



सत्यमेव जयते

न्यायालय मुख्य आयुक्त विकलांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES
विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No.199/1021/11-12

Dated:- 27.12.2016

In the matter of:

Shri Satish Kumar, *D626*
House No. 4006/G,
Chandigarh
Email: <s.k.gheeyal@gmail.com

..... Complainant

Versus

Central Board of Excise & Customs,
(Through the Chairman), *D627*
Department of Revenue,
Ministry of Finance,
North Block New Delhi-110001.

..... Respondent

Date of hearing : 11.11.2016

Present :

1. Shri Satish Kumar, Complainant..
2. Shri Rajpal Singh, Under Secretary, on behalf of Respondent..

ORDER

The above named complainant, a person with 70% locomotor disability filed complaints dated 30.05.2011 and 08.08.2011 before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act' regarding promotion to the post of Inspector, Central Excise – Waiving of Physical Standards prescribed in the Recruitment Rules, 2002 for Inspectors.

2. The complainant has submitted that at the time of DPC for promotion from STA to Inspector (Central Excise) he was called for to appear in physical test by the Office of the Commissioner, Central Excise Commissionerate, Chandigarh-I, which was conducted by the Department on 08.02.2010. He appeared in the physical test but he was not called for the interview and nothing adverse was intimated to him that on what basis he was not called for interview. The list of qualifying candidates to the grade of Inspector was issued on 08.02.2010. Being aggrieved he had given a representation to the Commissioner, Central Excise Commissionerate, Chandigarh-I on 22.05.2010. His representation was rejected by the Office of the Chief Commissioner vide letter dated 05.05.2010 informing him that in view of physical standard prescribed in the Recruitment Rules 2002 of Inspectors, he did not qualify the physical parameters of height and chest.

3. The Under Secretary, Central Board of Excise & Customs, Department of Revenue vide letter No.A.32018/17/2012-Ad.III.A dated 30.11.2012 submitted that the case for promotion of Shri Satish Kumar to the post of Inspector under the existing recruitment rules has been considered by the office

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of the Commissioner of Central Excise, Chandigarh-I. The Additional Commissioner (CCU, Customs & Central Excise (CZ), Chandigarh had informed to this vide letter C.No.II-3(6)SEC/DPC/2009/525 dated 05.05.2010 that attention is drawn towards Board's instructions issued vide F.No.A-12034/SSC/2/2003-Ad.III B dated 17.12.2008 para 5 of which clearly mentions that the Board decided that physical standards regarding height, chest and weight prescribed in the RRs do not clash with the parameters mentioned in the Notification of Ministry of SJ&E, hence the same shall be retained. However, the following relaxation shall be given in case of physical tests:-

- (a) The test of 'walking' shall not be insisted in case of OL and OAL categories.
- (b) The test of 'cycling' shall not be insisted in case of OL and OAL categories.

Thus in view of the physical standard prescribed in the Recruitment Rules 2002 of Inspectors, Shri Satish Kumar STA(PH) did not qualify the physical parameters of height and chest and declared unfit in physical standard. However, it is pertinent to mention that the officer has joined as DOS (under protest) in May, 2012. In view of above, it is stated that Shri Satish Kumar, STA (PH) (now DOS) has not qualified the physical parameters of height and chest as per existing Recruitment Rules. So, he is not eligible for promotion to the grade of Inspector.

4. The complainant vide his letter dated 18.03.2013 has submitted his comments in response to the reply of the respondent vide its letter dated 30.11.2012. He has submitted that the respondent vide its above referred letter had intimated that the case is still pending in DoP&T for amendment of Recruitment Rules with respect to height and chest relaxation to PH persons. The complainant intimated that till date he has not received any communication from the establishment in the matter.

5. The Respondent vide its letter dated 30.11.2012, 31.12.2015, 04.03.2016 and 21.06.2016 has intimated that promotion case of the complainant to the post of Inspector is pending with the Legislative Department and, therefore, it will take some more time to be finalized.

6. Upon considering respondent's replies dated 20.09.2011, 05.12.2011, 30.11.2012, 31.12.2015, 04.03.2016, 21.06.2016 and complainant's letters dated 20.09.2011, 14.03.2012, 18.03.2013, 05.03.2015, 07.12.2015 and 09.02.2016, a hearing was scheduled on 11.11.2016.

7. During the hearing on 11.11.2016, the complainant reiterated his written submission and submitted that his case for promotion is pending more than six and half years. No action on amendment in the Recruitment Rules has been taken by the Department. Direct recruitment of Inspectors have been done with exemption of physical standard without amendment of Recruitment Rules. He further submitted that the Central Administrative Tribunal, Delhi Bench in OA 2543/2012 in the case of Ms. Ira Singhal Versus Department of Personnel & Training & others, in its Order dated 25.02.2014 has held that "while assessing the suitability of the applicant for IRS (C&CE), the respondents have gone by the identification of the post by Ministry of Social Justice and Empowerment. The said Ministry itself has taken a view that if the applicant is actually suitable for a

service, the general condition may be waived of." The complainant is also demanding this relief. There is a huge difference amount to Rs.6,000/- per month in the salary due to this injustice as my colleagues who got promoted in the D.P.C. on 08.02.2010 have reached to the Basic Pay of Rs.52,000/- and my Basic Pay stands at Rs.46,000/- as on August, 2016. He prayed for justice in his case.

8. The representative of the respondent submitted that as per the Recruitment Rules of the post of Inspector – 2002, the physical criteria has been prescribed. A person who wants to become Inspector, should meet the criteria of physical standards, height, weight and chest. The complainant has not been promoted as Inspector as he did not meet the criteria of height and chest. In the case of disabled persons, we have sought the relaxation of the Ministry of Social Justice & Empowerment. After receipt of the reply from the Ministry of Social Justice & Empowerment, the Board will convey to us and only then the case of the complainant will be considered. He further submitted that the complainant wants to do desk job. As per DoP&T's classification/categorization, the post of Inspector has been categorized into three categories:-

- (i) Desk job.
- (ii) Moderate field activities job.
- (iii) Extensive field activity

He also submitted that the Recruitment Rules for the post of Inspector are pending with Legislative Department, it will take some more time to be finalized.

9. After hearing the parties and after going the records of the case, the respondent is directed to consider the complainant and all other similarly placed departmental candidates with disabilities for promotion to the post of Inspector Central Excise giving them the same relaxation/exemption in physical standards as applicable in the case of direct recruits or women candidates with effect from the date they first became due for promotion, if otherwise eligible/suitable for such promotion with all consequential benefits of pay etc. within 60 days from the date of receipt of this Order.

10. The case is disposed of accordingly.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities