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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH**

**Coram: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

Ist case

O.A. No. 060/00406/2014

Decided on: 20.01.2017

Sukhdeep Singh Kang s/o Sh. Udham Singh Kang r/o Village Hazipur, P.O. Dhunda, Tehsil Bassi Pathana, District Fatehgarh Sahib presently posted at NIS, Patiala, Punjab.

.....Applicant

**Argued by: Mr. D.S. Patwalia, Sr. Advocate with Mr. B.S.
Patwalia, Advocate**

Versus

1. Union of India through the Secretary, Ministry of Youth Affairs and Sports (MYAS), Room No. 4, C-Wing, Shastri Bhawan, New Delhi -110001.
2. Sports Authority of India through the Director General, Jawahar Lal Nehru Stadium Complex (East Gate), Lodhi Road, New Delhi -110003.
3. Secretary, Sports Authority of India, Jawahar Lal Nehru Stadium Complex (East Gate), Lodhi Road, New Delhi - 110003.
4. Executive Director (Academics), Sports Authority of India, NS, NIS Patiala, Punjab.
5. Sh. Yumnam Momo Singh, 4/43, Vijay Nagar, Double Storey, New Delhi -110009.
6. Ms. Athoni Rhesto, C/o Online Pharmacy, Japfu Market Complex, Near AOC Kohima, Nagaland - 7970001.

.....Respondents

Argued by: Mr. Arvind Moudgil, Advocate for Respondents

No. 1 to 4

Mr. Jagdeep Jaswal, proxy advocate for Resp.

No. 5 and 6

IInd case

O.A. NO. 060/00420/2014

Baljinder Singh s/o Sh. Harbans Singh r/o #318, Ward No. 2, Kurali, District Mohali.

.....Applicant

**Argued by: Mr. D.S. Patwalia, Sr. Advocate with Mr. B.S.
Patwalia, Advocate**

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3. Secretary, Sports Authority of India, Jawahar Lal Nehru Stadium Complex (East Gate), Lodhi Road, New Delhi - 110003.
4. Executive Director (Academics), Sports Authority of India, NS, NIS Patiala, Punjab.
5. Sh. Parveen Nair, # 450, 1st Floor, Sector 15-A, Chandigarh - 160015.

.....Respondents

Argued by: Mr. Arvind Moudgil, Advocate for Respondents

No. 1 to 4

Mr. Jagdeep Jaswal, advocate for Resp.

No. 5

Order

BY HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)

1. As identical questions of law and facts are involved, in Original Application (O.A.) NO. 060/00406/2014 titled Sukhdeep Singh Kang Vs. Union of India & Others (for brevity, '1st Case'), and O.A. NO. 060/00420/2014 titled Baljinder Singh Vs. Union of India & Others (in short 'IInd case'), so we propose to dispose of the indicated OAs, by virtue of this common decision, in order to avoid repetition of facts, with the consent of learned counsel for the parties. However, the epitome of the facts and material has been extracted from 1st case, for convenience, ready reference, and to effectively decide the matter.

2. Tersely, the facts and material, which need a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant OAs, and emanating from the record is that initially the respondents issued advertisement in the year 2007 to fill up various posts, including the post of Junior Scientific Engineer (JSO), Anthropometry and JSO, Bio-Mechanic. Applicant (in 1st case) Sukhdeep Singh Kang applied and was selected for the post of JSO, Anthropometry, whereas

applicant (in IInd case) Baljinder Singh applied and was selected for the post of JSO, Bio-Mechanics, after successfully clearing the recruitment process. However, their appointments on the pointed posts were on contractual basis. They have continued working on the respective posts till date, as per letter dated 27.01.2014 (Annexure A-1).

3. The case set up by the applicants, in brief, insofar as relevant, is that since the recruitment process for regular appointment did not take place, in pursuance of the advertisement issued in the year 2011, so the respondents again issued another advertisement (Annexure A-2 (in Ist case)/A-3 in the IInd case) to fill various posts on regular basis, including the posts held by the applicants, in the year 2012. There were total 19 vacancies, advertised for the post of JSO, in various disciplines. Out of these, 10 vacancies were for general category candidates and nine were reserved for SC, ST & OBC category candidates. Two posts of JSO were assigned to the discipline Anthropometry and three posts for JSO, Bio-Mechanics, as per advertisement (Annexure A-2). The applicants applied for the posts of JSO, Anthropometry and JSO, Bio-Mechanics respectively.

4. Earlier, The applicants had filed O.As bearing No. 444/PB/2013 and 445/PB/2013 respectively, claiming certain weightage for period of their continuous service, rendered by them, on the said posts. The OAs were disposed of, by a common order dated 20.11.2013 (Annexure A-5 in Ist case), with a direction to the respondents to grant weightage to the

applicants in the interview, for their past service rendered with the respondents.

