

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.210/00781/2014

DATED THIS Friday THE 21st DAY OF September, 2018.

**CORAM : DR.BHAGWAN SAHAI, MEMBER (A)
SMT.RAVINDER KAUR, MEMBER (J) .**

Sayali Sudesh Lad,
Aged 35 years,
Ex. Sepoy O/o New Central Excise
Bldg. 115, M.K. Road, Churchgate,
Mumbai - 400 020.
Residing at:
4/70 B.D.D. Chawl,
N.M. Joshi Marg,
Mumbai - 400 013. . . Applicant.

(By Advocate Ms.Priyanka Mehndiratta).

Versus

1. The Union of India, through
the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi - 110 001.
2. The Joint Commissioner (P&V),
O/o The Commissioner
115, Central Excise Building,
Maharshi Karve Road,
Opp. Churchgate Station,
Mumbai - 400 020.
3. The Additional Commissioner (P&V),
O/o The Commissioner of
115, Central Excise Building,
Maharshi Karve Road,
Opp. Churchgate Station,
Mumbai - 400 020. . . Respondents.

**(By Advocates Shri R.R. Shetty
and Smt.J.K. Rehel).**

**Order reserved on : 07.08.2018
Order delivered on : 21.09.2018.**

O R D E R
Per : Dr.Bhagwan Sahai, Member (A)

Through this application the applicant has sought quashing of order dated 18.07.2014 which was a show cause notice issued requiring her to explain as to why her service should not be terminated and another order dated 31.10.2014 terminating her appointment as Peon in the office of Commissioner of Central Excise, New Central Excise Building, M.K. Road, Churchgate, Mumbai.

2. Shri Sudesh A. Lad, late husband of the present applicant Smt.Sayali S. Lad worked as Peon in the above office of Commissioner of Central Excise, Mumbai. He expired on 31.08.2012. Then on 17.09.2012 she applied to the above office for appointment of her son Kaushik, aged 16 years (instead of herself) on compassionate ground in place of her late husband. Thereafter the applicant again applied to the above office vide application dated 27.09.2012 for employment of herself on compassionate ground. After conducting a physical test and verification of standards on 03.06.2013, she was offered appointment through letter dated 20.06.2013 mentioning therein 18 conditions of service and was appointed on 08.07.2013 in the grade of Sepoy on compassionate ground. This appointment

was temporary and purely provisional, clearly mentioning that she would be on probation for two years which may be extended at the discretion of the Appointing Authority.

2.1. On 01.04.2014 Shri S.R. Jadhav one of the candidates on waiting list for compassionate employment, filed O.A.No.178/2014 before this Tribunal. In this he requested that vigilance report of Smt.Sayali S. Lad should be called to verify facts submitted by her. Subsequently on receipt of this O.A. and on examining contents of her declaration and Service Tax surrender certificate submitted by her, the office of the Commissioner, Central Excise sought certain information from the applicant dated 28.05.2014 stating that the office had received information to the effect that the applicant was the Proprietor of Umesh Cable Master doing cable network business in the area of B.D.D. Chawl, Worli having connections to 15 buildings.

To this she replied on 02.06.2014 questioning the context in which that information had been sought from her on the request of third party. She also mentioned that this seeking of information was based on frivolous RTI application filed by the third party in the Office of

Commissioner of Central Excise and she had also been impleaded as a party respondent in O.A.178/2014 filed before Mumbai Bench of C.A.T. She requested that since the personal information had been sought by the third party in RTI application, consent of the concerned person (i.e. her) is necessary and also denied her ownership of M/s.Umesh Cable Network.

2.2. She informed that the cable business had been started by her late husband's brother i.e. Shri Umesh Lad in his own name in 1995, who died in 2001. Subsequently the cable business was inherited by wife of Shri Umesh Lad, but later because of her remarriage in 2004, **the cable business was transferred in her name in 2005 for and on behalf of her father-in-law, who was 75 years old and she was the only adult member of the family.** She further stated that by the time of death of her husband in 2012, **the cable business had come to closure and that she was not owner or partner of M/s.Umesh Cable Network.** With respect to Income Tax and other details filed, she mentioned in her reply that her Service Tax Certificate had been surrendered on 17.04.2009 and as per the declaration certificate the total turnover at that time was Rs.3,43,000/-. In the end she requested that she being a widow she

should not be made a scapegoat.

2.3. Thereafter the applicant was served with a show cause notice dated 18.07.2014 asking her as to why her service should not be terminated. This show cause notice mentioned that - it has come to the notice of the Department that the applicant was Proprietor of Umesh Cable Master doing business of cable network in B.D.D. Chawl area, Worli and an inquiry had been conducted into facts of the case. The applicant was then asked to submit certain documents.

