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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 1525/96

Date: 25-1-1999

Between :

B.V. Peerna Chandra Kumar .. Applicant

A N D

1. Union of India,
Secretary,
Ministry of Finance,
(Department of Revenue)
Central Board of Direct Taxes,
New Delhi.
2. The Chief Commissioner of Income Tax,
A.P., Ayakar Bhavan, Basheerbagh,
Hyderabad - 500 004 .
3. The Selection Committee for Sportsmen
Recruitment, C/o. O/O Chief Commissioner
of Income Tax, 8th Floor, Ayakar Bhavan,
Basheerbagh, Hyderabad.
4. Mr. R. Jayakumar, Inspector of Income Tax,
O/O The Director of Income Tax (Investigation)
9th Floor, Ayakar Bhavan, Basheerbagh,
Hyderabad.
5. Mr. P. Prabhakar, Inspector of Income Tax,
O/O the Chief Commissioner of Income Tax,
A.P. Hyderabad.
6. Mr. Alphones Absolom, Inspector of Income Tax,
O/O the Chief Commissioner of Income Tax,
A.P. Hyderabad.
7. Mr. Ramesh, Inspector of Income Tax,
O/O. The Assistant Commissioner of Income Tax,
(Administration) Circle-3, Hyderabad. .. Respondents

Counsel for the Applicant : Mr. M. Tirumal Rao
Counsel for R 1- 3 : Mr. V. Bhimanna
Counsel for R 4, 6 & 7 : Mr. T.P. Acharya
Counsel for R 5 : Mr. GVRS Varaprasad

Ceram:

Hon'ble Shri H. Rajendra Prasad, Member (A)

Hon'ble Shri B.S. Jai Parameshwar, Member (J)

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Heard Mr. M. Tirumal Rao, learned counsel for the Applicant, Mr. V. Bhimanna for Respondents 1 to 3, Mr. T.P. Acharya for Respondents 4, 6, and 7 and Mr. GVRS Varaprasad for Respondent 5.

2. At the outset it needs to be recorded that almost every fact, averment and contention raised by the parties in this OA have been urged, fully noted, appropriately examined, or commented on and adjudicated in OA 317/95 (filed by this Applicant) and disposed of along with OA 953/94 (filed by one Sheikh Kareemullah) with a common order on 10th June, 1996, since the facts and circumstances were nearly identical in both the cases. The same set of grievances, grounds and pleadings were once again analysed and dealt with in OA 1431/96, filed by this Applicant, and disposed of by this Tribunal by an order passed on 5th November, 1997. In OAs 317 and 953/95, the Tribunal, after taking due note of all facts urged by the rival parties, identified six areas of contention and determined questions common to both cases and asked the Respondent 2 (in both OAs) to reconsider the claims in the light of the observations made in the judgment and the pleadings of the applicants. In OA 1431/96, nearly the same facts were available to be dealt with, and, having duly examined them, the case was disposed of by setting aside the impugned order therein and directing the Respondents to consider the claim of the applicant ⁱⁿ that case in the next available vacancy ^{under} the relevant quota.

There are thus ^{really} no new issues to be examined in the case on hand as these have already been adequately scrutinised on atleast two earlier occasions.

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3. The facts of the case are briefly as under :

A press-notification was issued by Respondent-2 on 7th August, 1993, inviting applications from meritorious candidates for recruitment of sportsmen from seven disciplines to 3 posts of Inspectors of Income Tax. The minimum educational requirement for the post was a degree from a recognised University or an equivalent qualification and the age limit was 20 - 30 years. The criteria for selection of candidates were spelt out as under:

" Eligibility: Following types of Sportsmen who have represented at any of the given events in any of the following games/sports viz. Athletics, Carroms, Power Lifting, Swimming, Tennis, Hockey and ~~Volleyball~~ shall be considered meritorious and are eligible for appointment.

(i) Sportsmen who have represented a State or the country in a National or International competition in any of the games/sports.

(ii) Sportsmen, who have represented their Universities in the Inter University Tournaments conducted by the Inter University Sports Board.

(iii) Sportsmen, who have represented the State Schools Teams in the National Sports/Games for Schools conducted by the All India School Games Federation.

