

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 1063/97

Date of Decision: 25.09.2001

Shri Subash Pilaji Cawas.

Applicant(s)

Shri S.S. Karkera.

Advocate for Applicant

Versus

Union of India & another

... Respondents

Shri Vadhwkar with
Shri M.I. Sethna.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. ... MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. ... MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library

Shanta J
(SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1063/97

THIS THE ^{25th} _A DAY OF SEPTEMBER, 2001

CORAM: SHRI S.L. JAIN. : MEMBER (J)
SMT. SHANTA SHAstry : MEMBER (A)

Shri Subhas Pilaji Cawas
aged about 30 years
residing at Room No.2,
Chawl No.6, Sai Krupa
Housing Society, Singh Estate,
Samata Nagar, Kandivli (East),
Mumbai-400 101. . . Applicant

By Advocate Shri S.S. Karkare

Versus

1. The Union of India,
through the Commissioner
of Central Excise, Bombay-II,
Piramal Chambers, Jijibai Lane,
Opp. Parel Post Office,
Parel, Mumbai-400 012.
2. The Director,
National Academy of Customs,
Excise & Narcotics, Regional
Training Institute, Bhandup (E),
Mumbai-400 042. . . Respondents

Shri V.D. Vadhavkar with Shri M.I. Sethna.

O R D E R

Smt. Shanta Shastry. Member (A)

The reliefs sought in this OA are as follows:

- a) This Hon'ble Tribunal be pleased to hold and declare that the action of Respondent No.3 in withholding the appointment letter dated 30.12.91 is illegal and bad in law.
- b) The Hon'ble Tribunal be pleased to issue a Writ of Certiorari and pass an appropriate order directing Respondent No.1 to treat the Applicant as due to have been appointed with effect from 30.12.91.

- c) This Hon'ble Tribunal be further pleased to direct the Respondents to pay the salary of the Applicant for the period from the date of appointment i.e. 30.12.91 till the date the applicant is taken on duty.
- d) This Hon'ble Tribunal be pleased to hold and declare that the action of Respondent No.3 in disregarding the mandatory order of Respondent No.1 to hand over the letter of appointment to the applicant is illegal, arbitrary and autocratic.
- e) This Hon'ble Tribunal be pleased to quash and set aside the order dated 24th March, 1995.
- f) Any other appropriate relief as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.
- g) Cost of the application may please be provided for.

The applicant was initially engaged as casual labour in the office of the Respondent No.3 with effect from 24.6.85. He appeared for an interview for selection to the post of sepoy (group 'D' post). After screening and interviewing him, he was selected for the post of sepoy vide letter dated 30.12.91. In this letter, the Respondent No.3 was directed to hand over the appointment letters of one Shri S.S. Sakpal and the applicant in order to enable them to join as sepoy in the office of Respondent No.1. However, before the applicant could receive the appointment letter, he had been involved in a criminal case of theft. The theft had taken place of VCR National Brand from the cabin of Director of NACEN and the same was discovered on 7.12.90. The Respondent No.3 had made a complaint to the Kanjurmarg Police Station regarding the said theft. No names of suspects were mentioned. After

investigation, the applicant was made accused No.1 and the criminal case No. CR 102/90 was registered against the applicant and another person. His appointment letter was therefore withheld. On 16.1.92 the office of Respondent No.3 informed the Respondent No.1 that the appointment letter had not been delivered to the applicant and it was kept pending till final decision in the criminal case.

2. Thereafter the appointment of the applicant was cancelled vide letter No.24.3.95. the applicant was acquitted vide judgment and order dated 11.1.95. There was no appeal against it. When the applicant approached the respondents for giving him the appointment, he was denied the same on administrative grounds. The applicant had made a representation on 6.3.95. According to the applicant, he did not receive any reply to his representation. He had made further representation in 1997 and also in 1998 seeking to restore him as casual labour at least. But the applicant was not taken on duty. It is this grievance, which has brought him to this Tribunal.

3. The applicant's contention is that he was not at all involved in the criminal case, he was falsely implicated and that is evident from his acquittal from the case and therefore, when the judgment was delivered on 11.1.95 he should have been appointed as sepoy. He was regularly appointed as sepoy and therefore, the same

cannot be undone now. He was hopeful that his representation would be considered by Respondent No.1 and he would be allowed to join duty. But he has not been allowed to join duty. On the contrary, he has been informed that his appointment letter was cancelled in May 1995 itself. The respondents submit that the applicant was duly informed vide letter dated 24.3.95 stating that his appointment as sepoy in the Central Excise Commissionarate cannot be considered on administrative grounds and hence it is cancelled. His further representation dated 6.8.97 was not replied to because of the reply already given. It is not correct to say that the applicant had not received the communication dated 24.3.95. The letter was despatched by the office of the Respondent No.1 on the address given by the applicant. The respondents have produced the copy of the despatch register showing issue of the letter. The appointment of the applicant was not rejected arbitrarily, but in accordance with law and in the circumstances prevailing then. The applicant was involved in a criminal case and he was made first accused. He did not come to ask for a copy of the appointment letter from Respondent No.1 when he did not receive it. Instead he had taken four years to ask for the same. He submitted his first representation only after he was acquitted in the criminal case. The same was rejected after proper consideration on the administrative grounds. The respondents have also denied that the applicant was illegally restrained in

