

63

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

C.A. No. 80 OF 1996.

Date of Order: 24-3-1998.

Between:

S.V.K.Mahesh .

.. Applicant

and

1. The Union of India, rep., by its Secretary, Ministry of Finance, Revenue Department, New Delhi.
2. Commissioner of Customs & Central Excise, Customs House, Visakhapatnam.
3. A.Jagannadham, s/o Sri Appanna, r/o H.No. 16-42-2/A, Kotha Jalaripeta, Visakhapatnam.

.. Respondents

COUNSEL FOR THE APPLICANT :: Mr. N. Rama Mohana Rao

COUNSEL FOR THE RESPONDENTS:: Mr. V. Rajeshwara Rao &
:: Mr. V. Mallik for R-3.

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

AND

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

: O R D E R :

ORAL ORDER (PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (J))

Heard Mr. N. Rama Mohana Rao, learned Counsel for the Applicant and Mr. V. Rajeshwara Rao, learned Counsel for the Respondents, and Mr. V. Mallik, learned Counsel for the Respondent no. 3.

Jai

.....2

2. The applicant was subjected to the selection process of an interview on 20-12-1990 and was selected for the post of Greaser, vide Memorandum No.F.No.55/1/90-Estt, dt:4-10-1991. The applicant was offered the appointment as Greaser which he accepted and joined duty on 14-10-1991, as per Order(at page.13 Annexure-III to the OA). It is further stated that the appointment offered to the applicant was purely on adhoc and casual basis on the wages at the rate of 1/30th of the pay at minimum of the relevant pay scale of Rs.800-1150 Plus Dearness Allowance as applicable to Central Government Employees for work of 8 hours per day.

3. It is stated that the applicant was arrested by Police at Visakhapatnam on 27-8-1992 and remanded to judicial custody by the Magistrate but was released on bail on 4-9-1992. On release from bail, the applicant submitted a representation for entrusting him the work. The respondents stated that his case will be entertained only basing upon the result of the outcome of the criminal investigation.

4. It is stated that the applicant was prosecuted before the Court of Metropolitan Session Judge,Visakhapatnam in S.C.No.139 of 1993 on 14-9-1995. The Court of Metropolitan Session Judge, Visakhapatnam, acquitted the applicant of the charges (a copy of the Judgment of the Court is at page.21, Annexure.X to the OA).

5. After acquittal by the Metropolitan Session Judge, the applicant submitted a representation/to the respondent-authorities to appoint him as Greaser. His representation dated: 11-10-1995(Annexure.VII, Page 19 to the OA) was not considered.

6. Even before submitting his representation, the applicant had filed a Suit in O.S.No.15 of 1993 on the file of the Hon'ble

Tan

.....3

1st Additional District Munsif, Visakhapatnam. It is stated that the said Suit was withdrawn on 22-1-1996.

7. The applicant has filed this O.A. for a declaration that the action of the 2nd respondent in not considering his case for appointment as Greaser though his name was sponsored through the Employment Exchange as arbitrary, unconstitutional, illegal and unsustainable, and consequently to direct the 2nd respondent to entertain the applicant to duty in the post of Greaser in the office of the 2nd respondent, and further to direct the respondents 1 and 2 to consider and appoint him in the permanent vacancy of the post of Greaser in the office of the 2nd respondent with all attendant benefits.

8. Before going into the merits, we may observe here that the applicant had ⁸ impleaded the Respondent no.3 in the O.A. It appears that the respondent no.3 was appointed as Greaser in the post of twice the applicant. His appointment cannot be challenged by the applicant. The respondent no.3 was not a necessary party to this O.A. However, the respondents 1 and 2 have to decide the case of the applicant whether he should be reinstated after the Judgment of the Session Judge Court in S.C.No.139 of 1993. If the applicant is to be reinstated then he should be posted in accordance with the rights accrued to him due to the disposal of the representation in his favour. At that time, it is for the respondents to decide where to find a vacancy and how to fix him in the Organisation. Hence in our opinion the impleading of respondent no.3 itself is not warranted. However, having impleaded him and he also submitted a reply in this connection, we leave the issue open in regard to the posting of Respondent no.3 in the Department as Greaser in accordance

Te

.....

with the Law. We do not make any observation in this connection.