5. The case of the applicants further proceeds that they successfully cleared the recruitment process and merit list was prepared. Applicant (in the Ist case) was placed at Sr. No. 1 in the merit list of JSO, Anthropometry (Annexure A-6), whereas applicant (in the IInd case) was placed at Sr. No. 4, as per merit list of JSO, Bio-Mechanics (Annexure A-5). They fared very well in the interviews as well. It was alleged, that surprisingly, the respondents issued combined appointment letter dated 02.05.2014 (Annexure A-7 (in the Ist case)/A-6 (in the IInd case), which did not contain the names of the applicants. The respondents have never revealed the marks, obtained by the them and weightage given to them, in pursuance of the order of this Tribunal (Annexure A-5). In fact, for two posts of JSO, Anthropometry, both the appointees are from reserved category i.e. Respondent No. 5 belongs to OBC category and Respondent No. 6 belongs to ST category, making the selection of JSO, Anthropometry as 100% reserved selection.

6. Sequelly, the applicant (in IInd case), claimed that he belongs to reserved category. There were three posts of JSO, Bio-Mechanics, without giving any bifurcation of the categories, and neither any roster point is being maintained. Still, for the reasons best known to the respondents, in the merit list it was mentioned that only two posts were to be filled in the discipline of Bio-Mechanics and that, too, from General category candidates. However, by the impugned order, only one person i.e. Respondent No. 5 has been selected and appointed in the

discipline of Bio-Mechanics and remaining posts are lying vacant.

7. Aggrieved thereby, the applicants have preferred the instant OAs, challenging the impugned selection/appointment of private respondents, inter-alia, on the following grounds:-

"(i) That firstly it is submitted that the order dated 20.11.2013 (A-5) of this Hon'ble Tribunal was unambiguous and clear that the applicant had to be given the weightage in interview for the service he has rendered in the respondent department till date. However, no such weightage was given and in fact just to overcome the order of this Tribunal, the marks so given in interview were not disclosed. Such action of the respondents is not only illegal and arbitrary but also contemptuous in nature. Thus, on this ground alone, the present original application deserves to succeed.

(ii) That, further, vide the advertisement A-2, out of the 19 posts of JSOs, 1 post fell under the ST category. However, 2 ST candidates have been appointed i.e. respondent no. 6 in Anthropometry discipline and one Ms. M.Khyothunhio Humtsoe in Psychology discipline. Thus, the appointments are made in violation of the advertisement itself. In fact, in the discipline of Anthropometry, where the petitioner applied in general category and was at no. 1, posts were advertised and both have been filled up by reserved candidates making it a 100% reservation discipline which is not permissible in law. Thus, on this ground also the present petition deserves to succeed.

(iii) That infact the respondents have earlier also defied the order dated 12.04.2013 (A-3) of this Hon'ble Tribunal to the detriment of the applicant for reasons best known to them. Now also, the applicant is being meted out with the same result to his detriment by not appointing him who stood at sr. no. 1 in the merit list. This action of the respondents is illegal, arbitrary and in violation of Article 14 and 16 of the Constitution of India. On the ground of discrimination also the present petition deserves to succeed."

Likewise, the applicant (in IInd case) has also pleaded two additional grounds, which read as under:

"(ii) That further, the applicant belongs to the SC category which is in the knowledge of the respondent department. Though the advertisement was silent as to how many posts belong to which category, therefore, the applicant applied under the general category. However, as per the impugned order, only 1 post out of the 3 advertised has been filled up in the discipline of Bio-Mechanics. If for any reason any of the vacant post belongs to the reserve category of SC, the applicant has the first right on the said post and the same ought to be offered to the applicant. Thus, on this ground also the present Original application deserves to succeed.


(iii) That further it is submitted that as per the advertisement, three posts of JSO in the discipline of Bio-Mechanics were advertised. However, eventually vide the impugned order only one post in the discipline of Bio-Mechanics has been filled that too in the general category. It is incumbent upon the respondents to fill up all the

advertised posts and thus the 2 vacant posts ought to be filled by the eligible candidates in the merit list, thus offering the appointment to the applicant on the post of JSO Bio-Mechanics. Thus, on this ground also the present Original Application deserves to succeed."

Levelling a variety of allegations and narrating the sequence of events, in detail, in all, the applicants claimed that although they were meritorious and were duly selected, as per merit list, but the respondents have not appointed them, for the reasons best known to them. On the strength of aforesaid grounds, the applicants seek to quash the impugned selection/appointment of private respondents in the manner indicated hereinabove.

8. The respondents refuted the claim of the applicants and filed the written statement wherein it was vaguely pleaded that the initial appointment of the applicants were contractual and they have agreed not to claim any regularization on the basis of their contract appointment. It was alleged that since the applicants have participated, so they are now estopped from challenging the recruitment process.