(iv) Sportsmen, who have been awarded National Awards in Physical efficiency under the National Physical Efficiency Drive.

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It was also clarified that:

- " \ All eligible Sports persons will be called for a written test on the pattern similar to the examinations conducted by the Staff Selection Commission for relevant posts. Those candidates who rank sufficiently high in the written examination will be called for interview(for the post of Inspectors only). The successful candidates in the written examination for the post of LDCs will be called for a typing test. Selection to the ~~ME~~ post of UDCs will be made exclusively on the basis of the performance in the written test. The successful candidates in the written examination for the post of stenographer Gr.III will be called for a speed test.
- " While determining the proficiency in sports, the levels at which the candidates have participated in the respective disciplines and their current form will also be taken into account. For this purpose, they could also be subjected to practical/field tests to be conducted by an expert in the respective discipline (having regard to the requirements of the charge and the proficiency of the candidates in their respective sports discipline) "

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The Applicant submitted his candidature well before the last date fixed for the receipt of applications, was permitted to write the prescribed written test on 30th January, 1994, tested for his skills in the chosen discipline on 7th July, 1994, and, having qualified in the written/skill-tests, was called to face an interview on 8th July, 1994. However, whereas he was tested and interviewed for the post of Inspector of Incometax against one of the 3 (later raised to 4) vacancies, he was offered the post of a UDC on 20th July, 1994, against one of the five posts which were also notified in the same advertisement; if the offer was acceptable to him, the Applicant was asked to fill up and submit the necessary attestation forms, which he did well within time, was duly appointed to the post and joined as UDC in the Respondent Organisation on 1st February, 1995.

4. The grievance of the Applicant in the earlier OA (317/95) was about his non-selection as Inspector Income-tax. The same remains unchanged in this OA as well. The only development that has occurred between the earlier and the present occasions is the issuance of the impugned order by Respondent-2 (CR No. 78/Estd/Sports/96 dated 22nd October, 1996: Annexure-1, page 21 of the OA) - in compliance with the directions of this Tribunal in the earlier OA - in disposing of the Applicant's representation dated 13th February, 1995. This order, incidentally, merely reiterated, though backed by elaborate justifications and reasons, an earlier cryptic, non-speaking decision of the said Respondent rejecting the Applicant's claim to the post of Income tax Inspector which had been set aside by the Tribunal on 10th June, 1996.



5. The Applicant's claim has consistently rested on the following pleas, namely -

- (i) that his candidature, written and skill-tests, and the personality test were all intended to adjudge his suitability for the post of Income-tax Inspector and the offer of a UDC's appointment was, under the circumstances, wholly unwarranted and impermissible;
- (ii) he was the lone candidate from Tennis discipline to be skill-tested and managed to defeat all rivals who were pitted against him during the trials. And since he was the only representative of Tennis, there was really none with whom his performance at the field-tests could be compared;
- (iii) He had an impeccable track record of past performance, having participated or won awards in :

All India National Level XI Annual Open Tennis tourney in 1985; National Junior Tennis Tourney in 1981; semifinalist in Andhra Kesari Open Tourney in 1996; semi-finalist in Men's Singles & Quarterfinalist in Men's Doubles in Inter Varsity Tourney in 1987; captained the University team in Inter University Tourney in 1988; winner at Inter Collegiate (Varsity level) Tourney in 1987; stood first in Regional Level Championship; semi-finalist in Inter District Tourney in 1990; stood first at the National level (?) of singles tourney.

Moreover, he had produced adequate documentary evidence of his past exploits to support his claims in this regard.

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(iv) Respondent 4 - 7 had failed to produce any documents or certificates to back their claims in their respective fields of sport. Moreover, the coaches who had been appointed to test the sporting skills of the candidates had not certified their proficiency or excellence in the chosen sport(s);

(v) The Respondents 4- 7 who were in-service (departmental) candidates had ceased to play any active game for more than a decade, and had nothing to show for any stellar performances in any sport, as evidenced by the fact that none of them had been even granted any advance increment(s) usually given to outstanding sportsmen;

(vi) Thus, whereas he had fully succeeded in establishing his past excellence as well as the current form - in the form of certificates and performance in the field-trials - Respondents 4 - 7 had failed to prove either. They were also overaged and had been unduly favoured by selection as Inspectors while his bona-fide credentials for the post had been equally unduly ignored;

