

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1607/2013

Order Reserved on 07.12.2015
Order Pronounced on: 28.04.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Ajay
S/o Shri Hari Singh,
R/o House No. 85,
Vill. & P.O. Kair,
Najafgarh, New Delhi-110043. -Applicant

(By Advocate: Shri Amit Anand)

Versus

1. Union of India
Through
Member Staff
President (RSPB),
Railway Board,
Rail Bhawan, New Delhi.
2. The Executive Director, Estt (Sports)
-cum- Secretary,
Railway Sports Promotion Board,
Railway Board, Rail Bhawan,
New Delhi.
3. The General Manager (P)
East Central Railway, Hajipur,
Bihar. -Respondents

(By Advocate: Shri S.M. Arif)

O R D E R

Per Sudhir Kumar, Member (A):

The applicant of this O.A. is aggrieved by the respondents not having provided appointment to him against Sports Quota, in spite of his fulfilling all the requisite qualifications, merit etc. envisaged in the policy

of the respondents for appointments against Sports Quota, and through Talent Scouting in Group 'D' category. He has submitted that his case was duly recommended by the President of Sports Association etc., and while recommending his case the Zonal Railway had wrongly assumed that the Group 'D' post in Kabaddi discipline was not included in the pre-decided disciplines of Sports for Zonal requirement for the year 2012-13. His case is that Kabaddi is a Sport recognized by the Railway Sports Promotion Board (RSPB, in short), and that the discretion allowed to RSPB for releasing the Sports category quota on the basis of the recommendations from the President of relevant Sports Association has not been properly exercised. Hence this OA.

2. The applicant has passed Higher Secondary Examination, and claimed to have scored second position in a National Level Rural Tournament Group 'D' held in January 2011 at Karnataka. He submitted that he also participated twice in the Junior National Kabaddi Championship, and also participated thrice in the Delhi State Kabaddi Association Championship, etc., and he has annexed various certificates as Annexure A-4 (Colly).

3. The applicant has also stated that his name has been recommended by the Member of Parliament of his constituency to the Ministry of Railways through Annexure A-5 recommending for

consideration of his name against the Sports Quota in the Railways, preferably in New Delhi and nearby, in the Northern Railway.

4. A call letter for trial for recruitment in Railways against Sports Quota (Talent Scouting) for the year 2012-13 was issued to the applicant on 16.10.2012, asking him to attend the trial to adjudge his game skill and physical fitness on 15.11.2012 at Patna, along with the relevant documents, through the letter at Annexure A-7. On that date, the trial of his sport Kabaddi was conducted, as per the instructions of RSPB, in order to ascertain as to accommodate the applicant's candidature either within the Zonal Quota of Group 'D' category of the year 2012-13, or, if it is not feasible, then the quota of RSPB pool being requested to be released to accommodate him. The applicant qualified at that trial, and through letter dated 11.12.2012, the Office of the General Manager, East Central Railway, Hajipur, wrote to the Secretary, RSPB, New Delhi, that as the Zonal Quota of Group 'D' pertaining to Talent Scouting of that Railway for the year 2012-13 had already been utilized, it was requested that two more Group 'D' posts may be released from the RSPB Pool, so that the two candidates, including the applicant, whose names were included in that letter, and who were found fit during the trial, may be accommodated in the East Central Railway.

5. The respondents, however, rejected that proposal through the impugned Annexure A-1 dated 19.02.2013, declining to release one berth from the RSPB's Talent Scouting Quota for the year 2012-13 for

providing employment to the applicant in the East Central Railway against Sports Quota. The Zonal Railway then requested RSPB once again through their letter dated 26/27.02.2013 (Annexure A-9) to re-consider for releasing of two berths for including the two candidates whose names had earlier been recommended through Annexure A-8 dated 11.12.2012. However, once again, on a re-consideration, through letter dated 25.03.2013 (impugned Annexure A-2), the proposal was again rejected by the Railway Board.

