

Reserved
(On 01.05.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **08th** day of **May** 2018

Original Application No 330/01089 of 2011

Hon'ble Dr. Murtaza Ali, Member – J
Hon'ble Mr. Gokul Chandra Pati, Member – A

Amarjeet Singh, S/o Shri Raj Pal Singh, R/o Village Kharpur, Kharabdal, P.O. Pilkhuwa, District Ghaziabad (UP).

... Applicant

By Adv: Sri Sudama Ram

V E R S U S

1. Union of India through the General Manager, North Central Railway, Headquarter Office, Subedarganj, Allahabad.
2. General Manager, North Central Railway, (Headquarter Office), Subedarganj, Allahabad.
3. The President, North Central Railway Sports Association, Subedarganj, (Headquarter Office), Allahabad.
4. Chief Personnel Officer, North Central Railway, Subedarganj, (Headquarter Office), Allahabad.
5. The Secretary (Sports/RSPB), Railway Board, Rail Bhawan, New Delhi.

... Respondents

By Adv: Sri Shashi Dhar Shukla

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The present OA is preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- “i) To issue an commanding the respondents to produce original records and relevant file relating to proceeding of Talent Scouting Sports Quota of Power Lifting in 110 Kg. category relating to the petitioner and further the Hon'ble Tribunal may be pleased to issue a writ of certiorari quashing the impugned letter dated 22.03.2010 together with its retrial report dated 24.03.2010 (Annexure A-1 & A-2 respectively to the Compilation No. 1 of this Original Application).*
- ii) To issue a suitable order or direction in the nature of mandamus directing the respondent nos. 2 to 4 to consider and given appointment and posting order to the petitioner on the basis of his achievement i.e., 2nd position secured and being awarded with Silver Medal in the Senior National Power Lifting Championship held at Rajhara Mines, Drug from 5th – 10th August, 2008 on the basis of trial conducted by the Trial Committee constituted by the respondents held on 04.11.2009 in which the petitioner was selected and recommended by the Trial Committee and was duly*

approved for the appointment in Group 'C' post against Talent Scouting Quota of Power Lifting in 110 Kgs. category of North Central Railway and RSPB with all consequential benefits from the date his case was approved for appointment to be given i.e., June 2009, within a period as may be fixed by this Hon'ble Tribunal.

- iii) To issue suitable order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.***
- iv) To award the cost of the original application to the applicants."***

2. The brief facts of the case are that the applicant is a sportsman claiming to have won a medal in Senior National Level Powerlifting Championship held on 5th to 10th August, 2008. He applied for appointment in the Railways against sports quota as per Railway Board's order dated 30.03.2007 (Annexure A-12). On 04.11.2009, the applicant was called for verification of his records relating to sports achievements and academic qualifications etc. and also appeared in trial, where he was found fit and included in the list of selected candidates as per the copy of the note sheet (Annexure A-14), alongwith another candidate Subhash Pratap. But the applicant was not given appointment and asked to report for retrial on 22.03.2010, in which the applicant could not participate. The decision was taken to again call the applicant for retrial on 24.03.2010. These letters dated 22.03.2010 and 24.03.2010, calling the applicant for retrial have been annexed as Annexure A-1 and A-2 respectively.

3. The respondents have filed counter affidavit in which it is stated that as per Railway Board's letter dated 30.03.2007 for sports persons upto 3rd position in an individual event at Senior National Championship conducted in last four months, no trial is necessary. The applicant was considered after four months for which trial was taken and he was declared fit for consideration for recruitment in Group 'C'. While processing the case it was found that further period of four months have expired, hence, the decision was taken for fresh trial on 24.03.2010, but the applicant did not turn up. In the meantime two other candidates namely Subhash Pratap and Karamvir were considered in pursuance of

the Court's order by diverting the vacancies of other talented area. It was further stated that the respondents have challenged the order of this Tribunal in case of Subhash Pratap before Hon'ble Allahabad High Court in a Writ Petition and as per the interim order of Hon'ble High Court their appointments will be subject to further order in the Writ Petition. It was also stated that the Railways considered the cases of only Subhash Pratap and Karamvir, both are medal winner of Senior National Power Lifting Championship. It is further stated that at present no post of Group 'C' is available to consider the case of the applicant.

