

4

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.541 OF 1993
Cuttack, this the 25th day of January 1999

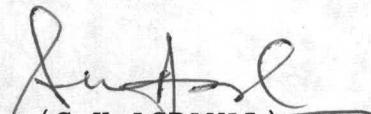
BADRINATH ROUTRAY Applicant

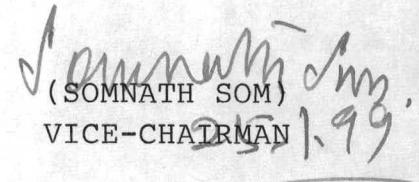
Vrs.

Union of India and another Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(S.K.AGRAWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
25.1.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.541 OF 1993
Cuttack, this the 25th day of January 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)

.....

Badrinath Routray, 22 years
son of R.N.Routray
Jeypur, PO/Via-Balianata,
District-Puri

Applicant

By the Advocate -

M/s A.K.Misra
S.K.Das
S.B.Jena &
J.P.Rath

Vrs.

1.Union of India,
represented through
Central Provident Fund Commissioner,
Central Office,
9th Floor,
Mayurbhanj,
New Delhi-110 001.

2.Regional Provident Fund Commissioner,
Unit-9, Bhubaneswar-7.

Respondents

By the Advocate -

Mr.S.C.Samantray
Addl.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to appoint the petitioner in Group-C (LDC) post in Sportsmen Quota as per the advertisement at Annexure-2. There is also a prayer to quash the letter dated 4.8.1993 (Annexure-8) in which Central Provident Fund Commissioner has denied appointment to the petitioner against the Sportsmen Quota. At the time of

admission of this application, after hearing the learned counsels of both sides, the Tribunal directed that one post of L.D.C. should be kept vacant until further orders.

2. The facts of this case, according to the petitioner, are that he has passed All India Secondary School Examination in 1987 from Sainik School, Bhubaneswar. In 1985 he was declared as the Best Athlete in the Inter Zonal Sainik Schools Athletics Meet at Kapurtala. He represented Orissa in the Third Junior National Athletic Championship in February 1988 at Jalandhar. He stood first in 110 Metres Hurdles Race held in February 1988 at Barabati Stadium, Cuttack, organised by the Orissa Ameteor Athletic Association. He secured third position in 110 Metres Hurdles Race in the East Zone Athletic Meet for Juniors held in July 1989 at Calcutta. He was also selected by the Sports Authority of India to stay in the Sports Authority of India Sports Hostel at Barabati Stadium, Cuttack. In order to encourage sports activity, government of India, Department of Personnel & Administrative Reforms, had issued circular dated 4.8.1980 on appointment of meritorious sportsmen to Groups C and D posts in relaxation of procedure. This policy circular is at Annexure-1. The Regional Provident Fund Commissioner, Bhubaneswar (respondent no.2) issued advertisement which was published in Prajatantra on 23.3.1990 for filling up of the post of L.D.C. for sportsmen who have excelled in 400/800/1500 metre Race, Discuss/Zavelin Throw/Putting the Shot/110 Metres Hurdles/Long Jump. The essential qualification, according to the advertisement, was that sportsmen who have represented the State or the country/University/State School teams in the National or International competition/Inter-University tournament conducted by the Inter University Sports Board/National Sports for Schools conducted by the All India Games Federation are eligible to apply. Accordingly,

