

(S)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT Sittings AT AURANGABAD.  
NEW BOMBAY BENCH

XXXXXX

198

T.A. No. (A) 46/88

DATE OF DECISION 27.6.1989

Shri Sudhir Bhalchandra Bhatlawand Petitioner

Shri B.M. Bajpai Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

Shri T.P. Pardeshi, Inspector Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member (J)

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

(b)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
CIRCUIT Sittings AT AURANGABAD

Tr. Application No. (A) 46/88  
(Writ Petition No. 410/88)

Shri Sudhir Bhalchandra Bhatlawande,  
Research Scholar,  
Zoology Department,  
Marathwada University,  
Aurangabad.

.. Applicant

V/s.

1. Union of India

2. Regional Director  
(Western Region)  
Staff Selection Commission,  
Army & Navy Building,  
Bombay-400 023.

3. Under Secretary,  
Central Board of Excise & Customs,  
Ministry of Finance,  
Jeevan Deep Building,  
Sansad Marg,  
New Delhi.

.. Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar  
Hon'ble Member(A), Shri P.S.Chaudhuri

Appearance:

1. Shri B.M.Bajpai,  
Advocate  
for the applicant.
2. Shri T.P.Pardeshi,  
Inspector,  
Central Excise, Pune.

ORAL JUDGMENT:-

Dated: 27.6.1989

(Per: Shri M.B.Mujumdar, Member(J))

The applicant Sudhir Bhalchandra Bhatlawande had filed Writ Petition No. 410/88 in the Aurangabad Bench of the Bombay High Court on 14.3.1988. For want of jurisdiction the High Court has sent it to this Tribunal by its order dated 26.7.1988. In this Tribunal it is numbered as Transferred Application(A) 46/88.

2. The relevant facts for the purpose of this

judgment are these: In pursuance of an advertisement published in May, 1984 the applicant applied for the post of Inspector of Central Excise. He was allotted Roll No.51-30052 and he appeared in the written examination for the selection which was held on 11.11.1984. The results were declared in March, 1985. He passed in the written examination. Interviews were held in Bombay on 14.4.1985 for which also he appeared. The results of the selection were published in the 'Employment News' dated 14.9.1985. The list was in order of merit and the applicant's Roll No. was at serial No.176 in Zone 13. Zone 13 comprises of Dadra & Nagar Haveli, Goa, Daman & Diu and Maharashtra.

3. As the applicant did not receive any communication he made representation dated 11.3.1986 to the Regional Director (Western Region), Staff Selection Commission, Bombay i.e., Respondent No.2. As no reply was received he submitted a second representation dated 4.9.1986 to the same authority. On 1.1.1987 the applicant made a representation to the New Delhi office of respondent No.2. In this representation he specifically mentioned "since last one year I could not get any communication from Staff Selection Commission, Bombay." On 12.1.1987 the New Delhi Office by a memorandum in a cyclostyled proforma informed the applicant that the dossiers of all the qualified candidates had been passed on to the Under Secretary, Central Board of Excise and Customs, New Delhi i.e., respondent No.3 for further allocation to different Collectorates/Charges. The applicant was, therefore, requested to contact him for further

information. Thereafter, on 20.1.1987 the applicant submitted a representation to respondent No.3. Simultaneously, he had requested <sup>in his</sup> friend Shri S.T. Sane working at Delhi to inquire in the New Delhi office of respondent No.3. After inquiry, Shri Sane informed the applicant by letter dated 30.1.1987 that his concerned papers had already been passed on to the Collector of Central Excise, Bombay on 5.9.1985 and the Collector of Central Excise, Bombay would be issuing his appointment order.

