

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No.827/94.

Date of Decision: 17-9-97

Between:

M.V.Ramakrishna. .. Applicant.

And

1. Central Board of Excise and Customs, represented by its Chairman, Government of India, North Block, Central Secretariat, New Delhi.
2. The Collector-I, Customs and Central Excise Department, Government of India, Headquarters Office, Basheer Bagh, Hyderabad - 29.
3. Deputy Collector (P & V), Customs and Central Excise Department, Government of India, Basheer Bagh, Hyderabad-29.
4. The Assistant Collector, Customs and Central Excise Department, Government of India, Hyderabad - VIII Division, Central Excise, 2nd Floor, Posnete Bhavan, Ramkote, Hyderabad. .. Respondents.

Counsel for the applicant: Sri P. Naveena Rao.

Counsel for the respondents: Sri N.V.Raghava Reddy.

CORAM:

Hon'ble Sri R. Rangarajan, Member (A)

Hon'ble Sri B.S. Jai Parameshwar, Member (J).

JUDGMENT.

(per Hon'ble Sri B.S. Jai Parameshwar, Member (J))

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Heard Sri P.Navvena Rao, the learned counsel for the applicant and Sri N.V.Raghava Reddy, the learned counsel for the respondents.

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This is an application under Sec.19 of the Administrative Tribunals Act. The application was filed on 14-7-1994.

The applicant herein was selected by the Staff Selection Commission and was appointed as U.D.C., under the respondents. He claims that he is a physically disabled person and his ~~his~~ appointment to the post was against Physically handicapped quota. On 25-8-1992, he was promoted as Tax Assistant.

There are two channels of promotions for U.D.Cs.,/ Tax Assistants. They are (a) on the Executive side-as Inspector of Central Excise and Customs and (b) on the Administrative side-as Deputy Office Superintendent.

The post of Inspector of Central Excise and Customs is to be filled up by 75% by direct recruitment and 25% by promotion. The promotion will be made from among the following categories of employees.

"Promotion:

By selection from amongst:

- (i)Upper Division Clerks/Steno Grade-III with 5 years service.
- (ii)Upper Division Clerks with 13 years of total service as Upper Division Clerk and Lower Division Clerk together subject to the condition that they should have put in a minimum of two years service in the Grade of Upper Division Clerks

iii) Stenographers (Gr.II) with 2 years service

(iv) Stenographers (Gr.II) or Stenographers Gr.III with 12 years service as Stenographer Upper Division Clerk and Lower Division together subject to the condition that they should have put in a minimum of two years service as Gr.III Stenographer or Upper Division Clerk.

The Respondent No.3 issued Circular bearing
for
Circular dated 25.3.1994 calling eligible
Departmental candidates for consideration for promotion
to the post of Inspector of Central Excise & Customs.

The applicant was one of the candidates submitted
his candidature. It is stated that his name was
at Sl.No.7 in the list of candidates called
for test. The tests prescribed for promotion are

(a) Written Test, (b) Physical standards Test and
(c) Viva-voce. The applicant submits that he was
qualified in the physical test and he was required
to appear before the DPC., on 14th and 15th April, 1994.

Since 14-4-1994 was declared a public holiday,
interview was conducted by the DPC on 15-4-1994.
The applicant appeared before the DPC. on 15-4-1994.
He was not interviewed without disclosing any reasons.

On 18-4-1994 he submitted a representation to the 2nd respondent seeking reasons for not allowing him to appear for the interview on 15-4-1994. Again on 13-6-1994 he submitted a representation. His representation was considered and a reply dated 28-6-1994 was issued informing him that as per instructions, Physically handicapped persons were not eligible for Executive posts. It is not in dispute that the post of Inspector of Central Excise and Customs is an Executive post. // Being aggrieved by the reply dated 28-6-1994 the applicant filed this O.A., praying to call for the records relating to and connected with Proceedings dated 28-6-1994 i.e., the impugned letter of the 3rd respondent and the proceedings of the DPC., which met on 15-4-1994 for selection for promotion to the post of Inspector of Central Excise and to quash or set aside the decision to make the applicant ineligible for promotion as Inspector of Customs and Central Excise as arbitrary, unconstitutional and consequently to direct the respondents to interview the applicant on the basis of his performance in the interview to promote him to the post of Inspector of Customs and Central Excise with effect from the date his junior was promoted and with all consequential benefits.

In the meanwhile the respondents by their Office order No. (NGO) No.94/94 dated 9th June, 1994 promoted the applicant to the post of Deputy Office Superintendent, (Level II).

This Tribunal by its Interim Order dated 15-7-1994 accept the post of Deputy Office Superintendent, (Level II) which was offered to him, then, it was without prejudice to ~~in~~ his contentions raised in the O.A.

During the pendency of the O.A., there was further selection for promotion to the post of Inspector of Central Excise. Then the applicant filed M.A.419/95. This Tribunal by its order dated 26-4-1995 disposed of that M.A., stating that "the promotions that were going to be given on the basis of interviews to be conducted by DPC., which is going to meet on 27-4-1995 or a later date for the post of Inspector of Central Excise will be subject to the result of this O.A., and the same has to be stated in the orders of promotion."

