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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW

Original Application No. 240 of 1992(L)

Ran Prakash Srivastava	First Applicant
Various	
Union of India and Others	Other Respondents

CORAM:

Hon'ble Justice U.C. Srivastava, V.C

Hon'ble Mrs. K. Choyya, Member (A)

(By Hon'ble Justice U.C. Srivastava, V.C.)

By means of this application the validity of the orders dated 30.7.1991, disallowing the applicant from service while functioning on the post of Inspector, which is without jurisdiction alongwith the orders dated 31.1.1992 passed by the Appellate Authority is under challenge. In pursuance of the letter dated 30th July, 1977 inviting applications for the posts of Inspector, Upper Division Clerk and Lower Division Clerk to be submitted to the Assistant Collector (head Quarter), Control Excise, Sarvoday Nagar, Kanpur and Assistant Collector (Head Quarter), Control Excise, the applicant who was fully eligible in accordance with the terms and conditions stated in the aforesaid advertisement, applied interalia

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for the post of Lower Division Clerk in pursuance of the aforesaid advertisement (Annexure 3 to this application).

2. The applicant being fully eligible for the post he was issued a call letter. It was instructed therein that the applicant should bring all the original certificates pertaining to his Academic and Sports qualifications and report to the examination centre latest by 10.00 hours in order to enable the competent authorities to ascertain and examine eligibility and suitability of the applicant for appearing in the examination. Thereafter, the applicant was served with the letter dated 19.12.1977 requiring him to appear in the Typing Test. This time too he was instructed to bring the original certificates again before appearing in the test. Having succeeded in test he was appointed as Lower Division Clerk in substantive capacity vide order dated 31.12.1977.

3. He was appointed as Inspector (DG) on 29.12.1984, a Group 'C' post, as direct appointee as a result of open competition, i.e. through written examination and interview and physical test alongwith outside candidates. By this time all the recruitment to the Group 'C' posts were being made by Staff

Selection Commission which had come into existence and the Head of Department, i.e. Collector, Customs and Excise, Kanpur was permitted to recruit incumbents in Group 'C' & 'D', i.e. L.D.C, U.D.C and Inspectors etc to the extent of 5% of the total vacancies from amongst candidates who were experts of assorted description subject to the condition that applicants also fulfilled the requisite qualification relating to education, age etc.

4. Thereafter, quoting the instances of Shri K.N. Lodha, Sri Anupesh Tewari, a Lower Division Clerk of the department were also appointed as Inspector(DG) 'Direct Sports Quota' on 24.5.1983 vide S.O. No. 943 and thereafter again quoting the above instances S/Shri Ashok Kumar Srivastava, Rajendra Singh and M.N. Munro, all Lower Division Clerks in the Collectorate were also appointed as Inspector(DG) 'Direct Sports Quota' on 7.6.1984 vide S.O. No. 984, 985 and 986 ibid. All these four Lower Division Clerks were selected and appointed without any examination and without any office circular/Notice or advertisement to the best of applicant's knowledge by-passing their next grade as Upper Division Clerks.

5. The applicant was served a letter dated 28.8.1983 issued under the signature of the Assistant Collector(Vigilance), Central Excise Collectorate, Kanpur requiring him to produce his Sports Certificate alongwith the latest address of the issuing authority of the sports certificate and with

other proofs in support of the sports certificates. Suddenly the applicant was placed under suspension on contemplation departmental enquiry vide order dated 15.10.1987 issued by the Deputy Collector (P&V) Control Service, Kanpur. The show cause notice dated 6.11.87 strangely enough stating that "It was clearly mentioned in the advertisement that sports/games certificates only relating to National & Federation of Games/Secretary of National Association/Secretary of the concerned State Association/Dean of University /Director of any other Sports Office as authorized, Additional Director Sports, Joint DC, Deputy Director /Directorate of Public Institutions, for school games/Govt Education, as the case may be will be acceptable. But the applicant submitted the application enclosing therewith the attested copies of 2nd KHO KHO CHAMPIONSHIP (1973-73) organised by National District KHO KHO Association under the suspension of U.P. KHO KHO CHAMPIONSHIP of 1976-77, Souvenir certificate along with other certificates of Educational Qualifications etc which were not in accordance with the requirement published in the advertisement dated 30.7.77. It was further alleged that the applicant failed to observe the instructions which were clearly published in the said advertisement and even after joining the service being fully aware of the instructions contained in Government of India Office Memo dated 29th December, 1972 and 4th August, 1980 and the applicant

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nicled the Government and managed to get himself appointed to the post of Inspector on the basis of invalid certificates and hence he committed misconduct and violated the provision of Rule 3(1)(i), (ii) and (iii) of the C.C.S (Conduct) Rules

6. The cause was shown by the applicant. He denied the charge against him and asserted that on the basis of the said certificate, he was appointed. The certificates were also submitted by the Head of the Department and thereafter he was given an appointment, and his appointment was based on his fulfilling the requisite educational qualifications, age etc and successfully competing in the direct recruitment by open competition with outsiders and the same was not ~~that~~ only on the basis of games/Sports certificates that he was appointed first as Lower Division Clerk and thereafter as Upper Inspector as these games/sports certificates only served the restricted purpose of certifying the application of the applicant direct in respect to an advertisement instead of his name being sponsored by the placement Exchange.

