

Central Administrative Tribunal
Principal Bench: New Delhi

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OA No.2706/93

New Delhi this the 19th Day of January, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri B.S. Hegde, Member (J)

Shri Anil Misra,
S/o Sh.O.P. Misra
R/o Om Kutti
Opp.Ram Avtar Halwai Shop
Mohalla Nagphani
Moradabad-244 001

...Applicant

(By Advocate Sh. C.Hari Shankar)

Versus

1. Union of India through
Secretary, Department
of Personnel & Training,
North Block,
New Delhi.
2. The Secretary,
Ministry of Environment & Forest
Paryavaran Bhawan
C.G.O. Complex,
New Delhi.

...Respondents

(By Advocate Mrs. Raj Kumari Chopra)

ORDER(ORAL)

(Hon'ble Mr. N.V. Krishnan)

This matter is before us for further directions in respect of the interim order issued on 5.1.94 by a Hon'ble Single Member Bench of this Tribunal, directing the respondents to permit the applicant to participate in the professional training which has already commenced on 3.1.94, which was effective till 18.1.94 and which has been extended till today.

2. The brief facts are that the applicant who is a member of the Indian Forest Service (IFS) is at present posted as Deputy Conservator of Forests, Silvassa, Dadra & Nagar Haveli. He passed the 1992 Civil Services Examination. He was

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allotted tentatively the Indian Police Service by an order dated 6.9.93 and directed to report for training at the Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussoorie without fail on 6.9.93. Therefore, when he reported to the Academy on 9.9.93 he was not admitted. However, the Director took up the matter with the first respondent - Ministry of Personnel by the Annexure-6 dated 8.9.93 recommending that a relaxation may be made in this case or that he may be permitted to join the Foundational course to be conducted by the National Police Academy, Hyderabad later on.

3. In the meanwhile, the applicant was declared unfit on medical grounds for the Indian Police Service by the Annexure-9 letter dated 23.9.93 about which he has no grievance. His next option was for the Indian Customs and Excise Service. He has, therefore, represented on 1.12.93 that as he has come to know that he has been allotted to one of the Central Services Group 'A' he be permitted to join Foundational course which was to start shortly.

4. He states in the OA that it is his understanding that the first respondent has decided to accept the applicant's option for the Indian Customs and Excise Service. However, as nothing was heard, he filed this OA on 24.12.93 for a direction to the first respondent to allocate the applicant to the Indian Customs and Excise Service or to any other Service opted by him on the basis of the 1992 Civil Services Examination. By way of an interim order he prayed that he should be permitted to join tentatively

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the professional training course scheduled to commence in the first week of January, 1994.

5. When this application came up before the Hon'ble Single Member Bench on 5.1.94 the interim directions referred to above were given. The first respondent has filed an unnumbered MA stating that certain relevant facts have been suppressed by the applicant and that, therefore, the interim order granted may be recalled. It is stated that the Ministry of Environment and Forests, which is the cadre controlling authority of the IFS, has issued a memorandum of charges dated 23.12.93 (Annexure R-II) initiating disciplinary proceedings against the applicant under the All India Services (Discipline & Appeal) Rules, 1969 in respect of the charge enclosed as Annexure-1 to that memorandum. This contemplates an enquiry for the imposition of a major penalty. In such a circumstance, it is stated that the memorandum dated 14.7.93 of the Department of Personnel (Annexure R-III) directs that the selected Government servant should not be relieved for taking up the appointment, if by that time charge sheet for imposition of penalty under CCS (CCA) Rules, 1965 or sanction for prosecution is issued or a chargesheet is filed in a court to prosecute the Government Servant, or he is placed under suspension.

6. In the circumstance, the respondents contended that the applicant cannot be relieved and, therefore, cannot be permitted to join Foundational training course. It is further stated that after the disciplinary proceedings are concluded the case of the applicant would be dealt with in accordance with the rules, orders/instructions on the subject.

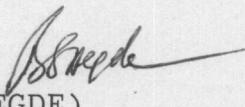
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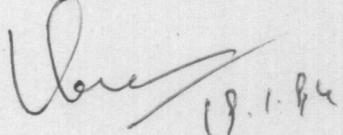
7. We have heard the parties. The learned counsel for the respondents submitted on instructions that the applicant was allotted the Indian Customs and Excise Service after he was disqualified for the Indian Police Service but that decision could not be implemented for the reasons mentioned above.

8. The learned counsel for the applicant contended that after his allotment, the respondents have no alternative except to send him for training. He relied on a decision of the Supreme Court in AIR 1976 SC 376.

9. We have carefully considered the matter. Admittedly, the applicant had not been relieved by the Government of Union Territory of Dadra and Nagar Haveli for joining the Foundational Course. He also admits that the memorandum of charges Annexure R-II were served on the applicant on 23.12.93. We are of the view that this case is similar to a situation where the recommendation of the DPC in respect of a candidate is placed in a sealed cover if before the DPC meets the candidate has been issued a memorandum of charges initiating disciplinary proceedings. The applicant has applied for selection to the Civil Services for improvement of his prospects. Therefore, he cannot claim, as a matter of right that he should be relieved to join the training course. The judgement of the Supreme Court referred to above does not advance his claim. We are of the view that the respondents cannot be faulted for not relieving him to join the training course in the changed circumstances.

10. In this view of the matter there is no question of extending the interim order. We find that the OA itself has now become untenable and accordingly it is dismissed. We, however, make it clear that the first respondent is obliged to review the case of the applicant for appointment to the Indian Customs and Central Excise Service after the conclusion of the disciplinary proceedings initiated against him by the Annexure R-2 memorandum and pass suitable orders in accordance with law, rules/instructions on the subject. The O.A. is disposed of as above. No costs.


(B.S. HEGDE)
MEMBER(J)


(N.V. KRISHNAN)
VICE-CHAIRMAN

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