(vii) The officers (two Commissioners and two others of Deputy Commissioner rank), had colluded to favour undeserving candidates and had no first-hand experience and expertise to assess sports-related performances;

(viii) The Interview/Personality Test introduced in the selection process was not really envisaged by the departmental instructions and circulars. It had no place in the scheme and process of selections and had been resorted to only with a view to conferring favours on undeserving candidates;

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(ix) The impugned order in this case does not meet the questions identified by the Tribunal in its order passed in OA 317/95, is against rules and instructions of the department;

(x) The departmental circulars of 23rd December, 1988, envisaged the drawing up of a list of candidates based on their past sports record and current form (to be assessed by means of field-trials) and then to subject them to a qualifying written test. That this was the correct sequence in which the three segments of selection process - assessment of past record, current form and written test - had to be conducted was implicit in the departmental circulars and instructions, was further underscored and indeed reemphasised in explicit terms in the Office Memorandum No.14034/1/95-Estt(D) dt. 4th May, 1995 (Annexure-4 to OA). This OM, though issued later than the selections held in 1994, was merely an elaboration of the earlier instructions on the subject. While this was the proper sequence prescribed by the rules and instructions, Respondents 2 and 3 had reversed the sequence of the selection-process by subjecting the candidates to a written test and next by assessing their proficiency, besides introducing a personality test/interview in the final phase. This is in clear violation of the rules and circulars issued by the department and hence is very questionable;

(xi) The accepted State policy on reservations was not followed in making these selections inasmuch as not a single post was reserved for any category. The Applicant, who belongs to the reserved category of SC was thus deprived of a chance of consideration on the basis of reservations quite apart from the basic eligibility, not to mention his undeniable merit and excellence in his chosen sport;

Based on the above pleadings, the Applicant prays for setting aside the impugned order issued by Respondent-2 and for a declaration that his (Applicant's) non-selection and appointment to the post of Inspector Incometax is illegal and violative of the departmental instructions and circulars in this regard. He prays further for a direction to the Respondents to appoint him as Inspector Incometax with all consequential benefits like seniority etc.

6. Respondents 4, 6 and 7 in their counter-affidavit make the following replies - which, incidentally, are by and large repetitions of their known stand in the earlier OA:

- (a) the fact that the Applicant belongs to SC does not confer any overriding preference to him over other meritorious candidates;
- (b) since they and the Applicants represented different (sports) disciplines, there cannot be any relative or comparative assessment of merit among the two;
- (c) excellence in sports is not the sole consideration for selection of sportsmen; it can at best be regarded as one of the many relevant requisites for such selection.
- (d) it is not true that they are overaged and stopped playing at appropriate levels of competitive sport long ago; they have continued to play and participate in their chosen area of sport;
- (e) no quota is earmarked for SC sportspersons and it is not mandatory to reserve any post(s) for recruitment of outstanding sportsmen;
- (f) if the impugned selections are interfered with by way of judicial intervention, it will have country-wide ramifications and unsettle many selections made elsewhere;

(g) the applicant, having accepted the terms of the process of selection as notified in the relevant advertisement issued by the authority and having applied for the post in response to it, cannot question the validity of the process which was wholly in keeping with the said advertisement;

(h) the claim of the Applicant for the post of Incometax Inspector got extinguished from the moment he accepted the post of UDC offered to him as a consequence of the same selection process;

(i) if the Tribunal and other courts were to start interfering in the selections made on the basis of mere allegations, the same might well start a trend whereby all rejected candidates at various selections would feel encouraged to make similar allegations;

(j) the selections in this case, made by a committee comprising four high officials on the basis, inter alia, of the opinions and assessment of competent coaches, cannot be questioned;

7. Respondent-5 in his reply statement makes the following points :

- (a) as at 6(b) above;
- (b) he had an impressive track record, having participated in Inter-University Hockey team in 1971, been a member of the State team at the Nationals in 1974 and 1984, and having represented the department in the All India Civil Services Hockey Tournament & Cultural Revenue Sports Meet.
- (c) the applicant, having duly and willingly participated in the selection process, is estopped from questioning later that very process;
- (d) there cannot be any sub-reservations to persons of SC category in the sports-quota over and above the general reservations available to them.

