

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00674/2017

Jabalpur, this Friday, the 10th day of May, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Manish Kumar Prasad son of late Shri Ramnath Prasad, aged about 39 years, Occupation – Inspector in the Central Tax, Customs and Central Excise in the Office of Commissioner CGST, Central Tax, Customs and Central Excise, 48 Administrative Area, Arera Hills, Hoshangabad Road, Bhopal, posted at Division No.II, Bhopal CGST, R/o 20-B 9-A, B.D.A. Complex, Saket Nagar, Bhopal M.P. 162024

-Applicant

(By Advocate – Shri M.K. Verma)

V e r s u s

1. Union of India through Secretary, Department of Revenue North Block, New Delhi 110001.
2. Central Board of Excise and Customs, Hudco Vishala Building, Bhikaji Cama Palace, R.K. Puram, New Delhi 110022.
3. Chief Commissioner (CCA) CGST Customs and Central Excise, Bhopal 48 Administrative Area, Arera Hills, Hoshangabad Road, Bhopal 462011.
4. Commissioner CGST, Customs and Central Excise Bhopal, 48 Administrative Area, Arera Hills, Hoshangabad Road, Bhopal 462011

- Respondents

(By Advocate – Shri Himanshu Shrivastava)

(Date of reserving order : 22.11.2018)

ORDE

By Navin Tandon, AM.

The applicant, who belongs to visually handicapped category, is aggrieved that he is not being allowed to continue in the job of Inspector with the respondent department.

2. The applicant has made following submissions:-

2.1 He belongs to visually handicapped category.

2.2 He appeared in the Combined Graduate Level Examination (CGLE) – 2011 conducted by Staff Selection Commission (SSC).

2.3 Pursuant to this selection, four candidates have been recruited in visually handicapped category as Inspector in Central Excise, two each in Vadodara zone (Amit Kumar and Shamsher Singh) and Chennai zone (Anshuman Singh and the applicant).

2.4 Having cleared the physical standard/endurance test and medical examination, he was issued offer of appointment on 08.02.2013 (Annexure A-4). He joined at Trichy Customs Commissionerate on 18.02.2013 (Annexure A-5). He was posted in Customs Division Trichy and given unique employee code on 22.07.2013 (Annexure A-7).

2.5 He appeared in CGLE-2012 again and was successful. He was issued offer of appointment dated 18.02.2014 (Annexure A-10) by Bhopal Zone of Central Excise. Accordingly, he joined at Bhopal on 03.03.2014.

2.6 Prior to joining Bhopal, he was issued with a No Objection Certificate, by Additional Commissioner, Trichy on 02.01.2014 (Annexure A-12) and acceptance of technical resignation from Customs Division Trichy on 27.02.2014 (Annexure A-13). Consequently, he was given benefit of past services, as is evident from letter dated 24.11.2014 (Annexure A-14) issued by Bhopal Zone.

2.7 Inspectors in Central Excise have to undergo departmental examination for confirmation. He had appeared and passed the written examination in Trichy of Chennai zone held in June 2013 (Annexure A-16). However, he could not succeed in viva voce.

2.8 He requested the Bhopal zone of Central Excise to let him appear in the confirmation exam scheduled in December 2014. In reply, he was informed by letter dated 11.12.2014 (Annexure A-17) that the appointment of the applicant as Inspector Central Excise is under consideration by the Central Board of Excise and Customs (CBEC) and his

request for appearance in Paper VI viva voce will be taken whenever clarification from CBEC is received.

2.9 He filed several representation in the year 2016, 2017 (Annexure A-19 colly.) to allow him to appear in the confirmation examination.

2.10 The respondents have issued him letter dated 07.08.2017 (Annexure A-20) stating “Visually Handicap” is a disqualification for the post of Inspector.

2.11 Applicant has received information (Annexure A-28) under RTI that SSC had received requisition from CBEC, with vacancies earmarked for visually handicapped persons for CGLE-2011. Further, CBEC has informed under RTI on 28.10.2013 (Annexure A-29) that visual handicapped candidate is eligible for the post of Inspector in Central Excise.

2.12 Applicant has also given the history of other three visually handicapped persons, who were selected alongwith the applicant as Inspectors in Central Excise through CGLE-2011.

2.12.1 Shri Amit Kumar was not allowed to join Vadodara Zone. He filed a case with Chief Commissioner for persons with Disabilities, who ruled in his favour. Consequently,

CBEC (respondent No.2) vide letter dated 08.09.2014 (Annexure A-22) allowed Shri Amit Kumar to join as Inspector (Central Excise). Accordingly, he was issued offer of appointment on 19.12.2014 (Annexure A-23). He has joined and is still working.

