

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH : PATNA**

Registration No.:- OA 813 of 2005.

Date of Order :- 8<sup>th</sup> May 2012

**C O R A M**

HON'BLE MR. A. K. JAIN,.....MEMBER [A]  
HON'BLE MS. BIDISHA BANERJEE,.....MEMBER [J]

Awadhesh Nath Tiwary, S/o Shri Kaushal Nath Tiwary, resident of Village-Sukroi, P.O.-Bakuchi, District- Deoria (U.P.), presently posted as Groundsman SAI-SAG Centre, Muzaffarpur.

Applicant.

By Advocate :- Shri S.K. Verma

Versus

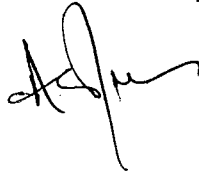
1. The Union of India, through the Secretary, Govt. of India, Department of Youth Affairs and Sports, Shastri Bhawan, New Delhi.
2. The Director general Sports Authority of India, Jawahar Lal Nehru Stadium, Lodi Road Complex, New Delhi.
3. The Secretary, Sports Authority of India, Jawahar Lal Nehru Stadium, Lodi Road Complex, New Delhi.
4. The Director, Sports Authority of India, Netajee Subhash Eastern Centre, Salt Lake City, Kolkata.
5. The Regional Director [East], Sports Authority of India, Netajee Subhash Eastern Centre, Salt Lake City, Kolkata.

Respondents.

By Advocate :- Shri R.K. Choubey.

**ORDER**

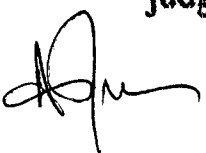
Akhil Kumar Jain, Member (Administrative) :- This OA has been filed by the applicant for regularization of his services on the post of Field Assistant



in Sports Authority of India w.e.f. the date of his consideration and regularization on the post of Groundsman in the meeting of Selection Committee held on 05.08.1993. The applicant has also prayed for direction upon the respondents for granting all the consequential benefits including arrears of difference of salary of Groundsman and Field Assistant and also for payment of cost and compensation.

2           The facts of the case in brief are that the applicant who is presently posted as Groundsman at SAI-SAG Centre, Muzaffarpur was initially provided work on an honorarium of Rs. 750/- per month at S.P.D.A. Centre, Gumla in the State of Jharkhand. As claimed by the applicant, he was appointed against a vacant post of Field Assistant and was treated as contingency staff against the said post from 1991 to 93. Steps were taken to regularize his service. However, on the basis of recommendation of Selection Committee in its meeting on 03.08.1993, the respondents, instead of regularizing him in the post of Field Assistant, appointed him on the post of Groundsman on regular basis in the pay scale of Rs. 750-940/- vide order dated 19.08.1998. The applicant accepted the offer and joined on the post without any protest [Reference judgment of Hon'ble High Court in CWJC No. 1960 of 1994 [R] and LPA No. 622 of 2002].

3           The applicant filed a writ petition no. 1960 of 1994 before the Ranchi Bench of the Hon'ble Patna High Court [ now High Court of Jharkhand]. The said W.P. was dismissed by Hon'ble Single Judge vide order dated 09.09.2012. The applicant filed LPA No. 622 of 2002. In its judgment dated 09.05.2003, the Hon'ble High Court of Jharkhand modified



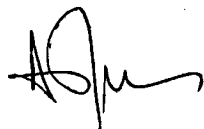
the order of Hon'ble Single Judge to the extent of their observations as under :-

“ In our opinion, when the appellant was already working on the post of Field Assistant from before the meeting of the Selection Committee held in August, 1993 and was otherwise also fit to be regularized/appointed on the said post, the respondent Sports Authority of India was required to take step to fill up the said post on regular basis, providing opportunity to the appellant also to be considered for the said post along with others in accordance with law.”

4 In compliance of the said order of the Hon'ble High Court, Director, SAL, Netaji Subhash Eastern Centre, Salt Lake City, Kolkata passed order dated 7/8.04.2004 with observation that the direction of the Court would be followed as and when situation would come. The applicant filed Contempt petition- Cont (C) case No. 333 of 2005-before the Hon'ble High Court of the Jharkhand. The contempt petition was disposed of by the Hon'ble Court vide order dated 02.07.2005 as follows :-

“Strictly speaking, no contempt can be said to have been committed by the alleged contemnors-opp. parties on the basis of the opinion expressed by the Court, while disposing of LPA No. 622/2002 on 9<sup>th</sup> May, 2003. However, since the petitioner has not been considered for the post of Field Assistant, he may have acquired a fresh cause of action.”

5 At the initial stage of hearing of the OA, a query was made that when Sports authority of India was placed within the jurisdiction of this Tribunal in the year 1995 and when the Hon'ble Court disposed of original writ petition in the year 2002 and LPA was decided on 09.05.2003 giving

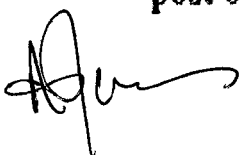


certain directions to the respondents, whether this Tribunal could exercise the same jurisdiction which had already been exercised by Hon'ble High Court. To answer these queries, the learned counsel for the applicant was allowed time [Reference order dated 07.02.2006]. The respondents were also given opportunity to make their submission on the point whether or not in such circumstances fresh case for same relief could lie before this Tribunal keeping in view the circumstances of the case.

6 We are constrained to point out that in spite of several opportunities given to the respondents, no written statement was filed on their behalf. As such, the matter was admitted and then heard in presence of the learned counsel for the respondents Shri R.K.Choubey.

7 The learned counsel for the applicant submitted that in the order passed in the Contempt Petition, the Hon'ble High Court, taking note of order dated 7/8.04.2004 passed by the respondents, observed that since the petitioner had not been considered for the post of Field Assistant, he might have acquired a fresh cause of action. It was also observed that order passed on the said petition would not prevent the petitioner from moving afresh, if so advised. He argued that non consideration of the applicant for the post of Field Assistant in terms of Hon'ble High Court's order was, therefore, a fresh cause of action and hence, the Tribunal had jurisdiction to entertain the OA and pass order thereon.

8 The learned counsel for the applicant further submitted that in spite of the fact that the applicant was working on casual basis against the post of Field Assistant, his non consideration by the selection committee for



regularization against that post and regularization on lower post on the ground of non availability of post was arbitrary, unfair and illegal. One post of Field Assistant was clearly vacant at that time and the applicant was sole candidate having viable claim to that post. Furthermore, employees'/staffs' claims for regularization on respective posts were considered in the light of recommendation made by respondent no. 5. But the case of the applicant was separated and his services were regularized on the lower post of groundsman contrary to recommendation which was highly discriminatory, un-just and violative of Article 14 of the Constitution of India. Since the applicant fulfilled all requisite qualifications for the post of Field Assistant and was working against that post on casual basis, denial of his regularization against that post was arbitrary and a colourable exercise of power which is not permissible. Regularization on a lower post amounted to punishment.

9           The learned counsel for the applicant stated that in spite of order passed by the Hon'ble High Court of Jharkhand after considering all the facts and circumstances of the case, the respondents were sitting tight over the matter and were only referring to observation made in the letter dated 07/08.04.2004. They had not even cared to file a reply to the OA as they <sup>Mr</sup> had nothing to defend. He, therefore, pleaded for allowing the OA.