8. Respondents 1-3 who are really the prime respondents, in their capacity as selecting/appointing authorities, have filed a counter-affidavit embodying replies to various questions raised by the Applicant: these are in the nature of close approximations or reiterations of the stand taken in the impugned order in this OA. They state that -

Counter-affidavit

- (i) the Applicant was only one among the three candidates, out of a total of eleven, whose candidature for Incometax Inspectors was not found meritorious enough by the Selection Committee, and was therefore offered the post of a UDC.
- (ii) the Applicant's reference to clarificatory instructions issued by the Department of Personnel & Training OM No.14034/1/95-Estt.(D) dt.4th May,1995, is inappropriate and uncalled for since this Memo was issued much after than the impugned selections had been made and could not have a retrospective application.
- (iii) the contentions raised by the Applicant are mere repetition of those raised by him in OA 317/95 earlier.
- (iv) there is no ground to assert, as the Applicant has done, that his current form or performance was better or higher than other contending sportspersons, because he cannot evaluate or appraise the merits of those belonging to other disciplines.
- (v) there are no rules or instructions providing for the reservations to SC in the sports-quota.

Annexure R-I & II

- (vi) the selection procedure followed was to
 - (a) identify the sports/games for which recruitment is to be made,
 - (b) call for applications from candidates belonging to the identified

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sports/games,

(c) written test,

(d) field tests

(e) technical tests/interviews.

(vii) Reservations meant for sports-quota, being similar to those under Physically Handicapped persons, are to be only adjusted against the respective category (SC/ST/OBC/OC) but do not call for separate sub-reservations;

(viii) The recommendations made by the Selection Committee are not subject to judicial scrutiny except on the limited grounds such as illegality or patent material irregularity in the constitution of the Committee or its procedures, or proven malafides affecting the selection. (Dalpat Apasaheb vs. B.S. Mahajan - AIR 1990 SC 434 and State Bank of India vs. Mohd. Mynuddin AIR 1987 SC 889). None of the deficiencies are attracted in the instant selections and no interference is warranted or permissible.

(ix) The interview/personality test was integral to the selection process and not extraneous to it;

(x) the written examination can be called neither a qualifying or a determinant test but is simply a part of the whole selection process;

(xi) Viva-voce/Personality Test was also similarly an essential concomitant of the selection process.

9. Taking into account the contentions and submissions of the parties to the OA, it is felt that the issue fall under the following heads, the answers to which would impart clarity and perspective to the basic questions arising in this case:

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- A. Relevance or otherwise of personality test/interview
- B. Reservations for SC candidates
- C. Estoppel
- D. Correctness of the selection processes as determined by the relevant circulars and departmental instructions
- E. Other related issues

10. We proceed now to analyse the facts and submissions of the parties under the heads cited above. It is ~~to~~ made clear, however, that it is not our intention to review or interfere with the selection and appointment of Respondents 4 to 7. Their appointments were made many years ago and it is considered neither fair nor expedient to question the same or to interfere with settled selections in any manner. The discussion which follows is limited therefore to the claims and merits (or demerits) of the Applicant alone, quite independent of the merits, such as they are, of these respondents.

11. A. PERSONALITY TESTS:

(i) The relevant press notification for Recruitment of Meritorious Sportsmen states that all eligible sports-persons will be called for a written-test on a pattern similar to the examination conducted by the Staff Selection Commission for the relevant posts.

The Applicant contends that the pattern of examination referred to relates to the written test alone and does not purport to include a Personality Test which is not envisaged by any departmental instruction or circular in this regard. It is argued that this would at best mean that the questions set for the written test should be modelled on the questions set for similar examination for the same posts by the Staff Selection Commission. This makes any Personality Test entirely impermissible. (Pages 5-6 of the OA).

(ii) The Respondents on the other hand say that the scheme of examination conducted by the Staff Selection Commission comprises a written examination as well as Personality Tests, and inasmuch as the recruitment of sportspersons undertaken by them was merely a one-time substitute for the regular recruitment to similar post by the said Commission, they were bound to hold such a [✓] (personality) test.