2.12.2 Shri Anshuman Singh was terminated from service on 07.03.2014 (Annexure A-25). He also approached Chief Commissioner for Persons with Disabilities. As a result, he was reinstated in service on 26.09.2014 (Annexure A-26).

2.12.3 Shri Shamsher Singh was issued with order of appointment by Vadodara zone on 08.01.2015 (Annexure A-27).

3. The applicant has sought for the following reliefs:

“8. RELIEF SOUGHT:

8.1 This Hon’ble Tribunal may kindly be pleased to quash the impugned letter dated 07.08.2017 alongwith CBEC letter based on which letter dated 07.08.2017 has been passed, in the interest of justice.

8.2 This Hon’ble Tribunal may further be pleased to direct the respondents-department to permit the applicant to appear in the departmental examination for confirmation of Inspector and the applicant be treated permanent employee of the department, in the interest of justice.

8.3 That this Hon’ble Tribunal may, further be pleased to award the cost of instant list in favour of the applicant.

8.4 Any other relief(s), direction(s), instruction(s), which this Hon'ble Tribunal deem fit and proper looking to the above facts and circumstances of the case be also awarded in favour of applicant in the best interest of justice.”

4. The respondents in their reply have submitted as under:-

4.1 After the appointment of applicant in Bhopal zone, it came to notice that CBEC's circular no. F.No.1803/08/2008-Ad 111 (B) dated 01.07.2010 (Annexure IR/1) does not reflect visually handicapped as an eligible category of disabled for the post of Inspector in Central Excise and Customs.

4.2 Subsequent notification by SSC for CGLE-2013 does not reflect visually handicapped among permissible physical disabilities for Inspector (Central Excise).

4.3 On a similar issue, Shri Anshuman Singh has been terminated from service by Chennai zone.

4.4 Information provided by CBEC (respondent No.2) under RTI on 28.10.2013 (Annexure A-29) is in conflict with the existing circulars.

4.5 Indication of visually handicapped quota for the post of Inspector in the SSC notification appears to be typographical error at CBEC or SSC level.

4.6 The challenge to the order dated 07.08.2017 (Annexure A-20) should be dismissed.

5. Heard the arguments of learned counsel of both the parites and perused the pleadings available on record.

6. Learned counsel for the applicant strongly argued that the applicant is facing gross injustice in the hands of the respondents. CBEC has allowed the batchmates of the applicant through CGLE-2011, who are also in visually handicapped category, to continue in job. However, different yardstick is being applied to the applicant. He also brought our attention to the APAR of 2014-15, 2015-16 and 2016-17 (Annexure RJ-3) to show that his grading on a scale of 10 is between 9 and 10.

7. Learned counsel for the respondents argued that the rules do not allow visually handicapped person to be appointed as Inspector in Central Excise. Therefore, the applicant has no right to continue as Inspector, as he belongs to visually handicapped category.

FINDINGS

8. We find that the respondents have not offered any comments to para 4.25 of the O.A, wherein the history of other three visually handicapped candidates through CGLE-2011 have been stated. The

respondents have emphasised about termination of service of Shri Anshuman Singh by Chennai zone, but have failed to controvert the assertion that he has been reinstated.

9. The applicant has demonstrated presence of 2 vacancies in visually handicapped quota of Inspector (Central Excise) in Bhopal zone in the Details of Vacancies of CGLE-2012 (Annexure A-8). Infact, the chart shows a total of 13 vacancies in visually handicapped quota on All India basis.

10. The offer of appointment dated 18.02.2014 (Annexure A-10) clearly indicates VH along with the name of the applicant, which is the abbreviation used for visually handicapped. Therefore, the respondents cannot feign ignorance about this fact.

11. We fail to understand how CBEC (respondent No.2) can apply different yardstick to different people. While other three batchmates of the applicant through CGLE -2011 were offered letters of reinstatement/appointment in September 2014, December 2014 and January 2015 respectively, the applicant's case was taken up for consideration at around the same time in December 2014 (Annexure A-17) by CBEC. After more than two and half years in July 2017, the applicant is being threatened with loss of job.

12. It has not been controverted by the respondents that the break up of vacancies in CGLE-2012 (Annexure A-8) does show two vacancies in visually handicapped quota in Bhopal zone. Further, SSC has confirmed that these vacancies were indicated in the requisition received from CBEC.

13. The appointment of the applicant is not the result of any manipulation or false statement on his part.

14. From the foregoing, we find it would be travesty of justice if the applicant is not allowed to continue in the job which he has got through hard work and continues to perform well, as indicated by his APARs.

15. Accordingly, the O.A is allowed. The letter dated 07.08.2017 (Annexure A-20) and the CEBC's letter dated 27.07.2017 mentioned therein are quashed and set aside. The applicant be allowed to continue in his job. The respondents are also directed to permit the applicant to appear in the departmental examination for confirmation at the first available opportunity. No costs.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member