

10
16

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.28/2000

Cuttack, this the ~~8th~~ day of July, 2004

Raj S. Subramaniam Applicant

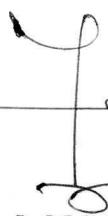
Vrs.

Union of India & Others Respondent

FOR INSTRUCTIONS

(1) Whether it be referred to the Reporters or not? Ys

(2) Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not? Ys


M.R. MOHANTY
08/07/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.28/2000

Cuttack, this the 8th day of July, 2004

CORAM:

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

Raj S. Subramaniam, Aged about 29 years, S/o R.S. Mani,
Resident of Nagara Lane, Machhua Bazar, P.O. Buxibazar, Dist-
Cuttack.

..... Applicant.

By the Advocate(s) Mr. P.K. Mohapatra

-Vrs-

1. Union of India, represented through the Comptroller & Auditor General of India, 10-Bahadur Saha Zafar Marg, Indraprasta, Head Post Office, New Delhi (India)
2. Accountant General (Audit-I), Orissa, Bhubaneswar

✓

12 2

3. Amit Kumar Patjoshi, Auditor in the Office of the
Accountant General, Audit-I, Orissa, Bhubaneswar, Dist-
Khurda.

..... Respondent(s)

By the advocate(s) Mr. A.K.Bose,

ORDER

SHRI B.N. SOM, VICE-CHAIRMAN:

This O.A. has been filed by Shri R.S. Subramaniam, being aggrieved by the action of the Respondent No.2 in not appointing him to the post of Auditor though he stood first in the recruitment test for sports quota held by Respondent No.2 on 18/19.12.99 at Bhubaneswar.

2. The grievance of the applicant is that although he possesses exceptional qualification in the field of sports, having participated in National Sports/Games for Schools, Inter-University Tournaments and in National & International competition in Table Tennis and had secured highest marks in the recruitment test including field trial, he was not selected for the sports quota vacancy in Table Tennis and denied appointment in Respondent Department. His allegation is that the Respondent Department having not given required weightage to the experience and achievements

✓

of the applicant for representing the State of Orissa since 1992 for 12 consecutive times at University level, State level and National level in Table Tennis discipline, they have acted in violation of the guidelines/rules prescribed in this regard. His non-selection is an act of colourable exercise of power and, therefore, illegal and arbitrary.

3. The Respondent Department have contested this O.A. in all respects. They have denied that they had contravened the laid down procedure for recruitment of sports quota candidates for which they had held recruitment test on 18/19.12.99. They have also explained in their counter in detail the method of selection followed by them. They have stated that the candidates were assessed not only on the basis of field trial, the certificates awarded by the competent sports authorities to the candidates, but also on the basis of their performance before the Selection Board. Based on these selection parameters, 3 best candidates out of 8 were selected for appointment. As the applicant could not secure enough marks to obtain a position within the number of vacancy, he was not selected. They have also referred to the decision of Chandigarh Bench in O.A.No.1015/HP/98, dated 23.2.2000, *Anurag Sharma v. Comptroller & Auditor General of India and others*, where the Tribunal had upheld that "prescription of marks for viva voce, therefore, cannot be assailed as arbitrary or irrational". They have

M

argued that as the selection process had not been found bad by this Tribunal earlier in this case, in the present case also it cannot assailed on the ground that selection process was defective.

4. We have heard the Ld. Counsel for the rival parties and also perused the records placed before us. We had also called for the report of the Selection Board along with the assessment sheet and found that all the candidates were assessed by the Selection Board and awarded marks on the basis of the parameters, set for this purpose by the Respondent Department.

5. The learned counsel for the applicant has very stoutly submitted that the applicant who is a holder of a Masters degree in Business Administration from the Utkal University and who had been representing the State of Orissa in Table Tennis at National level and who had at the field trial ranked first among the competitors, could not have been left out of the selection except on account of bias or arbitrariness in selection. He had also pointed out that one female candidate for Badminton discipline, although did not participate in the selection trial, was selected for appointment against one of the posts reserved under Sports Quota. He further stated that Respondent No.3, who was selected, had participated only in one National Junior Game in Badminton which was held in 1997. On the other hand, the applicant, who had participated in the National games representing Orissa

State since 1992, was not found meritorious enough to be offered an appointment against the sports quota.