S. J. S. S. S. S.

the petitioner applied for the post of L.D.C. in the Sportsmen Quota. On 21.6.1992, the Selection Committee considered 447 applicants and after scrutiny recommended 52 candidates for practical test. The practical test was conducted by six Coaches sponsored by Director of Sports, Government of Orissa. With regard to 110 metres Hurdles Race, the Coach/Examiner was Shri K.C.Panda, Senior Coach in the Barabati Stadium at Cuttack. The petitioner appeared at the selection, i.e., the practical test and according to him, the Selection Committee unanimously recommended several candidates for the posts in order of merit and the petitioner's name, according to him, was recommended at Serial No.1. On 9.9.1992, the Regional Provident Fund Commissioner, Bhubaneswar (respondent no.2) wrote a letter to Central Provident Fund Commissioner (respondent no.1) stating that selection for one post was conducted during the calendar year 1992 and the applicant stood first in the test. It is also stated that the applicant had submitted the necessary forms and certificates, and respondent no.2 forwarded the same to respondent no.1 for approval. This letter is at Annexure-3. A reminder was also sent in letter dated 16.11.1992 (Annexure-4). On 28.1.1993 (Annexure-5) respondent no.2 sent a detailed letter indicating how the applicant had been selected and sought for approval to appoint the applicant under the Sportsmen Quota before the ensuing All India Athletic Meet to be held at Kurukhetra from 20.2.1993. At Annexure-6, the office of respondent no.2 again approached respondent no.1 indicating that originally five candidates were selected and their names were approved by respondent no.1. Of these candidates, four had already joined and the fifth one, one Lal Mohan Mahanta did not turn up to join his appointment. To fill up this remaining vacancy, a proficiency test was conducted on 21.6.1992 and the

S. Jom.

applicant was selected. The proceedings of the Selection Committee were also sent seeking approval of respondent no.1 for appointment of the applicant. This is at Annexure-6. At Annexure-7 is a further reminder dated 7.5.1993. In Annexure-8, respondent no.1 turned down the proposal for appointment of the applicant stating that the applicant had reportedly participated only in junior level sports and the latest event won by him was in the year 1989. As four years have already passed since the applicant has participated in national events and he has never been selected for participation in any senior athletic meet, respondent no.1 indicated that it would not be in the best interest of the organisation to consider his selection at that late stage. Accordingly, respondent no.2 was directed to initiate fresh recruitment process for filling up 5% of the total vacancies of direct recruitment in Groups C and D posts for the year 1993 under Sportsmen Quota. This letter at Annexure-8 is dated 4.8.1993. After this, in Annexure-9 respondent no.2 issued fresh advertisement for filling up of the sportsmen quota. The applicant's case is that in response to the advertisement he applied for the post of L.D.C. in Sportsmen Quota. He had the necessary sports background as indicated in the advertisement. He was duly selected by the Selection Committee after appearing at a practical test. His name was recommended at serial no.1 in the select list. But for grounds which are not genuine, no appointment order was given to him. That is how he has come up with the aforesaid prayers.

S.JM

3. The respondents have filed an elaborate counter in which they have stated that in pursuance of the Department of Personnel's Office Memorandum dated 4.8.1980 the Central Provident Fund Commissioner has issued circular dated 20.9.1990 for appointment of meritorious sportsmen to Groups C and D posts to the extent of 5% of vacancies arising in a calendar year for which direct recruitment is made. The purpose of such

9
recruitment is to build up a team for making selection of sportsmen in the quota prescribed. The concession for appointment of meritorious sportsmen against 5% of vacancies is not a reservation in service and if vacancies identified for meritorious sportsmen are not filled up, then the vacancies will not be carried forward to the subsequent year. It is further submitted that the prerogative to decide for which event a sports person will be selected rests with the organisation and no candidate can demand that in the particular sports in which he is proficient should be the one selected by the organisation. Department of Personnel Office Memorandum dated 4.8.1980 lists out the various disciplines and these have been expanded by another circular dated 18.9.1985 and it is for the Department to choose the particular event. It is further stated that such appointment of sports person is concessional in nature and the candidates cannot demand as of right such appointment. Besides, a candidate, who has attended the recruitment process, cannot claim appointment by virtue of such attending the selection process. The relevant portion of page 2 of the counter is quoted below:

J Jm
".....The Selection Committee constituted under the circular dated 20.9.90 is the final authority in deciding the events in which selection of candidates is to be recommended to the respondent No.1 for appointment. The decision regarding events in which meritorious sportsmen could be appointed is within the discretionary powers of the respondent No.1....."

