

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.1139 of 2012

Cuttack this the 2nd day of ~~March~~, 2016

Pradeep Kumar Barik...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ND
2. Whether it be referred to CAT, PB, New Delhi for being
circulated to various Benches of the Tribunal or not ? ND

R.C.
(R.C.MISRA)
MEMBER(A)

A.K.
(A.K.PATNAIK)
MEMBER(J)

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CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Pradeep Kumar Barik
Aged about 31 years
Son of Sri Nishakar Barik
Permanent resident of Mathasahi
Tulasipur
PS-Bidanasi
Dist-Cuttack

...Applicant

By the Advocate(s)-M/s.M.K.Khuntia
A.K.Apat
J.K.Digal
Ms.B.K.Pattnaik

-VERSUS-

Union of India represented through :

1. The Director General of Posts
New Delhi
2. Chief Post Master General
Orissa Circle
At/PO-Bhubaneswar
Dist-Khurda
3. The Assistant Director(OL) and Secretary
O.C.P.S.B, Bhubaneswar
At/PO-Bhubaneswar
Dist-Khurda
4. The Assistant Director(RE)
Circle Office
Bhubaneswar
Dist-Khurda
5. Shri Shyama Sundar Mohapatra
Son of Raghunath Mohapatra
At-Suarsahi
PO/Dist-Puri-762 001



6. Director of ~~Sports~~ & Youth Services
Govt. of Orissa
Bhubaneswar
Dist-Khurda
7. Asst.Director,
Sports Authority of India
Training Centre,
Barabati Stadium
Cuttack
8. Secretary General
Wrestling Federation of India
Indira Gandhi Sports Complex
Yamini, Velordrome, Room No.103
New Delhi
9. Secretary
Orissa Wrestling Association
Nyapatna, Mangalabag
Cuttack

...Respondents

By the Advocate(s)-Mr.S.Behera
Mr.G.C.Nayak

ORDER

R.C.MISRA, MEMBER(A):

Shorn of unnecessary details, it would suffice to note that questioning the legality of appointment of Shri Shyama Sundar Mohapatra, who is respondent no.5 herein, to the post of PA/SA under Sports Quota in the Department of Posts, applicant had earlier approached this Tribunal in O.A.No.315 of 2008. This Tribunal, vide order dated 21.9.2011 disposed of the said O.A. with the following direction.

“...Accordingly, we hold that the body weight categories with which applicant and Res.No.4 were called upon to fight with Shri Patil (55 kgs.) and were defeated by 5 points and 1 point respectively, and that the marks awarded against each of them against wrestling bout do not stand to reason on the forefront of submissions made by Respondent



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No.7. In view of this, we direct Respondent No.1 to reconstitute a Committee consisting of two experts to reconsider and reassess the marks awarded to the applicant and Respondent No.4 afresh, only in respect of wrestling bout, having due regard to International Wrestling Rules and the decision of the said Committee shall be final and binding on the applicant as well as Respondent No.4”.

2. Shri Shyama Sundar Mohapatra, respondent no.5 herein had earlier been cited as Respondent No.4 in O.A.No.315 of 2008.

3. In obedience to the orders of this Tribunal, Office of res.no.2 vide Memo dated 16.02.2012(A/11) communicated their decision enclosing thereto the minutes of the Expert Committee which reconsidered and reassessed the marks. The outcome thereof being not palatable, applicant has again approached this Tribunal in the instant O.A. seeking the following relief.

- i) ...to quash the order dated 16.02.2012 under Annexure-A/11.
- ii) To quash the selection and appointment of Respondent No.5 in the post of Postal Assistant/Sorting Assistant under Sports quota in SSRM 'N' Division under Annexure-A/6.
- iii) To direct the Respondents to select and appoint the applicant in place of Respondent No.5.
- iv) And pass such other order/direction as deemed fit and proper in the interest of justice in the facts and circumstances of the case.

4. Brief history of the matter is that applicant was one of the contending candidates for the post of Postal Assistant/Sorting Assistant under the Sports Quota in response to advertisement

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dated 12.8.2003 issued by the Department of Posts. Applicant belongs to wrestling category. Accordingly, he along with nine other candidates were called for appearing at the performance trial that had been held on 9.8.2005 at Sai Centre, Dhenkanal Stadium, Dhenkanal. Out of nine, seven candidates had completed the performance trial. It is the case of the applicant that in the event of wrestling, there are eight body weight categories, such as, 50 kgs, ^{55 kgs} 60 kgs, 66 kgs, 74 kgs, 84 kgs, 96 kgs, and 120 kgs. As per Wrestling Federation of India Rules, if one wrestler opts, he will fight with the next higher category. Further, the said rules stipulate that if a lower category wrestler fights with his next higher category wrestler and is defeated in the wrestling, he will not be disqualified. On the contrary, if a higher category wrestler while fighting with a lower category wrestler is defeated, he would be declared disqualified. Applicant is a lower category wrestler under 50 kgs. He was called upon to fight with one Sivaji Bhagban Patil, who is a higher category wrestler coming under 57 kgs. without his option being taken and in the fight, applicant was defeated from Sivaji Bhagban Patil. On the other hand, Shri Shyam Sundar Mohapatra (res.no.5) belongs to higher category under 67 kgs. and was called upon to fight with Shri Sivaji Bhagaban Patil (57 kgs.) and in the fight, res.no.5 was defeated. As per Wrestling Federation of India Rules, Shri Shyam Sundar Mohapatra being higher category wrestler (67 kgs.) and having