4. In the Rejoinder Affidavit filed by the applicant, the stands taken in the OA are reiterated. It was pointed out that the letter to appear for retrial on 24.03.2010 was issued on 22.03.2010 and it is not reasonable for the applicant to receive the letter dated 22.03.2010 in time to appear for retrial on 24.03.2010.

5. Heard Shri Sudama Ram, learned counsel for the applicant and Shri Shashi Dhar Shukla, learned counsel for the respondents. Learned counsel for the applicant submitted that the case of the applicant in the present OA is squarely covered by the order dated 11.04.2011 passed by this Tribunal in the case of Subhash Pratap vs. Union of India and Others in OA No. 1323 of 2010. In that case Subhash Pratap was short listed with one of the candidates alongwith the applicant of this OA (Annexure A-14). Since Subhash Pratap was not appointed by the respondents and asked to appear in retrial, he challenged the decision of the respondents before this Tribunal in OA No. 1323/10. He argued that the present applicant should also get the similar relief as Subhash Pratap. Learned counsel for the respondents argued that the case of Subhash Pratap is different from the case of the applicant in present OA as he was a medal winner in Senior National Championship for Powerlifting.

6. We have considered the material available on record and the submissions as well as order dated 11.04.2011 passed by this Tribunal in the case of Subhash Pratap vs. Union of India in OA No. 1323 of 2010, cited by the applicant's counsel. In this case, Subhash Pratap had applied under Talent Scout Quota and was selected in trial. The other two persons, who had also medal winners in National Championship held on 12.08.2009 to 17.08.2009 in Chandigarh were proposed to be appointed directly without any trial. Subhash Pratap was called for retrial before March, 2010 since by the time trial decision was taken it was beyond four months from the Championship. But Subhash Pratap did not attend retrial. While considering the case of Subhash Pratap in OA No. 1323/10, this Tribunal vide order dated 11.04.2011 has held as under:-

"On the basis of the above discussion we are of the opinion that there had been highly negligence in the act of the respondents in not giving appointment to the applicant and there was no fault of the applicant either in submitting application or otherwise co-operating the respondents. As there is provision in the Railway policy that within a period of four months of participation in the championship straight way the appointment is to be given to the applicant without any trial otherwise trial is to be conducted. In the present case from the date of participation in the Championship held at Chandigarh and the limitation was upto 16th December, 2009 but within that period appointment was not given to the applicant and it was the fault of the respondents and the applicant can not be allowed to suffer due to the lapse of the administration. In our opinion O.A. deserves to be allowed."

This decision was challenged by the respondents before the Hon'ble Allahabad High Court in Writ – A No. 52506 of 2011 where the following interim order was passed on 12.09.2011:-

"The sole respondent who is represented through counsel may file counter affidavit within a month. The petitioner shall have two weeks thereafter to file rejoinder affidavit. List immediately thereafter.

Meanwhile, it is provided that the appointment made in pursuance of the impugned order of the Tribunal shall be subject to further orders passed in this writ petition.

Sri Tarun Verma, learned counsel for the petitioner states that the appointment in terms of the aforesaid order of the Tribunal will be given to the sole respondent within six weeks."

This Writ Petition is now pending before Hon'ble High Court.

7. Learned counsel for the applicant submitted that the case of the applicant is similar to the case of Subhash Pratap. The respondents in their pleadings have submitted that the case of Subhash Pratap is different from the applicant's case. It is seen that the applicant was winner of medal of Senior National Level Power Lifting Championship held on 5th to 10th August, 2008 and he had cleared the fitness test conducted on 04.11.2009. Subhash Pratap was a medal winner in Senior National Level Championship of Power Lifting held on 12.08.2009 to 17.08.2009 at Chandigarh i.e. one year after the applicant. Since the question of appointment was being considered in 2009, initially Subhash Pratap was proposed for appointment by the respondents, as he was a recent medal winner, for which no trial was required to be held in his case. Copy of the note-sheet enclosed at Annexure A-14 shows that for this reason, the respondents had proposed the name of Subhash Pratap and Karam Veer out of 04 names under consideration. The applicant's case was not proposed alongwith Subhash Pratap. Hence, it cannot be said that the case of the applicant was identical case of Subhash Pratap.

