
(2009) 08 DEL CK 0450
In the Delhi High Court
Case No : Writ Petition (C) 9360 of 2009

Deepak Kumar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Customs House Agents Licensing Regulations, 2004 — Regulation 4, 5, 6, 8(1), 8(2)

Citation : (2010) 166 DLT 506 : (2010) 249 ELT 486

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Vinod K. Tewari and Pankaj Singh, for the Appellant; Gaurav Sharma, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—The petitioner has cleared the written examination conducted by the Director General of Inspection for being licensed as a Custom House Agent held under the Customs House Agents Licensing Regulations, 2004. The said examination was held on 29th December, 2006 and result was declared in the month of March 2007.

2. In terms of the Regulation 8(1), the petitioner is also required to clear the oral examination before the said licence is granted. The Regulation 8(1) also stipulates that written as well as oral examination shall be conducted by the Director General of Inspection at specified centres and specified dates, twice every year and intimation shall be sent to individual in advance. The said Regulation reads:- "8. Examination of the applicant:

(1) Any applicant whose application is received within the last date specified in the notice or publication, as the case may be, referred to in Regulation 4 and who satisfied the requirements or Regulations 5 and 6 shall be required to appear for the written as well as oral examination conducted by the Director General of Inspection at specified centres and specified dates, twice every year,

for which intimation shall be sent individually in advance before the date of examination.

3. Regulation 8(3) reads as follows:

(3) It shall be necessary for the applicant to clear written as well as oral examinations separately. An applicant who clears the written examination but fails in the oral examination linked to it, shall have to clear the oral examination within two years of the related written examination irrespective of the number of chances, and if he fails to do so, he shall be treated as having failed in the examination.

4. In view of the Regulation 8(3), a person who clears the written examination but fails in the oral examination, is required to clear the oral examination within two years. In other words, each candidate, who has cleared the written examination, has four opportunities to clear the oral examination within a period of two years i.e. he gets two opportunities each year.

5. It is an admitted position that the respondents were not able to conduct the two oral examinations in the year 2007. As per the counter affidavit, oral examinations were held on 26th March, 2007, 13th February, 2008 and 10th July, 2008. The petitioner had appeared in the said oral examinations but failed. However, the respondents have not conducted the second oral examination, which was required to be conducted in 2007 in terms of Regulation 8(1). Thus the petitioner is deprived of one opportunity to clear the oral examination in terms of the regulations.

6. The aforesaid regulations were considered by a Division Bench of this Court in W.P.(C) 14439/2006 titled Yaspal Singh v. Union of India and Anr. After examining the Regulations 8(1) to 8(3), it was observed as under:

10. The consequence of the failure of the Respondents to hold the oral examination twice a year means that the Petitioner who could have got 4 chances of appearing in the oral examination only got two chances of appearing in the oral examination and by virtue of Regulation 8(3) of the Regulations, since the two years period has elapsed after the declaration of the result in the written examination, the Petitioner may perhaps not even be called again for an oral examination. 11. The consequence of the inaction of the Respondents in calling the Petitioner for two oral examinations in 2005 and two oral examinations in 2006 (while calling him only once in each year) means that the Petitioner had lost two chances of appearing in the oral examination thereby depriving him of getting a Custom House Agents license. The Respondents have given no reason why they cannot rectify the prejudice that they have caused to the Petitioner because of their inaction.

12. The Respondents are, of course, trying to justify their failure to hold the written examination and oral examination with the required frequency as postulated by the Regulations on the ground that the Director General of

Inspection, Customs and Central Excise requested the Central Board of Excise and Customs that the examination should be conducted by the National Academy of Customs, Excise and Narcotics Control (NACEN) but that request was turned down by the CBEC.

13. This contention, to our mind, is untenable because the result of this is that persons like the Petitioner are deprived of seeking employment. Even if the reason given by the Respondents is tenable, they would be required to somehow or the other comply with the Regulations and make up for the shortfall in the requisite number of examinations.

14. Under these circumstances, we are of the view that the Petitioner has been unfairly treated by denying him the opportunity to appear in two oral examinations each year despite his having passed a written examination in accordance with the Regulations.

15. Consequently, to give the Petitioner his due, we direct the Respondents to call the Petitioner for an oral examination on the next two occasions when such an oral examination is held.

7. In view of the aforesaid reasoning, the present writ petition is allowed. The petitioner will be called and permitted to appear in the next oral examination, which will be held by Director General of Inspection, Customs and Central Excise. It is clarified that the petitioner will be permitted to participate in the next oral examination on the basis that had cleared the written examination held on 29th December, 2006. The writ petition is accordingly disposed of. No costs.