

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1506/2014

Order Reserved on:19.11.2016

Pronounced on:03.12.2016.

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Hitesh Mann,
S/p Sh. Jawahar Singh Mann,
R/o H.NO.74, Village Holambi Khurd,
VPO Holambi Kalan, Delhi-110082.

-Applicant

(By Advocate: Mr. Manoj Joshi)

Versus

1. Principal Chief Controller of Accounts,
Central Board of Direct Taxes,
9th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi.
2. Controller of Accounts,
Zonal Accounts Office,
Central Board of Direct Taxes,
Room No.270, Aayaktar Bhawan,
M.K. Road, Mumbai-40020.
3. Secretary,
Controller General of Accounts,
Office Controller General of Accounts,
Ministry of Finance,
Lok Nayak Bhawan,
Khan Market,
New Delhi.
4. Secretary,
Staff Selection Commission,

Block No.12, CGO Complex,
Lodhi Road, New Delhi.

-Respondents

(By Advocate Mrs. Avinash Kaur)

O R D E R

Mr. K.N. Shrivastava, Member (A):

Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant has prayed for the following specific reliefs:

“b. Direct the respondents to reinstate the Applicant back to post of Junior Accountant since 15.01.2013; and

c. Direct the Respondents to give all benefits and salary to the Applicant which would have accrued to him since his day of joining i.e. 15th of January 2013; and/or”

2. The brief facts of this case are as under:

2.1 The applicant was selected for the post of Junior Accountant in Controller General of Accounts (CGA) by the Staff Selection Commission (SSC) on 30.03.2012. Pursuant to the recommendation of the candidature of the applicant by the SSC, the office of Principal Chief Controller of Accounts, Central Board of Direct Taxes (CBDT), issued an offer of appointment to the applicant vide OM No.Admn.1/3-4/2012-13/Rectt/Acctt/Pr.CCA/HQ CBDT/4697-99 dated 05.11.2012 with a direction to report to ZAO-CBDT, Mumbai within 21 days. The Assistant Controller of Accounts in the

office of Principal Chief Controller of Accounts (CBDT) vide Annexure A-4 OM dated 07.01.2013 directed the applicant to report to ZAO, Mumbai within 07 days failing which the offer of appointment for the post of Accountant will be cancelled. The applicant joined his duties on 15.01.2013. After he had worked for two weeks, on 30.01.2013 he was asked to leave the work and not to come to the office until further communication. No reason for the same was disclosed to the applicant.

2.2 It is the case of the applicant that in his attestation form, which he had submitted to the ZAO, Mumbai, he had declared therein that an FIR against him had been registered but no charge-sheet had been filed in the Court of Law that he was not the main accused in the case and that he was arrested and later released on bail. Suspecting that due to the said FIR he might have been asked by the respondents not to come to the office, the applicant sought information under Right to Information Act, 2005 from the respondents. The respondents vide Annexure A-5 and Annexure A-7 confirmed this. They have also acknowledged that he had worked in the ZAO, CBDT, Mumbai from 16.01.2013 to 29.01.2013 and that he was posted in the Pre-Check Unit Section of ZAO, CBDT, Mumbai.

2.3 Aggrieved by the action of the respondents to keep his appointment in abeyance, the applicant has filed the instant OA, praying for the reliefs as mentioned in para-1 above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. The respondents 1-3 in their reply have acknowledged that the applicant had disclosed in the attestation form submitted by him to the ZAO, CBDT, Mumbai that a FIR had been lodged against him. It is also submitted that after receiving the attestation form, the Appointing Authority made scrutiny thereof and took cognizance of the adverse facts recorded by the applicant in the attestation form and decided to withhold his appointment. The attestation form clearly indicates that his retention in the service is further subject to being found suitable for government service in all respects. It is also stated that on receipt of Annexure R-1 letter dated 31.01.2013 from CBDT, directing therein that 'the applicant may be discontinued from attending office with immediate effect as his appointment is kept in abeyance', the applicant was directed accordingly. It is also averred in the reply that the applicant was orally informed that his appointment has been kept in abeyance and that nothing was given to him in writing.

4. Respondent No.4 in their reply have only stated that the applicant was selected by them to the post of Junior Accountant and allocated to the office of Principal Chief Controller of Accounts, New Delhi and was directed to report to ZAO, CBDT, Mumbai within 21 days from the receipt of offer of appointment.