4. Hence the applicant wrote a letter dated 4.2.1987 to the Collector of Central Excise, Bombay requesting for information about his appointment/posting at the earliest. The Deputy Collector, Central Excise, Bombay informed the applicant by his letter dated 23.2.1987 that his dossier had been sent to the Deputy Collector(F&E) Central Excise and Customs, Pune for appointment to the post of Inspector and directed him to approach the said authority. The applicant ~~then~~ wrote a letter dated 2.2.1987 to that authority requesting for information about his appointment as early as possible. To that letter the said authority informed the applicant by its letter dated 12.3.1987 that his dossier was received by that office on 1.10.1985 from Bombay and hence a letter was sent to him on 11.10.1985 for attending Physical Test. However, as the applicant neither attended the physical test nor sent any communication in the matter, <sup>his</sup> ~~hence the applicant's~~ dossier was returned to the Staff Selection Commission presuming that he was not interested in appointment as Inspector of Central Excise.

5. The applicant immediately wrote to the said authority i.e., Deputy Collector (P&E), Central Excise and Customs Pune on 28.3.1987 stating that he had not received the communication from him for attending the physical test. The applicant did not receive any reply and hence he sent another letter dated 19.4.1987 to the same authority specifically mentioning that he did not receive the letter dated 11.10.1985 for attending the physical test. He also requested for the issue of a fresh letter for appearing for the Physical Test and for mentioning the place so that he could appear for the physical test. In the last paragraph he pointed out that he was unemployed for the last three years and was waiting for appointment as he was interested in the appointment. He sent copies of this letter to various other authorities also. As no reply was received, he again moved respondent No.2 by letter dated 15.6.1987 requesting to consider his case and arrange for his posting/appointment as early as possible. After waiting for three months he again submitted a representation dated 14.9.1987 to the same authority. Respondent No.3 forwarded the representation to his New Delhi Office, i.e. to the Under Secretary, Staff Selection Commission, New Delhi with his letter dated 20.10.1987. In the mean time, respondent No.3 by his letter dated 15.10.1987 in reply to the applicant's representation dated 20.1.1987 that he had been called for physical standard test by the Collector of Central Excise and Customs, Pune vide Registered letter dated 10.5.1985, but he neither attended the

physical standard test nor sent any communication in the matter and hence his appointment was cancelled. It appears that the date 10.5.1985 mentioned in this letter is not correct.

~ then

6. The applicant made representation dated 19.1.1988 to the New Delhi office of respondent No.2 referring to respondent No.2's letter dated 20.10.1987 requesting them to reconsider his case sympathetically and appoint him as early as possible. The New Delhi office of respondent No.2 by its memorandum dated 3.2.1988 informed the applicant that his case was being looked into and that he would be informed about the final decision in due course.

7. The New Delhi office of the Staff Selection Commission finally informed the applicant by memorandum dated 1.3.1988 that a Registered letter dated 11.10.1985 was sent to the applicant by the Collectorate of Central Excise, Pune, asking him to appear for a physical test but as he did not respond to that letter and made no enquiry about his appointment within a reasonable period of six months after the result was declared, his claim for appointment on the basis of the said examination cannot be considered at the belated stage.

8. After this final reply the applicant filed the Writ Petition in the Aurangabad Bench of the Bombay High Court.

9. The main prayer in the petition is for directing the respondents to take his physical test for the post of Inspector of Central Excise and, subject to passing the test, appoint him to that post.

10. The respondents have resisted the application by filing the affidavit of Shri Vaman Dattarya Mirashi, Assistant Collector, Customs and Central Excise, Pune-2.

10. We have just now heard Mr.A.B.Bajpai, learned advocate for the applicant and Mr.T.P.Pardeshi, Inspector, Central Excise, Pune. Mr.Pardeshi showed us the record and requested for an adjournment as the respondent's Counsel, Mr.M.I.Sethna, could not come from Bombay for the Circuit Sitting of this Tribunal at Aurangabad today. But we have fixed this date long back. If there was any difficulty in their advocate coming from Bombay, the respondents could easily have engaged one from the panel available to them at Aurangabad. This case pertains to an appointment which should have been given over three and a half years ago and hence any delay will only complicate matters still further. Moreover, the facts which we have deliberately narrated at great length are undisputed and clearly establish that no law point is involved in the ~~decision in~~ this case. Hence we have rejected Mr.Pardeshi's request for adjournment.