6. The applicant has assailed such rejections of his candidature through Annexures A-1 & A-2 by refusing to release Sports Quota, without assigning any reason, to be against the respondents' own policy in this regard, which states that once the President of Sports Association of the Zonal Railways recommends any name(s), RSPB should release quota for appointment of such candidate(s). The applicant has taken the ground that non-consideration of his appointment, in spite of his having been found suitable, is illegal, arbitrary and contrary to law, and against the policies and guidelines which are binding upon the respondents. The lack of exercise of discretion by the respondents in favour of the applicants has also been assailed as being violative of applicant's rights under Articles 14 & 16 of the Constitution of India. It has been further submitted by the applicant that the recommendation of the Zonal Railway has not been considered properly by an incorrect use of discretion of RSPB, more so because the impugned Annexures A-1 & A-2 do not assign any reasons for applicant's non-consideration for

appointment to Group 'D' posts under Sports Quota. In the result, the applicant had sought for the following reliefs and Interim Relief:-

Reliefs

- "a) Call for the records of the case.
- b) Direct the Respondent No.1 to release one Group D post from RSPB Pool to consider for appointment of the applicant in East Central Railway under the sports quota which has been recommended by the President of Sports Association, East Central Railway, Hajipur, along with all consequential benefits.
- c) Award exemplary costs of the proceedings,
- d) Pass such further order or orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case".

Interim Order, if any prayed for:

"Restrain the Respondents to fill the posts under RSPB Pool in Group D post under sports quota for the year 2012-13 as provided under the norms and procedure for recruitment norms for incentives issued vide policy dated 31/12/2010".

7. The Interim Relief as prayed for was, however, not considered and granted till the case came to be finally heard and reserved for orders.
8. The respondents filed their counter reply on 13.11.2014. It was submitted that before initiating the process of recruitment against Sports Quota, game-wise distribution of total Sports Quota allotted by Railway Board is essential, and the quota allotted by Railway Board for East Central Railway in the year 2012-13 was as under:-

Rectt. Through		Posts having Grade Pay Rs. 4200	Posts having Grade Pay Rs. 2800/2400	Posts having Grade Pay Rs. 2000/1900	Posts having Grade Pay Rs. 1800	Total
Talent Scouting	HQ	01	03	08	04	16

	RSPB	01	01	04	02	08
Open Advertisement		Nil	03	09	04	16
Total		02	07	21	10	40

9. It was submitted that this Sports Quota was further subject to distribution game-wise, which was announced through orders dated 20.09.2012 and 28.09.2012 at Annexure R-2. It was explained by the respondents that while the Zonal Railway HQs. had so distributed the Sport-wise Quota concerned, both under the Talent Scouting and Open Advertisement categories, through Annexure R-2, the RSPB Talent Scouting Quota is operated only by the RSPB itself, and the Zonal Railway can only send a proposal for releasing berth(s) from such Quota to accommodate a candidate, or candidates, found fit in trial, if the Zonal HQ Quota under Talent Scouting is not vacant and available. It was admitted that the Trial Committee assessed the present applicant suitable for Group 'D' post as per Zonal Railway standards, but since there was no quota for Kabaddi in the Talent Scouting portion in Group 'D' posts with the Zonal Railway concerned, and the quota decided for Group 'D' posts, as per the game-wise distribution through Annexure R-2, had already been utilized, the proposal for releasing quota from RSPB Pool was sent to the Railway Board, which did not find the proposal suitable enough for release of berth from the RSPB Pool, since the performance of the applicant did not match the performance of the Indian Railway Men Kabaddi Players at the National & International level, as the Indian Railways team was the National Champion at that time, and included International level National players also.

