

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 290/00199/16

JODHPUR, THIS THE 3RD DAY OF JANUARY,

**2018
CORAM**

**HON'BLE MR. PRASANNA KUMAR PRADHAN, ADMINISTRATIVE MEMBER
HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER**

**ATUL S/O SHRI AJAY PAL, AGED 23 YEARS, R/O VILLAGE SANKROR DIST.
BHIWANI (HR) (HALL MAJDOOR AT 224 ADV. BASE ORD. DEPOT C/O 56
APO)**

.....APPLICANTS

BY ADVOCATE:- MR S.P. SHARMA.

VERSUS

- 1. UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF DEFENCE,
GOVERNMENT OF INDIA, RAKSHA BHAWAN, NEW DELHI.**
- 2. THE COMMANDANT, NO. 224 ADVANCE BASE DEPOT, BANAR JODHPUR,
C/O 56 APO.**
- 3. THE ADMINISTRATIVE OFFICER, NO. 224 ADVANCE BASE DEPOT, BANAR
JODHPUR, C/O 56 APO.**
- 4. THE LOCAL AUDIT OFFICER, LAO, BANAR JODHPUR.**

.....RESPONDENTS

BY ADVOCATE : MR K.S. YADAV.

ORDER

PER PRASANNA KUMAR PRADHAN, MEMBER(A)

**THE APPLICANT IN THE PRESENT OA SUBMITS AN APPLICATION
IN RESPONSE TO ADVERTISEMENT TO FILL UP THE VACANT POST OF CIVIL
MAJDOOR ISSUED IN ROJGAR SAMACHAR DATED 11-17 JANUARY 2014 (A/2).
HE PARTICIPATED IN THE SELECTION PROCESS AND WAS DECLARED
QUALIFIED FOR THE POST OF MAJDOOR AND WAS PLACED IN THE MAIN
LIST OF SELECT CANDIDATES. THE APPLICANT WAS SELECTED IN THE
CATEGORY OF SPORTS QUOTA HAVING REQUISITE CERTIFICATES (A/3 TO
A/5). FOLLOWING THE VERIFICATION OF DOCUMENTS, THE APPLICANT
WAS ISSUED A PROVISIONAL SELECTION LETTER DATED 18.07.2014 (A/6) AS**

INITIALLY THE SELECTION PROCESS WAS STAYED DUE TO AN OA NO. 290/00396/14 FILED BY THE BHALLA RAM & ORS BUT SUBSEQUENTLY THE APPLICANT AND OTHER CANDIDATES APPROACHED THIS TRIBUNAL IN OA NO. 290/00059/15 AND THIS TRIBUNAL IN OA NO. 290/00059/15 VIDE INTERIM ORDER DATED 17.02.2015 (A/7) DIRECTED THE RESPONDENTS TO ALLOW THE JOINING OF THE APPLICANT SUBJECT TO RESULT OF OA NO. 290/00396/14. HENCE, THE RESPONDENTS ISSUED THE CONDITIONAL APPOINTMENT LETTER DATED 23.03.2015 (A/8) FOLLOWING WHICH THE APPLICANT HAD JOINED DUTIES IN MAY, 2015 (A/9). THEREAFTER THE RESPONDENTS ISSUED SERVICE CERTIFICATE TO THE APPLICANT IN MAY 2015 (A/9).

2. THE APPLICANT SUBMITS THAT EVEN THOUGH HE WAS PERFORMING THE DUTIES REGULARLY, HE WAS NOT PAID SALARY SAYING THAT THERE IS SOME AMBIGUITY IN THE SPORTS CERTIFICATE OF THE APPLICANT. THEREFORE, THE APPLICANT SUBMITTED VARIOUS REPRESENTATIONS TO SUPERIOR AUTHORITY FOR RELEASE OF HIS REGULAR SALARY. HOWEVER, HE WAS VERBALLY INFORMED BY THE RESPONDENT NO. 2 & 3 THAT THERE IS SOME AMBIGUITY IN THE SPORTS CERTIFICATES PRODUCED BY HIM, HENCE HIS APPOINTMENT IS NOT APPROVED BY THE HIGHER AUTHORITIES. THEREAFTER, THE APPLICANT WAS ISSUED SHOW CAUSE NOTICE ON 25.02.2015 (A/1) POINTING OUT THAT THE SPORTS CERTIFICATES SUBMITTED BY HIM DOES NOT QUALIFY HIM FOR COMING UNDER MERITORIOUS SPORTS QUOTA (MSQ) AND WHY HIS APPOINTMENT SHOULD NOT BE DISPENSED WITHIN 30 DAYS FROM THE DATE OF RECEIPT OF THIS LETTER. THE APPLICANT HAD SUBMITTED REPLY TO THE SHOW CAUSE NOTICE ON 16.03.2016 (A/12). AGGRIEVED BY THE SHOW CAUSE NOTICE, THE APPLICANT HAS FILED PRESENT OA SEEKING TO SET ASIDE THE IMPUGNED SHOW CAUSE NOTICE DATED 25.02.2016 AND NOT TO TERMINATE THE SERVICES OF THE APPLICANT.

