

Central Administrative Tribunal, Principal Bench

O.A. No. 2122/2004

New Delhi this the 16 day of August, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mrs. Chitra Chopra, Member (A)

U.S. Lamba
S/o Shri Ami Lal
R/o Quarter No.1969
Type-III, NH-IV Faridabad,
Haryana,
Presently at New Delhi.

Applicant

By applicant: Dr. Surat Singh.

Versus

1. Union of India
Through Secretary,
Ministry of Finance,
New Delhi.
2. The Commissioner,
Central Excise Commissionerate,
Delhi-1, C.R. Building I.P. Estate,
New Delhi.
3. The Administrative Officer,
Central Excise Commissionerate,
Delhi-1, C.R. Building I.P. Estate,
New Delhi.

...Respondents

By Advocate: Shri M.K. Bhardwaj, proxy counsel for Shri A.K. Bhardwaj, Counsel.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

OA is filed for setting aside the order dated 12.12.2003 (Annexure A-1) whereby the representation of the applicant for his promotion to the post of Inspector was rejected and for further direction to the respondent to consider him for promotion from the post of Tax Assistant to the post of Inspector.

2. Briefly, the allegations of the applicant are that on 1.10.1993 he was promoted to the post of Tax Assistant in the office of the respondent. He was eligible for consideration for promotion to the post of Inspector on clearing the physical test before he had attained the age of 38 years as per Recruitment Rules. A DPC was convened in 1987 for promotion to the post of Tax Assistants, for those who had qualified the physical test, but the applicant was not informed of the physical test before that meeting so he was deprived of this opportunity. The applicant had attained the age of 38 years on 6.5.1987

so his right for consideration for promotion was denied. His representation for giving him one more opportunity up to the age of 45 years of age has also been similarly rejected.

3. The respondents in their counter reply have controverted the allegations of the applicant. They have alleged that the applicant was intimated about the physical test, which was held in 1987, before the DPC considered Tax Assistants for promotion to the post of Inspectors. The applicant at that time was posted in Central Excise Division, Ambala and two other candidates, who were similarly situated and were posted in that Division, had attended the physical test. The circular issued for physical test had been duly circulated and the applicant also knew about it. It is further submitted that as per the Central Board of Excise and Customs instructions, the UDC and Stenographers were eligible for consideration for promotion to the grade of Inspector of Central Excise in normal course only if they are below 38 years of age (40 years in the case of SC/ST and combatant war service candidates). The persons who were not considered for promotion to the grade of Inspector in the normal course, or if they were considered and approved for promotion but could not be promoted due to non-availability of vacancies, could be given two additional chances of promotion to the post of Inspector in the normal course so long as they were below 45 years of age provided they satisfied the prescribed physical standard. Further, those who were considered once for promotion in the normal course in the past but were found unfit, may also be given one more chance for consideration for promotion as Inspector in the normal course if they were below 45 years of age. The persons who were considered for promotion to the grade of Inspector in the past (up to 38 years of age) and were found unfit more than once were not eligible for consideration for such promotion. It was also stated that a person should be regarded as having availed of one or two chances, as the case may be, if his name was included in the consideration list placed before the DPC and he had been found unfit for such promotion by the DPC. According to the respondents, the name of the applicant was included in the consideration list for promotion to the grade of Inspector more than once and the DPC has not found him 'not yet fit' for such promotion. The applicant had already availed of more than one chance up to the age of 38 years for consideration for such promotion. His name was not included in the consideration list for the year 1988 and

afterwards. It is also stated that in 1987 also (up to 6.5.1987), i.e., before the applicant attained the age of 38 years, his name was considered for promotion to the grade of Inspector, but his name was not included in the consideration list for DPC for such promotion due to his absence in the physical test.

