

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 627/93
~~XXX~~ **TAX NO.**

DATE OF DECISION 17.11.1997

R.B. Shikariya **Petitioner**

Mr. M.S. Trivedi **Advocate for the Petitioner (s)**

Versus

Union of India & others **Respondent**

Mr. Akil Kureshi **Advocate for the Respondent (s)**

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

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

R.B. Shikariya
Inspector of Central Excise &
Customs
Nadiad

C/o. M.S. Trivedi
Advocate
E/4, Shivani Apartment
Sahajanand College
Azad Society Road
Ahmedabad- 15.

Applicant

Advocate: Mr. M.S. Trivedi

Versus

(1) Union of India (through)
The Director General
Ministry of Telecommunication
Sanchar Bhavan
New Delhi.

(2) The Chief General Manager
(Telecom) Gujarat Circle
Opp: Khanpur Office
Khanpur, Ahmedabad-1.

(3) The General Manager
Vadodara Telecom District
Jalaram Marg
Kareli Baug, Vadodara- 390018. Respondents-

Advocate: Mr. Akil Kureshi

ORAL ORDER IN
O.A./627/93

Dated 17.11.1997

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The applicant when he was serving as J.T.O. in the Telecom Department had applied for the post of Inspector of Central Excise and Customs. While sending the application, he had not got it forwarded through proper channel. Subsequently he came out successful in the written test and was called for interview. The Staff Selection Commission informed him by their letter dated 9.7.91 that he had not produced the No Objection

certificate (NOC) which he was required to do, as he was serving in Central Government department. He accordingly applied to the ~~Sixff~~ Telecom Department for grant of such ~~X~~.an N.O.C. by his letter dated 2.7.91. A copy of this letter dated 2.7.91 (which had not been earlier enclosed) is now made available and taken on record. In this letter, he stated that he had appeared for the Inspectors of Central Excise and Customs Examination 1990 and had been called for personality Test and requested for issuance of an N.O.C. from the Department of Telecom. He further gave a commitment that he would follow the rules and regulations of the department as required if he was selected for the said post. The Department proceeded to issue NOC dated ~~22.7.~~ 91 a copy of which is enclosed as Annexure A-1 to the O.A. He was selected for the post of Inspector of Central Excise. He then submitted a representation to the Chief General Manager, Gujarat Telecom Circle where he had clearly brought out that he had been selected to the post of Central Excise and Custom Inspector and had also referred to the fact that he had obtained N.O.C. which was issued earlier. He proceeded to tender his resignation from the post of J.T.O. with one month's notice w.e.f. 26.3.92 and also expressed his readiness to pay whatever amount was due to be recovered from him. A copy of the letter dated 26.3.92 is shown to us by Mr. Kureshi. The Department then proceeded to accept his resignation which is in the nature of a technical resignation and asked him to pay back a sum

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of Rs.19,000/- which included training charges and also the stipend paid to him during the period from 4.9.89 to 20.4.90. He deposited this amount and had executed a fresh bond with the Central Excise Department.

Subsequently he represented to the department by his letter dated 25.8.93 requesting for refund of the amount of Rs.19,042/- he had deposited with the Telecom Department on his quitting the department as can be seen at Annexure A-5. This representation was rejected by the department and the present O.A. has been filed challenging such rejection.

2. We have heard Mr. Trivedi for the applicant and Mr. Kureshi for the respondents.

3. Mr. Trivedi relies on the general instructions from the Ministry of Home Affairs/Ministry of Personnel as that the terms of the bond should not be enforced against employees for their release when they are empanelled in another department of Central Government or a Public Enterprise wholly or partly owned by the Central Government as per Department of Personnel O.M. dated 14th November 1984, provided they have taken proper permission. He further submits that since the applicant had obtained an N.O.C. from the Telecom Department well before he was actually selected for a post in the Department of Central Excise and Customs, the amount deposited by him should be refunded to him.

4. The respondents have taken the view that the applicant had not got his application forwarded through proper channel initially. Besides he had also committed himself to repay whatever amount was due

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to be paid to the department and accordingly the deptt. had enforced the bond and that he cannot take back the money deposited by him with the Department.

5. We find that the only ground adduced by the department for rejecting the claim is that his initial application for the post of Inspector of Central Excise and Customs 1990 was not sent through proper channel. However, it is not denied that he had moved the department and obtained N.O.C. before ~~the officer offer~~ ^{be appeared} for interview. In the light of this position we hold that it is not very material that the application was not forwarded initially through proper channel when the same department had agreed to issue N.O.C. by their letter dated 26.12.1991. Issue of such N.O.C. amounts to ex-post facto ~~sanc~~ ^{sanction} regularisation and has the same effect as if the application has been forwarded through proper channel.

