

9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

ORIGINAL APPLICATION NO. 159 OF 1999

Cuttack, this the 18th September, 2003

Jitendra Kumar Routray Applicant


Vs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? ye
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? ye


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

10

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

ORIGINAL APPLICATION NO. 159 OF 1999
Cuttack, this the 18th September, 2003

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

.....

Jitendra Kumar Routray, aged about 21 years, son of Sukadev Routray,
of Plot No. 982/2522, Rangani Sahi, P.O.Barmunda, Bhubaneswar,
District Khurda Applicant.

Vs.

1. Union of India, represented through Chief Post Master General,
Orissa Circle, Bhubaneswar, District Khurda.
2. The Chief Post Master General, Orissa circle, Bhubaneswar, District
Khurda.
3. Assistant Director (OL), Secretary, Orissa Postal Circle Sports Board,
Office of the CPMG, Orissa, Bhubaneswar, District Khurda
4. Rasabihari Padhi, s/o Rama Hari Padhi, R/O Plot No.23, Balichhak
Sahi, Jatni, Dist.Khurda, Orissa. (Intervenor)

..... Respondents

Advocates for applicant	-	M/s S.S.Das, B.R.Das & P.R.Mohanty
Advocate for Respondent Nos. 1 to 3	-	Mr.A.K.Bose, Sr.CGSC
Advocate for Intervenor-Respondent 4	-	Mr.D.P.Dhalsamant.

.....

6

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This Original Application was disposed by the Tribunal by order dated 15.10.1999. However, one Shri Rasabihari Padhi, son of Rama Hari Padhi, who was not a party in the Original Application, challenged the said order in a writ petition, registered as OJC No. 14089 of 1999, before the Hon'ble High Court of Orissa. The Hon'ble High Court dismissed the writ petition by the order dated 28.2.2001 on the grounds that the petitioner-Shri Rasabihari Padhi was not a party before the Tribunal and that he was neither called to the interview in question, nor did he appear in the said interview. Thereafter, Shri Padhi filed Special Leave to Appeal (Civil) No. 5496 of 2001 before the Hon'ble Supreme Court against order dated 28.2.2001 passed by the Hon'ble High Court. The Hon'ble Supreme Court by order dated 24.1.2003 allowed the Civil Appeal, set aside the order of the Hon'ble High Court and that of the Tribunal, and remitted the matter to the Tribunal for fresh consideration after impleading Shri Rasabihari Padhi as a Respondent.



It is in this background that we have heard the matter in OA No. 159 of 1999, impleading Shri Rasabihari Padhi as Respondent No.4.

2. The case of the intervener-Respondent No.4, as disclosed by him in his counter filed on 28.7.2003, is that Respondent No.3 with ill-motive had issued call letter to the applicant on 18.11.1998 for attending performance trial in Carrom discipline, without issuing such call letter to intervener-Respondent No.4. That call letter was issued to the applicant only one day after the last date of submission of applications. He further alleged that Respondent No.3, without deciding as to who would conduct the performance trial, had issued call letter to the applicant which smacks of mala fide. It was only on 18.11.1998 that Respondent No.3 had approached the Secretary, Orissa State Carrom Association, to conduct the performance trial to be held on 19.11.1998 and obtained a reply from him wherein he expressed his inability to accept the offer. He nominated in his place one Shri S.S.Samant, Assistant Secretary of the Association to conduct the trial. The intervener, on coming to know about the performance trial on 19.11.1998, made a representation to Respondent No.2 requesting him to enquire into the matter as to why he was not called for the performance trial. It was because of this representation from intervenor-Respondent No.4 that the performance trial held on

4

13

19.11.1998 was cancelled and a fresh performance trial was ordered to be held on 4.5.1999 and 5.5.1999. The intervener-Respondent No.4 has alleged that Respondent No.3 had suppressed this fact in the counter that Respondent No.2 had cancelled the performance trial held on 19.11.1998 due to some mal-practice adopted in the process of selection. The intervener has urged that he had submitted his application with all the requisite documents within the prescribed period and that is why he was called for the performance trial on 4.5.1999 and 5.5.1999. He has thus submitted that if he could be called for the performance trial in May 1999, there was no reason why he was not called for the performance trial which was held on 19.11.1998.