9. The main contention of the official respondents in this O.A. is that the applicant has been acquitted as the prosecution failed to prove the guilt of the accused beyond reasonable doubt. ^{They} We also depend on the Judgment of this Tribunal in O.A.No.1003 of 1995 decided on 28-11-1995 to sustain their case.

10. Whether the applicant has to be reinstated or not after he has been acquitted in S.C.No.139 of 1993 by the Court of the Metropolitan Session Judge at Visakhapatnam has to be examined by the respondents in detail on the basis of the facts available in this case and also on the basis of the representation dated: 11-10-1995 submitted by him. If the respondents come to the conclusion that his ~~discharge~~ ^{acquittal} is in order then they should make arrangements to reinstate him. In case they decide not to reengage him, a detailed Speaking Order rejecting his case has to be given. In that case the applicant is at liberty to challenge that reply in accordance with Law. Merely asking him not to come for duty is not a proper disposal of his case and the department cannot act in an arbitrary manner by discharging him from service without giving him a proper order.

11. The learned Counsel for the respondents submits that in a similar case O.A.No.1003 of 1995 the applicant was a regular employee and he was acquitted in a criminal case on the basis of the failure to be proved his case beyond reasonable doubt. In that case this Tribunal has held that there are no reasons to interfere in his case in regard to his reinstatement. Hence the learned Counsel for the Respondents submits that this case is also similar to that and no inference can be called in this case also.

Te

.....5

12. In a case where an applicant was acquitted either without unblemish or on the basis that the case was not proved beyond reasonable doubt then it is for the respondents to examine that case in detail and take a final decision on the basis of the facts of this case. Reliance on some other case, in our opinion, even though it is similar, may not be proper as the facts will vary from case to case. Hence the above submissions of the respondents is rejected.

13. In the result the following directions ^{are} given:-

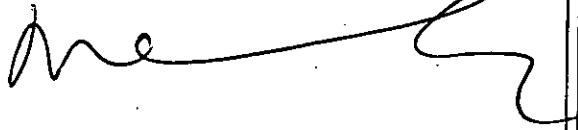
- i) We keep the issue of appointment of Respondent no.3 open and it is for the respondents to decide his case in accordance with the Law.
- ii) The representation dated:11-10-1995 of the applicant after he was acquitted by the Court of Metropolitan Session Judge,Visakhapatnam has to be decided by the appropriate respondents in accordance with the law taking into account the various contentions raised in this O.A. as well as his representation dated: 11-10-1995 and other facts available before the appropriate authority. This decision should be taken within a period of two months from the date of receipt of a copy of this Order.

14. With the above direction, the O.A. is disposed of. No costs.


(B.S.JAI PARAMESHWAR)

MEMBER(J)

24.3.98

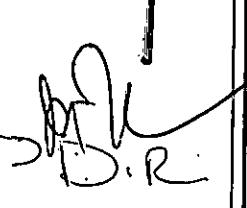

(R.RANGARAJAN)

MEMBER(A)

Dated: this the 24th day of March, 1998

Dictated in the Open Court

DSN


D.R.

..6..

Copy to:

1. The Secretary, Min.of Finance, Revenue Dept., New Delhi.
2. Commissioner of Customs & Central Excise,
Customs House, Visakhapatnam.
3. One copy to Mr.N.Rama Mohana Rao,Advocate,CAT,Hyderabad.
4. One copy to Mr.V.Rajeswara Rao, Addl.CGSC,CAT,Hyderabad.
5. One copy to Mr.V.Mallik, Advocate,CAT,Hyderabad.
6. One copy to D.R(A),CAT,Hyderabad.
7. One copy to HBSJP, M (J),CAT,Hyderabad.
8. One duplicate copy.

YLKR

16/4/98

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

DATED: 24/3/98

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

O.A.NO.

80/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLR

