

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 437/2007

This the ^{16th} day of December, 2008

Hon'ble Mr. M. kanthaiah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)

Ujjwal Prakash aged about 37 years son of late Sri R.K.Srivastava, resident of B-1/55, Sector B, Aliganj, Lucknow (presently working as Senior Tax Assistant in the office of Commissioner, Customs and Central Excise, 7, A Ashok Marg, Lucknow -226001.

Applicant

By Advocate: Sri R.C.Singh

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, New Delhi.
2. Chief Commissioner, Customs, Central Excise and Service Tax, Lucknow zone, 7 A Ashok Marg, Lucknow.
3. Commissioner, customs and Central Excise, 7 A Ashok Marg, Lucknow -226001.
4. Joint Commissioner, Customs, Central Excise and Service Tax, Lucknow (Cadre Controlling Authority).
5. Additional Commisisoner (P&V), Office of the Commissioner , Central Excise, 7 A, Ashok Marg, Lucknow -226001.
6. Shri Ranbir Singh, Joint Commissioner, Central Excise and Customs Department, Lucknow (Cadre Controlling Authority).

Respondents

By Advocate: Sri G.K.Singh

ORDER

HON'BLE DR. A.K. MISHRA, MEMBER (A)

This application has been made challenging the action of respondent No. 4 for referring the applicants for verification of his height by Chief Medical Officer, Lucknow in the presence of Departmental staff pursuant to the instructions of respondent No. 5 as communicated in his letter dated 17.9.2007. He also claims for inclusion of his name in the list of successful candidates issued on 19.9.2007 for promotion to the post of Inspector, Central Excise and Customs.



2.1 The case of the applicant ,in brief , is as follows:-

The applicant was originally appointed as Upper Division Clerk (UDC) in the Department of Central Excise and Customs. His post was re-designated as Sr. Tax Assistant w.e.f. 20.1.2003. While working as UDC, he came within the zone of consideration for promotion to the grade of Inspector. His case was considered in the DPC meeting held in August, 2003 but was rejected on the ground that he was short in height for the post. He made representations that one Sri Manoj Kumar Mishra who was initially declared short in height was subsequently given the promotion on the basis of a certificate issued by Chief Medical officer and he should be permitted to get his height measured by the Chief Medical Officer. Subsequently he obtained a certificate from Chief Medical Officer Rai Bareilly on 3.1.2006 recording that his height was 157.7 cm which was more than the requirement of 157.5 cm. On the basis of this certificate which was referred to the Chief Commissioner (Respondent No. 2) , he was allowed to appear in the DPC meeting held on 27/28.7.2007. But, due to non-availability of sufficient number of vacancies , he could not get the promotion.

2.2. Subsequently, the department , pursuant to the decision of Andhra Pradesh High Court, decided to hold DPC on 18.9.2007 for selection of candidates to fill up the vacancies in pre restructured cadre of Inspector. Although, the applicant was a legitimate candidate, he was unfortunately directed for re-verification and measurement of his height again by Chief Medical Officer, Lucknow in the presence of one Superintendent and two Inspectors of the Department vide impugned letter No. 17.9.2007 of respondent No. 5. Although, he was allowed to appear in the interview , his name was not included in the list of successful candidates issued by respondent No. 2 in his establishment order dated 19.9.2007. He presumes that his failure to appear before the CMO, Lucknow has been held against him in not allowing the promotion.

2.3. He has challenges the action of the respondent No. 4 on the following grounds:-

i) That one Sri Manoj Kumar Mishra, similarly circumstanced, who was earlier disallowed on the ground of not meeting the height requirement was subsequently promoted on the basis of a certificate issued by the Chief Medical Officer (CMO) but he has been singled out for further verification of his height even though he had



submitted earlier the certificate of CMO, Rai Bareilly and was cleared for promotion in the previous meeting of the DPC. The present action of the respondent No. 4 was discriminatory and without jurisdiction.

ii) When the certificate of CMO, Rai Bareilly, issued in his favour had been accepted by the Chief Commissioner, Central Excise, subordinate authorities like Additional Commissioner and Joint Commissioner, (Respondents NO. 4 and 5 respectively) could not possibly review the decision of the Chief Commissioner. Such action on their part is malafide, primarily meant for causing unnecessary harassment to the applicant.

iii) Since, according to him, he was cleared by the DPC, his name should have been included in the list of successful candidate but for the arbitrary insistence on appearing before the CMO, Lucknow for re-verification of his height. The respondents are estopped from challenging the validity the certificate issued by the CMO, Rai Bareilly.

3.1. The respondents have denied the allegations of malafide and arbitrary action. They have submitted that there was a genuine doubt about the correctness of height certified by CMO, Rai Bareilly. The counsel for the respondents drew our attention to the personal bio data recorded in the service book of the applicant placed at Annexure - 5 to the Counter Reply, where at page 2, the height of the applicant has been recorded as 153.5 cm. This statement was furnished by none other than the applicant himself and signed by him in token of his correctness. This statement was made by him when he was more than 25 years of age. Medically, one does not grow in height after that age. Further, he was declared physically unfit by the DPC held in August, 2003 ~~on the~~ ground of being short in height. There were allegations not only about him but others who were candidates for the DPC meeting of 2007. Therefore, in fairness to all, it was decided that all such doubtful cases should be referred to the CMO again for verification. There were doubts in respect of height certificates issued by the Medical authorities in respect of other candidates, namely, Sri B.N. Shukla, Sr. Tax Assistant, Sri Raj Kumar Sr, Tax Assistant and Sri R.R.Singh, Sr. Tax Assistant in addition to the applicant. All these cases were referred to the CMO concerned for re-verification in the presence of departmental staff. There was no grievance from others. The



applicant, for reasons best known to him, avoided to appear before the CMO, Lucknow in spite reminders issued to him. As a matter of fact, when the doubt in respect of the applicant was referred to the CMO, Rai Bareilly in the letter dated 17.10.2007 of respondent No. 4 (Annexure CR-3), the CMO, Rai Bareilly himself in his letter dated 6.11.2007 suggested that the candidate's height should be re-verified. Since height is a matter of fact, there was no illegality in directing the applicant to submit before the proper medical authority for re-verification. Full opportunities were given to him but he, instead of availing of the opportunity, has chosen to file this application with ulterior motive.


3.2. As regards the authority of respondent No. 4 to ask for such a re-verification, it was submitted that as per delegation of power, he has full authority in respect of supervision and administrative control over the Central Excise Division, Lucknow -I and Aligarh and in that capacity, he was legally and morally duty-bound to satisfy himself that there were no inaccuracies about fitness of candidates. The applicant was to appear before a new DPC in 2007 and he had full jurisdiction to satisfy himself about the eligibility of the candidates, particularly about doubtful certificate concerning the physical standards prescribed for the post of Inspect of Central Excise.

4. From the aforesaid narration, it is clear that there was genuine doubt about the correctness of the height of the applicant certified by CMO, Rai Bareilly. Further, it is established that his is not the only case which was singled out for re-verification. On the other hand, three other candidates were also asked to go for re-verification before the CMOs concerned in the presence of departmental staff. The allegations of malafide and arbitrariness have not been made out by the applicant. On the other hand, the respondents have given sufficient reasons justifying their course of action. In any case, no prejudice is being caused to the applicant if he is asked to appear for re-verification of his height. There is no question of denial of any opportunity to the applicant. On the other hand, he is deliberately avoiding such a verification which would have conclusively decided the dispute about his height particularly, when there was wide variance between the height declared by himself in his service book and the height certified by the CMO, Rai Bareilly. He should have complied with the



Direction of the authorities and volunteered himself for medical re-verification in the presence of departmental staff if he had a genuine case and he was earnest about arriving at the truth on a matter of disputed fact in stead of running to the Tribunal. The role of the Tribunal is to espouse the cause of truth, not to perpetuate a certified fiction. His conduct itself is making his case more doubtful. Therefore, he should present himself for re-verification without further delay. We notice that a number of doubtful medical certificates have been filed before the respondents. This is a cause for concern and needs administrative investigation to discount the possibility of fraud.

5. In view of the aforesaid analysis, we do not find any merit in the application, which is accordingly dismissed. No costs.


(DR. A.K. MISHRA)
MEMBER (A)


(M. KANTHAIAH)
MEMBER (J)

16.12.08