It has been further stated that because a selected candidate of 1991 did not join, the vacancy should not have been carried forward to 1992 by respondent no.2. Respondent no.1, who is the competent authority, decided in larger public interest to extend the selection to a wider section

by ordering that fresh recruitment process should be initiated to fill up the sportsmen quota and this has been done by issuing the advertisement at Annexure-9 of the O.A. and no fault can be found with that. It is further stated that Regional Provident Fund Commissioner, Orissa, has no authority to select candidates for the sportsmen quota. He is only to shortlist the candidate and the final selection is to be made by another Selection Committee at Delhi headed by Additional Central Provident Fund Commissioner with two others as Members. It is further stated that Selection Committee had already considered appointment against vacancies available under sportsmen quota for the years 1990 and 1991 and had originally approved appointment of two candidates for 1990 and three candidates for 1991 under sportsmen quota. Of the three candidates of 1991 the Selection Committee had recommended three names to respondent no.1. Respondent no.1 communicated approval for appointing five candidates against the vacancies existing for the year 1990 and 1991. But one of the candidates selected for appointment against vacancy of 1991 did not join and respondent no.2, Regional Provident Fund Commissioner, Bhubaneswar, initiated a fresh process for recruitment for filling up of the single vacancy. This, according to the counter, is beyond the powers of respondent no.2. It is further submitted that the petitioner's participation in sports events was in 1989 and prior to that and in the meantime four years have passed. The applicant had in the meantime discontinued participating in sports events and therefore, his candidature was not considered. On the above grounds, the respondents have opposed the prayers of the applicant.

13

4. The applicant has filed a rejoinder in which he has reiterated the points made in his O.A. and it is not necessary to recount the averments made in the rejoinder.

5. We have heard Shri Aswini Kumar Misra, the learned counsel for the petitioner and Shri S.C.Samantray, the learned Additional Standing Counsel appearing on behalf of the respondents, and have also perused the records.

6. It is clear from perusal of records that the Department of Personnel's Office Memorandum dated 4.8.1980 lists out a large number of sports activities from Athletics (including Track and Field events to Chess) and it is for the authorities in the concerned Department to decide for what discipline they would give concessional appointment to sportsmen. But this point elaborately made in the counter of the respondents is not relevant at all because here in the original advertisement at Annexure-2, "110 metres hurdeles" has been specifically mentioned and the applicant has participated in that event only. The second point made by the respondents in their counter is that according to the instructions of Central Provident Fund Commissioner vacancies arising in the sports quota in a particular year, if remaining unfilled, should not be carried forward to the next year. This is not specifically mentioned in the circular dated 20.9.1990 of the Central Provident Fund Commissioner which is at Annexure-R/1. It has been, therefore, submitted by the learned Additional Standing Counsel that for the single unfilled vacancy out of the three vacancies of 1991, a fresh recruitment process should not have been initiated by respondent no.2. It is further submitted that for filling up of this vacancy respondent no.1 has ordered fresh recruitment process along with vacancies of 1993 to widen the field of choice and this being in the larger interest of sportsmen seeking concessional appointment, no exception can be taken

S. Jam
ly

to this. Thus the stand of the respondents is that respondent no.2 should not have held a fresh test for the unfilled vacancy of 1991 in 1992 as the vacancy is not to be carried forward. As already noted, the fact that the vacancy cannot be carried forward has not been specifically mentioned in the circular of the Central Provident Fund Commissioner referred to earlier. Moreover, from page 7 of the counter, it appears that earlier the sportsmen quota vacancies for the years 1990 and 1991 were sought to be filled up together and accordingly two candidates for 1990 and three candidates for 1991 were recommended. This itself shows that in the past the vacancies for the year 1990 were carried forward to 1991. For the three vacancies of 1991, three names were recommended, but the third candidate did not join and that is how a fresh test was made in which the applicant excelled himself and was recommended as the first name in order of merit, vide proceedings of the Selection Committee at Annexure-R/III. Because of the above, it cannot be held that vacancies for concessional appointment of sportsmen for one year will have to be filled in that year itself. As regards the stand of the applicant that respondent no.2 was not authorised to conduct a fresh test to fill up the unfilled vacancy of 1991, it is seen from the record that for the vacancies of 1990 as also of 1991, respondent no.2 initiated the recruitment process, held the test and recommended names to respondent no.1, which is exactly what was done in respect of the unfilled vacancy of 1991 in which the applicant was recommended. No fault, therefore, can be found with the action of respondent no.2 in this regard.

