

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2796 of 2002

New Delhi, this the 8th day of April, 2003

(10)

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Mrs. K.S. Uma
37, Karthik Apartments
Sector 21 C,
Faridabad,

.....Applicant

(By Advocate : Shri K.B.S. Rajan)

Versus

1. The Union of India thro'
The Chairman,
Central Board of Customs & Central Excise,
North Block, New Delhi.
2. The Commissioner of Central Excise,
I.P. Estate, C.R. Building,
New Delhi.
3. The Additional Commissioner (P & V)
Central Excise Commissionerate, Delhi 1,
C.R. Building,
New Delhi.

.....Respondents

(By Advocate : Shri R.R. Bharti)

ORDER (ORAL)

BY SHRI GOVINDAN S. TAMPI, MEMBER (A) :

Heard both the learned counsel S/Shri K.B.S. Rajan, learned counsel for applicant and Shri R.R. Bharti, learned counsel for respondents.

2. Challenge in this OA is directed against the action of the respondents in not calling the applicant for interview for promotion to the grade of Inspector in Customs/Central Excise on the ground that she did not possess the minimum prescribed height.
3. The applicant is working as Personal Assistant in the Customs/Central Excise Department, New Delhi.

and reckons her seniority from 1993 and is fulfilling the requisite experience for being considered for promotion to the post of Inspector (Customs/Central Excise). In the year 1998, she had appeared in the physical standard test, when she was found to be marginally short by 0.5 cms. from the prescribed height. She had thereafter undergone height related exercises in which she has succeeded and applied for consideration for the same post once again in the year 2002. But she was not given a chance as no evidence of her gaining the height was produced by her. The applicant had presented herself before the Civil Surgeon, Government Hospital, Faridabad, who had certified vide his letter dated 10.10.2002 that her height is 152 cms. As the only point of dispute was the height and as she has certified of having the height of 152 cms., the respondents could not have denied her an opportunity as they were not authorised to overlook the evidence given by the medical authority. The applicant's case should, therefore, be considered as she was qualified, pleads Shri K.B.S. Rajan, learned counsel for applicant.

4. On 29.2.2002, when the matter had came up for admission, the respondents were directed that the applicant may provisionally be interviewed but her result be not declared till the disposal of the OA.

5. On behalf of the respondents, it is pointed in the counter, duly reiterated by Shri R.R. Bharti, learned counsel that the applicant had once failed in

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physical test by being found short by height of 3 cms., in December, 1998. The Medical Board duly constituted by the CHGS conducted a review test on 2.2.2000, when she was found to be of 150 cms. height. The admitted position is that Medical Board had found her to be only 150 cms. tall. Her case cannot be even considered, as she was having sub-standard height in terms of Recruitment Rules. No discrimination of any sort has been cause in the case of the applicant and she has only been found ineligible for consideration because of her sub-standard height.

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6. During the oral submission, in reply to the query from the court, Shri Rajan, learned counsel for the applicant pointed that her case could be considered by a fresh Medical Board which alone can examine and decide upon the certificate produced by the Civil Surgeon, Government Hospital, Faridabad. As the certificate given by the medical authority may not be called in question by any junior Ministerial Officer.

7. We have carefully considered the matter and we find that the applicant has a case for consideration. If, as brought out in the letter dated 9.10.2002 from the respondents, the applicant was not considered for being interviewed, only on account of her sub-standard height, which the applicant has forcefully rebutted and has produced a medical certificate from a Civil Surgeon, the matter calls for re-examination.

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Respondents should consider her case by subjecting her to another test by a different Medical Board. It would be in the fitness of thing, as a decision given by the senior doctor like Civil Surgeon, Government Hospital, Faridabad cannot be disputed or overridden by some junior functionary in the administration. We, therefore, dispose of this OA with a direction to the respondents to have the case of the applicant placed

before a Medical Board to be consisting doctors working in hospitals different from RML Hospital, Delhi and Civil Hospital, Faridabad. If, the findings of the newly constituted Board is in her favour and she is declared to be having the requisite height, respondents may take action in pursuance of her performance in the interview for which she was provisionally admitted and her service record and pass suitable orders. No costs.

S Raju
(SHANKER RAJU)
MEMBER (J)
/ravi/

GOVINDAN S. TAMPI
MEMBER (A)