8. It is also seen that the respondents have stated at Para 34 of their counter reply as under:-

“.....
As such, at present no post in Grade 'C' is available to consider the case of the applicant.”

However, instead of taking a final decision on the application of the applicant either to appoint or to reject, the respondents chose to give equal opportunity to all four candidates and retrial was fixed on 24.03.2011. Para 35 of the counter reply, in this regard, states as under:-

“35. That, the contents of paragraph no. 4.25 of the original application are not correct as stated, hence denied and in reply thereof it is submitted that on being declared fit in the trial dated 4.11.2009 the case of the applicant along with the case of Shri Subhash Pratap, silver medal winner and Shri Karamvir, Bronze medal winner was considered by the President, North Central Railway Sports Association subject to release of two berth from RSPB, who has passed the order, which has already been quoted in preceding paragraphs of this counter reply. As such, to give equal opportunity to all the candidates, re-trial was fixed on

24.03.2011 vide order letter dated 22.3.2011. All the candidates were informed through telephone also, but all of them remained absent."

9. We note that the re-trial is not as per the procedure in the letter of the Railway Board dated 30.03.2007 (Annexure A-12) for the appointment through Talent Scouting quota. Para 7.1 of the said letter dated 30.03.2017 mentioned the following procedure for talent scouting:-

"7.1 Talent Scouting

7.1.1. Appointments against sports quota in Group-C category under Talent Scouting shall be given only after trial, except when a sportsperson represented the country, in Individual events, in any of the recent International Championships as mentioned in Category A or Category-B under Para 3, concluded within last four months

OR

When the sportsperson has obtained up to third position in the individual event at the Senior National Championship concluded within last four months.

However, in team games, trial is necessary.

7.1.2. In respect of recruitment in Group-D against Talent Scouting quota, trial is necessary.

7.1.3. For the purpose of trial for recruitment both in Group C & Group D through Talent Scouting, a Trial Committee may be nominated by the President of concerned Sports Association at Headquarter level and by the DRM at Divisional level. The Trial Committee shall comprise of three officials with experience of Sports, including one JAG officer, a sports officer and a Coach of the respective game (National/Railway/NIS qualified).

7.1.4. Trial shall be conducted in the presence of all the three members of the Trial Committee. The Trial Committee shall give its recommendation as FIT or NOT FIT for further consideration."

Hence, it is not understood under what authority the retrial of the applicant was ordered. None of the candidates who were called for retrial on 24.03.2011 including the applicant participated in the said retrial. Subhash Pratap had moved this Tribunal in OA No. 1323/10 which was decided in his favour. The applicant moved this Tribunal in the present OA. Learned counsel for the applicant at the time of hearing, had submitted that a similar relief as extended to Subhash Pratap in OA No. 1323/10 be extended to the applicant also.

10. In view of the above and taking into account the fact that the respondents themselves have treated all the candidates including the applicant as well as Subhash Pratap at equal footing, as stated in paragraph No. 35 of the counter reply, we are of the view that the present

applicant is also entitled to be considered for appointment by the respondents as per extant rules, subject to availability of vacancy and as in the case of Subhash Pratap, the appointment of the applicant, if any, would be subject to the final decision of Hon'ble High Court in Writ Petition No. 52506 of 2011.

11. Accordingly, the OA is disposed of with the direction to the respondents to consider the case of the applicant in terms of para 10 of this order. There is no order as to costs.

(Gokul Chandra Pati)
Member (A)

(Dr. Murtaza Ali)
Member (J)

/pc/