7. Coming to annexure-8 it is seen that in spite of several recommendations and reminders from the local office, the approval for appointment of the applicant did not come from respondent no.1 and in Annexure-8 the proposal was

13

turned down on the ground that the applicant won the latest event only in the year 1989 and as four years have passed, it would not be in the best interest of the organisation to consider his selection at a late stage. It was also noted that the applicant had never been selected for participation in any Senior Athletic Meet. As against this, the local office has pointed out that in the test held on 26.2.1992 the applicant had cleared 100 metres hurdles in 16.8 seconds against which the organisation's record is 17.4 seconds. Thus, the performance of the applicant in 110 metres hurdles is better than the past performance available in the organisation. The respondents in page 2 of the counter, portion of which has been quoted by us earlier, has mentioned that the Selection Committee is the final authority in deciding the events in which selection of candidates is to be recommended and accordingly, the Selection Committee had chosen 110 metres hurdles. The respondents in paragraph 8 of the counter have mentioned as follows:

".....The intention behind allowing reservation to appointment under sports quota is not for rehabilitating sports personnel retired from sports activities."

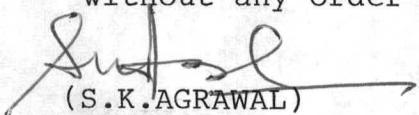
It is also mentioned in this paragraph that the applicant has discontinued participating in sports events. The applicant in his rejoinder has mentioned that he is continuing his sports activities and he has been improving his performance in the Meet organised by Orissa Amateur Athletic Association. In November 1996 he stood first in 110 metres hurdles clocking the distance at 16.0 seconds. The certificate of merit is at Annexure-X/1. There is another certificate at Annexure-X/2 in which he has been given certificate of merit for standing first in 400 metres hurdles for men with 59.0 seconds. This disproves the contention of the respondents that the applicant has discontinued sports activities after 1989 and it will not be in the best interest of the organisation to

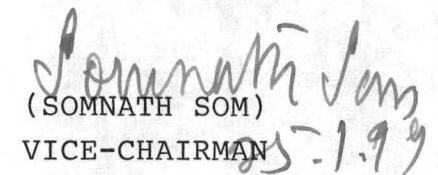
S. Som

take him as L.D.C. It is seen that at the time of physical test on 26.2.1992 he cleared 110 metres hurdles at 16.8 seconds and he has improved upon his performance very substantially in 1996 by clocking 16.0 seconds in the same event. This contention of the respondents is, therefore, held to be without any merit.

8. Lastly it is contended by the respondents that appointment of sports persons is a concessional appointment and this is not a case of reservation in appointment. Even if it is taken that this is not a reservation in appointment but only a case of concessional appointment, then a person who has been asked to apply for a post in the sports quota in respect of any designated event and has applied and has come out successful in the test has to be given the appointment in terms of the concessional appointment. The respondents have made the point that the Regional Provident Fund Commissioner and his Selection Committee are only recommending authorities and the Committee in the office of respondent no.1 is the final authority. Even if this be so, it is seen that in the past cases the Committee at the Head Office has approved appointment of persons recommended by the local Selection Committee. The instant case is the only exception and the grounds given that he has discontinued sports activities and his past performance will not be in the best interest of the organisation have been proved to be incorrect as mentioned in the discussions above. In consideration of the above, we quash the order at Annexure-8 as the grounds on which the order at Annexure-8 has been issued are proved to be incorrect. Respondent no.1 is directed to approve the appointment of the applicant in the sports quota of 1991 for which one post has been kept vacant by virtue of the order dated 6.10.1993 of the Tribunal, within a period of 30 (thirty) days from the date of receipt of copy of this order.

9. In the result, therefore, the application succeeds and is allowed, but, under the circumstances, without any order as to costs.


(S.K.AGRAWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
15-1-99

AN/PS