(iii) On this aspect of the case there hardly exists any scope for much comment or extended discussion. The observations contained in Paras 20 and 27 of the judgment of this Tribunal in OA 1431/96 sums up the position adequately and we find no reason to disagree or depart from the stated views. Even if there is no specific mention of an Interview/Personality Test in the departmental circulars and government instructions on the subject, the deficiency alone cannot divest the Respondents' right to evolve suitable additional modes of assessing the suitability of a candidate to hold a particular type of post in their administrative control. We are in agreement with the Respondent's view that the satisfaction of the aspect of suitability for a post in all respects by an essential requirement (because) ..the suitability to a post varies from post to post and the various tests conducted in a recruitment process for a post are designed towards this objective (page 7, Annexure R I)

(iv) The argument raised by the Applicant regarding the impermissibility/irrelevance of the Personality Test/Interview is rejected.

As regards the Applicant's allegation that the Personality Test was conducted merely to award undeserved marks and confer unmerited favour on chosen candidates, the same amounts to no more than an allegation based on suspicions or surmises. This is specially so because no mala fides have been alleged, much less proved, by the Applicant against any member of the Selection Committee. Not being privy to the quality of the Applicant's performance at the Personality Test/Viva Voce/Interview we are not in a position to entertain any suggestion that he was deliberately awarded lower marks or that higher marks were given to any other candidate(s) or that the Applicant was purposely downgraded in any manner. This argument too is therefore rejected.

B. RESERVATIONS:

(i) The Applicant complains that no consideration was given to the fact that he belongs to SC and the Respondents had ipso facto violated the safeguards relating to reservations which constitute an essential aspect of State Policy in

relation to employment under the Government.

(ii) The position as regards reservations is that selection of meritorious sportspersons in relaxation of recruitment procedures is permissible upto 5% of the vacancies in a year subject to the only condition that the overall reservations of all types do not exceed 50% of the total number of such vacancies. Sportsmen so appointed will be adjusted in the Reservation Roster against the appropriate category. And unless otherwise specifically exempted every recruitment shall duly comply with the constitutionally mandatory requirement of community-reservations in respect of all public appointments.

(iii) The Respondents cite a judgment of Hon. Supreme Court in Indira Sawhney vs. UOI (AIR 1993 SC 477), and DO P&T OM No.F.36035/16/91-Estt. ISCT) dt. 20-9-1994 (Pages 3 & 4, Annexure I/RI to the OA). This is supposed to be in reply to question(1) formulated by this Tribunal in its judgment in OA 317/95. It is seen in this connection that the Tribunal had raised the basic query as to whether or not communal reservations were permissible within the Sports Quota. Nowhere in the various replies filed by this Respondents has this question been met squarely. All that has been shown by the Respondents is that sportspersons belonging to SC, if selected, shall have to be adjusted against the relevant roster point of that particular category during the relevant recruitment year. This, however, is not really the appropriate answer to the question raised. If it had been the case of the Respondents that the sports persons belonging to a reserved category, upon their selection, were suitably adjusted in the roster, the same could have been acceptable atleast as a part answer. Alternately, if the Respondents had shown that no reservations had ^e _{been} made, because the overall ceiling of 50% had already been reached in respect of all reservations for the vacancies available to be filled during the year, it would have made a convincing answer to the question raised. But this has not been evidently the case. The primary and the most obvious intent which was at the base of the Tribunal's question under discussion