The respondents have filed their counter stating that as per the entries ⁱⁿ of the Service Book of the applicant, the applicant was appointed as U.D.C., against the physically handicapped quota, that as per the instructions of the Board vide letter bearing

F.No. B-12017/5/91-AD.III.B dated 13--7--1993/ it was clarified that no reservation would be admissible to the Physically handicapped persons against the Executive Posts of Inspectors/Preventive Officers/ ~~etc etc~~ followed that since the applicant was appointed against the Physically handicapped quota, he was not called for interview before the DPC., held on 15-4-1994, that by inadvertence the applicant was ~~not~~ directed to undergo physical test, that while issuing the Circular dated 23-5-1994 they lost sight of the instructions contained in the letter dated 13--7--1993, that the applicant is not suitable for the post of Inspector of Central Excise and Customs as per the letter dated 13--7--1993, that as the applicant had qualified in the physical test, the same should not be construed to mean that a candidate who was physically handicapped was suitable for the post of Inspector of Central Excise & Customs which is an Executive post, that as per the impugned letter, he has been suitably informed about the existing rules.

The applicant in para 5(3) of his application had cited certain instances of physically handicapped persons being promoted to the post of Inspector of

Central Excise and Customs. According to him, Sri Nageswara Reddy was promoted in the year 1991, Dasarathi Gupta, ^{Wore} Mohd Gazli, N.V Ramana Murthy and Rami Reddy ~~have been~~ promoted to the post of Inspector of Central Excise and Customs ~~as~~ even though they are physically handicapped persons. While traversing this averment, the respondents have stated that those officials were promoted earlier to 13-7-1993 and that therefore, the applicant cannot take advantage of the promotion of the said Officers because the letter dated 13-7-1993 clearly stated that physically handicapped persons are not suitable for the Executive post.

The applicant has not filed any rejoinder to the counter.

It is significant to note that what deformity the applicant is having has not been explained in the O.A., The said fact was material to ascertain whether he could overcome the instructions contained in the letter dated 13-7-1993.

The learned counsel for the Respondents during the course of his arguments produced a copy of the letter dated 13-7-1993 and also the letter dated 19-4-1996

In the letter dated 13--7--1993 it has been stated as under:

"I am directed to say that the question of identifying executive posts of Inspector/ Preventive Officer/Examining Officer etc., for physically handicapped persons and providing reservation to them in those posts has since been examined by the Board. It has been decided that no reservation will be admissible to the physically handicapped persons against the above mentioned posts as these have not been identified as suitable for appointment of physically handicapped persons."

In Para 2 of the letter dated 19-4-1996, the Department has once again clarified as under:

"It is once again clarified that the executive posts of the Inspector of Central Excise, Preventive Officer and Examiner have not been identified as suitable for appointment of the physically handicapped persons. Therefore, the Physically handicapped persons can neither be appointed/promoted to these executive posts nor any benefit of reservation is admissible to the physically handicapped persons for appointment/promotion to these executive posts."

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It is for the Administration to notify certain posts which can be provided for the physically handicapped persons. The Tribunal cannot give any direction regarding that aspect. Further, the Tribunal cannot sit in, over the decision of the executive, ~~or the executive~~, ⁱⁿ consideration of the nature of duties to be performed by the incumbents. Those who are physically handicapped and the physical strain they may have to undergo and they have to take a decision either to exclude or include the persons who are handicapped for considering them to the said executive posts.

As it is, the applicant has not substantiated that he could perform the duties of the Inspector of Central Excise and Customs. Mere passing the physical test do not confer any right to the applicant for claiming appointment to the post of Inspector of Central Excise & Customs. The respondents have specifically stated that they had failed to look into the instructions contained in the letter dt.13.7.1993 while issuing the Circular dated 25.3.1994 and that when they noticed that the applicant having been recruited against the Physically handicapped quota, they did not allow the applicant to appear before the DPC., held on 15.4.1994. The applicant cannot claim the post merely because he had passed the written test and physical test conducted pursuant to circular dated 25.3.1994.

As the applicant himself failed to explain from what deformity he is suffering from and his failure to

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challenge the letter dated 13.7.1993 which excluded the physically handicapped persons from considering for promotion for the post of Inspector of Central Excise, we feel that there are no grounds to interfere with the impugned letter Dt.28.6.94.

The applicant was not considered fit for executive post of Inspector/Preventive Officer/Examining Officer in view the letter dated 19.4.96. These two letters are important letters in regard to the Recruitment Rules for the executive posts. If the Recruitment Rules does not specify any thing in regard to the promotion of the physically Handicapped candidate, then that recruitment rule can suitably be clarified by an executive letter. Such an executive letter should be treated as an explanation to the Recruitment Rule for conducting selections for promotion.

Unless it is proved that such executive letter is issued contrary to the Recruitment Rules or issued with a malafide intention, then only such executive letters can be questioned. In this OA, the executive instructions dated 13.7.93 and 19.4.96 do not appear to have been issued which are contrary to the initial Recruitment Rules. Further, this ^{instruction have} rule has not been challenged in the OA on any valid grounds. Unless the executive instructions to clarify the Recruitment Rules are challenged, no order can be given without considering the import of those executive instructions. As these executive instructions are not challenged, and they are in the rule book the applicant cannot get any relief unless those executive orders are set-aside. In that view also the application has to be rejected.

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The respondents have clarified as to why certain physically handicapped persons were promoted earlier to 13.7.1993. When that is the case, the applicant cannot

merits in this O.A. Hence the O.A., is liable to be dismissed.

In the result, the O.A., is dismissed. There will


(B.S. JAI PARAMESHWAR)
17-9-97


(R. RANGARAJAN)
MEMBER (ADMN.)

Date: 17th Sept. 1997

SSS/ksm


D.R. (T) 1997

22/9/97
S. K. J.

TYPED BY
C. D. P. REDDY

CHECKED BY
APPROVED BY

IN THE CENTRAL GOVERNMENT

THE HONOURABLE JUDGES

AND
THE CHIEF PARMIGHAAR
(M) (J)

Dated: 17/9/97

RECEIVED

RECORDED

in

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Admitted and Interim

Allowed
— or with Directions

Dismissed

— as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs

RECD

II Court