6. The Respondents have in their counter drawn our notice to the decisions in *Dalpat Abashed Solaunke vrs. Dr.B.S.Mahajan, (1990) 1 SCC 305*, *Indian Airlines Corporation vrs. K.C.Shukla, (1993) 23 ATC 407*, and *Omprakash Popli v. Delhi Stock Exchange Association Ltd.,(1994) 2 SCC 117*, that it is not the function of the court to hear appeals over the decisions of the Selection Committee and to scrutinize the relative merits of the candidates. They have also drawn our notice to the decision of Chandigarh Bench, as stated earlier. While the Respondents have denied all the allegations, they have not answered clearly if the female candidate for the Badminton discipline did not participate in trial, or if Respondent No.3 had participated in Junior National game in Badminton held in the year 1997 only. Neither in their counter nor during their oral submission any reason was available as to why the applicant who had represented the State at National forum for 12 long years was not adjudged as the most meritorious sportsman in Table Tennis in Orissa to be recruited against sports quota. We have, therefore, gone through the various instructions issued by the Government of India as well as Respondent-Department



regarding recruitment/appointment of "meritorious sports persons" to Groups C and D posts in relaxation of the recruitment procedure.

7. In *Anurag Sharma's case (supra)* Chandigarh Bench held that there was no arbitrariness or irrationality in the selection process adopted by the Selection Committee. The decision in that case, however, does not take away the scope of judicial review of the selection of meritorious sports persons made by the Accountant General, Orissa, because the allegation of colourable exercise of power has been brought against the Respondents and we are bound to look into the allegations. We have also observed at paragraph 6 above that the allegation levelled by the applicant had not been answered in a clear-cut manner by the Respondents. The applicant has mentioned repeatedly that he has been representing the State at the National Level for seven years. He had also represented Utkal University in his student days. In the circumstances, his plea that having stood first in the field trial taken under the supervision of the experts called from the distinguished sports bodies like National Institute of Sports, if he could not be selected as the meritorious sports person in Table Tennis by the Respondent-Department, such a decision is bound to be called arbitrary and bereft of credibility. We had, therefore, called for the proceedings of the Selection Committee to look into the worthiness of the allegations. From the minutes

M

of the Selection Committee, we find that the candidates, belonging to Table tennis discipline, who reached the final stage and faced interview were, graded as follows:

Sl.No.	Name	Marks in Field trial (30)	Marks for Certification (30)	Interview (20)	Total(80)
1	Shri Rakesh Kr.Pradhan	18.5	20	13	51.5(52)
2	Miss.Smita Choudhury	22.75	20	10	52.75(53)
3	Shri Kedar Chandra Pagal	21.25	20	12.25	53.50(54)
4	Shri Raj S.Subramanian	26	20	06	52

The candidates at Sl.Nos.2 and 3 were selected. The applicant, who was not successful because his performance before the Selection Board was inferior to the other candidates who, however, had scored much less marks at the field trial. His performance as a sports person was superior to the other two who were selected, but because of securing 30% marks in

interview he was left out of the reckoning. The applicant had, therefore, alleged that he was not selected because of bias on the part of the Selection Board. The learned counsel for the Respondent-Department had defended the allocation of 25% of marks on the ground that after some years the candidates selected against sports quota have to work as Auditors and therefore, the Selection Board while interviewing the candidates assessed their potential to function as Auditors. This view was upheld by the Chandigarh Bench of the Tribunal. We have great respect for the opinion expressed in *Anurag Sharma's case (supra)*. But the facts of the present case persuaded us to go into the question as to whether allocation of 25% for interview leaves room for arbitrariness. As we have stated earlier, the Respondents have tried to defend the allocation of 25% marks for interview on the ground that the candidates are also to be assessed to find out if they have potential for becoming good Auditors in due course. We are unable to accept this contention as we find from a perusal of the various circulars issued by the office of the Comptroller and Auditor General of India regarding procedure of selection of meritorious sports persons for appointment to Groups C and D posts in relaxation of the recruitment procedure. In this connection, we would also refer to the letter dated 23.2.1993 wherein three parameters according to which the sports quota

recruitment has to be carried out have been spelt out. By means of two of these parameters the candidates' quality as sports persons are assessed and his non-sports qualities to be assessed by the Selection Committee by means of interview. For the first two parameters 30 marks have been allocated and for the interview 20 marks have been allocated. In *Anurag Sharma's case (supra)* it was submitted that the objective of Selection Board was to find out the potentiality of the sports persons to be able to become Auditors in that organisation in future. However, from a perusal of the circular dated 23.2.1993 we have no doubt that the Tribunal was misled substantially in this regard. In fact, as we have stated earlier, the instructions of the Comptroller & Auditor General in that letter are that the Interview Board should find out the standard of general awareness of the sports persons and that no marks should be allowed on the basis of educational qualification. Here we would also like to recall what the Apex Court has laid down in *D.V.Bakshi v. Union of India*, AIR 1993 SC 2374:

