisions contained in second proviso to Rule 4 and resorted to falsehood and subterfuges to get the validity of offer of appointment extended on false pretext of ill health with an innocent mind. He is taken to know the provisions of rules and he was expected to act within the framework of rules and the statutory provisions contained in those rules. He is thus guilty. Ignorance of law cannot be an excuse. The learned counsel for the applicant could not cite a single authority to justify the conduct of the applicant who not only indulged in gross misrepresentation of facts but miserably failed to practise equity. The dominant motive behind the various acts of the applicant has been personal aggrandisement at the cost of ethics, morals and rules which have all become casualties in this case.

15. Before parting with the case, it is necessary to express our anguish over the total ineffectivity, insensitivity and callous of Central Board of Direct Taxes, Revenue Department, Ministry of Finance, Government of India in disposing of the representation of the applicant. As a matter of fact their mysterious silence is baffling. In a case like this involving the career of a young man there should have been some response positive or negative. If the decision, was forfeiture of the offer of appointment, it would have been by way of punishment and as such Article 311 (2) of the Constitution would be attracted and show-cause notice would have been necessary along with a memorandum of charge etc. The observance of natural justice would have an integral part of the

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departmental enquiry. Proceedings would have been a long drawn affair. Simply asking the applicant to go away from the training institute would have served the purpose. It would have been by way of punishment casting a stigma on his conduct if the response could not have gone in for an order of termination simpliciter. The silence and inaction on the part of the respondents resulted in confusion worst confounded and also resulted in filing of this O.A.

16. Apart from legal issues which have been analysed in depth by us and apart from the follies and foibles of the applicant there is a human angle to the problem which cannot be overlooked. The applicant has resigned his job as Assistant Engineer, NBCC, and if the offer of appointment is extinguished which cannot be done without a proper enquiry since Article 311 of the Constitution will be attracted and it would also be imperative to follow the principles of natural justice i.e. serving a memorandum of charge giving opportunity to show-cause etc. and this is bound to be protected affair. Till then the applicant cannot be allowed to be in the streets with no job in hand. This will breed cynicism at the very threshold of the life. There is no order from the Union of India or C.B.D.T. in regard to withdrawal of offer. It can only be presumed on the basis of the orders of Director General, NADT, Nagpur, cancelling the room allotment and asking the applicant to quit NADT on 5th January 1993. There is no formal order regarding forfeiture of offer of appointment.

17. Taking an overall view of the matter, we would direct the authorities to take a lenient and sympathetic view on the representation filed by the applicant. Sort of forfeiture of the offer of appointment on grounds of its legal extinction for not joining the Foundational Course training from 12th

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October, 1992, the respondents will be at liberty to downgrade his seniority and place him below the officers of 1992 batch. He may be permitted to complete the induction course i.e. Professional Training which is currently ^{he} ^{under} going on. He may be allowed to complete the Foundational Course training with the officers of 1992 batch. The question of seniority may be determined by the respondents taking an overall view of the matter. The O.A. No.1469/93 is thus disposed of with the above directions, but in the circumstances with no order as to costs. The interim order passed by the Tribunal will stand vacated in the light of aforesaid directions.

(B.K. Singh)
Member (A)

(J.P. Sharma) 29.10.94
Member (J)