9. Similarly, in additional affidavit filed on 04.07.2016 by the respondents, it was admitted that the applicant (in Ist case) qualified the written examination and obtained 38.20 out of 80 marks, as per merit list (Annexure-A). He has also qualified in interview and secured 12 out of 20 marks, as per the result (Annexure-B). Likewise, applicant (in IInd case) scored 40.80 out of 80 marks in written examination and 10 out of 20 marks in interview. However, according to the respondents, the appointments were made on merit and as per reservation policy.

 Virtually acknowledging the factual matrix and reiterating the validity of recruitment process and result, the contesting

respondents have stoutly denied all other allegations and grounds, and prayed for dismissal of the OAs.

10. Controverting the pleadings in the reply of the respondents and reiterating the grounds contained in the O.A, the applicant (in IInd case) filed the replication. That is how we are seized of the matter.

11. Having heard the learned counsel for the parties, having gone through the record, with their valuable help, and after bestowal of thoughts over the entire matter, we are of the considered view that the instant OAs deserve to be allowed, for the reasons mentioned herein below.

12. What cannot possibly be disputed here is that the applicants, having successfully cleared the recruitment process, were appointed as JSO w.e.f. 30.08.2007, in their respective discipline. They were continuously working as such when the respondents advertised to fill up 19 various posts of JSO on regular basis, vide advertisement (Annexure A-2). Out of 19, two posts were advertised for the post of JSO, Anthropometry, whereas three posts were advertised for JSO, Bio-Mechanics. Applicants applied, successfully cleared the recruitment process. Applicant (in the Ist case), was placed at Sr. No. 1, as per merit list of JSO, Anthropometry, whereas applicant (in the IInd case) was placed at Sr. No. 4, as per the merit list of JSO, Bio-Mechanics (Annexure A-5).

13. Not only that, the respondents, in their additional affidavit, have categorically admitted that the applicant (in Ist case) qualified the written examination and obtained 38.20 out of 80 marks, and scored 12 out of 20 marks in interview. Similarly,

applicant (in IInd case) scored 40.80 out of 80 marks in written examination and 10 out of 20 marks in interview.

14. Meaning thereby, the applicants in both the cases have successfully cleared the recruitment process and they were selected on merit on their respective posts. Strangely enough, they were not given appointment by the Competent Authority, for the reasons best known to it. It is not a matter of dispute that there was no bifurcation of posts and kind of reservation in the initial advertisement (Annexure A-2). Neither any roster point was maintained, nor the posts were bifurcated in terms of category. However, it remained an unfolded mystery that what prompted the Competent Authority not to issue appointment letters to the applicants. The vague explanation, projected by the respondents, in the additional affidavit, that the appointments of private respondents were made on the basis of merit and in view of reservation policy, is not borne out of the record and is speculative.


15. As indicated hereinabove, neither the respondents have depicted any specific reservation, in the advertisement (Annexure A-2), nor any roster point was maintained, nor the posts were bifurcated in terms of category and nor produced the complete data on record to the effect that how many posts were to be filled from general category candidates, and how many posts were to be filled from the reserved category candidates in each discipline. No explanation much less cogent is forthcoming on record, even to remotely indicate that how 100% reservation was applied, while filling up the post of JSO, Anthropometry, which is not legally permissible. Similarly, no reason,


whatsoever, is forthcoming on record, that why even the applicant (in IInd case), who belongs to reserved category, has not been offered appointment, particularly when the respective posts are still lying vacant. Thus, the action of the respondents, appears to be smeared with colorable exercise of power, and lacks requisite details. Once the applicants were duly selected on merits, in that eventuality, they cannot be denied their regular appointment on speculative and unsubstantiated grounds, by the respondents, in the garb of the impugned order. Therefore, the impugned order cannot, legally, be sustained, in the obtaining circumstances of the case.

16. No other point, worth consideration, has either been urged or pressed by learned counsel for the parties.

17. In the light of the aforesaid reasons, the instant OAs are, hereby, accepted. The impugned order dated 02.05.2014 (Annexure A-7(in the Ist case)/A-6 (in the IInd case) are set aside. At the same time, the respondents are directed to consider the case of the applicants for appointment on the posts of JSO, Anthropometry and JSO, Bio-Mechanics respectively, within a period of two months positively, after the receipt of certified copy of this order. However, the parties are left to bear their own costs.

A copy of this order be placed on record of O.A. NO. 060/00420/2014 titled Baljinder Singh Vs. Union of India & Others.


(RAJWANT SANDHU)
MEMBER (A)


(JUSTICE M.S. SULLAR)
MEMBER (J)
20.01.2017