10. The respondents had reiterated the above submissions in their reply to the OA on merits also.

11. While replying to the facts of the case, it was further submitted that at that time the applicant did not have any latest achievements other than his participation in the Junior National Kabaddi Championship in 2010, and did not have any sports achievement in any recognized event after 2010. It was submitted that the proposals for release of berths from RSPB's Talent Scouting Quota are considered on the merit of each case separately, and, keeping in view the performance of Indian Railway Men Kabaddi Players at National & International levels, since the applicant's performance did not match with the same, his case was not found suitable for release of a berth from RSPB's Talent Scouting Quota for the year 2012-13. It was submitted that the recommendation of the President of the Sports Association of the Zonal Railway is not binding upon RSPB, and that the candidature of the applicant had been rejected only because the Railway Board did not find his case strong enough to release a berth from the RSPB's Talent Scouting Pool. Any wrong doing on the part of the respondents was denied, and it was prayed that the OA deserves to be dismissed.

12. Along with the counter reply, the respondents had filed Annexure R-1 dated 18.04.2012, their partially modified Recruitment Policy for Sportspersons against the Sports Quota, amending their earlier policy dated 31.12.2010, which had been annexed by the applicant as Annexure A-3 of his OA, as already mentioned above. Annexure R-2 was

the East Central Railway Zonal HQ Sports Quota distribution, detailing the Sports Quota vacancies in different Pay Bands & Grade Pay for the year 2012-13, and Annexure R-3 was the same as Annexure A-3, in particular the Annexure-1 of that 31.12.2010 policy, containing the list of the Junior National Level Championships recognized by RSPB for recruitment of Sportspersons in Indian Railways against Sports Quota.

13. The applicant filed a rejoinder on 12.02.2015. Through this, he had submitted that when his case was being considered for the year 2012-13, and the certificate of Junior National Championship possessed by him was for the year 2010, it was within the prescribed past period of two years, and it is wrong for the respondents to state that he did not possess a recent or current Sports participation certificate to render him eligible for being considered under the Sports Quota. It was further submitted that in terms of the detailed instructions dated 31.12.2010 (Annexure A-3) the applicant had secured 78 marks out of 100 against the requirement of 60 marks, which was required for his appointment for strengthening the teams of Eastern Railway Men Kabaddi Team. It was submitted that comparison of his performance with the Indian Railway Men Kabaddi Team, for which the selection is made on the basis of performance of the teams of all the 19 Railways, was incorrect, and that his case was squarely covered by the Respondents' own instructions dated 03.09.2012 (Annexure RJ-1) regarding recruitment of Sportspersons against the Sports Quota, and hence it was once again prayed that the OA be allowed.

14. Heard. Since the policy clarifications dated 18.04.2012, Annexure R-1, and dated 03.09.2012 Annexure RJ-1 were referred to by both the learned counsel during their arguments, we may reproduce portions of their contents here as follows:-

Annexure R-1 dated 18.04.2012

“The recommendations of the Committee have been accepted by Board (MS) for implementation over all Zonal Railways and Production Units from the year 2012-13, i.e., 01.04.2012 onwards. Accordingly, the following paras of Board’s letter dated 31.12.2010 referred above, shall stand amended and replaced by Amended Para/New Para:-

Para No.	Existing Para	Amended/New Para
2.1, 2.14 (New Para), 2.15 (New Para)	Not reproduced here	
4.1 (m) Notes (New Para)		In team sports, only sportsperson who have actually played the sport in field, shall only be eligible. Therefore, a sportsperson who represents as member of a team in any recognized sports event/championship but has actually not played in the field, shall not be considered for recruitment against sports quota.

Annexure RJ-1 dated 03.09.2012

“GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD)

No. 2012/E(Sports)/4(1)/1/Policy Clarifications

New Delhi, 3rd September 2012

The General Managers (P),
All Zonal Railways including

CLW, DLW, ICF, RCF, RWF, Metro Railway/Kolkata,
The CAO(R), DMW/Patiala,
The DG, RDSO/Lucknow.

