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In the Central Administrative Tribunals Hyderabad Bench

At Hyderabad

OA.1241 /95

dt.2-3-98

Between

B. Apparao

: Applicant

and

1. Commissioner of Customs and Central Excise  
Custom House, Port Area, Visakhapatnam

2. Addl. Commissioner of Customs  
Customs House, Port Area, Viasakhapatnam

: Respondents

Counsel for the applicant

: P.B. Vijayakumar  
Advocate

Counsel for the respondents

: N.R. Devaraj  
Sr.CGSC

CORAM

HON. SRI A.V. HARIDASAN, VICE CHAIRMAN (ERNAKULAM BENCH)

HON. SRI H. RAJENDRA PRASAD, MEMBER (ADMN.)

## Order

Oral order (per Hon. Mr. A.V. Haridasan, Vice Chairman(BB)

The applicant was appointed as Sepoy in the Department of Central Excise and Customs on 25-8-1989 after a process of selection. His services were terminated by an order dated 14-7-1992 on the ground that the appointment was procured basing on a fake sponsorship by the Employment Exchange, without holding any enquiry. The applicant challenged the termination of his service in OA.606/92. The Tribunal set aside the order giving an opportunity to the respondents to take action <sup>in</sup> accordance with rules. Consequently a chargesheet was issued to the applicant alleging that he had secured appointment as Sepoy in the Customs House, Visakhapatnam, on the basis of forged list of candidates and other forged documents purported to have been sent by Employment Exchange Officer, Visakhapatnam. The applicant denied the charge. An inquiry was held. The Inquiry Officer found that though the appointment of the applicant was basing on the fake list, The involvement of the applicant in the fraud has not been established. Accepting the finding, the Disciplinary authority by its order dated 31-1-1994 removed the applicant from service. Aggrieved by that the applicant preferred an appeal which was disposed of by the Appellate authority, the first respondent, by the impugned order dated 17-5-1994. While the appellate authority accepted the finding arrived at by the Disciplinary authority and did not find any infirmity in the procedure he thought that the order of removal from service was rather

harsh and proceeded to take a very lenient view. The Appellate authority set aside the penalty of removal from service. Taking guidance from the order of the Tribunal in Chet Bahadur Vs. Union of India reported in 1990 (13) ATC 163 wherein it was observed that as the applicant therein was not a party to the fraud, the respondents might consider his appointment on an existing or future vacancy alongwith the other candidates sponsored by the Employment Exchange; the Appellate authority noting that the services of the applicant were found to be blemishless ordered that the applicant would be maintained as a Sepoy in the Department treating him as a fresh appointee without any benefit of the past service. It was also provided that the ~~case~~ of four other persons considered along with the applicant might also get the same benefit and all the five incumbents would maintain their interse seniority. It is aggrieved by this order that the applicant has filed this application. It is alleged in the application that the first respondent had exceeded his powers in ordering that the applicant shall be treated as a fresh appointee after having set aside the order of dismissal. The applicant therefore seeks to set aside the impugned order.

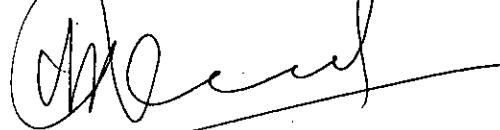
2. The respondents seek to justify the impugned order. They contend that while the applicant had no right to continue on the post the Appellate authority has been guided by a benevolent dispensation contained in the orders of the Tribunal in Chet Bahadur's case. In any case the impugned order does not deserve interference by the Tribunal, contend the respondents.

3. We have taken into account the totality of the facts and circumstances emerging from the pleadings and materials brought on record. We have also heard the learned counsel on either sides.

4. The arguments of the learned counsel for the applicant that the imposition of a penalty which is not prescribed in Rule 11 of CCS(CCA) Rules by the Appellate authority is unsustainable cannot be brushed aside altogether. It is true that forfeiture of past service is not one of the penalties specified in Rule 11 of the CCS(CCA) Rules. The Appellate Authority accepted the ~~finding~~ finding of the Disciplinary Authority that the applicant obtained appointment on the basis of fake sponsorship list and that his involvement in the fraud was not established. The Appellate Authority considered the penalty of removal from service too harsh because the applicant's involvement in the fraud has not been proved. However, as the appointment of the applicant ~~w~~ itself was on the basis of a false list the applicant was found not entitled to hold the post. However, ~~guided~~ guided by the ruling of the Tribunal in Chet Bahadur's case the ~~appellate~~ appellate authority instead of cancelling the appointment of the applicant ordered that he would be maintained in service treating him as a fresh entrant. Though technically the Appellate Authority's order may not be in full conformity with the provisions of CCS(CCA) Rules in the facts and circumstances of the case we do not consider any interference with the order necessary.

5. In the result the application is dismissed. No costs.

  
(H. Rajendra Prasad)  
Member (Admn.)

  
(A.V. Haridasan)  
Vice Chairman (EBO)

Dated : March 2, 98  
Dictated in Open Court

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O.A. 1240 to 1244/95.

To

1. The Commissioner of Customs and Central Excise Custom House, Port Area, Visakhapatnam.
2. The Addl. Commissioner of Customs, Customs House, Port Area, Visakhapatnam.
3. One copy to Mr. P. B. Vijayakumar, Advocate, C.A.T. Hyd.
4. One copy to Mr. N. R. Devraj, Sr. C.G.C. C.A.T. Hyd.
5. One copy to DR(A) C.A.T. Hyd.
6. One spare copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE A. V. Amin Raser  
VICE-CHAIRMAN (Empanelled  
AND *Bench*)  
THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

DATED: 23 - 1998.

ORDER/JUDGMENT:

M.A./R.A./C.A. No.

in  
O.A. No.

1261/95

T.A. No.

O.W.P

Admitted and Interim directions  
Issued.

Allowed

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.

