

(2023) 01 DEL CK 0075

In the Delhi High Court

Case No : Civil Writ Petition No. 526 Of 2020

Reetesh Kumar Shukla

APPELLANT

Vs

Commissioner Of Customs (Airport And General) And Ors.

RESPONDENT

Date of Decision : 12-01-2023

Acts Referred:

Citation : (2023) 01 DEL CK 0075

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Priyadarshi Manish, Anjali Jha Manish, Harpreet Singh

Final Decision : Allowed

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. The Petitioner - Mr. Reetesh Kumar Shukla has filed the present petition seeking issuance of a customs broker license to him.
3. The case of the Petitioner is that a public notice was issued on 27th April, 2018 by Respondent no. 2 – Directorate General of Performance Management Customs, Central Excise and Service Tax for conduct of customs broker examination. The said examination was conducted on 15th March, 2019. The Petitioner had appeared in the examination. He was informed on 30th April, 2019 that he had qualified the online written examination and was entitled to appear in the oral examination. Before the commencement of the said examination, the passing marks for the oral examination had been fixed at 50 marks. However, once the examination process begun, the same was increased to 60 marks. Due to this increase in cut off marks, since the Petitioner did not satisfy the score of 60, he was declared as an unsuccessful candidate. Hence, this writ petition has been filed seeking grant of the license on the ground that the cut off marks could not have been increased after the examination process had commenced.

4. Similar issues related to the same examination were raised in three writ petitions being W.P(C) 12777/2019, W.P(C) 12865/2019 and W.P(C) 13132/2019 wherein the Id. Single Judge of this Court had, by a detailed order dated 18th February, 2022, held that the cut off marks could not have been changed after the examination notice was issued. The Id. Single Judge observed as under:

"16. There is no dispute that the call letters were issued to the petitioners on April 30, 2019 asking them to appear in the oral examination (on May 23, 2018/ May 25, 2018) before the communication dated May 03, 2019 was sent to the Principal Director General, NACIN. On the date of April 30, 2019 when such communication was sent there was no decision that the cut of marks for oral examination was 60 and not 50.

17. That apart, the communication dated May 03, 2019 was not even sent to the petitioners. The learned counsel for the petitioners are justified in stating that even if the communication dated April 30, 2019 stated that the oral examination has to be held under CBLR, 2018 but it still did not state that the cut-off marks for oral examination are 50. Otherwise, the petitioners would have contested the prescription of 60 marks for those candidates who had participated in the selection process, which was initiated under the CBLR,2013.

18. It cannot be disputed the selection process with regard to the petitioner had started under CBLR, 2013 and it is also conceded by Mr. Harpreet Singh that under the CBLR,2013, a candidate is entitled to appear in oral examination, on two occasions within a span of two years. The petitioners herein did appear in the oral examination, once but had not qualified. The second chance of oral examination in which the petitioners were eligible/entitled to appear, cannot be on different parameters. Otherwise, there would be anomaly, inasmuch as for written examination they were assessed at 50 marks, but for oral examination at 60 marks. Further, the right of consideration on same parameters could not have been taken away.

19. That apart, it is not the case of the respondents that before the petitioners appeared in the oral examination held on May 23/25, 2019 the petitioners were put to notice that their consideration for oral examination would be on the basis of 60 marks. In the absence of such a notice to the petitioners the criteria could not have been changed. Further, it is not the case of the respondents that petitioners have not achieved 50 marks in the oral examination held on May 23, 2019/May 25, 2019, hence, the petitioners having qualified the written examination on the basis of 50 marks, they have to be assessed at 50 marks in the oral examination, otherwise, it shall have the effect of changing the criteria midway, which is impermissible."

A perusal of the above observations would show that the finding of the Id. Single Judge is that the criteria could not have been changed midway.

5. The conclusion in the said judgment was as under:

"22. In view of the above discussion, the writ petitions are allowed and disposed of. The respondents are directed to issue license to the petitioners as Custom Brokers."

6. Id. counsel for the Petitioner submits that the said judgment clearly covers the case of the Petitioner which is also not disputed by Id. Counsel for the Respondent.

7. It is submitted that the said judgment of the Id. Single Judge dated 18th February, 2022 also stands confirmed in the LPA. Mr. Priyadarshini Manish, Id. Counsel submits that in terms of the replies received under the RTI Act, the Petitioner has scored 50 and has thus qualified in the oral examination.

8. In view of the fact that the identical issue has been decided by this Court in favour of the Petitioner it is directed that the Petitioner be issued the customs broker license, subject to verifying that the Petitioner has scored 50% and above in the oral examination. The verification process shall be conducted within two weeks and the license shall be issued within four weeks.

9. If any clarification is required the Respondent is free to contact the Petitioner on [M: 9999435617].

10. The petition is allowed in these terms. All pending applications are disposed of.