

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO. 418 OF 2003

Shri Sachin Sadashiv Malvankar. ... Petitioner.
V/s.
Union of India and others. ... Respondents.

Mr.A.I.Bhatkar for the petitioner.

Mr.Y.S.Bhate with Mr.Pawan Patil for the respondents.

CORAM : A.S.OKA & SANDEEP K. SHINDE, JJ.

DATE : 13th December 2018.

ORAL JUDGMENT : (Per A.S.Oka, J.)

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents. The petitioner was appointed as a Sepoy in the Customs Department. It is claimed that he joined his duty on 9th August 2000 and was continued in the said post from time to time. His services were sought to be terminated with effect from 7th August 2001 and that is why the petitioner and others approached the Central Administrative Tribunal (for short "Tribunal") by filing Original Application wherein a prayer was made for regularization. The Tribunal by the impugned judgment and order dated 17th January 2003 rejected the said Original Application. The Original Application was rejected by accepting the contention of the respondents that there

were no vacancies available for regularizing the employment of the petitioner and others and that there was a ban imposed by the Ministry of Finance on direct recruitment. The Tribunal, therefore, observed that regularization cannot be granted and the order of termination was justified. We may note that in this petition, on 30th January 2003, this Court granted ad-interim relief in terms of prayer of prayer clause (d) by which the respondents were directed to continue the employment of the petitioner as a Sepoy. While issuing rule vide order dated 8th June 2003, the said ad-interim relief was continued as interim relief.

2. The learned counsel appearing for the petitioner tendered across the bar office order dated 14th June 2013 bearing No.140/2013 issued by the Deputy Commissioner of Customs. By the said order, the employment of 55 Sepoys mentioned therein was regularized in the pay-scale mentioned in the said order with effect from 24th October 2007. The name of the petitioner appears at serial No.55. Though the regularization was notionally granted with effect from 24th October 2007, it is observed that those persons will not be entitled to arrears of pay on account of notional regularization.

3. The learned counsel appearing for the petitioner, on instruction, states that the petitioner is happy with the order dated 14th June 2013 and he has no subsisting grievance except for the fact that the said order records that the regularization of the petitioner is subject to outcome of the present petition.

4. As noted earlier, by the impugned judgment and order, the prayer for regularization of the employment of the petitioner was rejected on the ground there were no vacancies at the relevant time. Now the fact that with a effect from 24th October 2007, the employment of 55 Sepoys has been regularized shows that on 24th October 2007, there were vacancies to accommodate the petitioner.

5. In the circumstances, the order dated 14th June 2013 granting notional regularization to the petitioner with effect from 14th October 2007 will have to be treated as legal and valid and will continue to operate even after the disposal of the petition. With the above direction, petition is disposed of. Rule is partly made absolute accordingly.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)