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been defeated from Shri Shivaji Bhagaban Patil (57 kgs.) should have been declared disqualified. Instead, he along with six other candidates was called for verification of original documents and consequently, Shri Shyam Sundar Mohapatra has been issued with the offer of appointment to the post of PA/SA vide A/6 dated 10.4.2007.

5. Applicant has pleaded that despite the direction of this Tribunal to Res.no.1 in the earlier round of litigation to reconstitute a Committee consisting of two experts to reconsider and reassess the marks awarded to him and Respondent No.4 afresh, only in respect of wrestling bout, having due regard to International Wrestling Rules, the authorities have not acted in conformity with the said direction. To the contrary, they constituted an expert Committee comprising same members who had already assessed their performance and awarded marks. In addition to the above, applicant has produced certain information obtained by him through RTI Act from the Wrestling Federation of India vide A/9 dated 21.2.2012, the relevant part of which reads as under.

"As per International Wrestling Rules - Chapter 7, Article-44-Classification of points - Sh. S.S.Mohapatra and Sh.Pradeep Kumar Barik belong to same rank as both have lost 1-5 points. Therefore both should have been awarded equal points. But Sh Pradeep Kumar Barik has lost to higher weight category and Shri S.S.Mohapatra has lost to lower [down to two category] category, as such Sh. S.S.Mohapatra should not have been awarded more marks. Sh.Pradeep Kumar Barik at least should be awarded equal marks that of Sh.S.S.Mohapatra".

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6. Based on the above, applicant has prayed for the relief as mentioned above.
 7. Respondent No.5 (Shri Shyama Sundar Mohapatra) though duly noticed has neither entered appearance nor filed any counter.
 8. Respondent No.6, Director of Sports & Youth Services, Government of Orissa, though has entered appearance, yet, no counter has been filed.
 9. Department of Posts in their counter have stiffly opposed the prayer of the applicant in the O.A. and have submitted that the O.A. being devoid of merit is liable to be dismissed.
 10. Since, this matter has already been addressed by the earlier decision of this Tribunal, we are not inclined to go into the detailed facts of the counter again, as in our considered view, the minutes of the expert Committee is quite sufficient to come to a just and reasonable conclusion. For the sake of convenience, minutes of the Expert Committee which had reconsidered and reassessed the marks awarded to the applicant vis-à-vis res.no.5 in pursuance of the orders of this Tribunal in O.A.No.315 of 2008, are reproduced hereunder.

"This is regarding recruitment of Sportsmen in relaxation of normal recruitment rules. In this connection one Shri Pradeep Kumar Barik had filed O.A.No.315/2008 challenging the selection memo of CPMG, Orissa Circle No.S.Cell/1-RE-99 dated 10.04.2007. Hon'ble CAT disposed off the O.A. vide order dated 21.09.2011 with direction to reconstitute a committee consisting of two experts to reconsider and re-assess the marks awarded to

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the applicant and respondent no.4 afresh only in respect of wrestling bout having due regard to International wrestling Rules and the decision of the said Committee shall be final and binding on the applicant as well as respondent no.4.

In obedience to the order of Hon'ble CAT, the Director, Sports Authority of India, Kolkata and the Director, Sports & Youth Services, Nayapalli, Bhubaneswar were requested to nominate technical officials/coach in the game of wrestling to re-assess the marks awarded. Accordingly, SAI, Kolkata nominated Shri Sarbeswar Bhatta, Wrestling Coach & Shri R.N.Senapati, Wrestling Coach was nominated by the Director of Sports & Youth Services, Orissa. As per the decision, 25.01.2012 was fixed for the meeting to re-assess the marks as per order of Hon'ble Court.

Both the above wrestling coaches attended today, i.e., on 25.01.2012 to reconsider and re-assess the marks awarded to Shri Pradip Barik, the applicant and respondent no.4 afresh in obedience to order dated 21.9.2011 passed in O.A.No.315 of 2008 by Hon'ble CAT, Cuttack Bench, Cuttack.

We have gone through all the records in connection with selection under Sports Quota to the post of PA.SA in SSRM 'N'Division, Cuttack. It is observed from the selection list that both Shri P.Barik, the applicant & Shri S.S.Mohapatra, Respondent No.4 have been defeated from Shri S.Patil. According to the rules regarding wrestling bout Shri Barik has been defeated by 5-0 whereas Shri Mohapatra has been defeated by 1-0. The wrestling bouts were performed for selection and not for the purpose of competition. It is observed that Shri Patil could secure more technical points against Shri Barik than that of Shri S.S.Mohapatra. This implies that Shri Barik is less skilled than Shri Mohapatra in respect of securing technical points. Taking into account the performance Shri Patil has secured 20 marks in wrestling bout, Shri Barik has secured 16 marks in wrestling bout & Shri S.S.Mohapatra has secured 18 marks in wrestling bout from total marks of 20. Moreover, it is observed from the selection list that Shri Patil has secured 50 marks, Shri Mohapatra has secured 49.5 marks and Shri Barik has secured 48 marks out of total marks of 70. We re-checked and re-assessed all the

documents and observed that the marks awarded to Shri Barik, Shri Patil & Shri Mohapatra in respect of wrestling bout have been awarded correctly in accordance with rules".

11. The above decision of the Expert Committee is the subject matter of challenge in this O.A.

12. We have heard the learned counsel for the respective parties and perused the materials on record. We have also gone through the written notes of submissions filed in support of their respective contentions.

13. From a bare perusal of the pleadings of the parties, particularly, the minutes of the Expert Committee reconstituted in pursuance of the direction of this Tribunal in O.A.No.315 of 2008, the first and foremost point that needs our determination is whether the Respondent-Department have reconstituted the Expert Committee in order to reconsider and reassess the marks between applicant and res.no.5.

14. Applicant has contended that the Expert Committee which had earlier assessed the performance and awarded marks had again reconsidered and reassessed the same and therefore, it cannot be held sacrosanct.

15. In counter-reply, no specific submission has been made by the respondent-department as to why the same Committee which had already assessed the performance and awarded marks in respect of the applicant and res.no.5 was reconstituted to reassess the same. A passive resistance in this regard has been made by the respondents by stating that "*the*



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experts for the reassessment Committee were selected by SAI, Kolkata & Sports & Youth Services, Government of Odisha. Both the authorities were requested to nominate experts to act as member in the reassessment committee and in response both the experts were nominated".

16. The respondents in the counter-affidavit have stated that in obedience to the orders of the Tribunal in the earlier round of litigation, the Director, Sports and Youth Services, Government of Odisha, and Sports Authority of India, Kolkata were requested to nominate Technical Officers/Coach in the game of wrestling to re-assess the marks. SAI, Kolkata nominated Sri Sarbeswar Bhatta, Wrestling Coach and Shri R.N.Senapati, Wrestling Coach was nominated by Director of Sports and Youth Services. The respondents, therefore, have avoided giving a direct answer to the charge of the applicant that the same two persons who initially awarded the marks, and whose marks were to be reassessed by the direction of this Tribunal, again came together to reassess and found the marks awarded to be correct. This action of the respondents is in violation of both ^{the} in letter and spirit of the orders of the Tribunal in O.A.No.315 of 2008. The direction of the Tribunal was to reconstitute a Committee consisting of two experts to reconsider and reassess the marks awarded to the applicant and Shri S.S.Mohapatra, respondent no.5 herein afresh, only in respect of Wrestling Bout, having due regard to International

Wrestling Rules. The Tribunal while passing this order did not definitely mean that the same two experts who earlier had assessed the matter, would re-assess it. That will defeat the ends of justice.

17. Another aspect to be considered is that the Tribunal ordered that the decision of the 'reconstituted Committee' shall be final and binding on the applicant as well as Shri S.S.Mohapatra, respondent no.5 in this O.A.. The reason behind the Tribunal passing such an order is that assessment of performance in a Wrestling Bout can be made only by an expert body, and not by the Tribunal. It was observed by the Tribunal that the marks awarded to applicant and Shri S.S.Mohapatra (res.no.5 herein) did not stand to reason, as against the submission made by respondent no.7, i.e., Secretary General, Wrestling Federation of India, in view of which the Tribunal passed orders ^{for} reassessment by a re-constituted Committee, having due regard to International Wrestling Rules. When the same experts are nominated to re-evaluate and reassess the situation, the direction of the Tribunal is frustrated. Concurrently, it can be concluded that the order dated 16.2.2012 which is impugned in this case is not a proper implementation of the orders of the Tribunal, both in letter and spirit.

18. Another important fact is the information obtained by the applicant under RTI Act from the Wrestling Federation of India



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communicated by a letter dated 21.2.2012, which conveys that the applicant should be awarded equal marks as those awarded to Shri S.S.Mohapatra (res.no.5). It is also necessary that reconstituted Committee should take this information as an input for their consideration.

19. In view of the above, we reiterate the directions of the Tribunal in O.A.No.315 of 2008. By quashing the impugned order dated 16.2.2012, we remand the matter to respondents with a direction to reconstitute the Committee by taking in two fresh experts who will reassess the marks in the light of observations above. The decision of the reconstituted Committee shall be final and binding on the applicant and respondent no.5.

20. With the observation and direction as aforesaid, the O.A. is disposed of, with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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