4. In the rejoinder the applicant has reiterated his own case.

5. We have heard the learned counsel for the parties and have also perused the record.

6. Admittedly, the applicant was entitled to be placed in the list for consideration for promotion to the post of Inspectors till 6.5.1987, i.e. before he had attained the age of 38 years, on his satisfying the physical test. The grievance of the applicant is that he did not receive the intimation of the physical test in the year 1987 so he was deprived of the chance for promotion to the post of Inspector. This allegation is strongly refuted by the respondents and it is stated that two other similarly placed Tax Assistants, who were posted in the same Ambala Division in which the applicant was also working, had appeared in the physical test and were considered by the DPC of 1987. The contention of the applicant in the OA during the hearing that the respondents should produce the acknowledgement about the receipt of the circular relating to the physical test, to our view, is entirely unjustified. The present petition has been filed by him in August, 2004 and after 17 years it may not be possible for the respondent to trace out the circular with the proof that the applicant had its due knowledge. But the fact remains that two other similarly situated Tax Assistants had attended the physical test and were given consideration by the DPC. We cannot believe that the applicant had not come to know of inclusion of his name in the consideration list and holding of physical test. After all the applicant must be looking forward to this event eagerly, more particularly when it was last chance for him before he had attained the age of 38 years. The applicant made first representation for his promotion to the post of Inspector only in 1994. It is unbelievable that the applicant who had right for consideration last in 1987 and knew that he was going to surpass the age limit on 7/5/1098, i.e., he would cross 38 years of age on that day, would have kept quiet and had not approached the respondents in the year 1987 itself. We do not find any good reason for disbelieving the respondents that the circular for physical test was circulated in the office where the applicant was then posted and it

must have come to the notice of the applicant also, who for reason best known to him, thought it proper not to attend that physical test while his two other colleagues availed of this chance. The applicant, as such, has himself to blame for loosing the opportunity for consideration for promotion in the year 1987.

7. Another contention of the applicant is that he should have been given one more chance for consideration for promotion before he had attained the age of 45 years. But the rule position has been clarified by the respondents in the counter-reply. Only those persons who were either not considered for promotion to the grade of Inspector in the normal course or if they were considered and approved for promotion but could not be promoted due to non-availability of vacancies could be given two additional chances for promotion in the normal course provided they were below 45 years of age and also satisfied the prescribed physical standard. Besides those who were considered once for promotion in the normal course in the past but were found unfit were given one more chance in the normal course if they were below 45 years of age. The persons who were considered for promotion before they had attained 38 years of age and were found unfit more than once, were not eligible for such consideration. It is alleged by the respondents that the applicant had availed of more than one chance up to the age of 38 years and his name was not included in the consideration list for the year, 1988 onwards as he had surpassed the age of 38 years and did not fall in the category of person who could be given a chance upto the age of 45 years. He had already crossed eligibility age of 38 years on 6.5.1987. In the year 1987, he was within the consideration zone, but he could not be considered by the DPC for such promotion since he had not cleared the physical test. In the above facts and circumstances, the claim of the applicant in this OA after 17 years or at the most made in his representation in 1994, i.e., 7 years after he became ineligible for consideration in 1988, does not evince confidence in the above facts and circumstances. Accordingly, we reject this contention.

8. There is one more reason for rejecting the claim of the applicant. The applicant, a Tax Assistant had two avenues of promotion. One was to the executive cadre of Inspector and the second to the Deputy Office Superintendent Level-IIInd. He was promoted and accepted his promotion as DOSL-IIInd on 1.3.1996. Once he had accepted that promotion, he cannot request the respondent to revert him back to the post of Tax

Assistant and then consider his case for promotion to the post of Inspector, the second channel. This promotion was granted to him in 1996. The present OA is filed in 2004. Having accepted his promotion in one channel he did not have an indefeasible right to get himself reverted to the post of Tax Assistant from retrospective effect, particularly in the absence of recruitment rules, and seek promotion to the higher post in the second channel. The delay and laches of the applicant in seeking redressal of his grievances by filing the OA before the Tribunal is also writ large in the present case.

9. The result of the above discussion is that the OA has no merit. It is dismissed but without any order as to costs.

Chitra Chopra
(Chitra Chopra)
Member (A)

M.A. Khan
(M.A. Khan)
Vice Chairman (J)

Rakesh