Sub. :-Recruitment of sportspersons against sports quota.
Ref. :- Railway Board's letters of even number dated dt. 18.04.2012 (RBE No. 52/2012) & 26.06.2012 (RBE No. 75/2012) and 2010/E(Sports)/4(1)/1(Policy) dated 31.12.2010 (RBE No. 189B/2010).

In continuation of Board's letters referred to above regarding recruitment of sportspersons on Indian Railways against Sports Quota, following is clarified:-

- (i) **Instructions** issued vide Board's letter of even number **dt. 18.04.2012** (RBE No. 52/2012) **will come into effect for all recruitments against sports quota both through Talent Scouting and Open Advertisement from the year 2013-14 onwards.**
- (ii) **All recruitments against sports quota both through Talent Scouting and Open Advertisement for the year 2012-13, will be done as per instructions issued** vide Board's letter No. 2010/E(Sports)/4(1)/1(Policy) **dated 31.12.2010** (RBE No. 189B/2010), read with modifications issued from time to time.
- (iii) **Any recruitment against sports quota for the year 2012-13 which has already been completed and conducted by the Railways as per Board's instructions' dated 18.04.2012 (RBE No. 75/2012) remains valid.**

2. **Recruitment against sports quota** both through Talent Scouting and Open Advertisement **for the year 2012-13 must be initiated before 30.11.2012 and finalized by 28.02.2013.**

3. Receipt of this letter may please be ensured.

(PARVEZ)
Director, Estt.(Sports)"

(Emphasis supplied).

15. Learned counsel for the applicant submitted that in terms of the law as laid down in **Commissioner of Police, Bombay v. Gordhandas Bhanji AIR (39) 1952 SC 16**, and in **Mohinder Singh Gill v. Chief Election Commissioner : 1978 (1) SCC 405**, the respondents could not, after having passed cryptic and non-speaking impugned orders Annexures A-1 & A-2, rejecting the applicant's candidature, be allowed to supply their reasons for having done so, by way of their counter reply

and its Annexures, when those reasons had not been included in the impugned orders themselves. He further emphasized Paragraphs 2.10 and 4.2 of Annexure A-3 dated 31.12.2010 which state as follows:-

“2.10 Talent Scouting Quota of RSPB Pool shall be operated by RSPB. However, the requests of Zonal Railways/Production Units etc., duly recommended by the President of their Sports Association for release of berths from RSPB Pool may be considered by RSPB on merit. Railways/Units may send proposals in this regard, only after complete utilization of their Talent Scouting and Open Advertisement quota, along with all relevant information and documents, at least one and half months before the completion of the financial year, i.e., by 15th February”.

XXX XXX XXX

4.2 Period of reckoning Sports Achievements :

“4.2.1 For recruitment against sports quota, the sports achievement shall be in the immediate previous two years for both Talent Scouting and Open Advertisement and sportspersons shall be an active player. For this purpose previous two financial years from the date of receipt of application or date of notification, as the case may be, shall be taken in to account.

For example, for applications received in 2010-11 (i.e. from 01.04.2010 to 31.03.2011) for recruitment through Talent Scouting or notification issued during this period for recruitment through Open Advertisement, the sports achievements of current and previous two financial year i.e. 2009-10 & 2008-09 shall be taken into account and therefore, sports achievements on or after 01.04.08 shall only be considered for appointment, in the extant case. For this purpose concluding day of the championship shall be taken into account.

4.2.2 Activeness in sports shall be adjudged as per his/her performance during the trials. It is, therefore, not necessary that the sportsperson must have sports achievement during current/previous financial year to see his/her activeness in sports”.

(Emphasis supplied).