not performing his duty. In fact, the applicant did not come for work in the office of Respondent No.2 after the occurrence of theft on 6.12.90. The letter of appointment clearly stated that if the applicant failed to join duty within 15 days, the appointment order will be liable for cancellation. The applicant was aware of appointment letter issued to him, but he never reported in front of either Respondent No.1 or Respondent No.2 until 6.3.95. The respondents cannot be expected to keep the post vacant for the applicant for so many years. Cancellation of appointment order does not amount to termination order. Appointment can be cancelled if a person appointed does not join or found eligible or has secured appointment by fraudulent means or on any administrative grounds. At the time of criminal case the applicant was on daily wages and he failed to report to the office of Respondent No.2 after the criminal case was registered against him. A daily wage worker is not a regular employee, he is only paid for the day he works, therefore, the applicant has no case. The respondents have taken the plea of limitation also. The appointment order was issued in 1991. It was canceled on 24.3.95. The applicant has filed this OA in December, 1997. Thus, the cause of action having arisen in 1991 the application does not deserve to be considered being beyond limitation period.

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4. The applicant has filed MP for condonation of delay. He has stated that since he had not received any reply from the respondents, he could not approach the Tribunal earlier. The applicant has also relied on few judgments particularly the judgment of Allahabad High Court in the case of Awadhesh Kumar Sharma Vs. Union of India & Others decided on 24.1.2000 (2001 (1) ATJ 408). According to the applicant, his case is covered by this judgment. In the aforesaid case, the petitioner was selected as Mazdoor in the Central Ordnance Depot after interview. The selection was cancelled on account of his involvement in a criminal case. He was acquitted in the criminal case and he made a representation for appointment and he was intimated that he would be considered as a fresh candidate as and when vacancies are released. The Allahabad High Court held that on his acquittal it has to be deemed in law that in fact he was never involved in the criminal case and a direction was given to allow him to join duty.

5. Learned counsel for the applicant has also referred to another case of Babu Lal Vs. State of Haryana & Others (1991 (16) ATC 481) wherein it was held that the applicant therein was entitled to reinstatement after acquittal. In another case of Regional manager, Bank of Baroda Vs. Presiding Officer, Central Govt. Industrial Tribunal & another (1991 (1) SC 265), it was

ordered that from the date of acquittal, the applicant be treated as fresh recruit and was entitled to back wages.

6. In regard to limitation, the applicant has placed reliance in the case of K. Thimmappa & Others Vs. Chairman, Central Board of Directors, State Bank of India & another (2001 SCC (L&S) 374. It was held in this case that the petition cannot be rejected solely on the ground of laches when the question of violation of Fundamental Right (Article 14) is involved in it. When there is no infraction of Article 14 of the petitioner, question of delay in filing the petition cannot be ignored. Another judgment produced is OA No.13/89 decided by Allahabad Bench of the Tribunal in the case of Dhiru Mohan Vs. Union of India & Others. It was held in this that Section 21 made no distinction between application impugning an irregular or illegal or a void order - period of limitation prescribed in Section 21 is applicable to an application challenging a void order. At the same time the Hon'ble Court held that a void order has no existence in the eyes of law and is a nullity, it need not to be set aside. The application claiming arrears of salary etc., cannot be defeated on the plea that void order was not assailed within the period of limitation. Failure to challenge a void order within the limitation period would not render the same impregnable. In short, the learned counsel for the applicant pleads that since the applicant had actually

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been selected for appointment to the post of sepoy and for no fault of his, he had been falsely implicated in the criminal case and was finally acquitted, he should have been continued and appointed in the post of sepoy. The delay needs to be condoned, the applicant's case is strong on merits.

7. We have heard the learned counsel for both the parties and have given careful consideration to the rival contentions.

8. We find that the applicant's appointment order was issued on 30.12.1991. But he did not receive it as it was not delivered to him due to criminal case pending against him. The applicant could certainly have enquired as to what happened to his appointment order when he did not receive it. Even though criminal case was pending, nothing prevented the applicant from enquiring about it or from asking for the appointment order. He kept quiet for nearly four years and waited for the judgment in the criminal case. It is only after acquittal on 11.1.95 when he filed a representation on 6.3.95, the applicant had asked to give him his appointment order. The applicant was only a daily wage worker, it is nowhere claimed by him that he has been granted temporary status or he has been regularised. In fact, the appointment was for his regularisation and therefore, he cannot claim that he was not given any hearing or no enquiry was conducted before cancelling

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his appointment order. Even though the applicant had relied on the judgment of the Allahabad High Court in case of Awadhesh Kumar Sharma, the Supreme Court in the case of Union of India Vs. Rati Pal Saroj & another has ruled otherwise and it would prevail. The reasons given by the applicant for condonation of delay are not convincing enough and even if it is to be condoned in view of the judgment cited as above by the respondents, there is no merit and we therefore, do not consider it necessary to interfere in the matter.

8. The OA is dismissed, no costs.

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(SMT. SHANTA SHAstry)
MEMBER (A)

S.L. JAIN

(S.L. JAIN)
MEMBER (J)

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