IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION 1018 OF 2015

DISTRICT : SINDHUDURG

Shri Sudhir Vishnu Bhagwat,)
Working as Assistant Sub-Inspector,)
[State Excise], Check Post Insuli,)
Tal-Sawantwadi, Dist-Sindhudurg)
R/o: Pinguli-Gudhipur, Tal-Kudal,)
Dist-Sindhudurg.)...**Applicant**

Versus

1. The Commissioner,)
State Excise, [M.S], Mumbai,)
Having office at Old Custom)
House, 2nd floor, Fort,)
Mumbai 400 023.)
2. The State of Maharashtra,)
Through Principal Secretary,)
Home Department [State Excise])
Having office at Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 27.07.2016

PER : Shri R.B. Malik (Member) (J)

ORDER

1. Heard Shri B.A Bandiwadekar, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer holding for Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. This Original Application disputes the order dated 29.5.2014, Exh-A, page 21 of the Paper Book, whereby the Applicant came to be held ineligible to be considered for promotion to the post of Sub Inspector of State Excise (Sub Inspector hereinafter) from the post of Constable on the ground that his height was not 165 cms.

3. We have perused the record and proceedings. The Applicant came to be appointed as a Constable in State Excise on 1.5.1989. Copy of the first page of the Service Book is at Exh-B, page 31 of the Paper Book. His exact height on that day was 166 cms.

4. It is common ground that the Applicant met with a very serious road accident on 2.1.2009. He was required to be hospitalized and underwent surgery as well. We find that in their own way the fact of unfortunate road accident has not been disputed even by the Respondents.

5. It appears that earlier also the Applicant was required to move this Tribunal with O.A no 818/2013, Exh-N, page 75 of the Paper Book (Shri Sudhir Vishnu Bhagwat Vs. Commissioner, State Excise and one anr). By judgment dated 3.3.2014, this bench directed the Respondent to take suitable decision in pursuance of the communication dated 2.2.2011 sent by the Committee to the Commissioner, State Excise, in respect of physical fitness of the Applicant for the said promotional post and to communicate the same to the Applicant within three months from that date.

6. It is again a common ground that the mandate of the Tribunal was complied with. The height of the Applicant was found 165 cms from right side and 164.5 from left side. This mode was adopted for the fact that the post-accident state of affairs produced a certain result which necessitated the same. It was found by the authorities that the height was short of 165 cms and by the impugned communication dated 29.5.2014 this fact was informed to the Applicant, stung whereby he is up before us in this Original Application.

7. Now there are two broad aspects of the matter, which in our view, we must approach this Original

Application with and the resultant answer would both lead to the same result as we shall be presently pointing out.

8. The first and formidable aspect of the matter is that it is an admitted position that when appointed as a Constable the height of the Applicant was 166 cms and it is indisputable that post-accident there was a marginal decrease in the height. The Applicant can certainly not be blamed for the same. Therefore, this is the matter which will fall squarely within the jurisdictional office of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, generally and particular reference to Section 47 thereof. That being the state of affairs, it is not even open to the Respondents to block the promotion of the Applicant for any reason whatsoever, once it was clearly established that he suffered the accident while in service and therefore, the benefits enshrined in the Disabilities Act would come into play and Respondents will have to act in accordance therewith and if otherwise found fit the Applicant will have to be promoted. In short the decrease in height shall not affect the promotional prospects of the Applicant.

9. Secondly, even otherwise it is very clear that the measurement of height is not, especially in the context of the present facts, always be finally fool proof and in the context of the fact that at the time of initial entry the height of the Applicant was 166 cms, it was even otherwise necessary for the Respondents to condone the deficiency if there was any, and treat the Applicant as an exception. Undoubtedly, if they did not do it, we can direct them to do so.

10. The upshot is that the Original Application must succeed. The communication herein impugned is hereby quashed and set aside. The Respondents are directed to reconsider the case of the Applicant for promotion to the post of Sub-Inspector, State Excise, and if otherwise found fit, to appoint him on that promotional post within a period of 3 months from today. Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 27.07.2016
Dictation taken by : A.K. Nair.

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