16. He had also taken us through the certificates produced at Annexure A-4 (Colly) to show that the applicant had participated at the 3rd National Level Rural Tournament Group-II under the Panchayat Yuba Krida Aur Khel Abhiyan held from January 12-15 2011 in Karnataka, in which, according to the Merit Certificate, the applicant had secured

second position. He had also taken us through various other Participation Certificates of the applicant at various Sports events, including Delhi State Events and others. He very strongly argued that the respondents could not have rejected the case of the applicant after having included Kabaddi as a Zone-wise Sport, included under their Talent Scouting Policy, announced through Annexure A-3 dated 31.12.2010. He also emphasized upon Paragraphs (i) and (ii) of the Policy Circular dated 03.09.2012 (supra). Learned counsel for the applicant also emphasized upon the file Notings obtained by him under the RTI Act, which had been filed by him on 12.07.2013 as permitted by this Tribunal, and submitted that in the Notings dated 28.01.2013, the respondents had themselves first noted in Para 3 & 4 & 4(sic), and then the DDE (Sports) had on 30.01.2013 recorded as follows:-

28.01.2013

“ 3. Ajay fulfils norms laid down for recruitment in Grade Pay Rs.1800 against the sports quota, under the Talent Scouting Scheme.

4. This case was forwarded to ECR for examining. ECR has stated that the trial was held on 15-11-2012 where Shri Ajay has been found fit for GP 1800. (F/X)

4.(sic.) ECR has also stated that Kabaddi discipline in category viz. GP 1800 was not included in the pre decided disciplines of Zonal Requirement for the year 2012-13 and ECR has already exhausted their quota of all berths in GP 1800 under Talent Scouting for the year 2012-13. (F/Y)

30.01.2013

The candidate has no outstanding sports achievement. Only participation in Jr. National 2010. There is also no sports achievement in recognised event after 2010. In a similar case of Volley ball (ECR) we has (sic.) not agreed to for release of berth from RSPB's Talent Scouting Quota”.

17. The learned counsel for the respondents had, on the other hand, while admitting that the impugned orders were cryptic, submitted that the reasons for not selecting the applicant had been recorded on file on 30.01.2013 by the DDE (Sports) as reproduced above, and he had also emphasized on Para (iii) of the Policy Clarifications dated 03.09.2012 (Annexure RJ-1) (supra) which, at the cost of repetition, may be reproduced here as follows:-

“(iii) Any recruitment against sports quota for the year 2012-13 which has already been completed and conducted by the Railways as per Board's instructions 'dated 18.04.2012 (RBE No. 75/2012) remains valid”.

(Emphasis supplied).

18. It was submitted by him that the respondents have no ill-will against the applicant, and it is only because Kabaddi has been dropped as one of the eligible Sports in the Circular dated 18.04.2012 (Annexure R-1) (supra), and the recruitment against Sports Quota for the year 2012-13 had already been completed, the respondents could not come to the aid and rescue of the applicant, in spite of his qualifying in the Trial Tests conducted at Patna.

19. We have considered the facts of this case very carefully. It is true that the policy dated 31.12.2010 (Annexure A-3) was very comprehensive in regard to the policy and procedures to be followed for reckoning Sports achievements, and for Talent Scouting for the purpose of Railways. It is also true that, as pointed out by the learned counsel for the applicant during arguments, in Para 4.2.2 of that Circular, as reproduced by us already in Para-15/above, it was laid down that activeness in sports during trial was to be given importance, it was not considered necessary

that the sportsperson must necessarily have sports achievements during the previous/current financial year, in order to see his/her activeness in sports.

20. There is also merit in the argument of the learned counsel for the applicant that activeness in the sports during trial should be the main criteria, as excellence in future performance has to be expected by the Railways. He also cited that even if a previous Olympics Medal winner fails in the trial conducted by the Railways during recruitment, the appointment should be given under the Circulars, and not on the basis of the past performance, because it is the future performance, which is the expectation for which the Railways provides such reservation in sports.

21. However, we have seen that in the Annexure-I read with Note-I below Para 4.1 of the Circular dated 31.12.2010 (supra), in respect of Kabaddi, the participation in the category of men under-19 age Group at the Junior National Kabaddi Championship alone was the criteria. Though the learned counsel for the applicant tried hard to convince us that the merit certificate issued in respect of the applicant's participation at the 3rd National Level Rural Tournament Group-II under the Panchayat Yuba Krida Aur Khel Abhiyan held in Karnataka was fully covered under the same category as given in Annexure-I of the relevant Circular dated 31.12.2010, we are not convinced that to be true, as participation at the National Level Rural Tournament Group-II in a particular scheme of the Ministry of Youth Affairs & Sports, namely Panchayat Yuba Krida Aur Khel

Abhiyan, cannot be termed to be participation in the Junior National Kabaddi Championship, as the two are not the same.

22. The applicant had participated in the 35th Junior National Kabaddi Championship held at Theni in Tamilnadu from 15.01.2009 to 18.01.2009, which was more than three years prior to the recruitment trial held at Patna on 15.11.2012. The applicant had, however, participated on behalf of State of Bihar as a player, in the 37th Junior National Kabaddi Championship, held at Bhilai, Chhattisgarh, from 01.12.2010 to 05.12.2010.

23. Both these participations by the applicant at the 35th Junior National Kabaddi Championship held at Theni in Tamilnadu from 15.01.2009 to 18.01.2009, and at the 37th Junior National Kabaddi Championship also on behalf of State of Bihar as a player held at Bhilai, Chhattisgarh from 01.12.2010 to 05.12.2010, were only participations, and not medal winning performances at Junior National Kabaddi Championships. His second position at the 3rd National Level Rural Tournament Group-II held at Davengere in Karnataka from January 12-15, 2011 under the Panchyat Yuba Krida Aur Khel Abhiyan cannot compensate for his lack of any award winning performance at either the 35th or the 37th Junior National Kabaddi Championships. The applicant has not produced any certificate in regard to the 36th Junior National Kabaddi Championship, which must have been held in between. Mere participation cannot be held to render the applicant to be eligible for

allocation of Sports Quota, under the guidelines issued by the respondents on 31.12.2010, as they were amended on 18.04.2012 (Annexure R-1) (supra). Moreover, through that Annexure R-1 dated 18.04.2012, Kabaddi itself was removed as an eligible sports event, and, therefore, that Circular dated 18.04.2012 would not provide any relief to the applicant.

24. His trial held at Patna on 15.11.2012 having been held after the issuance of Annexure R-1 dated 18.04.2012, and being in respect of the year 2012-13, which, from the pleadings as advanced before us, means 01.04.2012 to 31.3.2013, it is clear that the applicant cannot be allowed to reopen the recruitment against Sports Quota for the year 2012-13, which had already been completed and conducted, in order to be accommodated in view of Para (iii) of the Policy Clarification dated 03.09.2012 (supra) issued by the respondents through Annexure RJ-I.

25. Learned counsel for the applicant had read out and relied upon the judgment of a Coordinate Bench dated 08.05.2015 in OA No.1949/2014

Ms. Kavita Rani vs. Union of India & Others. But in his arguments, learned counsel for the respondents had submitted that this judgment and order actually operates against the case of the applicant, since in that case the trial itself had not been conducted, and the Northern Railway had waited for Railway Board-RSPB to first release the berth, and had not conducted the trial at all, which was contrary to the directions of the Railway Board, and in that context the Bench had directed for trial of the applicant therein to be conducted, and if she was

found fit, and all necessary formalities are completed, then it was ordered that the Railway Board will be approached for release of berth for her. It was submitted by the learned counsel for the applicant that the applicant's case is covered under that order of the Coordinate Bench, and the learned counsel for the respondents contested that the two cases were not on all fours with each other.

26. After having considered their contentions, we are of the view that since in the instant case the trial of the applicant had already been conducted, and his case was not on all fours covered with the case of **Ms. Kavita Rani** in OA No.1949/2014, no benefit of the order dated 08.05.2015 (supra) can be provided to the applicant of the present OA.

27. In the result, we do not find any merit in the OA, and the same is, therefore, rejected, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.

