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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No./T.A. No. 627 of 1997 Decided on: 29-1-98

S. Radhakrishnan Applicant(s)

(By Advocate: Shri K.B.S.Rajan)

VERSUS

U.O.I. & Ors.

Respondents

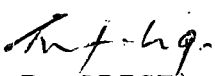
(By Advocate: Shri M.K. Gupta)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches of the Tribunal? NO


(S.R. ADIGE)
VICE CHAIRMAN (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

D.A.No. 627/1997.

New Delhi, dated the 29th Jan, 1998.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

S. Radhakrishnan,
Fencing Coach,
S.A.G. Centre,
Yamuna Velodrome,
Indira Gandhi Stadium,
New Delhi - 110002. Applicant.
(By Advocate: Shri K.B.S. Rajan)
Versus

1. Union of India through
the Secretary (Sports),
Ministry of Human Resources Development,
Shastri Bhawan,
New Delhi.

2. The Director General,
Sports Authority of India,
Jawaharlal Nehru Stadium,
Lodi Road Complex,
New Delhi - 110003.

3. A.S.V. Prasad,
Executive Director (Teams),
Sports Authority of India,
Jawaharlal Nehru Stadium,
Lodi Road Complex,
New Delhi - 110003. Respondents.

(By Advocate: Shri M.K. Gupta)

JUDGMENT

BY HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

Applicant seeks regularisation as a
Fencing Coach in SAI and to fix his pay in the
scale of Rs.1640-2900 from the date of regularisation
with seniority, payment of arrears and consequential
benefits.

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2. Applicant states that the Recruitment Rules for the post of Coach in SAI (Annexure -2) stipulate a minimum educational qualification of Diploma in Coaching from SAI/NSIS Patiala or from any other recognised Indian/foreign University and representation at Inter State/ Inter University level competitive. Although admittedly applicant does not possess the aforesaid educational qualification, he was initially selected as an understudy to the Fencing Coach in SAI in 1989 and was later appointed as a Fencing Coach there vide letter dated 14.7.92 (Annexure-A) on contract basis on a consolidated monthly payment of Rs.3500/- for one year w.e.f. 1.7.92 with option on either side to terminate the contract with one month notice. The said contract was extended from year to year. By letter dated 17.4.96 (Annexure-A1) he was informed that his contract would not be extended beyond 31.3.97 unless he acquired the required qualification to work as a Fencing Coach, but during hearing we were informed that Respondents had extended the contract for a further period of one year which now expires on 31.3.98.

3. Applicant contends that there is no course in Fencing conducted either by NSIS Patiala nor indeed by any Institute in India, and consequently no other Coach in Fencing has the requisite qualification of Diploma in Coaching. He states that one more coach namely one Shri A. Singh was appointed as Fencing Coach in September, 1995 on contract basis on a consolidated monthly salary of Rs.4500/- which was raised in the second year to

Rs.5500/- . He contends that even in Archery and shooting persons without requisite qualifications (namely Shri Soumandas in Archery and Shri N.S. Rana in Shooting) have been appointed. He states that he had requested respondents through several representations to spare him to a foreign educational institution to enable him to acquire the necessary Diploma, but respondents have not done so. He also contends that normally respondents have not been retrenching employees on account of non-possession of qualification, but have been adjusting them elsewhere as suitable to the qualification possessed.

4. Applicant impugns the condition in para 2 of respondents' order dated 17.4.96 (Annexure-I) informing him that his contract will not be extended beyond 31.3.97 if he does not acquire the requisite qualifications as illegal and arbitrary and states that he has been subjected to intra discipline discrimination vis a vis Shri Anouch Singh as well as inter-discipline discrimination vis a vis a list of coaches (Annexure-8). He alleges that respondents have not taken into account the fact that no Course is available in Fencing discipline in India nor his training as understudy to Foreign Coaches for nearly 3 years in India, nor indeed have they given him any assistance in securing the required diploma

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from an institution abroad. On the other hand he contends that Coaches without requisite qualification have been regularised and promoted and under the circumstances he should also be afforded similar treatment, and if for any reason that were not possible he be adjusted on a post suitable to his qualification, more so as he is now overaged for any employment in Govt. department.

5. Respondents in their reply have contested the O.A. They point out that applicant was engaged on a specific contract on terms and conditions specified in the contract and applicant has no legally enforceable right for continuation under the employment of the respondents on the expiry of the contract period, until and unless the contract is renewed or extended on terms and conditions mutually agreed to by both the parties. They point out that as applicant was not appointed on adhoc / temporary basis, there is no question of his regularisation. It has been stated that by a decision ^{of the} governing body, which was the authority empowered to frame the RRs, the same have been kept in abeyance, and it was decided not to recruit Coaches on a regular or permanent basis but on contract basis on terms and conditions specified in the contract (Annexure-I). As regards Shri Somen Das, respondents state that he was appointed in 1987 itself, when no RRs were in existence. The RRs were framed in 1992 and SAI Conditions of Service and Staff Regulations, 1992 provided that all appointments made before the RRs were notified in 1992 would be

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deemed to have been made under the Rules.

