

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 436 of 2002

Monday, this the 30th day of September, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. K.G. Jacob,
Sepoy (OG),
Custom House,
Cochin - 9
.....Applicant

[By Advocate Mr. P. George Williams]

Versus

1. Union of India, represented by the Secretary, Department of Revenue, North Block, New Delhi - 110 001
2. Additional Commissioner of Customs, Customs House, Cochin - 9

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 30-9-2002, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

On the death of the father of the applicant who was working as a Lab Attender in the office of the 2nd respondent in 1984, the applicant was considered for employment assistance on compassionate grounds and he was directed to report before the authorities for a physical endurance test, by Annexure A1 order dated 24-8-1984 of the Assistant Collector of Customs. He was required to produce certificate to establish educational qualifications and certificates regarding age and date of birth in Christian Era. Complying with the requirement he underwent the physical endurance test. By Annexure A2 order dated 1-10-1984, the applicant was appointed as a Sepoy with effect from 1-10-1984. He was subsequently confirmed on the post of

Sepoy by office order No.180/89 dated 27-11-1989 (Annexure A3). While the applicant was serving the Department with unquestioned devotion and unblemished record, he was surprised to find an order dated 7-6-2001 (Annexure A4) issued to him informing that an enquiry against him was contemplated. The allegation contained in the memorandum of charges was that he at the time of appointment produced a false certificate from the Government doctor regarding his height in order to secure appointment as Sepoy. The applicant was by memorandum dated 6-7-2001 directed to appear for a personal hearing before the Additional Commissioner of Customs. By Annexure A7 order dated 13-6-2002, he was again directed to make additional submissions if any required. Coming to know that on the basis of some complaints that the applicant's height was shorter than what was required under the Recruitment Rules the action has been initiated, the applicant has filed this Original Application seeking to set aside Annexure A4, A6 and A7 orders and for a direction to the 2nd respondent to drop the proceedings pursuant to Annexure A4, A5 and A6 orders. It is alleged in the application that the applicant having not even been held responsible for any misrepresentation regarding his health and having not produced any forged certificate the proceedings at this distance of time after his appointment on an alleged complaint is wholly unjustified.

2. Respondents in the reply statement contend that as per the Recruitment Rules, a height of 157 cms. is required for appointment as Sepoy, that the applicant's height as is recorded in the Service Book is found to be only 154 cms., that initially the applicant was appointed taking the height of 158 cms. shown in the medical certificate Annexure R3 issued by the Government doctor to be correct and that as the height is found to be only 154 cms., the applicant is found to be guilty

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of furnishing false certificates. Therefore, the action proposed to be taken is perfectly in order, contend the respondents.

3. We have carefully gone through the materials placed on record and have heard Shri P. George Williams, learned counsel of the applicant and Shri C. Rajendran, SCGSC appeared for the respondents.

4. The learned counsel of the applicant argued that as there is no allegation that the applicant has made any false declaration in regard to his height, that the applicant has falsified the medical certificate or that the medical certificate was fraudulently obtained and produced, initiation of disciplinary proceedings after nearly two decades of his appointment on the basis of a complaint, the author of which is not made known, is unsustainable in law and is not justified. The learned counsel of the respondents on the other hand argued that as the minimum height required for appointment as Sepoy according to the Recruitment Rules being 157 cms. and the height of the applicant is only 154 cms., the proceedings against the applicant is justified.

5. Having considered the facts and circumstances of the case emerging from the pleadings and other materials on record and having heard the arguments of the counsel, we find no justifiable grounds to sustain a disciplinary proceedings against the applicant on the basis of Annexure A4 memorandum of charges. The statement of imputation is as follows:-

"Shri K.E. Jacob, was appointed as Sepoy on compassionate grounds on 1.10.1984 on the basis of a Medical certificate, showing that he acquired the physical standards as prescribed in the Recruitment Rules for Sepoys. Due to a representation made by an individual the Chief Commissioner of Customs & Central

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Excise, Bangalore, had directed to re-examine his physical standards. Accordingly he was asked to appear for a Medical Examination before the Medical Board, and the result showed that he did not possess the required physical standards."

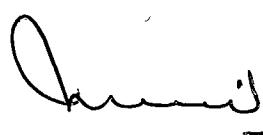
6. There is no allegation that the applicant represented that his height was 158 cms. There is no allegation that the medical certificate was falsified by the applicant. There is also no allegation that the medical certificate was collusively or fraudulently procured by the applicant for securing employment. It is revealed from the pleadings (reply statement) that the height of the applicant was recorded in the Service Register of the applicant as 154 cm. and that the entry was made a year after his appointment in 1984.

7. The height and weight of a candidate can be verified by the competent authority before making recruitment. The height is not something which the candidate can manipulate or conceal. The applicant presented before the recruiting authority who was free to take his physical measurements. If the authority failed to do that, the candidate recruited cannot be found fault for any deficit. If the Medical Officer has made a mistake in measuring the applicant's height for recording in the Fitness Certificate Annexure R3, the applicant cannot be held responsible for that especially when there is no allegation of any collusion between the applicant and the Medical Officer. The appointment of the applicant was made on compassionate grounds. In the Service Register the applicant's height was recorded as 154 cms. The applicant having presented himself for verification, there is no misconduct on the part of the applicant justifying disciplinary proceedings after nearly two decades of his appointment.

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8. In the light of what is stated above, the Original Application is allowed and the impugned orders Annexure A4, A6 and A7 are set aside. No order as to costs.

Monday, this the 30th day of September, 2002


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. A-1: True copy of memo S45/145/84 Estt.Cus. dated 24.8.1984 issued by Asst. Collector of Customs (Estt.).
2. A-2: True copy of Office Order No.145/84 issued by Dy.Collector of Customs.
3. A-3: True copy of Office Order No.180/89 issued by Deputy Collector of Customs.
4. A-4: A true copy of memorandum DIS 6/2002-ESTT.CUS dated 7.6.2001 and Annexures issued by the 2nd respondent.
5. A-5: True copy written statement by the applicant to the 2nd respondent.
6. A-6: A true copy of memo DIS 6/2001/ESTT.CUS dated 6.7.2001 issued by Dy.Commissioner of Customs (ESTT).
7. A-7: A true copy of memo Dis.6/2001-Estt.Cus dated 13.6.2002 issued by the 2nd respondent.

Respondents' Annexures:

1. R-1: Report dated 17.9.84 of Physical endurance test conducted by Supdt. of Customs (P).
2. R-2: True copy of letter dated 5.9.84 of the applicant.
3. R-3: True copy of Medical Certificate issued by Dr.S.A.S.Mohammed Lebba, Asst. Surgeon Govt. Hospital, Palluruthy.
4. R-4: True copy of order accepting Annexure R-3 for appointment of applicant as Sepoy (OG).
5. R-5: True copy of medical certificate issued by the Medical Board after medical re-examination of the applicant.
6. R-6: True copy of letter sent to the Health Secretary, Govt. of Kerala.

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