"It is, therefore, clear that no hard and fast rule can be laid down in this behalf as much would depend on the nature of performance expected for responsibility to be handed by candidate after his selection and entry into the establishment. The method of evaluation would, therefore, vary and cannot be

a matter of any straitjacket formula. The weight to be given to the performance at the interview would depend on the nature of duties, responsibilities and functions to be handled after selection." (Emphasis supplied)

8. It is well known that the Government of India has introduced the scheme of recruitment of various sports persons in Government Departments/Organisations with a view to encourage development of sports in the country. In pursuance of this policy, different Departments and organisations have been building up teams in their organisations in various sports disciplines like Hockey, Football, Cricket, Badminton, Table Tennis, Volleyball, etc. In sync with the objective of the scheme of recruiting meritorious sports person to encourage interest in sports, more weightage has to be given to the sports qualities of the candidates and not to their non-sports qualities. In other words, the distribution of marks among the three parameters should be made in such a way that the marks at the interview should not be able to make or mar a candidate. The selection should not be tilted on his performance before the Interview Board. It is also interesting to note that both in the case of *Anurag Sharma* and also in the case of the applicant, they were not selected because they fared badly before the Interview Board. It is also well

known that most of the sportsmen by nature are shy. But a shy candidate is not liked by any Interview Board and therefore, it is unlikely that he will be finding favour with the interview Board. But that shy person in the field will behave like a lion. Any selection process which overlooks this aspect of real life situation would always face criticism.

9. The question, therefore, arises whether the allocation of 20 marks for interview out of total marks of 80 is unreasonable and disproportionately excessive. In the case of *Satpal v. State of Haryana*, 1995 SCC (1) Supp.206, it has been held that where the marks allotted for viva voce test are disproportionately excessive, it would tend to arbitrariness. Since the objective of this recruitment exercise is to recruit the most meritorious sports persons, the allocation of marks for performance before the Selection Board should not be such that performance before that Board could become the decider about the ultimate placement of a candidate in the select list, as it had happened in the instant case. We, therefore, hold that the third parameter, i.e., performance before the Selection Board, should play only a supportive role to the recommendation made by the experts at the field trial and nothing more. The Apex Court has held that interview marks should not be more than 15% toward off bias or arbitrariness in selection. In this



case, we find that the allocation of 20 marks for viva voce is disproportionate because viva voce being subjective, the achievement of a candidate in sports and his performance in the field trial can be negatived by his quality of performance before the Interview Board. We have also found that if the viva voce marks are reduced from 25% to 15% of the total marks, the applicant would have found a place in the select list.

10. We would like to recall here what the Apex Court has observed in the case of *Lila Dhar v. State of Rajasthan*, AIR 1981 SC 1777, that the object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. As awarding of 25% marks for interview leaves enough room for patronage and favouritism and as the object of recruitment in this case is to select the most meritorious sportsperson in Table Tennis into public service, it is a fit case to carry out a review as to why a meritorious sportsman who has represented the University/State for 12 consecutive years and who proved his worth in the field trial could not be selected. Having regard to the above facts and circumstances of the case and also what the Apex Court had observed in the case of *Indian Airlines Corporation v. (Capt.) K.C. Shukla*, 1993 (1) SCC 17, that

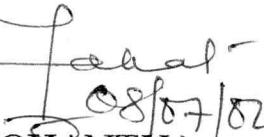


23

13

efforts should be made to limit scope of arbitrariness in interview by narrowing down the proportion as various factors are likely to creep in. We have no hesitation to say that the non-selection of the applicant, a national level player for years for the State of Orissa as a meritorious sportsperson calls for review.

11. In view of our above discussion, we dispose of this Original Application by directing the Respondents to review the recommendation of the Selection Board in the most objective manner and also to review as to why one of the top achievers in Table Tennis in the State of Orissa could not be called the most meritorious sportsman by the Selection Board and selected for appointment. The review in this regard shall be carried out and completed within a period of 120 days from the date of receipt of copy of this order. No costs.


08/07/84
(M.R. MOHANTY)

MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC/ANPS