

(RESERVED ON 04.09.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 04th day of *October*, 2018.

ORIGINAL APPLICATION NO. 1309 OF 2013

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Kumod Mathur, aged about 61 years, son of Late H.P. Mathur, resident of , 243, Ellora Enclave, Dayalbagh, Agra-U.P. Retired from the post of Deputy Commissioner, Central Excise, Kanpur
.....Applicant.

VERSUS

1. The Union of India, through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. The Chairperson, Central Board of Excise & Customs, New Delhi.
3. The Chief Commissioner, Customs & Central Excise, 7A, Ashok Marg, Lucknow-U.P.
4. The Commissioner, Central Excise Commissionerate, 117/7 Sarvodaya Nagar, Kanpur-U.P.
5. The Additional Commissioner, Central Excise Commissionerate, 117/7, Sarvodaya Nagar, Kanpur-U.P.

.....Respondents

Advocate for the Applicant : Shri Shyamal Narain

Advocate for the Respondents : Shri Raghvendra Pratap Singh

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The present Original Application (in short OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

- (a) *That this Hon'ble Tribunal be pleased to quash and set aside the impugned Charge Memo dated 30.04.2012 (Annexure No. A-1 to the Compilation No. I), as also the entire disciplinary proceedings arising therefrom,*
- (b) *That this Hon'ble Tribunal be pleased to direct the respondents to sanction the leaves of the applicant for the period 08.02.2012 onwards, in the light of the second medical opinion received by them from the C.M.O. Agra, and the report dated 01.07.2013 submitted by the Chief Commissioner, Customs, Central Excise and Service Tax, Lucknow, to the Zonal Member, CBEC.*

- (c) *That this Hon'ble Tribunal be pleased to direct the respondents to release the regular pension of the applicant, as also his entire held-up post-retirement benefits such as gratuity, leave encashment, commutation etc. along with interest at such rates as may be found appropriate, within such reasonable period of time as might be considered just and proper.*
- (d) *That this Hon'ble Tribunal be pleased to grant such other relief, as the applicant might be found entitled to in the facts and circumstances of the case.*
- (e) *That this Hon'ble Tribunal be pleased to award the costs of this Original Application in favour of the applicant, throughout."*

2. The brief facts in this OA are that the applicant had joined service on 02.12.1972 at Agra appointed on compassionate grounds as Inspector under the Department of Customs and Central Excise, Government of India. He was promoted to the post of Superintendent on 30.03.1990, and as Assistant Commissioner on 13.12.2002 and then to the post of Deputy Commissioner w.e.f., 30.06.2009. He was working as Deputy Commissioner till his retirement on 30.04.2012.

3. It is stated by the applicant that in pursuance of some complaints, the applicant and some other employees, were directed by the department to get their height measured, to ascertain whether at the time of their initial appointment as Inspector, they were fulfilling the prescribed criteria regarding height. The applicant was issued a letter dated 10.09.2008 for measurement of his height and he submitted a certificate issued by the Chief Medical Superintendent, UHM, District Hospital, Kanpur on 14.09.2018, certifying his height to be 157.5 cms. However, this is denied by the respondents, who in para 12 of the counter affidavit mentioned that the exercise for re-measurement of the height was initiated in pursuance to the order dated 18.01.2011 of Hon'ble High Court, Allahabad (Lucknow Bench). The case of Sunil Kumar Sharma Vs. Union of India (Annexure CA-1 to the counter affidavit). Prior to that on the basis of a complaint, respondents had issued a letter dated 10.09.2008 to CGHS, Kanpur who

informed height as 156 cm, but in this report, signature of the applicant was missing. The applicant produced a report dated 14.09.2008 through a medical examination without approval of respondents stating his height to be 157.5 cm.

4. Thereafter, a letter dated 03.02.2012 (Annexure No. A-3 to the OA) was issued by the Additional Commissioner (Vig), Central Excise, Kanpur directing him to report at Headquarters Control Room office at 9:30 AM on 09.02.2012 for measurement of his height. The applicant, in response to the aforesaid letter, sent a letter dated 07.02.2012 (Annexure No. A-4 to the OA) stating that he had never been served with the letter dated 18.01.2012 and requested that the same be made available to him. The applicant also stated that measurement of his height was taken at the time he had joined the department and the same would be available in service records, copy of which were requested. Thereafter, the applicant was served with a letter dated 14.02.2012 (Annexure No. A-5 to the OA) asking for explanation of the applicant for not appearing on 09.02.2012 for measurement of his height as per the letter dated 03.02.2012.

5. The applicant has stated that he proceeded on medical leave from 08.02.2012 and was advised rest up to 09.03.2012 by the attending doctor. Applicant informed the respondents accordingly. Another letter dated 29.02.2012 (Annexure No. A-7 to the OA) was written by the Additional Commissioner (Vigilance), Central Excise, Kanpur to the CMO UHM Hospital, Kanpur under copy to the applicant, requesting for another date for height measurement. The applicant has stated that he received this letter only on 22.03.2012 by a special messenger and immediately upon the receipt of the letter dated 29.02.2012, the applicant sent a letter dated 22.03.2012 (Annexure No. A-8 to the OA), through the same

messenger, requesting that the date for measurement of height may be fixed with the CMO after he attains fitness to resume duties. Thereafter, the applicant was served with two letters dated 19.03.2012 (Annexure No. A-9 to the OA) and 26.03.2012 (Annexure No. A-10 to the OA) directing him to report to the Medical Board, CMO, Kanpur on 29.03.2012, for measurement of his height. The applicant sent a similar reply expressing his inability due to his medical conditions.

6. Meanwhile, the applicant, had sent his applications to the respondents for sanction of his medical leave and in this connection, the Additional Commissioner (Pers.), Central Excise, Kanpur, sent a letter dated 30.03.2012 (Annexure No. A-16 to the OA) to the C.M.O. Agra, under copy to the applicant, requesting the CMO to get the applicant checked up medically by a medical officer not below the rank of Civil Surgeon or Staff Surgeon and furnish his medical opinion. The applicant presented himself before the CMO Agra on 07.04.2012, who informed that medical-cum-fitness certificate shall be issued by him only when the applicant was declared fit to join duties. No examination or check-up of the applicant was done by the CMO Agra. A letter detailing these facts was sent by the applicant to the Additional Commissioner (Pers.), Central Excise, Kanpur on 07.04.2012. (Annexure No. A-16 to the OA). Thereafter, the applicant received a communication dated 26.04.2012 from the CMO Agra, for getting himself medically examined on 28.04.2012 in the context of the second opinion sought by the department regarding extension/sanction of his leave on medical grounds. The applicant vide letter dated 29.04.2012 (Annexure No. A-18 to the OA) explained his inability to go to Lucknow. Then the applicant was duly put through a medical check-up by the CMO Agra at the hands of the Chief Medical Superintendent, District Hospital,

Agra. Then the CMO Agra sent a letter dated 04.05.2012 (Annexure No. A-19 to the OA) to the Additional Commissioner, Custom, Central Excise and Service Tax, mentioning his agreement with the report of the Chief Medical Superintendent, District Hospital, Agra confirming illness and genuineness of the applicant's admission to the hospital on 25.04.2012.

7. When these correspondences were going on, the respondents issued the impugned charge memo dated 30.04.2012 to the applicant (Annexure A-1), on the date of his retirement on the allegation that he had willfully failed to comply with the directions to present himself for measurement of his height before the concerned medical authority. The applicant then furnished two representations dated 10.04.2013 and 07.05.2013 (Annexure No. 22 and 23 to the OA), before the Chairperson, CBEC. In response to the applicant's representations dated 10.04.2013 and 07.05.2013, the Chairperson, CBED called for a report from the Member Zone who instructed the Chief Commissioner, Customs, Central Excise and Service Tax, Lucknow to submit his report in the matter. The Chief Commissioner then submitted a detailed report dated 01.07.2013 (Annexure No. A-24 to the OA) to the Zonal Member, CBEC. The applicant also moved a representation dated 09.09.2013 (Annexure No. A-25 to the OA) before the Chairperson, CBEF requesting for sanction of his medical leave and dropping of the impugned Charged Memo dated 30.04.2012. The applicant filed this OA when no action was taken by the respondents.

8. In the counter affidavit filed by the respondents, it is stated that the applicant was appointed on the post of Inspector on compassionate ground on 02.12.1972. In the column meant for 'Height by measurement (without shows)', the applicant's height is shown as 5'2" which falls short of

prescribed height. The entire exercise of re-measurement of height of the officers was initiated on specific direction of the Lucknow Bench of Hon'ble High Court, Allahabad given in the case of Sunil Kumar Sharma VS UOI through order dated 18.01.2011. In a W.P. No. 511 (SB) of 2009 dated 28.03.2009 filed before the Hon'ble High Court of Allahabad, Lucknow Bench against the order of this Tribunal dated 16.12.2008. Subsequently, on receipt of a complaint on the same issue, the scope of this exercise of re-measurement was extended to those officers also whose names were mentioned in the complaint. Thereafter, under the direction of the office of the Chief Commissioner in compliance of the order dated 18.01.2011 of the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, the applicant was requested to get his height measured from CMO Kanpur on 09.02.2012 & 29.03.2012, but the applicant did not turn up on these dates to designated medical authority. It is stated in the counter affidavit that on 29.03.2012 again suo motto, the applicant forwarded certificate of height from CMO Agra as mentioning therein his height as 157.5 cms was not proper. In response to this as per direction of Chief Commissioner, Central Excise, Lucknow, CMO/State UP Medical Board was requested to fix an early date for measurement of height of the applicant. But the applicant informed his inability to appear before the designed Board on medical ground.