6. In the light of the above position, we hold that the applicant is entitled to the relief sought for and accordingly direct the respondents to refund to him the amount of ₹ 19,042/- which he had deposited with the department earlier within three months from the date of receipt of a copy of this order.

7. Mr. In order to facilitate this, we quash the letter dated 28.9.93 as at Annexure A-6. No costs.

7. Mr. Trivedi says that the respondents should be directed to pay a reasonable amount of interest on the money kept with them. This is not one of

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the reliefs which has been specifically sought for in this C.A. We also hold that in the facts and circumstances of the case, it is not a fit case to award any interest.

P.C.Kannan

(P.C.Kannan)
Member (J)

V.Ramkrishnan

(V.Ramkrishnan)
Vice Chairman

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DATE OFFICE REPORT

O R D E R

30.4.98

Case No. 255/98.

Heard Mrs. Safaya on M.A. 255/98, who represents the respondents in place of Mr. Kureishi. M.A. is for extension of time. Time is extended to comply with the directions upto 15.5.98.

Mr. Trivedi for the original applicant states

that in case, the decision is not implemented by that date, the applicant may be awarded interest. As regards this, the original applicant may take up the matter in appropriate proceedings if the Tribunal's direction is not complied with even after 15.5.98.

M.A. stands disposed of accordingly.

A copy of this order may be given to the respondents.

(P.C. Kannan)

Member (J)

(V.Ramakrishnan)

Vice Chairman

(V.Ramakrishnan)
Vice Chairman

(P.C. Kannan)

Member (J)

(V.Ramakrishnan)

Vice Chairman

(V.Ramakrishnan)
Vice Chairman

(P.C. Kannan)

Member (J)

*K.R.

DATE OFFICE REPORT

O R D E R

03.04.98 Mr. Ajmera says that he will file memo of appearance in place of Mr. Kureshi. Adjourned to 16.4.98.

DR
(P.C. Kannan)
Member (J)

VR
(V. Ramakrishnan)
Vice Chairman

16.4.98 Mrs. Safaya files appearance for the respondents

in place of Mr. Kureshi. We have seen M.A. 255/98 filed more than a month back. The original respondents failed to indicate the present position in this regard within a week. Adjourned to 30.4.1998. Mr. Trivedi present.

DR
(P.C. Kannan)
Member (J)

VR
(V. Ramakrishnan)
Vice Chairman

vtc.

30.4.98

Mrs. Safaya files appearance for the respondents in place of Mr. Kureshi. In respect of M.A. 255/98, she prays for time to ascertain the present position. Mr. Trivedi present.

Adjourned to 12.5.98.

(P.C. Kannan)
Member (J)

(V. Ramakrishnan)
Vice Chairman

DATE

OFFICE REPORT

O R D E R

XXXXXXXXXXXXXXXXXXXXXX

Heard Mrs. Safaya on M.A. 255/98, who represents the respondents in place of Mr. Kureshi. M.A. is for extension of time. Time is extended to comply with the directions upto 15.5.98.

Mr. Trivedi for the original applicant states that in case, the decision is not implemented by that date, the applicant may be awarded interest. As regards this, the original applicant may take up the matter in appropriate proceedings if the Tribunal's direction is not complied with even after 15.5.98.

M.A. stands disposed of accordingly.

A copy of this order may be given to the respondent

(P.C. Kannan)
Member (J)

(V.Ramakrishnan)
Vice Chairman

*SN.

DATE OFFICE REPORT

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(P.C. Kannan)
Member (J)

(V. Ramakrishnan)
Vice Chairman

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16.4.98

Mrs. Safaya says that she will enter appearance in place of Mr. Kureshi. We have seen M.A. 255/98, filed more than a month back. The original respondents to indicate the present position in this regard within a week. Adjourned to 30.4.1998. Mr. Trivedi present.

(P.C. Kannan)
Member (J)

(V. Ramakrishnan)
Vice Chairman

vtc.

30.4.98

Mrs. Safaya files appearance for the respondents in place of Mr. Kureshi. In respect of M.A. 255/98, she prays for time to ascertain the present position. Mr. Trivedi present.

Adjourned to 12.5.98.

(P.C. Kannan)
Member (J)

(V. Ramakrishnan)
Vice Chairman