10           The learned counsel for the respondents submitted that as the issue was an old one and related to the period of posting of the applicant at Gumla in Jharkhand, there was delay in getting instructions. Earlier some incomplete information was received which was referred back. He stated



that on the same issue, the applicant earlier filed writ petition and later on LPA before the Hon'ble High Court of Jharkhand. The matter was considered on merit and orders passed by the Hon'ble High Court. As such, no fresh application is maintainable on the same issue as the same is hit by res-judicata. He further submitted that the applicant was provided work on an honorarium of Rs. 750/- per month as clearly recorded in the judgment of Hon'ble High Court in LPA No. 622 of 2002. The scale of pay of Groundsman in which post the applicant was absorbed, was also <sup>in scale of AG-</sup> Rs. 750-940/-. This clearly indicated that while there might have been a post of Field Assistant at Gumla, he was given honorarium at par with a Groundsman. The applicant being engaged on honorarium basis did not have any right for absorption against particular post. As has been noted in the order of Hon'ble High court in LPA, the filling up of the post of Field Assistant was postponed in the meeting of Selection Committee held on 05.08.1993 and it was decided to fill up the vacancy after shifting of the Centre of SPDA to Chandali. In the meantime, the Kolkata High Court in FMAT No. 3459 of 1993 passed an interim order dated 22.12.1993 at the instance of one Swapan Kumar Mukherjee, who was directed to be offered fresh appointment in Group III post. He was, therefore, posted as Field Assistant at Gumla. As such, while rejecting the representation dated 22.04.2004 of the applicant, it was informed that there was no vacancy of Field Assistant of SPDA.

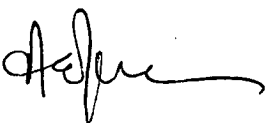
11           The learned counsel for respondents further submitted that there was no specific direction of the Hon'ble Jharkhand High court to

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appoint the applicant against the post of Field Assistant. Only an observation was made that the Selection Committee held in August 1993 was required to take steps to fill up the post on regular basis, providing the applicant opportunity to be considered. The authorities had already stated that this would be followed as and when situation would come. The contempt petition filed by the applicant was also dismissed. The learned counsel for respondents, therefore, pleaded that there was nothing new for the Tribunal to decide. Any order passed by the Tribunal would amount to modifying the order of Hon'ble High Court. If the applicant was aggrieved by non-consideration of his case, should have approached the Hon'ble High Court again. He, therefore, prayed for dismissal of the OA.

12           We have perused the records and considered submissions made by the parties.

13           On perusal of the judgments of Hon'ble High Court of Jharkhand in CWJC No. 1960 of 1994 and LPA No. 622 of 2002, we note that the prayer made in this OA is the same as in the cases before the Hon'ble High Court. The issue involved was considered by the Single Bench of the Hon'ble High Court on merit and the writ petition was dismissed. However, in the LPA, the Hon'ble High Court modified the order with observation as recorded above. Though in the Contempt case filed by the applicant, the Hon'ble High Court observed that the applicant may have acquired fresh cause of action, and that the order passed therein would not prevent him for moving afresh, we are of the view that even if it is accepted that jurisdiction of this Tribunal now lies, the fact remains that we have no



other option but to reiterate the order passed by the Hon'ble High Court in the LPA.

14 It is also noted that no time limit was fixed by the Hon'ble High Court in the LPA for taking action in view of their observation made in the judgment. If we fix a time limit, it would amount to modifying the order of Hon'ble High Court. We are, therefore, of the view that proper course of action for the applicant would have been to approach the Hon'ble High court in the matter. Having observed as above, we would also like to add that even if the contention of the respondents that somebody else was appointed against the vacancy of Field Officer existing at that time, it is difficult to believe that no vacancy of Field Officer arose since the time of passing of the order by the Hon'ble High Court and that occasion to consider the case of applicant has not come so far. We, therefore, direct that respondents shall take action <sup>strictly</sup> in terms of observation of Hon'ble High Court in their judgment dated 7/9.05.2003 in LPA No. 622 of 2002 as also in terms of their own letter dated 7/8.04.2004 as contained in Annexure A/11 in a time bound manner within three months and pass a reasoned and speaking order.

15 The OA is disposed of with these observation. No costs.

*Bidisha Banerjee*  
[ Bidisha Banerjee ]  
Member (J)

*A. K. Jain*  
[ A. K. Jain ]  
Member (A)

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