9. It is stated by the respondents that the Government of India, Ministry of Finance, CBEC letter dated 17.09.1982 prescribed minimum height of 157.5 cms for male candidates for appointment as Inspector in Central Excise. It is further stated that the applicant was duly informed vide letter dated 17.04.2012 of ADC (Vig), Central Excise, Kanpur that his leave was not sanctioned and hence the applicant should have reported for

duty immediately. Since, the applicant retired before any decision on his leave could be taken by the department, in terms of the O.M. dated 22.06.2010 (Annexure No. CA-6) issued by the Government of India, Ministry of Personnel, P.G. Pension and Pension (DoPT) the leave case is to be decided by the disciplinary authority which is the Board in this case.

10. Shri S. Narain, learned counsel for the applicant was heard first on 30.08.2018 in absence of Shri Raghavendra Pratap Singh, learned counsel for the respondents. While adjourning the OA to 04.09.2018, it was observed that the Tribunal will proceed with the hearing of the OA under the rule 16 of the CAT (Procedure) Rules, 1987 in case of absence of respondents' counsel. On 04.09.2018, learned counsel for the respondents was also absent. Hence, we proceeded to complete hearing of the case under the rule 16 of the CAT (Procedure) Rules, 1987 since the respondents' counsel was absent. But he was allowed to submit written submissions on the claim of the applicant regarding sanction of medical leave in his favour for the period from 08.02.2012 to 30.04.2012, as per the copy of letter enclosed at Annexure 1 of the MA No. 113/2018 filed by the applicant which was taken on record vide order dated 10.08.2018 of this Tribunal. We take note of the fact that learned counsel for the respondents has submitted the Written Arguments on 13.09.2018 in compliance of the order dated 04.09.2018, but nothing has been mentioned in the Written arguments about the applicant's claim for sanction of the medical leave for the aforesaid period. Further, although we proceeded with the case under the rule 16 of the CAT (Procedure) Rules, 1987 on 04.09.2018, the learned counsel for the respondents submitted his written arguments as per orders dated 04.09.2018 but no application for oral argument under the rule 16(2) of the CAT (Procedure) Rules, 1987 was filed by him.

11. Shri S. Narain, learned counsel for the applicant mainly reiterated the averments of the applicant in his pleadings and submitted that since the medical leave for the period 08.02.2012 to 30.04.2012 has been sanctioned as per the letter dated 24.05.2017 enclosed to the MA No. 113/2018, the impugned charge memo which is issued to the applicant after his retirement is not sustainable.

12. Learned counsel for the respondents, in his Written Arguments, mainly reiterated the stand of the respondents in their pleadings and stressed on the following points:-

(i) It is a well settled law that if a person is appointed to a post for which he was ineligible, then such appointment can be reversed subsequently. In view of the order dated 18.01.2011 in the case of Sunil Kumar Sharma vs. UOI & others of Hon'ble High Court, no interference of the Tribunal in the matter is called for.

(ii) Vide order dated 16.12.2008 of the Tribunal in OA No. 437/2007 has also directed about administrative investigation to discount possibility of fraud in view of a number of doubtful medical certificates filed before the respondents.

(iii) The charge memo dated 30.04.2012 was issued to the applicant who avoided to appear before the medical authority specified by the respondents in spite of being given ample opportunity.

13. We have carefully considered the pleadings on record and the submissions made by the learned counsels for the parties. This Tribunal, while considering the prayer for interim relief, had directed the respondents the following vide order dated 18.12.2013:-

“8. Having regard to the foregoing facts and the rules cited by the counsel for the applicant the impugned charge-sheet dated 30.4.2012 (Annexure A-1) is hereby kept in abeyance till the next date of hearing. List on 20th January 2011.”

The ground for passing the order dated 18.12.2013 was the submission by the applicant's counsel that the charge memo dated 30.4.2012 was served

on the applicant on 8.5.2012 after his retirement on 30.4.2012 and it is not in accordance with the rule 9(a) of the CCS (Pension) Rules, 1972 since no sanction of the President was obtained as mentioned in the para 4.23 of the OA.

