

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 797/2000

THIS THE 5TH DAY OF OCTOBER, 2001

CORAM: SMT. SHANTA SHASTRY

. MEMBER (A)

Maharaj N Singh, Appraiser
(Group-B), New Customs House,
Mumbai-38.

.. Applicant

By Advocate Shri S.N. Pillai.

Versus

Union of India, through
The Chief Commissioner of Customs,
New Customs House, Ballard Estate,
Mumbai-400 038.

.. Respondent

By Advocate Shri V.D. Vadhavkar.

O R D E R (ORAL)

The applicant in this case is aggrieved by the order dated 9.8.99 of the Chief Commissioner of Customs directing that the intervening period between the termination of service of the applicant and the reinstatement should be taken as leave, if any, admissible and the further order dated 11.7.2000 of the Deputy Commissioner of Customs intimating the applicant that his request to the Chief Commissioner to pay full pay and allowances during the intervening period has not been acceded to.

2. The applicant joined as Appraiser after he was recruited through UPSC on 23.10.1989 in the office of the Principal Collector of Customs, Madras. He remained,

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there till January, 1991. He appeared for the departmental examination in February, 1990 and August, 1990. He passed in all the papers except Paper-IV and viva voce. He was transferred from Chennai Custom House to Mumbai Customs in January, 1991 and was further posted at Kandla and again transferred to Mumbai in August, 1992. He continued there till 18.12.95 when his services were terminated on his failure to pass the departmental examination within the time limit. Being aggrieved, the applicant approached the Principal Bench in OA 1461/98. The Tribunal disposed of the application on 11.5.99 setting aside the termination order and remitting it back to the competent authority to re-examine the matter in terms of the rules and regulation in the matter and to pass appropriate orders on reinstatement or otherwise within a period of three months from the date of receipt of the order. The applicant's case was therefore, re-examined by the Chief Commissioner of Customs in pursuance of the Directions of the Tribunal and the orders were passed on 9.8.99 allowing reinstatement of the applicant in service. However, in the order, it was further directed that the period between his termination and reinstatement should be taken as leave if any admissible and that he shall not earn any increment till the date of his finally passing the departmental examination in full.

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3. It is the contention of the applicant that after he had passed the departmental examination partly in Madras, he was never intimated about the next departmental examination as he was being transferred from place to place. Therefore, he could not appear in the departmental examination within the stipulated time. According to the learned counsel for the applicant there were some others also, who had joined service prior to the applicant namely one Mr. M. Rajan and another Mr. B. Trimothy, who joined along with the applicant in October, 1989 and one Mr. Rakesh Ladwal, who joined in service later in July, 90 who had also not passed the departmental examination in full till April, 1996, but they were all continued in service, only the applicant's services were terminated in 1995. In fact in the case of the others, they had received the intimation about the examination, yet they had failed to clear the departmental examination in time.

4. The learned counsel for the applicant has drawn my attention to the judgment of the Jaipur Bench of the Tribunal in the case of one Mr. M.K. Jain who was similarly placed as the applicant. Mr. Jain had joined as appraiser on 9.4.91 and in his case also his service was terminated on the ground that he has not passed the departmental examination in time. In this OA 384/95 filed by Mr. Jain, the Tribunal allowed the OA and set aside the termination order and directed to reinstate the applicant with all consequential benefits.

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Thereafter, the respondents have passed an order on 3.2.2001 reinstating the applicant i.e. Shri Jain and treated the intervening period between termination and reinstatement in service as duty for all purposes. The learned counsel for the applicant submits that the applicant's case being similar to that of Shri Jain in the case of the applicant also, the intervening period should have been treated as duty instead of leave. Not only that even the other three officers, who were similarly situated to the applicant were given the benefit of continuous service, even without terminating their services. The applicant, therefore, prays to treat his intervening period also as duty.

5. The respondents have opposed the application and in their sur-rejoinder, they have submitted that the applicant's case is not on par with that of Mr. Jain. In the case of Mr. Jain, the Tribunal had given specific directions to reinstate him with all consequential benefits, whereas in the case of the applicant, the Tribunal had only set aside the termination order and had directed the respondents to re-examine the case of the applicant and pass appropriate orders in terms of rules and regulations. Accordingly, the applicant was reinstated and his intervening period between termination and reinstatement has been treated as leave. This has been done as per the rules and regulation. According to Shri Vadhavkar, the learned counsel for the respondents, the applicant's

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present OA amounts to resjudicata as he cannot go beyond the directions already given by the Tribunal. In this connection, the learned counsel has placed reliance in a judgment in the case of Kumar Vs. UOI & Ors 1996 (2) SCSLJ 376. In that case the employee had filed suit for reinstatement. After he was reinstated, he again filed writ petition for arrears. The High Court had allowed the arrears to be paid. Thereafter, again the applicant approached the Tribunal for interest to be paid, which was allowed. However, the High Court set aside the same and did not allow the interest on the ground of resjudicata. In the present case also since the Principal Bench of the Tribunal had allowed only reinstatement. The applicant cannot be given something beyond that by treating the intervening period as duty as the rules do not permit.

6. I have given careful consideration to the rival pleadings. In my considered view, the case of the applicant is on all fours with that of Mr. Jain (supra). Also there cannot be discrimination between similarly situated employees. In this case all the persons were appraisers. All of them failed to clear the examination in time, yet discriminatory treatment was given to three of them by allowing them to continue in service. In the case of the applicant, the services were terminated though he had never been intimated about the departmental examination. The case of the applicant and Mr. Jain are identical in that their services were

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terminated for not passing the departmental examination. I do not agree with the learned counsel for the respondents that this amounts to resjudicata. In fact, the Tribunal had left it to the respondents to re-examine the case of the applicant and pass appropriate orders in terms of rules and regulations. While the learned counsel for the respondents asserted that the rules do not permit to treat the intervening period as duty, the respondents themselves meted out different treatment to different employees, who are otherwise similarly situated. I cannot, therefore, accept this contention. In my considered view, the applicant's intervening period between termination of service and reinstatement also needs to be treated as duty. I, therefore, direct that the respondents shall treat the applicant's intervening period from the date of termination till the date of reinstatement as duty with all consequential benefits. This shall be done within a period of three months from the date of receipt of copy of this order. In the result, the OA is allowed. No costs.

Shanta J.

(SMT. SHANTA SHASTRY)

MEMBER (A)

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