Regarding Shri Amouch Singh it has been stated that he has obtained a degree of Bachelor of Physical Education (BPE) extending over 6 years from IPE Uda where fencing was one of the subjects included for one full year in that degree course, and he has also been engaged on contract basis and will be continued only till his services are required. In Shri N.S. Rana's case respondents stated that he has not been engaged on contract basis and is not their employee. Respondents state that they have no obligation to finance applicant in his effort to obtain the necessary educational qualification and also state that adjustment of persons as suitable to posts can be done only on the basis of their educational qualifications and the provisions of the RRs.

6. Applicant has filed his rejoinder in which he has broadly reiterated the contents of the OA.

7. We have heard applicant's counsel Shri KBS Rajan and respondents' counsel Shri M.K. Gupta. We have also perused the materials on record and given the matter our careful consideration.

8. No doubt RRs had been framed for recruitment of Coaches in SAI but the very authority competent to frame those rules, namely the governing Body had decided to keep those Rules in abeyance and recruit Coaches on contract basis instead. It is not applicant's case that he was recruited pursuant to those RRs before a decision was taken to keep them in abeyance. It is true that

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Regulation 4(ii) of the SAI(Service)bye laws and conditions of Service Regulations, 1992 provides that as there were no RRs framed for filling up the various posts, all appointments made from the date of inception of SAI shall be deemed to have been made under the RRs contained in the schedules of those Bye laws but in the face of applicant's own admission that he was engaged on contract basis (vide representation dated 23.7.94), Regulation 4(ii) would not apply in the facts and circumstances of the particular case. As applicants' appointment was purely contractual in nature on terms and conditions agreed to by the parties to the contract, respondents are on strong legal ground when they assert that applicant has no legally enforceable right to claim regularisation or indeed to compel them to acquire the required qualification of a Diploma or degree in Fencing.

9. Applicant cannot plead discrimination vis a vis Shri Anouch Singh as he like applicant has been appointed on contract basis. Nor can he plead discrimination vis a vis Shri Soumen Das who was appointed on regular basis as Dach in 1987 much before the RRs were framed, or indeed applicant was appointed. If applicant had any grievance about his appointment on contract basis in 1992 vis a vis Shri Soumen Das's appointment on regular basis in 1987, he should have raised his grievance in 1992 itself but he did not do so. He accepted his engagement on contract basis in 1992 and its extension on the same terms and conditions from year to year, and it is now because

of the impugned order dated 17.4.96 informing him that his contract would not be extended unless he acquired the required qualification to work as a Coach that he has approached the Tribunal. Similarly applicant has not in rejoinder explicitly refuted respondents' contention that Shri N.S. Rana has not been appointed as a Coach on contract basis and is not an employee of Respondents.

10. During hearing respondents' counsel Shri Rajan had contended that even after submission of the proposal for appointment of Coaches on contract basis on 5.9.92, for consideration of the Governing Body, respondents had appointed 2 coaches. We had asked respondents to apprise the Tribunal of the factual position on affidavit which respondents have done. In this additional affidavit respondents state that the proposal for approval of the Scheme for engaging Coaches on contract basis alone was submitted to the Governing Body on 5.9.92, but meanwhile it was decided that Coaches already selected and awaiting appointments should be given appointment. Respondents state that 23 Coaches in Cycling discription had been interviewed and selected by the Selection Committee on 25.6.92, and appointments were offered to Sl.No.6 of the merit list, including to one Shri Kuldeep Singh at Sl.No.5 in respect of which our attention had been invited by Shri Rajan. Respondents further states that applicant had been offered an appointment on contract basis even before the proposal to appointment coaches on contract basis had been formulated or submitted to the Governing Body.

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11. Before the Governing Body took the decision to appoint coaches on contract basis by keeping the RRs in abeyance, it is the RRs which held the field, and under the circumstances respondents have not explained how they gave the RRs a go by and appointed applicant on contract basis, even before the proposal to appoint coaches on contract basis had received the Governing Body's approval. It needs no reiteration that all appointing authorities are required to proceed strictly in accordance with the law.

12. Be that as it may, it is not applicant's case that he was appointed in accordance with the RRs because he himself has admitted in his representation dated 28.12.95 that he was appointed on contract basis. That being so, applicant gets no enforceable legal right to compel respondents to retain him on contract basis or indeed to regularise him.

13. Under the circumstances, we find ourselves unable to grant the relief prayed for by the applicant. However, this will not preclude respondents from retaining the applicant in his ^{on the present terms and conditions} existing capacity, or in any other suitable capacity, particularly in the background of the fact that the other Fencing Coach namely Shri Amouch Singh also does not have a degree/diploma in Fencing, even if he possesses a degree of Bachelor of Physical Education, in which Fencing was also one of the subjects taught.

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14. The OA is disposed of in terms of paragraph 13 above. No costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN) (S.R. ADIGE)
MEMBER (J) VICE CHAIRMAN (A).

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