was: whether any reservation were at all required, or permissible, within the three (later 4) vacancies of Inspector Incometax for which the recruitment was undertaken. This question was never even attempted to be answered. The Applicant contends that it was incumbent on the part of the Respondents to have earmarked atleast one vacancy for the SC/ST/OBC, specially because in the present context no instructions were issued by either DO P&T or more particularly by Respondent 1 or Central Board of Direct Taxes, permitting Respondent No.2 not to enforce the mandatory reservations or place the intended recruitment outside the pale of mandatory reservations. Nor has any general exemption from Reservations been granted by the Government in the matter of exclusive recruitment of meritorious sportspersons. The Respondents donot meet this point at all and explain instead the mode and manner of adjusting SC appointees against the related points in communal rosters. The explanation is scarcely relevant to the basic issue raised and completely beside the point raised. Consequently, the assertion that "there are no rules or instructions providing further reservations to SC/ST/OBC in the number of posts reserved for sportspersons" (para 10, page 4 of the counter -affidavit) does not ring true. It is not a question of there being no rules and instructions in this regard. It is rather a case of the existing rules and instructions being not followed in letter since the reservation of posts for these categories is by now a state policy arising out of the safeguards enshrined in the constitution and legislated by the Parliament. Unless a particular recruitment has been kept out of the purview of reservations by a special or general order, no appointments to any posts can be outside the purview of the mandatory reservations as provided by law and Acts of Parliament. There being no such order in the instant case, it follows that the Respondents were bound to adhere to the State policy in this ^aregd. And it is this failure which has payed ^{the} ~~int~~ way for the present grievance . The complaint of the Applicant is not ill founded.

(iv) In the backdrop of the discussion above, it has to be held that the Applicant was deprived of the chance of reasonable consideration for selection to the post he had applied for, because of the fundamental failure of the Respondents in not earmarking any vacancy at all for SC or other

reserved categories. This failure has operated adversely against the Applicant who belonged to SC, possessed all the qualifications for the post applied for by him and had duly qualified in the written test. Arguably, his selection to the post could have been assured had he been considered for selection against a reserved vacancy as indeed was his due in terms of the accepted and settled State policy.

(v) It is therefore held that the non-reservation of any vacancy/ies for the entitled categories of candidates - an unexplained deficiency in this case - was in violation of the mandatory requisites of the approved and established procedures and that this vital omission in the normal recruitment process has resulted in an obvious disadvantage to the Applicant who belongs to one of those very categories of persons who have a constitutional right to such concession.

C. ESTOPPEL

(i) It is argued by the official Respondents that with the acceptance of an alternate appointment of UDC by the Applicant, his right to question his non-selection as Inspector Incometax stands extinguished. They submit that the offer and acceptance of such alternate posts - especially when not applied for - can be said to be in conclusion of the Original Application for such recruitment and such candidate can be said to have accepted the alternative ^{post} offered. He, in such a situation, cannot also subsequently ^{turn} back and question such an accepted position.

(ii) Respondents 4, 6 & 7 follow the same line of argument. It is asserted that "having accepted the said post of UDC and joined (sic) in that post which was given basing on the same selection, he is estopped from questioning the same (para 12, page 5 of the counter-affidavit of Respondents 4, 6 & 7). Respondent 5 echoes a similar logic. "Furthermore", says this Respondent "he (the Applicant) was selected and appointed as UDC in the very same selections and hence he is estopped from questioning the selection process adopted by the Official respondents."

(iii) The unanimous reaction of all the Respondents would not, nevertheless, be acceptable. It is our firm view that the mere acceptance of an alternate lower appointment for which he had never aspired - arguably due to compelling reasons of poverty and a continuing unemployed state - cannot obliterate his basic right to seek remedies and reliefs in terms of law, rules and fairplay. Rules exist. The operation of law can never cease. Fairplay should be deemed to have been denied if it is not clearly demonstrably and overarchingly evident.

(iv) This aspect of the case has at any rate been dealt with by this Tribunal in OA 1431/96 and nothing remains to be added. Agreeing with the views contained in Para 18 of that judgment, we held that neither the selection of Applicant for an alternate post, nor the offer made to him for appointment to said post and nor even his acceptance of the offer, operate as an estoppel to his seeking the reliefs prayed for in this OA or obliterate his right to seek a judicial review of the selection process which deprived him of a chance of fair consideration to the post applied for by him.

D. SELECTION PROCEDURES

(i) The Applicant contends that the selection procedure adopted by the authorities are violative of the orders and circulars on recruitment of meritorious sportspersons. The correct procedure, according to the circular dated 23rd December, 1988 is to: identify the sports disciplines to which the recruitment is proposed to be made; call for applications from eligible sportspersons from those disciplines; scrutinise their eligibility in accordance with the criteria laid down; determine their proficiency in the particular discipline to which he belongs in terms of his past performance and current form through field trials/tests; drew up a list of the candidates in ranking order based on the twin considerations mentioned above; subject them to a qualifying written-test conducted on the lines of the test conducted by the Staff Selection Commission for identical posts; eliminate the names of candidates who fail in the tests; and draw up a panel comprising the remaining successful candidates.