3. THE APPLICANT HAS FURTHER SUBMITTED THAT THE EARLIER OA NO. 290/00059/15 FILED BY HIM AND OTHERS WAS ALLOWED BY THIS TRIBUNAL ON 04.02.2016 AND OA NO. 290/00396/14 FILED BY BHALLA RAM & ORS WAS DISMISSED. CONSEQUENTLY, THE APPOINTMENT OF THE APPLICANT ON THE POST OF MAJDOOR HAS BEEN APPROVED. MOREOVER, THE APPLICANT HAD NOT CONCEALED ABOUT HIS SPORTS CERTIFICATES POSSESSED BY HIM. HE SUBMITTED ORIGINAL CERTIFICATE OF DISTRICT, STATE AND NATIONAL LEVEL TO THE RESPONDENTS AND AFTER DUE VERIFICATION THE APPLICANT WAS SELECTED. IN SELECTION PROCESS, HE HAS SHOWN GOOD PERFORMANCE AND HE OBTAINED MERIT IN THE MAIN SELECTION LIST. IT IS ALSO PRESUMED BY HIM THAT EVEN IF SPORTS CERTIFICATE IS NOT CONSIDERED HE SHOULD FIND PLACE IN THE SELECT LIST. HENCE, HIS SERVICES SHOULD NOT BE TERMINATED.

4. THE RESPONDENTS HAVE FILED A REPLY STATEMENT IN WHICH THEY STATED THAT THE APPLICANT PURSUANT TO THE ADVERTISEMENT FOR THE POST OF MAJDOOR OFFERED HIS CANDIDATURE UNDER MERITORIOUS SPORTS QUOTA (MSQ) AND HAS AT HIS CREDIT THE

CERTIFICATE ISSUED BY HARYANA ATHLETICS ASSOCIATION SECURING 1ST POSITION 5000 M RACE AT DISTRICT LEVEL AND OPEN MAN MARATHON. THEREFORE, THE APPLICANT WAS GRANTED THE APPOINTMENT IN MSQ AND PLACED ON PROBATION FOR A PERIOD OF TWO YEARS. AFTER APPOINTMENT, THE SERVICE DOCUMENTS OF THE APPLICANT WERE SENT TO LOCAL AUDIT OFFICER (LAO), BANAR BUT THE SAME WERE RETURNED BY THE LAO RAISING OBSERVATIONS THAT THE APPOINTMENT OF THE APPLICANT IS ERRONEOUS IN VIEW OF OMS DATED 04.08.1980 AND 04.05.1995 ISSUED BY DOPT AS ATHLETIC RACE IS NOT INCLUDED FOR THE PURPOSE OF RELAXATION OR CONCESSION UNDER MSQ. THE RESPONDENTS THEN SENT THE MATTER TO THE INTEGRATED HEADQUARTERS OF MINISTRY OF DEFENCE (ARMY) ON THE OBSERVATIONS OF THE LAO AND THE SAME IS PENDING CONSIDERATION.

5. THE RESPONDENTS SUBMIT THAT THE OM DATED 04.02.1980 AND 04.05.1995 AS WELL AS RELEVANT PART OF THE ADVERTISEMENT MAKES IT CLEAR THAT THERE ARE FOUR CATEGORIES OF SPORTSMAN TO BE CONSIDERED FOR THE PURPOSE. THE APPLICANT POSSESS THE CERTIFICATE OF CROSS-COUNTRY AND MARATHON WHICH DOES NOT FALL WITHIN THE PARAMETERS LAID DOWN BY THE DOPT VIDE OM DATED 04.08.1980 AND 04.05.1995. THEREFORE, THE APPLICANT IS NOT ELIGIBLE TO BE CONSIDER UNDER MSQ AND HENCE, THE ACTION OF THE ANSWERING RESPONDENTS IS JUSTIFIED AND LEGAL.

6. THE APPLICANT HAS FILED REJOINDER FOLLOWED BY ADDITIONAL REPLY ON BEHALF OF THE RESPONDENTS. BOTH THE REJOINDER AND ADDITIONAL REPLY VIRTUALLY REFER TO THE SAME ISSUES/POINTS WHICH HAVE BEEN ELABORATED IN THE ORIGINAL APPLICATION AND REPLY.