7. The Enquiry Officer and Prosecuting Officer who appointed is. On the first day of enquiry dated 21.6.88 the applicant was served with a letter containing corrigendum of the memorandum of charges dated 5.5.88. According to the applicant that duplicates of the documents referred above were

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not supplied to him but the same was refused. The applicant made representations and has narrated how the disciplinary enquiry against him proceeded and according to him he was deprived of various opportunities. On 24.6.891 a show cause notice was served upon him requiring show cause as to why he should not be dismissed from service. According to the applicant it was sent to him without considering his representations against the enquiry report. The applicant filed an application before this Tribunal for quashing the notice and the notice was quashed with the direction that the representation of the applicant shall be considered but vide order dated 30.6.891 against the same a departmental appeal was filed by the applicant which was also rejected on 31.8.892. The applicant was dismissed from service.

8. The respondents have also submitted a detailed written statement in which it has been stated that the applicant has applied for the post of L.D.C enclosed attested copy of the 2nd Kho Kho Championship (1975-76) organised by Nainital District Kho Kho Association and the certificate of District Kho Kho Championship (1976-77) Souvenir certificate along with other certificates which were not in accordance with the requirements published in the advertisement, /this is how the applicant misled the Department. Even if he was allowed to appear in the examination and verification was made and an invalid certificate ^{and} ~~in proper~~ and verification did not confer any right on the applicant in which he remained in service for about 14 years. In the year 1984 he also applied

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for the post of Inspector which was against the Sports quota on the basis of attached copies of certificates evidencing his proof of being a Sportsman. The Meritorious Sportsmen could be appointed in accordance with the procedure prescribed by the Ministry of Home Affairs. The respondents have questioned the applicant's rights to challenge the appointment of four other L.D.Cs which S/Sri Arunesh Tewari, Ashok Kumar, M.W. Honzy and Mr. Nidhi Lahouri who were appointed without tests the ground that the applicant has no right to challenge the same. The applicant's plea is that he had participated in state level and as per the requirement of advertisement published carry no force. In the advertisement which was issued in Hindi daily *Dainik Jagran* Konkan the new item "Applications were invited from such brilliant sportsmen who have participated in the sports events of state level, National or International level or University and Inter University or State School Teams by the Asstt. Collector (Head Quarter) Central Excise, Konkan Sarvodaya Nagar, Konkan".

98 From the facts it is clear that in response to the advertisement the applicant submitted his certificates which was verified and after verification he was given appointment as L.D.C.

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Again for the post of Inspector the same certificates were accepted after 14 years. It was not open for the respondents to condemn their action in this manner. It only reflected on them that in case a challenge by them to the certificates on which they acted upon only reflected to make appointment or selection. If the same was ignored or abandoned condemned, it means still more relaxation was granted and after relaxation the appointment was given. It did not happen once but it happened twice and the respondents are even otherwise barred under principle of Precedency estoppel to challenge the same and nullify an appointment made 14 years ago. Even otherwise as per terms of the advertisement the applicant fulfilled the appointing authority the requisite qualification to look into the terms of advertisement and unless no corrigendum of the same was issued there could not have been any deviation from the same.

10. In this connection a reference was made to the case of Dr. Vinay Kumar Ram Pal Vs. State of Jammu and Kashmir, A.I.R 1983, 1199, which was a case of advertisement of admission in a medical college and the court held that the terms of advertisement are to be accepted unless the corrigendum to the same is not issued". In the advertisement the words used are "Rashtriya Asthar and Anthar-Rashtriya Asthar,

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meaning National level and International level and one who participates in it or any other sports for participating in All India Sports will be taken to have participated in the National Sports. In this connection a reference is being made to the case of State of Punjab Vs. Bhagwant Singh A.I.R. 1985 Supreme Court page 981, in the said case, the sports quota was for those who participated in all India inter University Hockey tournament, but the team was eliminated as zonal round. It was held that the respondent who was in that team was entitled to C.H. gradation certificate and failure of the team to reach the final, does not mean that the team to participate only in zonal tournament and in not all India tournament. The denial of admission on sports quota was held unjustified. Practically the same situation arises in this case also. It is thus clear that the applicant participated in All India Sports and fulfilled the terms of the advertisement also and the respondents knowingly accepted the same and now thereafter can go back against it and that too after several years and dismiss the applicant from service. They are also bound by the principle of acquiescence and waiver. If anybody was to be penalised the action should have been taken against one who made the selection or verification or issued the appointment letter. It appears that no such action has been taken against such person, the action against the applicant was unwarranted and not supported with the provisions of law and the proceedings which have been taken are thus manifestly unjust, unfair and against law.

11. As this application is allowed it is not necessary to enter into the other pleas raised by the applicant. Accordingly, this application deserves to be allowed. The dismissal order dated 30.7.91 and the appellate order dated 31.1.1992 are quashed.

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The applicant will be deemed to be continuing in service and he will be reinstated back in service with consequential benefits without layoff. There will be no order as to costs.

Monog (A')

Vice Chairman

Dated: 11th March 1993

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