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It is argued by the Applicant that the procedure adopted in the instant recruitment is flawed because the written-test took precedence over the essential initial step of drawing up the list of eligible candidates on the basis of their proficiency in the relevant sport.

Respondents 1-3 state that there was nothing irregular in the procedure adopted by them and this had in any case been duly notified in the advertisement issued by them. (Page 7, Annexure I/R-I)

(ii) The Applicant draws attention to DO P&T OM No. 14034/1/95-Estt(D) dated 4th May, 1995 which spells out the order of preference to be followed in the appointment of meritorious sportspersons, and argues that the scale of preferences detailed therein have been violated. The official Respondents reply that any reference to the instructions contained in this circular "is neither relevant nor required for the purpose of this OA", since these were issued subsequent to the impugned selections.

(iii) We find that the Respondents have not really touched upon - notwithstanding the elaborate explanations in Annexure I/R-I and R-II - as to the precise reason or authority for their decision to hold a written-test before drawing up a ranking panel of sportsperson based on their past (sports-) record and current form as evidenced in field-trials. The additional affidavit filed by them in OA 1431/96 (Annexure -R II) too, despite the elaborate (and somewhat laboured) explanation regarding the mode and manner of integration of different sportspersons, is studiously silent on this aspect. The point for consideration is if the panel of eligible candidates had been drawn up in the first instance, a person who had an outstanding past record and impressive current form would have been placed higher in the eligibility panel than those with comparatively less meritorious record/form, even if his performance at the written test was less impressive. That would have given such a candidate an edge over other contenders at the time of the final personality test/interview. Exactly what considerations led to the reversing of the sequence set out in the circular of 23rd December, 1988, has never really been made by the official respondents.

(iv) We have been shown the copy of an advertisement issued by Respondent 2 published in "Eenadu" (Vijayawada edition) in its issue of 31st December, 1991. This advertisement has following features:

- (a) - All eligible sportspersons will be called for a written-test
- (b) - Candidates who rank sufficiently high in the written test will be called for interview (for the post of Inspectors only)
- (c) - Sportspersons SELECTED for any of the posts will be asked to appear for a skill-test (relevant sports discipline) (emphasis supplied)

The contemplated selections were, however, not gone through for some reason and a fresh notification (relating to the present impugned selection) was issued on 7th August, 1993. This (new) advertisement states that -

- (a) - same as (a) above
- (b) - same as (b) above

The clause at (c) above is omitted. The reasons leading to this critical omission, if any, are not made clear. It is merely mentioned that for the purpose of determining a candidate's proficiency in sports, he "could also be subjected to practical/field tests". The exact consideration leading to this omission and change in the very next recruitment have never been revealed by the official Respondents. The alterations affected in the latest advertisement, being fairly crucial in nature, cast a shadow of unresolved doubt on the process of selection.

Hon. Supreme Court in two judgments cited by Respondent 1 - 3 (refer para 8, viii above) have laid down that judicial review of the selections made by properly constituted Committees is permissible on grounds of illegalities, irregularities or defects in their selection procedures. In the present instance the procedures followed by the Selection Committee have been called in question. It thus becomes necessary to examine this aspect which we

have duly undertaken to do. Since we find certain irregularities of procedures as having indeed been committed, a judicial review is not merely permissible but inescapably necessary. This settles the question of jurisdiction and limits of judicial intervention in the present case.

(v) In view of what is stated above, we hold that the process of the impugned selection was flawed on account of the fact that the sequence of parameters for the selection were altered without any explanation and an important clause which governed the selections in the preceding (incomplete) recruitment was abruptly omitted to the disadvantage of arguably the more deserving candidates.

