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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~
NEW BOMBAY BENCH

O.A. No. 427 of 1986

DATE OF DECISION 12.9.1989

Shri Ashok Jhamandas Ratnani Petitioner

Shri N.J. Ratnani Advocate for the Petitioner(s)

Versus

1. Secretary (Revenue), C.B.E.C., New Delhi
2. The Collector of Customs, Bombay Respondent

Shri D.M. Ranade, U.L.C. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member (J)

The Hon'ble Mr. F.S. Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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

Original Application No. 427/86

Shri Ashok Jhamandas Ratnani,
 R/o Sweet Home, 3rd floor,
 Above Bank of Baroda, L.J.Road,
 Mahim,
 Bombay-400 016.

.. Applicant

V/s.

1. The Secretary (Revenue),
 Central Board of Excise
 & Customs, Ministry of Finance,
 Parliament Street,
 New Delhi-110 001.

2. The Collector of Customs,
 New Custom House,
 Ballard Estate,
 Bombay-400 038.

.. Respondents

Coram: Hon'ble Member (J), Shri M.B. Mujumdar
 Hon'ble Member (A), Shri P.S. Chaudhuri

Appearance:

1. Shri N.J. Ratnani,
 Advocate
 for the applicant.

2. Shri L.M. Ranade,
 U.L.C.,
 for the respondents.

ORAL JUDGMENT: -

Dated: 12.9.1989

(PER: Shri M.B. Mujumdar, Member (J))

The applicant, Shri Ashok Jhamandas Ratnani, was appointed as Preventive Officer, Grade-I (Ordinary Grade) by the Additional Collector of Customs, Bombay on 24.8.1973. His name was sponsored by the Employment Exchange and he was selected after passing the competitive examination for that post. At the time of appointment he had not produced his Secondary School Certificate (SSC) showing what was his birth date. According to the terms and conditions of the

appointment, a candidate was required to be below 23 years as on 1.1.1973 for appointment to the post of Preventive Officer Grade-I (Ordinary Grade). The application of the applicant which was sent by the Employment Exchange showed his birth date as 20.4.1950. According to that birth date he was below 23 years as on 1.1.1973 and hence he was allowed to join subject to production of the Secondary School Certificate within one month. The SSC which he produced showed his birth date as 20.4.1949 and hence he was found to be above 23 years on 1.1.1973. However, according to the applicant the birth date in the SSC was not correct and hence along with that certificate he produced his horoscope, passport and certificate of birth issued by the Bombay Municipal Corporation. The horoscope and passport showed his date of birth as 20.8.1950. However, the certificate issued by the Bombay Municipal showed his birth date as 18.8.1950, which was subsequently corrected to 20.8.1950 as per the sanction of the Executive Health Officer under N.H./14465 of 29.8.1974. Relying on the birth date given in the SSC his services were terminated by the respondents by order dated 15.12.1973 as he was above 23 years as on 1.1.1973.

2. Against the above termination order the applicant went on making representations. In reply to the first of his representations dated 14.3.1974 he was asked to have his birth date mentioned in the SSC changed. The applicant approached the Secondary School Certificate Board along with a certificate issued by the Bombay Municipal Corporation, and requested for correcting the date of birth recorded in their record. But the Board

turned down his request on the ground that there was no provision for making any changes in the record once the student had passed the SSC examination. The applicant pointed out this difficulty to the concerned authority but still his representations were not favourably considered. However, his final representation dated 24.4.1978 to the Minister of State for Finance(Custom and Central Excise) succeeded and the Central Board of Excise and Customs by its order dated 15/19-6-1979 accepted the birth date of the applicant as recorded in the certificate issued by the Bombay Municipal Corporation as correct. Accordingly, the Board decided to re-instate the applicant in service forthwith. However, as regards the intervening period upto the date of re-instatement, the Board directed that it should be treated as dies non. On the basis of the Board's order, the Additional Collector of Customs, Bombay issued an order dated 11.7.1979. That order reads as follows:-

"Estt. Office Order No.248/1979.