3. Shri A.K.Bose, the learned Senior Standing Counsel, appearing for Respondent Nos. 1 to 3, vehemently objected to the allegations and to prove his point, he placed before us the applications received from all the candidates in response to the advertisement, the Register maintained by the Respondents where the applications received in response to the advertisement were documented, the minutes of the meeting of the Circle Relaxation Committee authorized to process the applications of the candidates and prepared the panel of short listed candidates for consideration of the High Power Committee for selection and also the



relevant file in which the representation dated 4.12.1998 submitted by the intervener-Respondent No.4 was considered by Respondent No.1. For Carrom discipline the Respondents had obtained and placed before the Circle Relaxation Committee sixteen applications including the one submitted by the intervener-Respondent No.4. The Committee had found the application of the intervener-Respondent No.4 deficient on two grounds, namely, that his date of birth being 9.6.1963 he was over aged and that he had not submitted educational certificates along with his application as required. Those were the reasons why he was not issued with any call letter for appearing in the performance trial on 19.11.1998.

5. We have gone through the representation purported to have been submitted by the intervener-Respondent No.4 on 4.12.1998 enclosing the filled up application form of the candidate where the date of submission noted 4.12.98 but overwritten as 13.11.98. We also find that the certificates which were submitted by the intervener-Respondent No.4 along with his letter dated 4.12.98/13.11.98 did not bear attestation on any one of them, and without attestation the certificates could not have been accepted by the Respondents at the scrutiny stage as genuine. We also notice that Respondent No.2, while ordering re-take of the performance trial on the basis of the representation received from the



intervener, did not exercise due diligence in scrutinizing the facts and circumstances of the case. Respondent No.2 also did not refer the matter to the Circle Relaxation Committee, headed by a senior officer of the Respondent-Department and which was responsible for scrutinizing all the applications received in response to the advertisement for their considered opinion before he could conclude that the performance trial need to be taken afresh for which good reasons existed. In other words, Respondent No.2 did not apply his mind truly and properly and thereby erred in recalling the test held on 19.11.1998. Having gone through the original records of the case, the applications of all the candidates and the reports of the Committee, we are of the view that the intervener-Respondent No.4 has failed to establish any case of foul-play in the selection of the candidates for Carrom discipline. After going through the records, we are left in no doubt that the candidature of the intervener-Respondent No.4, which was placed before the Circle Relaxation Committee, contained such information and materials submitted by him as would show that he was over-aged and he did not submit the requisite certificates in support of his claim.

5. Now we would deal with the facts and issues raised by the applicant and the Respondent-Department. In this Original Application

9

the applicant has prayed for a direction to the Respondent-Department to fill up the vacant posts, as advertised under Annexure 1, by the successful candidates including the applicant on the basis of the performance trial, without holding any further selection for the same posts.

6. Facts of this case, according to the applicant, are that the Chief Post Master General, Orissa Circle, issued an advertisement in *Prajatantra*, dated 30.10.1998 (Annexure 1) calling for applications from outstanding sports persons in certain disciplines for appointment as Postal Assistants/Sorting Assistants. In this advertisement, two posts have been shown against the discipline Carrom (Men). It was also indicated that the selection and appointment for sports persons will be made in relaxation of the normal rules on the basis of performance test. The applicant has stated that he is an outstanding carom player, having been the sub-Junior Champion in the All Orissa Open Tournament. In 1992-93 and 1993-94 the applicant was Sub-Junior Champion of the State. In 1994-95 he was Double's Champion in the Inter District & All Orissa Open Tournament. In 1997-98 he secured the third position in the selection trial conducted by the State Association to participate in the 28th Senior National and Inter State Carrom Championship. In 1998-99 he was State No.1 and represented the State of Orissa in All India