12. The main point to be considered in this case is whether the applicant had received the letter dated 11.10.1985 asking him to appear for a physical test. Unfortunately a copy of that letter is not attached to the reply of the respondents. But Mr.Pardeshi showed us a xerox copy of that letter. Copy of the letter shows that letters dated 11.10.1985 were sent to the applicant and 47 others requesting them to appear for the physical standard test on 17.10.1985 in the office of Central Excise and Customs, Pune-2. But the

respondents are not having the postal acknowledgement receipt from the applicant or even the postal receipt showing that the letter had been sent by registered post. We specifically asked Mr. Pardeshi about the acknowledgement receipt from the applicant, but he stated that it cannot be traced. In the reply also nothing is said about the acknowledgement receipt. Considering that the respondents are said to have sent the letters as "acknowledgement due", it was obviously incumbent on them to keep a watch on the receipt of the acknowledgements and to take appropriate action in case any acknowledgement receipt was not received. If that was not to be the case, then there was no need to send the letters as "acknowledgement due" as mere registered post would have sufficed.

13. The applicant was making representations persistently from 11.3.1986 i.e., within six months from the date of declaration of results. We do not think that if the applicant had received the communication dated 11.10.1985 he would have failed to appear for the test which was to be held in Pune on 17.10.1985. If he was unable to appear for the physical test for any reason, judging by the volume of correspondence he has subsequently engaged in we think that he would certainly have so informed the Pune office and asked for an alternative date. Hence from probabilities also we think that the applicant must not have received a copy of letter



dated 11.10.1985.

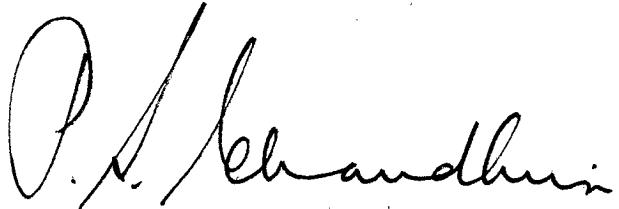
14. In view of the success in the examination the applicant had obtained a vested right in getting appointment as Inspector of Central Excise subject to his passing the physical test and fulfilling other formalities. We do not think that the applicant should lose that right simply because he did not receive the letter dated 11.10.1985 asking him to appear for the physical test. The New Delhi office of the Staff Selection Commission in their letter dated 12.3.1988 has mentioned that as the applicant did not respond to the letter dated 11.10.1985 and as he did not make any enquiry about his appointment within a reasonable period of six months after the results were declared, his claim for appointment on the basis of the examination cannot be considered. We fail to understand how the applicant was to respond to the letter dated 11.10.1985 when he had not received the letter at all. He has made this position clear in many of his communications. Moreover, as already pointed out, the applicant had made his first representation on 11.3.1986 i.e., within six months from the date of publication of the results of the examination. The respondents have not specifically denied that representation or, for that matter, any of the other representations attached to the application. Even thereafter he was persistently making representations as pointed out by us earlier. In any case, there is no mention of a limitation of six months in any of the notifications connected with the

selection and hence a time limit of six months cannot be applied rigidly.

15. Hence we hold that the applicant is entitled to succeed and hence pass the following order:-

O R D E R

- (i) Respondents are directed to call the applicant for physical test for the post of Inspector of Central Excise in Zone 13 and to appoint him to that post if he passes in that test and fulfills the other necessary requirements.
- (ii) The respondents should carry out this direction within three months from the date of receipt of a copy of this order.
- (iii) If the applicant is appointed he should be given the same seniority position which would have been given to him if he had passed the physical test for which he was called by letter dated 11.10.1985 ~~then~~ from the Deputy Collector(P&E), Central Excise and Customs, Fune.
- (iv) Parties to bear their own costs.

  
(P.S. Chaudhuri)  
Member(A)

  
(M.B. Mujumdar)  
Member(J)