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IN THE ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH,
HYDERABAD

O.A.NO. 1243 OF 1995

Between:

Shri M. Sivahandam

Applicant.

AND

1. The Commissioner of Customs &
Central Excise, Custom House,
Visakhapatnam.

Respondents.

2. The Addl. Commissioner of Customs,
Custom House, Visakhapatnam.

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENTS:

I, Mrs. Heera Radhakrishnan, W/o Shri M. Radhakrishnan, aged 47 years, Occupation Government Service, and resident of Visakhapatnam, do hereby solemnly affirm and state as follows:

I am working as Additional Commissioner of Customs in the office of the Respondent No.1, and am the second respondent herein. As such I know all the facts of the case, I am filing this Counter Affidavit for myself and on behalf of the Respondent No.1 herein as I have been authorised to do so. I hereby deny the averments made by the applicant in the affidavit filed in support of the above Original Application and the Applicant is put to strict proof of all such averments which were denied hereunder.

At the outset it is submitted that the order of the Commissioner of Customs & Central Excise is dated 17.05.94 and this Original Application has been filed on 5.8.95 which clearly makes the application time barred. Rule 21 of the Administrative Tribunal Act,

Corrections

Satya Anand
Attestor
P. S. HARNATH, M.A.,
Superintendent of
CENTRAL INTELLIGENCE UNIT
CUSTOM HOUSE
VISAKHAPATNAM

[Signature]
अपरायुक्त (कॉमिक एवं सतर्कता)
Additional Commissioner (P & V)
सीमा एवं केंद्रीय उत्पाद शुल्क
Customs & Central Excise
विशाखपट्टणम Visakhapatnam-530 035

1985 which deals with limitation states that such application shall not be admitted by the reason given for delay in filing the application appear grounds cited for relief are general and known to the applicant and the absence or availability of case files could not hinder the filing of this application in time if they so desired. Therefore the Original Application is liable to be dismissed on this ground alone.

The order of the Appellate Authority is not arbitrary and illegal as the submissions of the applicant were considered in full and in the proper perspective. The Appellate Authority while setting aside the order dt. 31.1.94 of the Disciplinary Authority removing the applicant from service, has taken into account the Delhi CAT's decision in the case of Chet Bahadur versus Union of India O.A.No.858/1989 dt.9.8.89 (1990) 13 ATC 163 and ordered that Shri M. Sivanandam be taken into service as a fresh recruit. This was because of the fact that it had been established by the inquiry that Shri M. Sivanandam

along with 4 others was actually employed on a fake list purported to have been sent by the Employment Exchange, and this vital aspect was taken into account by the Appellate Authority while passing the order. Also, the Appellate Authority has regarded the fact that in Chet Bahadur's case, Hon'ble Tribunal has observed that the persons removed be considered for appointment in the existing or future vacancies along with other candidates sponsored by the Employment Exchange.

Corrections

Satya Narayan
Attestor
P. S. HARNATH, "A."
Superintendent
CENTRAL INTELLIGENCE UNIT
CUSTOM HOUSE
VISAKHAPATNAM

[Signature]
अपरायुक्त (कार्यालय एवं सतर्कता)
Additional Commissioner (P & V)
सीमा एवं केंद्रीय उत्पाद शुल्क
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It is, therefore, clear that despite the clearly established fact that the Sepoy was appointed on the basis of a fake list purported to have been sent by the Employment Exchange, the Appellate Authority showed compassion in not upholding the order of dismissal, but permitted the Sepoy to be taken into service as a fresh recruit.

The Appellate Authority's order is not inconsistent as the same was passed taking into account the underlying principles of the judgement given by the Hon'ble Tribunal in Chet Bahadur's case. The Appellate Authority considered all the submissions in full made by the Applicant and the facts revealed by the inquiry carefully while passing the order and ordered that Shri M. Sivanandam be taken into service as if he were a fresh recruitee in the Sepoys cadre against the existing vacancies considering that it had been established that the Sepoy was actually appointed on the basis of a fake list purported to have been sent by the Employment Exchange. The Appellate Authority also held that the fact of earlier employment based on a fake list cannot be overlooked and he was of the view that ends of justice would be met if Shri M. Sivanandam was treated as fresh recruitee, denying the benefit of past service rendered by him. He had also ordered that the Sepoy shall be entitled to pay and allowances for the interregnum period at the minimum of the time scale.

Corrections

Sub Inspector
P. S. HARNATH M. A.
Superintendent of Customs
CENTRAL INTELLIGENCE UNIT
CUSTOM HOUSE
VISAKHAPATNAM

Deputy
अपरायुक्त (कामिक एवं सतर्कता)
Additional Commissioner (P & V)
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It is, therefore, not correct to say that the authorities have not applied their minds to the Inquiry which is characterised by the applicant as perverse; as the Disciplinary Authority and Appellate Authority have considered the same in full and in the proper perspective and have given reasoned findings.

The Applicant's averment that a heavy punishment affecting his service by virtue of fixation of pay, has been imposed is denied as the Appellate Authority has in fact, taken a lenient view considering the fact that the earlier employment was based on a fake list Shri M. Sivanandam has really no claim to the post but even so the Appellate Authority has, relying on the Chet Bahadur's case, offered relief by permitting the sepoy to be taken into service as a fresh recruit. The Appellate Authority has thus made a fair judgement relying on the decision of the Hon'ble Tribunal in Chet Bahadur's case. In view of this the plea of the applicant about losing 5 years of past service, fixation of pay, etc., does not merit consideration.

The Disciplinary authority has removed Shri M. Sivanandam from service vide her order No. S20/15(4)/92 CIU, dt. 31.1.1994 as it was established that the sepoy has secured appointment in Government

Corrections

S. S. Harnath

Attestor

P. S. HARNATH, M.A.
Superintendent of Customs,
CENTRAL INTELLIGENCE UNIT
CUSTOM HOUSE
VISAKHAPATNAM

[Signature]

Deponent

अपरायुक्त (कामिक एवं सतर्कता)
Additional Commissioner (P & V)
सीमा एवं केंद्रीय उत्पाद शुल्क
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In the C.A.T.
Hyd Bench

OA 1243/95

Counter Affidavit



Filed by -

N. R. Devanay
nr

notified
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