

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 28/4/04

OA 92/2003

Mohd. Akaram s/o Shri Umar Daraj Khan r/o 250, Near Bari Mosque, Jalupura, Jaipur.

... Applicant

Versus

1. Union of India through General Manager, North West Railway, Opp. Railway Hospital, Jaipur.
2. Divisional Railway Manager, North West Railway, Power House Road, Jaipur.
3. Divisional Electric Engineer-cum-Divisional Sports Officer, North West Railway, Power House Road, Jaipur.
4. Shri Zahir Taj s/o Shri Taj Mohd. r/o 381, Hasanpura, Jaipur.

... Respondents

CORAM:

HON'BLE MR. M. L. CHAUHAN, MEMBER (J)

HON'BLE MR. A. K. BHANDARI, MEMBER (A)

For the Applicant

... Mr. Ashok Gaur

For Respondents No. 1 to 3

... Mr. T. P. Sharma, proxy counsel for
Mr. S. P. Sharma

For Respondent No. 4

... Mr. Saugath Roy

ORDER

PER HON'BLE MR. A. K. BHANDARI

This OA u/s 19 of the Administrative Tribunals Act, 1985 is filed against alleged appointment of ineligible person on Group-D post in North Western Railway in Sports quota. The exact relief clause reads as under :

- i) by appropriate order or direction the entire record relating to selection including record of trial and interview may kindly be summoned by the Hon'ble Tribunal.
- ii) by appropriate order or direction the impugned order of appointment of respondent No. 4 may be quashed and set aside.
- iii) by appropriate order direction the respondent No. 3 may be directed to appoint the present applicant on Group-D posts in place of respondent No. 4."

2. Facts of the case are that applicant, belonging to OBC community, possessing educational qualification of 8th Class pass, having great interest in playing cricket and having participated in many State level

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tournaments and has been an active player and regularly going to field for playing cricket, (in proof of which Ann.A/1, A/2 and A/3 have been annexed) applied for a Group-D post advertised by Divisional Office Jaipur on 15.11.2002 vide Ann.A/4. It is stated that the applicant filled the requisite form and annexed all the required certificates with it and was called for interview held on 28.1.2003 (Ann.A/5). To the best of his knowledge, there were in all ten candidates and the Selection Board consisted of three members, whose designations are mentioned in the OA. To assist the Board some other persons were cooperated namely; Jaipur Divisional Railway Team Captain, two players of Jaipur Divisional Railway Team - and one NIS Coach from Rajasthan Sports Council. During the test applicant performed very well displaying his skills to the satisfaction of the Board and he gathered the impression that he alone was found suitable having been awarded 20 marks out of 20 at trials. It is further stated that due to some extraneous pressure from members of Selection Board name of Zanir Taj, private respondent No.4, was sought to be included in the select list, to which the only outside member i.e. NIS Coach from Rajasthan Sports Council did not succumb and refused to sign the selection proceedings. In these circumstances, the Board got the signature done by custodian player of Railway Cricket Team and ADAO - Girish Sharma. The interviews were held on the next date i.e. 29.1.2003. It is alleged that on this date, in an arbitrary and mala fide manner his marks obtained during trial were tampered with and changed and respondent No.4 was allotted 20 marks out of 20 in trial. That in view of this manipulation the applicant immediately submitted representation to DRM, North Western Railway, Jaipur, pointing out gross injustice meted out to him. In this representation he emphasised the point of ineligibility of respondent No.4. The fact of participation by respondent No.4 in the match between Railway Officers & Employees on 26.1.2003 as a railway employee due to which Selection Committee favoured him is also mentioned. A copy of the representation is annexed as Ann.A/6. It is further averred that in spite of these objections respondent No.3 issued order dated 20.2.2003 giving approval of appointment of respondent No.4 (Ann.A/7).

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Although not clearly mentioned in the OA, Ann.A/7 is thus the impugned order. In the application facts regarding ineligibility of respondent No.4 are further highlighted in paras 23, 24 & 25 which in essence show that respondent No.4 has not played in any tournament organised by Rajasthan Cricket Association in last three years nor has he played in any tournament organised by District Cricket Association, ^{and} ^{xx} that he has also not participated in any important event in last 2-3 years and that he is not an active player as required by the employer and that applicant's qualifications which are as per the advertisement have been arbitrarily and in a mala fide manner overlooked by the respondents.

3. In the grounds, arbitrariness and favouritism are alleged. Illegality is also alleged because appointment has not been made as per eligibility prescribed in the advertisement. It is also stated that his representation (Ann.A/6) has not been dealt with fairly by the respondents violating natural justice. Hence this OA.

4. After submitting the paper book, applicant had filed application for early hearing and the same was favourably considered. The official and private respondents have submitted separate replies. The official respondents have denied the allegations and claimed that the appointment order issued in favour of respondent No.4 is as per rules. They have denied the facts bringing out meritorious record of applicant due to want of knowledge. Regarding call letter for trial and test, it is stated that eligible candidates as per qualifications specified in the advertisement were invited to participate in it. That after trial selections were held by the Selection Board and the result was prepared which was got signed by all the concerned persons, which the applicant has no right to probe into. The allegation of extraneous pressure and in favouritism of respondent No.4 are stoutly denied and it is stated that the name of respondent No.4 was sought to be included in the select list on the basis of eligibility and performance. Allegation of manipulation of record to the detriment of

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applicant and in favour of respondent No.4 is also stoutly denied. Receipt (Annex A-6) of representation by the trial or selection committee is also denied. The alleged ineligibility of respondent No.4 in paras 23, 24 & 25 are also denied on the basis of certificates submitted by him and his performance during trial/selection process. The ground of illegality, favouritism, manipulation etc. are also denied and concluded that respondent No.4 has been rightly selected. The relief claimed by the applicant deserves to be denied also due to the fact that respondent No.4 has already been given appointment vide order dated 22.2.2003.

5. Respondent No.4 in his separate reply has tried to prove his eligibility with the help of OBC certificate, marks-sheet of BA Part-III issued by University of Rajasthan and testimonials issued by University of Rajasthan dated 6.7.99 (Ann.R4/3), Rajasthan Cricket Association issued in year 1996-97 (Ann.R4/4), District Cricket Association Jaipur dated 27.1.2003/3.12.2002 (Ann.R4/5 & R4/6 respectively). It is contended that he is an active player, represented State level teams in different tournaments, and possesses educational qualifications much higher than required. The allegation of his participation in a match on 26.1.2003 is denied by stating that the said match was between Railway Officers and Jaipur Club, and not Railway Officers and Railway Employees, and that he being a wicket keeper-cum-batsman participated in it as a member of Jaipur Club. Respondent No.4 also wants Tribunal to take note of the fact that whereas he is a Graduate, the applicant has not submitted proof of having passed 8th Class, Therefore, it is doubtful whether he has the requisite educational qualifications. On the basis of above, grounds of illegality, favouritism & manipulation are denied.

6. Separate rejoinders to replies by official respondents and respondent No.4 have also been submitted reiterating the facts of the application.

7. Heard the learned counsel for the parties. During arguments,

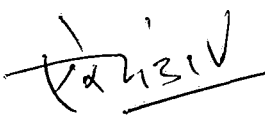


xxxxxxxxxxxxxxxxx contending parties stuck to the stands taken in their written pleadings. The impugned appointment is a special category appointment of sports person in which minimum educational qualification is 8th Class pass and while giving appointment special qualifications as anumerated in the advertisement dated 15.11.2002 had to be taken into account. It is clear that applicant and respondent No.4 amongst others had applied for one post meant for Cricketer. Special qualification for this post as mentioned in the advertisement is participation in Junior/Senior State level tournament representing District, National level inter school Championship, Junior or Senior National level Championship representing State School/University/ State level Junior or Senior Team with emphasis that candidate should have participated in these in the preceding three years and should be also currently an active player of the game. The applicant has challenged that respondent No.4 ^{does vx} did not possess these eligibility condition. So, the main point for consideration in this OA is whether the respondents have correctly examined the fact of eligibility of candidates.

8. On perusal of reply more particularly with regard to para 4.19 which is in regard to application of the applicant annexed as Ann.A/6, it is seen that official respondents have denied receipt of the same by the trial/selection. During pleadings, when counsel for the respondents was questioned as to whether the respondents had received the representation, which is addressed to the DRM, and not to the trial/Selection Committee, no definite reply was given. We feel that the question of eligibility is not to be decided by the trial/selection committee because the stage at which the role of trial/Selection Committee starts is much later than the stage at which eligibility is examined. Since on the other hand, official respondents have neither denied receipt of Annexure A/6 nor admitted having taken action upon it but ^{clearly vx} ~~wisely~~ stated that application as per Annexure A/6 has not been received by Selection/trial Committee, we feel that this contention of the applicant remains unreplied and thus the primary allegation in the OA that

respondent No. 4 is ineligible has not been examined by the official respondents. Learned counsel for respondent No.4 took great pains to prove *fulfillment of* special eligibility qualifications in regard to continued participation in sport by ~~respondent No.4~~ ^{him} at the State/University level but on seeing the dates and contents of the certificates/testimonials annexed with his reply it is found that some are old and others except one regarding participation in Calvin Shield State Championship - 2003 are general in nature. The official respondents have not given a direct reply to paras 23, 24 & 25 also in which eligibility of respondent No.4 has been pinpointedly questioned like Respondent No. 4's non participation in any RCA or District Cricket Association tournament in last three to four years and he is not an active player. In these circumstances, the reply of respondents appears to be unsatisfactory.

9. In these circumstances, the OA is partly allowed and the respondents are directed to check the eligibility of respondent No.4 as alleged in applicant's representation (Ann.A/6) and as per their advertisement dated 15.11.2002 (Annexure A/4) and if the same is not found as per eligibility conditions to reconsider the entire selection process. This exercise should be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(A.K.BHANDARI)

MEMBER (A)


(M.L.CHAUHAN)

MEMBER (J)