2.4. To the above show cause notice the applicant replied on 30.07.2014, in which in para 6 she stated that she was not actual or real owner of the cable business and was only helping her father-in-law. Because of hardly any income from that business, the Service Tax Certificate had already been surrendered in 2009 and business was continued solely on account of emotions of her husband's father. In para 8 she again repeated about surrender of the Service Tax Certificate and that total income mentioned in the surrender certificate was only Rs.3,43,000/-. She further emphatically stated that the cable business never belonged to her and she had not made investment in it and that she had nothing to do with that business and accordingly

nothing had been concealed by her.

2.5. The applicant's Advocate submitted that the business being run from her house was very small, it was only upto 2004, the Service Tax Certificate had also been surrendered in 2009 and even if some income was accruing to her from it, it does not disqualify her for appointment on compassionate ground. The applicant's Advocate further stated that her reply was rejected without application of mind and her termination in this manner is a stigma and reflected ill-motive of the respondents. Reliance was also placed on a case law - Gujarat High Court decision in **Prakash Govindbhai Meghani Vs. Shasnadhikari and another dated 20.11.2006** in which it was held that termination order had been issued without any show cause notice to the petitioner and without providing any opportunity to the petitioner to explain his misconduct, irregularity or unauthorized absence and, therefore, the termination order dated 13.07.2005 was quashed and set aside.

3. The respondents' Advocate has submitted that detailed reasons were communicated to the applicant in the show cause notice and also in the termination order of 31.10.2014. Because of the complaint made by Shri Jadhav, additional inquiry

had been conducted and the applicant was found to be Proprietor of M/s.Umesh Cable Master, a cable network business. In the reply dated 02.06.2014, the applicant did not submit any documentary evidence requested by that office. During investigation based on own admission of the applicant and the documentary evidence, it was observed that M/s.Umesh Cable Master was still doing its business and the applicant was its Proprietor and some revenue was also being generated from that business. These facts were contradictory to those submitted by the applicant in her declaration dated 26.09.2012 while applying for appointment on compassionate ground and during verification of financial status by the office of Commissioner of Central Excise on 16.10.2012. Also in the application dated 13.03.2013 addressed to Superintendent (Vigilance), Central Excise, Mumbai, the applicant had mentioned that there was no earning member in the family and that she did not have any income. Considering the above facts, the show cause notice issued to applicant mentioned that she had concealed the facts thereby violating condition No.5 of offer of appointment dated 20.06.2013 issued to her. The Condition No.5 reads as under:-

"You will be liable to be dismissed from service at any time, if it is discovered that the declaration or documents furnished by you in respect of this appointment, contain incorrect or false information."

But this factual information had been concealed by the applicant in her application for employment, in the declaration submitted by her on 26.09.2012 and during verification conducted by the respondents' office on 16.10.2012.

3.1. In her application, declaration and reply to the show cause notice, the applicant in her own admission took inconsistent stand on different occasions which prove concealment of important information by her. The Service Tax Certificate for the cable business had been surrendered by the applicant herself under her signature as Proprietor. Also in the reply dated 02.06.2014 she herself admitted that cable business was transferred in her name in 2005 for and on behalf of her in-laws. In her reply dated 30.07.2014, the applicant herself also stated that after remarriage of wife of her brother-in-law Shri Umesh Lad, the business was handed over to her father-in-law, but she being the only adult member in the family she was helping her father-in-law in running the business.

3.2. The respondents Advocate has further submitted that the applicant by concealing information in her application and declaration as well as reply to the show cause notice related to the cable business run by her, she had clearly violated the conditions of service of her appointment. Also the applicant was only a probationer at the time of termination and she was terminated after giving an opportunity to her to explain about the concealment of relevant information by her. It has also been emphasized that as per the instructions issued by the DOPT in O.M. dated 16.01.2013, compassionate appointments can be terminated on the ground of non-compliance of any condition stated in the offer of appointment after providing an opportunity to the appointees by issuing of show cause notice. In the instant case, the action taken by the respondents has been strictly as per provisions of DOPT OM and the applicant had obtained the employment without truthfully disclosing all relevant information to the concerned authorities and thereafter she has been attempting to cling to the employment any how.

4. On analysis of various facts of the case mentioned above and considering the rival contentions of the parties, it gets clearly

established that the contentions of the respondents are correct. The applicant concealed relevant details about running of the cable network business and her income from it while applying for the compassionate appointment, in her declaration and replies submitted by her to the respondents. She did not adopt honest approach in seeking the employment and thereafter in replying to the show cause notice issued to her. She has clearly violated the service conditions of her employment, thereby losing her claim of suitability for the employment given to her. Even then she has filed this O.A.. The OA is devoid of merits. Hence it is dismissed with costs. The applicant should pay Rs.100/- as fine, which be deposited by her with the CAT Bar Association, Mumbai within four weeks of receipt of copy of this order.

(Smt.Ravinder Kaur)
Member (J)

(Dr.Bhagwan Sahai)
Member (A) .

H.