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O.A.No.556 of 2009

Atanu Ghosh & Ors. Applicants
-Versus-
Union of India & Others Respondents
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Order dated: 05th August, 2010.

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THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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Four Applicants by filing this Original Application under section 19 of the A.T. Act, 1985 jointly seek direction to the Respondents to give them regular scale of pay as admissible and is given to other similarly situated employees working under the scheme of Special Area Games, launched by the Sports Authority of India, hereinafter called as 'SAI, SAG' centers without dispensing with services of the Applicants. It is their claim that they are continuing as Grounds Men, Bearer and Safaikarmachari under SAI SAG, Sundergarh since 2005 and Applicant No.2 since 2007. It is the specific claim of the applicants in support of the relief claimed in this OA that they are discharging the same and similar duties like that of regular Group D employees of the Department and that they have already completed 240 days of service. Further stand of the Applicants is that similarly situated employees working under the Assistant Director (Special Area Game) Water Sports Complex, Jagatpur, Cuttack approached this Tribunal in OA No. 354 of 1996, claiming the reliefs claimed by the applicants in the present OA. This Tribunal in order dated 18.04.2002 disposed of the aforesaid matter with certain direction for compliance; the Respondents allowed the regular scale of pay and regularized their services. According to the Applicants though the applicants stand on the same footing they have been denied the

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benefits of regular scale of pay and regularization as has been granted to others.

2. Respondents by filing counter opposed the stand taken by the Applicants in this OA. It is the claim of the Respondents that as the applicants' engagement was not in accordance with Rules; they cannot claim regularization as a matter of right; more so when the applicants have not completed 240 days of service. They have also raised objection to grant of the regular scale of pay to the applicants.

3. By filing rejoinder, Applicants controverted the stand taken by the Applicants about non-completion of 240 days of service. Besides the above, it has been reiterated that the engagement of the applicants in the present OA was in the same process of engagement of the four applicants in OA No. 345 of 1996. When their services could be regularized and they were granted regular scale of pay, the applicants should not have been discriminated.

4. This Bench of this Tribunal in order dated 14.5.2010 sought presence of the Deputy Director of Sports Authority of India Training centre at Barbati Stadium, Cuttack to ascertain whether the relief granted to the applicants in earlier OA can be extended to the Applicants. Accordingly, Mr. M.Kujur, Deputy Director, Sports Authority of India appeared at this Tribunal on 17.5.2010. On being asked the specific question whether the case of the present applicants is covered by the case of the applicants in earlier OA and whether they can be extended the benefits of regularization and scale of pay as has been granted by the Department in those applicants, Mr. Kujur took time to ascertain the position and apprise this Bench on the next date which was fixed to 19.5.2010. By filing MA No.294 of 2010, the



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Deputy Director, Sports Authority of India brought to the notice of this Tribunal that through letter dated 17.5.2010 he has sought clarification from the Director, New Delhi in the above aspects but no clarification has been received by him by then. Hence through the aforesaid MA he sought some time to obtain the instruction and apprise this Bench on the above issue. The matter came up on 19th May, 2010 when considering the aforesaid submission of the Deputy Director/ASC, the matter was adjourned to be taken up on 21.5.2010. On the request of Mr.Kujur for grant of one week more time as he has received no instruction, the matter was again adjourned to be taken up on 28.05.2010 when instead of apprising the instruction which Mr.Kujur would have got meanwhile from the Head Office for which he was granted adjournments one after the other, another Advocate stating to have come from the Bar of Hon'ble High Court of Clacutta to represent for and on behalf of the Sports Authority of India started argument on the merit of the matter without clarifying the specific points which this Tribunal wanted to know on earlier date and expecting response had granted adjournments. Surprisingly, Mr. Kujur, Deputy Director, Sports Authority of India from whom this Tribunal specifically wanted the instruction was also not present in the Bench when the proceeding of this case started. In view of the above, this Bench wanted to know from Mr.L.Jena, Learned ASC who was present on all earlier dates, on the specific question raised by this Tribunal. In the peculiar circumstances, heard Mr.Mishra, Learned Counsel for the applicant and Mr.L.Jena, Learned Counsel appearing for the Respondents and perused the materials placed on record. Without furnishing any answer to the specific question focused by this

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Tribunal, Mr. Jena, also relying on various decisions of the Hon'ble Supreme Court tried to negative the stand of the applicants taken in this OA. Relevant portion of the order dated 18-04-2002 passed in earlier OA No.354 of 1996 is quoted herein below:

"In that view of the matter, liberty is given to the Applicants to make a representation along with all documentary proof, if any, substantiating their working of 240 days in a calendar year to be conferred with temporary status within a period of 30(thirty) days hence and on receipt of such representation, the Respondents/Authorities are directed to give a personal hearing to each of the applicants and do well on the representation of the Applicants within a period of 30(thirty) days of receipt of the said representation and on the event of completing such 240 days of work, as aforesaid, the Respondents are directed to confer temporary status on the Applicants and as a consequence, grant all consequential benefits as required as per the scheme of granting temporary status including regularization. It is, however, made clear that till such time, the posts lying vacant in the category of the Applicants shall not be filled up by any person other than the Applicants."