Federation Cup Carrom Championship held at Baruni in Bihar and had also participated in the International 10th Anniversary SURCO All India Carrom Tournament, 1998. He also secured a White Slam in 27th Senior Nationals, 1998 at Akola and was adjudicated as the best under 16 in the All India Junior Boys Singles in the year 1995-96 at Trivandrum. The testimonials have been filed by him at Annexure 3 series. The petitioner applied in response to the advertisement at Annexure 1 and Respondent No.2 invited the applicant to attend the performance trial in the office of Chief Post Master General on 19.11.1998. After completion of performance test the applicant was verbally assured that he would be given appointment, but no such order was given to him. His father made a representation (Annexure 5) followed by another representation made by the applicant (Annexure 6). The applicant has made various averments how the test was held. He has also stated that the respondents with an ulterior motive to accommodate one Rasabihari Padhi, are trying to cancel the selection without any reason. It is further stated that Rasabihari Padhi had submitted an incomplete application and was also over aged and that is why he was not called to the test. The applicant has further stated that on the basis of his performance in the test he has a

9

reasonable expectation of getting appointment and that is why he has approached the Tribunal with the prayers referred to earlier.

7. The Respondents in their counter have stated that in the advertisement itself it was indicated that the Chief Post Master General reserves the right to select or not to select any sports person or to reduce or increase the number of candidates for selection in each discipline depending on the standards of candidates available. It is further stated that in accordance with the instructions besides performance test, an interview has to be conducted and empanelment should be based on performance test and interview. It is further stated that the Secretary, Orissa State Carrom Association was requested in letter dated 18.11.1998 (Annexure R/4) to attend and supervise the performance trial. But on account of his pre-occupation he nominated his Assistant Secretary, who is a national level player and an accredited national carrom referee to conduct the performance trial. After conclusion of the performance trial, the results were placed before the Circle Relaxation Committee for approval. The Circle Relaxation Committee did not accept the performance test on the ground that the Assistant Secretary who supervised the trial was an employee of the office of Chief postmaster General as that may raise doubt on the fairness in selection. Accordingly,

2

a fresh performance test was decided to be held for which all the candidates including the applicant were called upon to participate (Annexure R/6). The Respondents have stated that they had no ulterior motive to accommodate some other person and this assertion of the applicant has been denied.

8. In his rejoinder the applicant has reiterated many of his submissions made in his O.A. and has stated that the Chief Post Master General has right to select or not to select a person only on the ground of standard of performance of the candidates. It is also stated that in the advertisement, there was no mention of any interview and it was clearly written that the selection will be made on the basis of performance test and therefore, the plea of the Respondents that there has to be a fresh test as also an interview is an afterthought. On the above grounds, the applicant has reiterated his prayer in the rejoinder.

9. We have heard Shri S.S.Das, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the Respondent Nos.1 to 3 and Shri D.P.Dhalsamant, the learned counsel appearing for intervener-Respondent No.4.

10. The first aspect of the matter is that the Respondents have stated that the performance trial which was held on 19.11.1998 was



conducted by one Sasanka Sekhar Samanta, an employee of the Department and therefore, the Circle Relaxation Committee considered that it could not have been fair and decided to hold a fresh performance test under the supervision of an expert not related to the Department. We note from the counter filed by the Respondents that initially the Secretary of Orissa State Carrom Association was requested to attend and supervise the performance trial in the letter dated 18.11.1998 at Annexure R/4 by the Assistant Director (OL) and Secretary, OCPSB, office of the Chief Post Master General, Orissa Circle, Bhubaneswar. The General Secretary of Orissa State Carrom Association in his letter dated 18.11.1998 had indicated that he was deputing Sasanka Sekhar Samanta, Assistant Secretary of the Association and expert enough to supervise the trial to be held on 19.11.1998. From these two letters, it appears that the departmental authorities decided to hold the performance test on 19.11.1998 and wrote to the Secretary, Orissa State Carrom Association only on the previous day, i.e., on 18.11.1998 asking him to come and supervise the performance test. Under the circumstances, the response of the General Secretary, Orissa State Carrom Association stating that due to other pre-occupation he would not be able to supervise the performance test to be conducted on 19.11.1998 is only but natural. It is further seen





