

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application NO. 158/07

Dated the 18th January, 2008

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

Molly Varghese,
Deputy Office Superintendent,
Central Excise division-I,
Central Excise Bhavan,
Kathrikadavu, Kaloor,
Cochin-682 017.

.. Applicant

By Advocate : Mr. C.S.G. Nair

-Vs-

- 1 The Commissioner of Central Excise & Customs,
Central Revenue Building, I.S.Press Road,
Cochin-18.
- 2 The Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings, IS Press Road,
Cochin-18.
- 3 Union of India,
Represented by the Secretary,
Department of Revenue, North Block,
New Delhi-110 001.

.. Respondents

By Advocate: Mr. PA Aziz, ACGSC.

This application having been heard on 11th January, 2008 the Tribunal
delivered the following -

ORDER

(Hon'ble Mrs. Sathi Nair, V.C.)

In this application, the applicant assails the denial of her due promotion by the Annexure-A14 order. The brief facts of the case as stated by the applicant are that the applicant while working as Tax Assistant in Central Excise was called for Interview for promotion as Inspector of Central Excise on 31.3.93 and was found to have fulfilled the physical requirements but could not undergo physical endurance test as she was having some physical injury. Again on 31.3.94 she was called for interview for selection as Inspector and it was found that she was not having the required physical standard by the Officer. The applicant got herself examined by a Civil Surgeon Grade-I and obtained a Medical Certificate Annexure-A1, showing her height as 152 cms. and weight as 57 Kgs., which was sufficient for promotion, but this was not accepted. Being aggrieved, the applicant filed OA No. 658/94 and as directed by this Tribunal she appeared before a Medical Board constituted by the DMO, Ernakulam on 25.03.95. As the result of the Medical Examination did not reach the office of the 1st Respondent, the applicant obtained a copy of the Medical Certificate and produced the same before the 1st respondent. However, it was alleged that the certificate produced by the applicant was a forged one and hence initiated disciplinary proceedings against the applicant. Though enquiry was conducted,

the charges could not be proved. The Disciplinary Authority disagreed with the findings and imposed penalty on the applicant and it was confirmed by the 1st respondent. The applicant filed OA No.801/01 challenging the order of penalty imposed and this Tribunal set aside the order of punishment. On appeal by the Department, the Hon'ble High Court dismissed the Writ Petition No. 35608/04 filed against the order of this Tribunal. The applicant produced a copy of the order of Hon'ble High Court before the 1st Respondent with a prayer to grant all consequential benefits and promotion to the post of Inspector. The 1st respondent then promoted the applicant to the post of Deputy Office Superintendent in the Ministerial cadre. The applicant accepted the promotion without prejudice to her right to be promoted to the post of Inspector. The applicant submitted representations for granting her promotion as Inspector, but the 1st respondents have not taken any action on her representation. Hence, this OA has been filed praying for the following reliefs:

- "(i) To call for the records leading up to Annexure-A14 and quash the same;
- (ii) To declare that the applicant's height as shown in Annexure-A1 as well as in Annexure-A4 are correct and she had the required physical standard on 31.3.1994 and was eligible for consideration for promotion as Inspector by the DPC held on 31.3.1994.
- (iii) To direct the 1st and 2nd respondents to promote the applicant as Inspector of Central Excise from the date on which her immediate junior was promoted as per selection made by the DPC held on 31.3.1994 and grant her all consequential benefits.

(iv) Grant such other relief or reliefs that may be urged at the time of hearing or that this Hon'ble Tribunal may deem fit to be just and proper in the nature and circumstances of the case;

(v) Grant cost of this OA."

2] Reply has been filed by the respondents denying the averments made by the applicant as factually incorrect. According to them, in order to qualify for promotion as Inspector a candidate should have the prescribed physical standards and qualify in the physical endurance test. The physical standards and physical endurance test for women candidates are - Physical standard (minimum, Height 152 cms., weight 48 Kgs; Physical test -walking 1 km in 20 minutes and cycling 3 Kms. in 25 minutes. The applicant had not participated in the physical endurance test, however, she was allowed to attend the interview provisionally subject to the condition that the applicant will be eligible for promotion only if the applicant is found fit in the physical test/endurance test. The applicant attended the interview on 31.3.93 but she was not found fit for promotion by the DPC. The applicant was again called for a test of physical standards/physical endurance test on 28.3.94 and the height of the applicant was ascertained by a team of three officers to be 150 cms. As the applicant was not qualified according to the physical standard she was not called for interview. The applicant herself produced a certificate of physical fitness obtained from a Civil Surgeon Grade-I, which was not taken into consideration by the respondents. Representations submitted by the applicant was