E. ALLIED OR ANCILLARY ISSUES:

(i) Levels of excellence & proficiency: All candidates aspiring for the posts of Inspectors were duly tested for sports-efficiency by coaches assigned by Andhra Pradesh Sports Authority and the assessment by these experts is a sufficient enough guarantee of the correctness of ratings of proficiency as far as the current form of the candidates is concerned. It cannot be questioned. As regards their past record, it is merely to be observed that judged by sheer documentary evidence the number, level and type of competitive events participated in and the placements/prizes earned by the Applicant would appear to be higher and superior to those of Respondents 4 - 7. Even if the disciplines represented by the candidates are widely different and not ordinarily be relatively comparable, it should nevertheless be possible to arrive at a rationally accurate comparison among them from the view-point of number and levels of sport of these competitors. If this has not been done with reasonable accuracy, there is a case for reviewing the same. We find no reason why such review should not be undertaken. It would not be out of place here to record our view that as the subject recruitment was exclusively for sportspersons avowedly with a view to improving the existing standards of sports in the department and for building up teams in group events (Page 1, R.II), the overwhelming emphasis in the selections shall obviously have to be on the candidates' sporting

record, present form and potential as a sportsperson for the future. It follows as a corollary that if a person is sufficiently meritorious in a sport discipline of his choice, demonstrates an impressive past record in it, and displays a reasonably undiminished current form, the age factor would also be an important consideration in the final selection, for younger such a sportsperson of proven talent, the longer will he be able to serve the department in the particular sport, thereby fulfilling the original objective of such recruitment more meaningfully. In this view of the matter, it would not be incorrect to say that while a candidate aspiring for any post under the sports quota is bound to fulfill all the other requisites like success in the written test and personality test, the prime factor and overriding consideration ought to be in respect of his performance and potential in the sports arena. All other factors, though essential in every sense, are next only to the sporting talent and potential.

12. Based of the discussion in the preceding paragraphs, we hold that -

(i) the decision of the authorities to hold a Personality Test/Interview as a part of the selection process was quite in order and not objectionable or impermissible in any manner.

(ii) non-reservation of atleast one vacancy of Inspector Incometax to eligible sportspersons belonging to SC was incorrect inasmuch as such non-reservation deprived the Applicant of the right of proper consideration based on his entitlement in this regard.

(iii) no estoppel arises in this case by the mere acceptance of an alternative lower appointment by the Applicant, since the questions raised by him ~~impinge~~ upon the correctness of basic selection procedures adopted by the authorities.

(iv) the procedure for selection followed in the instant recruitment is flawed in

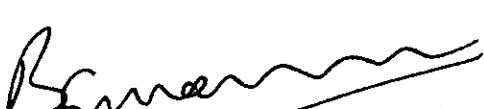
that (a) the list of eligible candidates was drawn up on the basis of their performance in the written-test instead of subjecting only those candidates to such (written) test as had to be empanelled in proper ranking order and order on the basis of their performance in the relevant sport; and (b) the procedure of selected candidates being called for skill-test was given up for no apparent reason and substituted by one which required all candidates to be subjected to such (skill-) test.

(v) the past performance record of the Applicant needs a review and accurate reassessment.

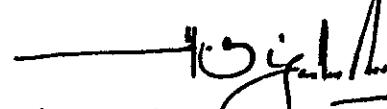
13. In the light of what has been recorded above, the following directions are issued:

- (a) Memorandum No. 78/Estt/Sports/96 dated 22nd October, 1996, is hereby set aside.
- (b) Respondent No.2 shall reconsider the claim of the Applicant for the post of Inspector Incometax under the sports quota keeping in view the conclusions recorded in paras 12 (ii), (iv) & (v) of this order.
- (c) Such administrative action as may be found necessary in order to comply with the direction (b) above shall be initiated forthwith after reconsideration of the Petitioner's claim to facilitate his appointment in the post originally applied for by him.
- (d) All action shall be completed in sixty days from the date of receipt of a copy of this order.

14. Thus the OA is disposed of. No costs.


(B.S. Jai Parameshwar)
Member (J)

MD 25.1.97


(H. Rajendra Prasad)
Member (A)



8/2/99

1ST AND 2ND COURT

COPY TO:-

1. HON. J.
2. HHRP M(A)
3. HSSP M(3)
4. D.R. (A)
5. SPARE 5

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASTIR :
VICE CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (3)

DATED: 25-1-99

ORDER/ JUDGMENT

M.A./R.A./C.P.NO.

In

O.A. NO. 1525/96

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALL QUED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

(14 copies)