from Annexure R/5 that the General Secretary, Orissa State Carrom Association nominated the Assistant Secretary, Shri Sasanka Sekhar Samanta to conduct the performance trial. The Respondents' stand is that since Shri Sasanka Sekhar Samanta being an employee of the Department, another test was decided to be held in order to conduct a fair trial. The applicant in his rejoinder has given some details as to how the trial was conducted in fair and transparent manner. The applicant has also stated that after the game the participants were asked to sign on the score sheets. These averments of the applicant have not been denied by the Respondents in their counter. The Respondents have also not stated that the performance trial was not held in a fair manner. There is no averment that any of the contestants or for that matter any outsider complained about the manner of conducting the performance trial and lack of fairness in the course of performance trial. We are to keep these facts in view in deciding the matter. As earlier noted, the respondents in their letter dated 13.4.1999 had cancelled the trial held on 19.11.1998. They had also written a letter on 8.4.1999 to the Secretary, Orissa State Carrom Association once again which is at Annexure R/7. From this letter, it is seen that the Secretary, Orissa State Carrom Association has been requested to direct a suitable technical expert who should not be an



employee of the Department of Posts to attend and supervise the game on 4th and 5th of May 1999. After considering all the aspects of the case, we are of the view that because in the earlier trial the Secretary, Orissa State Carrom Association could not himself supervise the performance trial could not be a valid ground for cancelling the performance trial. The technical expert for the trial on 19.11.98 was nominated by the Secretary of the State Carrom Association himself. That being the case the Circle Relaxation Committee was not competent to sit on judgment on his decision as they had no technical expertise in the matter. In case of any doubt they could have sought for the advice of the State Association instead of going on their own steam and fouling the whole process in end. The fact that a national carom referee had supervised the performance test should go to make the decision to annul the performance trial of 19.11.98 as capricious and inexpedient, more so in the absence of any allegation or complaint against its conduct. In view of this, we have no hesitation in holding that the cancellation of the performance trial conducted on 19.11.1998 on the sole ground that the person who supervised the trial on being duly nominated by Orissa State Carrom Association happened to be an employee of the office of Chief Post



Master General, is not sustainable either in the eyes of law or in the facts and circumstances of the case.

11. The second aspect is that the Respondents have stated that besides the performance trial they would hold an interview. In support of this, the Respondents have enclosed the relevant extract from Swamy's Compilation on Reservation and Concession in Government Service at Annexure R/2. It has been pointed out by the applicant in his rejoinder that in the advertisement there was no mention of an interview and this point has been brought in the counter as an afterthought to deprive the applicant of his chance of getting an appointment. In this connection, we note that the Respondents have not enclosed or even quoted the circular, if any, providing that besides the performance trial, there should be an interview. It is also to be noted that in the advertisement at Annexure-1 there was no mention that besides the performance trial there would be an interview. On the contrary, in the advertisement it was specifically mentioned that "selection of the outstanding sportsmen for appointment in relaxation of normal rule will be made on the basis of performance test". From this it is clear that the candidates were not informed either in the advertisement or in the notice calling them to the performance test at Annexure 4 that besides the performance test there would be an

E

interview. Even in their counter, the Respondents are silent as to the point regarding how much mark, if at all, had been earmarked for the performance test and how many marks for the interview, if at all it was decided from the beginning to hold such an interview. Under these circumstances, we have no hesitation in holding that the plea of holding an interview is an afterthought, more so in the absence of any mention of interview in the advertisement as also in the call letter. In view of the above, we hold that the action of the Respondents in canceling the performance test and selection held on 19.11.1998 is illegal and the same is accordingly quashed.

12. In consideration of all the above, the Respondents are directed to work out the selection for the post under the discipline of Carrom in accordance with the performance test held on 19.11.1998 within a period of sixty days from the date of receipt of copy of this order.

13. In the result, therefore, the Original Application is allowed but without any order as to costs.


(M.R. MOHANTY)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

AN/PS