forwarded to the Principal Collector for disposal. While the representation was under consideration, the applicant moved this Tribunal by filing OA 801/01 against the disciplinary order imposing penalty on the applicant on charges of producing forged certificate. The Tribunal and the Hon'ble High Court held that there is no evidence that the applicant had manipulated the certificate to show that she had the required height. It is further submitted that the Tribunal in its order dated 22.1.96 in OA No.5/96 filed by the applicant had directed the applicant to appeal before the Director of Health Services, Kerala about the dispute in the matter of height. The applicant instead of appealing before the Director of Health Services had preferred an appeal under the CCS(CCA) Rules. Further the applicant was granted notional promotion to the cadre of DOS L-II w.e.f. 8.11.96 and DOS L-I w.e.f. 3.7.02 and the applicant had accepted these promotions. According to the respondents, the applicant cannot now be reverted to the cadre of Tax Assistant. She was not promoted as she had not appeared for the physical standards/endurance test conducted on 31.3.93 and the DPC had found her unfit for promotion.

3] The applicant has filed a rejoinder reiterating the statements made in the application. The contention of the applicant is that she was deliberately denied the chance of appearing in the test conducted on 31.3.94 even after a medical certificate showing her height as 152 cms. was produced. The applicant is therefore seeking promotion with effect from 1994

when her immediate junior in the cadre of UDC/Tax Assistant was promoted as Inspector. It is further contended that on 31.3.93 the applicant was called for physical endurance test and interview and her height and weight were measured and recorded by the then Superintendent of Central Excise Headquarters Preventive, Cochin and her height was recorded as 152 cms., therefore, all the contrary averments made by the respondents are denied. The applicant was granted exemption from cycling test and walking test as per memo dated 30.3.93 (Annexure-A-15) issued by the Assistant Collector (PE & W). It is also stated that the applicant had accepted the promotion as Deputy Office Superintendent without prejudice to her claim for promotion as Inspector.

The applicant in her additional rejoinder quoted the observations made by this Tribunal in OA 801/01 to the effect that -"everything does not appear to be well with the manner in which the Office of the DMO as also the Medical Board have dealt with the examination of the applicant for determination of her height, preparation and sending of the Report/certificate of the Board" and that was itself proof of her innocence.

4] The Respondents have filed additional reply to the rejoinder reiterating that as per the record maintained in the office of the 1st Respondent, the applicant did not appear for the measurement of height on 31.3.93. Her height was recorded as 150 cms. as per the report dated 28.03.94 and by a team of 3 officers, including a lady officer, when it was re-ascertained on 29.3.94. Procedure for reference to a Medical Board was followed

and her representation was duly rejected.

5] We have heard Mr C.S.G. Nair, learned counsel for the applicant and Mr P.A. Aziz, ACGSC, for the respondents.

6] It can be seen from the pleadings in the case that the application has a chequered history. It is also an unusual case in the sense that the dispute centers on the required height of 152 cms. for promotion of the applicant to the post of Inspector, in as much as she was found possessing the required height on 31.3.93 but in the test held on 31.3.94 she was found short of the required height. Though the applicant had obtained a certificate of physical fitness from the Government Civil Surgeon showing her height as 152 cms., the respondents refused to accept the same. However, the respondents have not produced any records of the evaluation made on 31.3.93 or 31.3.94 in support of the denial except to say that the applicant did not follow the prescribed procedure of appealing to the Principal Collector, Customs & Central Excise. In any case, the applicant appeared before the Medical Board on 25.3.95 constituted as per the order of the Principal Collector, Madras in pursuance of the direction of this Tribunal in OA 658/94. As the report was not submitted by the Board, the applicant obtained a copy and submitted before the respondents showing her height as 152 cms. Annexure-A4 is the copy of the letter issued by the District Medical Officer of Health, Ernakulam, enclosing the report of the Medical Board, which found that her height was 152 Cms.

7] It is reported by the Respondent that on 31.3.94 the height of the applicant was re-ascertained by the Board of three officers, including a lady officer, but this record has not been produced before this Tribunal. The applicant then produced the Annexure A1 certificate of Physical Fitness issued by the Civil Surgeon Grade-I of General Hospital, Ernakulam, showing her height as 152 cms and weight as 57 Kg. Though the certificate was given by a Civil Surgeon Grade-I, the respondents did not take into consideration the same. The applicant filed a representation before the 1st Respondent but no action was taken. The applicant filed OA No.658/04 before this Tribunal and this Tribunal by order dated 8.2.95 disposed of the same with a direction to the applicant to file appeal before the Principal Collector, Madras. It was observed in the order that -" the orders issued in the impugned orders A/4 will stand modified in accordance with the decision taken by the Principal Collector of Customs and Central Excise, Madras, on the representation." The Respondent stated that this representation was rejected by the Principal Collector, but the rejection order has not been produced before us. However, it is seen that the Principal Collector considered the representation and referred the matter to a Medical Board and the applicant appeared before the Board on 25.3.95. As the Report was not submitted, the applicant obtained a copy of the Medical Board (Annexure-A4) and submitted to the respondents. As stated above, as no record was produced before us showing