The positive case of the Applicants in paragraph 4(8) of the OA is as under:

"That it is pertinent to mention here that similar incidents happened in Jagatpur SAG centre and the similarly situated employees approached this Tribunal in OA No.354 of 1996 and this Hon'ble Tribunal has been pleased to dispose of the original application vide judgment dated 18.04.2002 directing the Applicants therein to submit representation along with the documents substantiating their working of 240 days in a calendar year and on receipt of such documents the Respondents would give personal hearing and the Respondents would give the benefit of regularization. It was also directed that till such time no outsiders shall be engaged. Subsequently, the Respondents had regularized the four applicants in that Original Application and are drawing regular scale of pay. The present Applicants are similarly situated and posts are also same. The Respondents are legally bound to impart similar benefits of regularization and/or regular scale of pay."



The answer to the above contention of the Applicants is furnished by the Respondents in paragraph 21 of their counter. It reads as under:

“That the averments made in para 4.8 of the Original Application are denied by the Respondents. It is false to say that this Hon’ble Tribunal by order dated 18.4.2002 passed in OA No. 354/96 directed those applicants to submit representation along with documents substantiating their working of 240 days in a calendar year and on receipt of such documents the Respondents would give personal hearing and the Respondents would give the benefit of regularization.”

5. In view of the above, there is no dispute regarding grant of minimum scale and regularization on consideration of the representation by the applicants in No.354 of 1996. It is the positive case of the Applicants that they have completed 240 days of service in a calendar year which has been disputed by the Respondents in paragraph 22 of their counter. The cardinal principle in service jurisprudence is that there should be no discrimination between similarly situated persons and that discretion cannot be exercised discriminatorily. This because, Articles 14 and 16 strike at the arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly circumstanced employees. The decisions relied on by the Respondents’ Counsel dealt with regard to the right of an employee claiming regularization. But in the instant case the pertinent question for consideration is in regard to removal of injustice caused to them by the Respondents in the matter of minimum pay scale and regularization as has been granted to their counter part employees discharging the same and similar duties. Hence, I am of the opinion the decisions relied on by the Respondents’

Counsel have no application to the fact of the present case. The grant of minimum scale of pay to the Applicants in OA No. 354 of 1996 who were employed like that of the present applicants is not in dispute and, therefore, I feel no hesitation to hold that the present applicants are entitled to the minimum scale of pay as has been given to the similarly situated employees working in SAI, SAG, Jagatpur; which the Respondents shall pay to the Applicants within a period of thirty days from the date of receipt of this order.

6. In regard to the question of regularization, since completion of 240 days is in dispute, liberty is granted to the Applicants to make a representation along with all documentary proof, if any, substantiating their working of 240 days in a calendar year to be conferred with temporary status within a period of 30(thirty) days hence and on receipt of such representation, the Respondents/Authorities are directed to give a personal hearing to each of the applicants and do well to decide on the representation of the Applicants within a period of 30(thirty) days of receipt of the said representation and in the event of completing such 240 days of work, as aforesaid, the Respondents are directed to confer temporary status on the Applicants and as a consequence, grant all consequential benefits as required as per the scheme of granting temporary status including regularization in the light of the consideration given to the similarly situated employees at Jagatpur. This should be done at an early date preferably within a period of ninety days from the date of receipt of this order.

7. Last but not the least I strongly record my displeasure at the cavalier manner the case has been handled by Mr. Kujur, Deputy



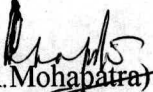
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Director, Sports Authority of India, Cuttack in the matter of providing information sought by this Tribunal and hope Respondent No.1 will issue suitable instruction for future guidance of Mr.Kujuru, Deputy Director, Sports Authority of India, Cuttack.

8. In the result, with the observations and direction made above, this OA stands allowed. There shall be no order as to costs.

9. Copy of this order be sent by the Registry to the Respondent No.1 for compliance.


(C.R. Mohapatra)
Member (Admn.)