Shri Ashok J.Ratnani, a candidate for the post of Preventive Officer Gr.I(OG) was allowed to join w.e.f. 24.8.73 provisionally pending production of original S.S.C. certificate in support of his age. In the SSC certificate produced by him, his date of birth is shown as 20.4.1949 according to which he was age barred being over 23 years as on 1.1.1973. Accordingly, his provisional appointment was reviewed and his services terminated w.e.f. 15.12.1973 vide E.O.I.No.238/1973 dt. 15.12.1973.

2. Now, in pursuance of the Board's orders contained in letter F.No.A 39015/32/78-Ad III A dt. 15/19.6.1979 Shri Ashok J.Ratnani has been reinstated in service as temporary Prev. Officer Gr.I (OG) w.e.f. 30.6.1979(FN) against the vacancy of Shri Braham Parkash, P.O.I. resigned. His correct date of birth may be taken as 20.8.1950 for all purposes.

3. The intervening period from the date of termination of his services to the date of his reinstatement i.e. from 16.12.1973 to 29.6.1979 should be treated as dies non for all purposes."

3. The applicant was not satisfied with the directions given in para 3 of the order, namely, for considering the period from 16.12.1973 to 29.6.1979 as dies non for all purposes. Hence he submitted various representations challenging that direction. The rejection of his last representation dated 4.1.1984 by the Board was conveyed to him by the Assistant Collector of Customs' Memorandum dated 13.10.86. The applicant has filed this application on 19.11.1986 praying- (a) for directing the respondents not to treat the intervening period from 16.12.1973 to 29.6.1979 as dies non, and (b) for directing the respondents to grant all salary and allowances for that period.

4. Respondents have resisted the application by filing the affidavit of the Deputy Collector of Customs (F&E), Bombay.

5. We have just now heard Mr. N. J. Ratnani, learned advocate for the applicant and Mr. D. M. Ranade, U.P.C. present on behalf of the respondents. He showed us the relevant record. After carefully considering all the records, we find that the Central Board of Central Excise and Customs was right in accepting the date of birth of the applicant given in the certificate issued by the Bombay Municipal Corporation, namely, 20.8.1950. This decision required the Board to reinstate the applicant because the applicant's services were wrongly terminated by order dated 15.12.1973 by accepting the date of birth given in

the SSC, namely 20.4.1949. But it is our considered view that the Board was not justified in treating the period from date of termination till re-instatement as dies non. Before passing this order no opportunity was given to the applicant to put forth his case. Moreover, it was not on account of any fault of the applicant that his services were terminated by the order dated 15.12.1973. He had produced a certificate issued by the Bombay Municipal Corporation along with other documents to show that the birth date recorded in the SSC was erroneous. It was this very certificate which was accepted later. When the Board has corrected the mistake it should not have directed that the intervening period be treated as dies non. Hence we are inclined to quash and set aside the impugned direction given in para 3 of the order dated 11.7.1979. However, we are not inclined to direct that the applicant all in should be given his pay and allowances for that period.

6. We, therefore, pass the following order:-

O R D E R

(i) The direction given in para 3 of the order dated 11.7.1979 (Exhibit-E to the application) is hereby quashed and set aside. Instead, we direct that the respondents shall treat the period from 16.12.1973 to 29.6.1979 as period spent on duty for all purposes, except for payment of arrears of salary and allowances for that period.

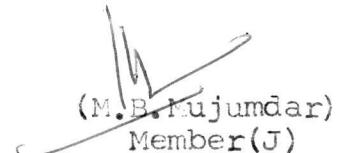
(ii) We further direct that the respondents shall re-fix the salary of the applicant in his original post on the above basis as well as re-fix his salary on his promotion as Preventive Officer Grade-I (Selection Grade) with effect from 2.9.1985.

(iii) We further direct that respondents shall pay the salary and allowances due to the applicant from 19.11.1983 onwards on the above basis. We specifically make it clear that he will not be entitled to arrears of salary and allowances upto 18.11.1983.

(iv) Parties to bear their own costs.



(P.S. Chaudhuri)
Member (A)



(M.B. Mujumdar)
Member (J)