rejection of the representation of the applicant it is not possible to ascertain the reasons for rejection of the same. In the meanwhile, the respondents initiated disciplinary action against the applicant on the charges of submitting forged certificate claiming promotion to the post of Inspector. As seen from the reply of the Respondents the charges were framed against the applicant and the enquiry officer after considering the materials brought out in the inquiry submitted the report holding that the charges were not proved. The 1st Respondent not fully agreeing with the report proposed to hold a fresh inquiry, but without doing so, he issued the order imposing a penalty of reduction in pay on the applicant. Being aggrieved, the applicant filed OA 801/01 before this Tribunal and this Tribunal extensively dealt with the matter and found that "none of the charges has been established is perfectly correct and justified and that the finding of the disciplinary authority to the contrary being based on no evidence at all is perverse and unjustified" and quashed the order imposing penalty on the applicant. Rejection of the representation and rejection of the opinion of the Medical Board are not mutually exclusive. The claim for promotion can be rejected only if the Medical Board's findings are against the applicant. The respondents are silent on this point. What prevented them from obtaining the genuine report of the Medical Board to whom they had themselves referred the matter? If such a report had been received, why the reply does not speak anything about it? In fact, though the respondents have filed a reply and additional reply

they are silent on this crucial aspect and only repeated the same averments.

8] From the above, it is clear that the claim of the applicant was not evaluated by the respondents as directed by this Tribunal for promotion in accordance with the certificate given by the Medical Board on the ground that the Medical Certificate of the Board, which was produced by the applicant, is a forged one. If the Respondents had any doubt about the genuineness of the certificate of the Medical Board, the proper course was to make a reference to find out the veracity of the same from the same Medical Board or to refer the matter to another Board. Having not done anything, the Respondents cannot reject the claim of the applicant. A definite finding has been rendered by this Tribunal and the Hon'ble High Court that the applicant had not forged the certificate. Even after such a finding had rendered by the Court, the Respondents did not care to re-evaluate the physical fitness of the applicant on the basis of the Medical Board's opinion instead they simply promoted the applicant to another post. In this application, the respondents are now taking a stand that as the applicant had accepted two promotions, the applicant cannot be reverted to the cadre of Tax Assistant and that the applicant is not entitled to get any relief in this application. This stand is clearly untenable.

9] The post of Deputy Office Supdt. to which the applicant was promoted stated to be not a feeder cadre for selection for the post of Inspector, to which the applicant is

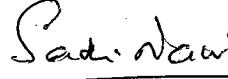
claiming promotion. Even if there is more than one channel of promotion, the right to be considered for promotion in accordance with the Recruitment Rules at the right time alongwith other qualified persons is a legal right of the applicant, which cannot be denied. It is also noticed that the applicant had accepted promotion to the post of DOS without prejudice to the claim for promotion to the post of Inspector, to which the applicant is entitled to. We had already noticed that there is a declaration by this Tribunal in OA No.658/94 as extracted (supra) that the eligibility status of the applicant for promotion would stand modified in accordance with the decision taken by the Principal Collector of Customs and Central Excise, Madras, in this regard. Therefore, the Respondents cannot eschew the responsibility taking the plea of the observations of this Tribunal in OA No. 801/01 to the effect that the order in OA does not decide that the height of the applicant is 152 cms. The Tribunal only meant that this is essentially a question to be decided on the basis of the report of the Medical Board by the competent authority. It has been held in the said order that the certificate dated 12.5.95 and the Annexure-A1 are genuine and not a forged one as alleged by the respondents and the respondents are therefore, duty bound to accept the certificates issued by the Medical Board and on that basis to take appropriate decision on the eligibility for promotion of the applicant.

10] In view of the above facts and circumstances, we are of the considered view that the prayer of the applicant is to be

allowed. The Respondents are directed to consider the promotion of the applicant to the post of Inspector on the basis of the findings of the Medical Board in Annexure-A4 by holding a review DPC, from the date on which her immediate junior was promoted. Since the delay is entirely attributable to the respondents and the pendency of the disciplinary proceedings, which has since been quashed, the applicant would also be entitled to all consequential benefits. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

The application is accordingly allowed. No costs.


(GEORGE PARACKEN)
JUDICIAL MEMBER


(SATHI NAIR)
VICE CHAIRMAN

STN