5. The applicant in his rejoinder to the reply filed on behalf of the respondents has stated that the Annexure R-1 direction of the CBDT Headquarters is dated 31.01.2013, which is subsequent to the applicant's joining ZAO, CBDT on 15.01.2013. The applicant has also placed reliance on the judgment of the Hon'ble High Court of Allahabad in the case of **Prem Shanker Pandey v. Krishi Utpadan Mandi**, [Civil Writ Petition No.33609 of 1990] in support of his case. The relevant para of the said judgment is extracted below:

“10. The only question that falls for the consideration is whether the order of termination of Petitioner is simpliciter or it is by way of punishment. The order of termination itself is couched in a very innocent and innocuous language. If the said order is read alongwith the recommendation letter of the Respondent No.1 it would appear that the decision to terminate the petitioner's service is taken because the criminal case is filed against him and FIR is lodged against him. In pursuance of that decision the impugned order is passed which is Annexure-C to the writ petition. It is permissible for the Court to lift the veil and peep into the reality as to what was the reason of termination of service of the Petitioner and to ascertain whether the order of termination of service was innocent, innocuous and simpliciter or was it punitive in nature. The order of termination may be innocent on the face of it but if the record reveals that it was not so and the basis of the order was punitive and the employer wanted to terminate the service by way of punishment, the Court is permitted to intervene.”

5.1 It is also stated that the attestation form submitted by the applicant is dated 24.11.2013 in which he has clearly mentioned that there is an FIR pending against him and despite that he was allowed to join duties.

6. The arguments of the learned counsel for the parties were heard on 19.11.2016. Shri Manish Joshi, learned counsel for the applicant and Ms. Avinash Kaur, learned counsel for respondents 1-3 argued the case.

7. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. Admittedly, the applicant has been selected to the post of Junior Accountant by the SSC through a proper selection process and allocated to Principal Chief Controller of Accounts, CBDT, who in turn, has posted him to ZAO, CBDT, Mumbai. Accordingly, the offer of appointment dated 05.11.2012 was issued to him. As per the mandatory requirement, the applicant had filled up the attestation form and submitted to the respondents, a copy of which is at Annexure R-2. In the said attestation form in response to the question whether "Have you ever been attested" – he has replied 'yes'. The applicant has not hidden any relevant facts from the respondents. He has confirmed lodging of the FIR against him. The FIR was registered on

16.09.2012, whereas the applicant was declared selected to the post by SSC on 30.03.2012. The main accused in the FIR is one Shakti Khatri, who has been accused of cheating in the examination of SSC, 2012. The applicant was also included in the FIR. He was arrested but given bail on 01.10.2012. No charge-sheet has been filed against him in the Court of law. The Hon'ble Supreme Court in the case of **Commissioner of Police v. Sandeep Kumar**, [(2011) 4 SCC 644] has held as under:

“When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.

The modern approach should be to reform a person instead of branding him as a criminal all his life.

We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate

interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed."

[Vide : Morris Vs. Crown Office, (1970) 2 Q.B.

114] In our opinion, we should display the same wisdom as displayed by Lord Denning.

As already observed above, youth often commit indiscretions, which are often condoned."

8. It is crystal clear that the applicant has not concealed any information from the respondents for securing his appointment. Despite his disclosure in his attestation form submitted to the respondents that an FIR had been lodged against him and that he was arrested and later released on

bail, he was allowed to join the duties. The respondents have also admitted that the applicant has in fact worked for about two weeks and without any written instruction/order, he has been asked not to come to duty. No notice was given to him. We are, therefore, of the view that the principles of natural justice have been completely flouted.

9. In view of the principles laid down by the Hon'ble Apex Court in **Sandeep Kumar** (supra), we are of the view that the ends of justice would meet by directing the respondents 1-3 to allow the applicant to resume his duty in his post in ZAO, CBDT, Mumbai. Needless to say that continuation or otherwise of the applicant in service shall be incumbent upon the final outcome of the criminal case vis-a-vis the FIR (Annexure A-2).

10. Resultantly, the OA succeeds. The respondents 1-3 are directed to send a written communication to the applicant within a period of four weeks from the date of receipt of a certified copy of this order, calling upon him to rejoin his duty at ZAO, CBDT, Mumbai. The applicant shall be given back wages from the date of filing of this OA, i.e., from 15.04.2014 but without any interest. The period of his absence from duty, i.e., from 30.01.2013 to the date of his rejoining shall be regularized.

11. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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