14. The para 31 of the counter affidavit in reply to para 4.23 of the OA states that the charge memo dated 30.04.2012 was affixed on the place of the residence of the applicant on 30.04.2012 after observing all necessary formalities as per law including Panchhama etc. We also note that the respondents have filed the MA No. 1721 of 2014 for vacating the interim order dated 18.12.2013 without mentioning anything about the mode of service of the charge-sheet dated 30.04.2012, although that was the main ground for which the interim order dated 18.12.2013 was passed. The applicant claims to have been hospitalized till 30.04.2012 and he had informed the authorities accordingly through his letters and leave applications. Hence, the reason for affixing the charge-sheet on the place of his residence instead of serving it on him at the hospital, has not been mentioned by the respondents. If the applicant would have refused to accept the charge-sheet in the hospital, then the service through affixture would have been acceptable. Further, no document or evidence in support of proper service of the charge-sheet has been enclosed with the counter affidavit or placed before the Tribunal to prove that the service of the charge-sheet on 30.04.2012 was as per law. In absence of such clarification or evidence, we are unable to accept the contention of the respondents that the charge-sheet dated 30.04.2012 was served on the applicant on 30.04.2012 before his retirement. On the other hand, the applicant has furnished in the Annexure A-1 of the OA, copy of his receipt of the charge-sheet on 08.05.2012 after his retirement. Further, nothing

about the date of service of the charge-sheet on the applicant was mentioned in the Misc. application filed by the respondents for vacation of the interim order dated 18.12.2013.

15. It is further noted that there was no stay order on the charge-sheet dated 30.04.2012 before passing of the interim order dated 18.12.2013. Action taken by the respondents to proceed with the charge-sheet when no interim protection was available to the applicant has not been mentioned in the pleadings of the respondents. It is seen that the applicant in the OA has claimed that different authorities have recommended for sanction of medical leave as applied by the applicant. In reply, the para 36 of the counter affidavit states as under:-

“36. That the contents of paras 4.28, 4.29, 4.30, 4.31, 4.32 & 4.33 of the Original Application as stated are not admitted, hence denied. In its reply thereto it is stated that as already referred by the applicant, a comprehensive report has already been sent by the Chief Commissioner, Lucknow vide letter dated 01.07.2013 wherein all the aspects of the case of the applicant have been discussed at length and in this letter itself, it has been specifically recommended for finalization of the leave case of the applicant.....”

16. Further, the claim of the applicant for sanction of the medical leave for the period from 08.02.2012 to 30.04.2012 as per the letter dated 24.5.2017 and letter dated 30/31.5.2017 copy of which are enclosed to the MA No. 113/2018 has not been refuted.

17. Learned counsel for the respondents, in his written arguments, has stressed on the order dated 18.01.2011 of Hon'ble Allahabad High Court (Lucknow Bench) by which the respondents were directed to inquire into the allegations about height of some of the employees including the applicant. But as stated in para 4 of the counter affidavit, the inquiry on the complaint of height of the applicant was initiated during September,

2008 and after the applicant furnished a medical certificate on 14.09.2008, it was not accepted by the respondents as the medical examination was arranged suo motu by the applicant. Nothing has been mentioned in the counter affidavit as to the reasons for not pursuing with the inquiry about the height of the applicant for more than three years after September, 2008 till 09.02.2012, when the applicant was issued a letter for his height measurement by CMO Kanpur. Further, the letter dated 09.02.2012 was issued to the applicant after more than a year of the order dated 18.01.2011 by which the Secretary, Department of Revenue, Ministry of Finance was directed to submit a report to Hon'ble High Court within three months after holding the inquiry in the matter. Hence, as per the direction of Hon'ble High Court the inquiry into the controversy should have been completed within three months of the order. But the matter relating to the applicant was abnormally delayed by the respondents till about three months of his retirement, in spite of initiation of inquiry in 2008 against the applicant and the order dated 18.01.2011 of Hon'ble High Court.

18. In view of the discussions above, we are of the considered opinion that the impugned charge-sheet dated 30.4.2012 is not in accordance with the rule 9 of the CCS (Pension) Rules, 1972 as it has been served on the applicant after his retirement and there is nothing on record to show that prior sanction of Hon'ble President of India has been obtained as observed in this Tribunal's order dated 18.12.2013. Hence, the impugned order dated 30.04.2012 (Annexure A-1 to the OA) is set aside and quashed. The respondents are directed to release the retirement benefits of the applicant as per the rules within two months from the date of receipt of a certified copy of this order. In case of failure to release the retirement benefits to

the applicant within the time as specified above, the applicant will also be entitled for the interest at the rate of 10% per annum from the date of his retirement and the said interest shall be recovered from the employee, if found to be responsible for delay in release of the retirement benefits to the applicant as per law. It is made clear that the respondents will have liberty to complete the inquiry about the height of the applicant in case the existing medical report / records regarding his height in the service record are not acceptable to the respondents and to initiate action against the applicant as per law in case his height is not as per the standard specified by the Government for the post in which the applicant was initially appointed.

19. The OA is allowed as above. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Anand...