7. WE HAVE HEARD THE LEARNED COUNSEL FOR BOTH SIDES. LEARNED COUNSEL FOR THE APPLICANT REFERRED IN DETAIL TO THE SUBMISSIONS MADE IN THE OA AND STATED THAT THE CERTIFICATES PRODUCED BY THE APPLICANT FROM ANNEX. A/3 TO ANNEX. A/5 WERE OBTAINED IN THE STATE LEVEL MEET. HE ALSO REFERRED TO A COMMUNICATION BY ATHLETICS FEDERATION OF INDIA DATED 03.08.2016 (A/13) WHICH ADDRESSED TO THE ADMINISTRATIVE OFFICER, 224 ABOD C/O 56 APO WHEREIN IT IS STATED THAT MARATHON, HALF MARATHON & CROSS COUNTRY ARE PART OF ATHLETICS. HE ALSO REFERS TO A PAPER CUTTING SAYING THAT EVEN AFTER JOINING THE POST THE APPLICANT HAD OBTAINED GOLD MEDAL IN POWER LIFTING FOR THE STATE AND IS LIKELY TO PARTICIPATE ON INTERNATIONAL LEVEL. THEREFORE, THE APPLICANT MERITS CONSIDERATION UNDER MSQ AND NO FRAUD WAS COMMITTED BY HIM. HE HAD SUBMITTED HIS CERTIFICATES BASED ON WHICH THE APPOINTMENT WAS MADE.

8. PER CONTRA, LEARNED COUNSEL FOR THE RESPONDENTS SUBMITTED THAT THE RESPONDENTS CONSIDERED THE MATTER IN THE LIGHT OF RELEVANT PROVISIONS PERTAINING TO MERITORIOUS SPORTS QUOTA. HOWEVER, AS STIPULATED IN THE ADVERTISEMENT, THE

APPLICANT DOES NOT FALL IN ANY OF THE CATEGORY. ON FURTHER BEING ASKED ABOUT WHY THE REPEATED REFERENCES WERE MADE TO THE AUDIT AND THEN TO THE INTEGRATED HEADQUARTERS OF MINISTRY OF DEFENCE (ARMY) SEEKING DIRECTION FROM THEM IF THEY WERE CONVINCED THAT THE APPLICANT DOES NOT MERIT CONSIDERATION, HE DID NOT HAD ANY SPECIFIC ANSWER TO THE SAME.

9. WE HAVE CAREFULLY CONSIDERED THE MATTER AND SUBMISSIONS MADE BY BOTH SIDES. THERE IS NO DOUBT THAT THERE ARE AMBIGUITY IN THE ACCEPTABILITY OF THE CERTIFICATES SUBMITTED BY THE APPLICANT UNDER MERITORIOUS SPORTS QUOTA AND WHETHER THEY CONFORM TO THE REQUIREMENT STIPULATED IN THE ADVERTISEMENT AND THE OM DATED 04.08.1980 AND 04.05.1995. HOWEVER, THE FACT STILL REMAINS THAT IN THE INITIAL SCRUTINY, THE RESPONDENTS ACCEPTED THE CERTIFICATE PRODUCED BY THE APPLICANT UNDER THE MERITORIOUS SPORTS QUOTA AND OFFERED HIM APPOINTMENT. THEY AGAIN TOOK UP THE MATTER WITH LOCAL AUDIT OFFICER AFTER CONFIRMATION OF GENUINENESS OF THE CERTIFICATE BY THE ISSUING AUTHORITY AND FOLLOWING REFUSAL OF THE LOCAL AUDIT OFFICER TO ACCEPT THE SAME, THEY TOOK UP THE MATTER WITH INTEGRATED HEADQUARTERS OF MINISTRY OF DEFENCE (ARMY) WHERE MATTER IS PENDING CONSIDERATION, AS IS EVIDENT FROM THE REPLY STATEMENT.

10. WE ALSO TAKE NOTE OF THE STATEMENTS OF THE LEARNED COUNSEL FOR THE APPLICANT THAT EVEN AFTER JOINING THE POST OF CIVIL MAJDOOR, THE APPLICANT HAS BEEN PARTICIPATING IN THE SPORTS EVENT AT NATIONAL LEVEL AND RECEIVED GOLD MEDAL THOUGH IT WAS MENTIONED THAT HE IS YET TO RECEIVE THE CERTIFICATE FOR THE SAME. WE FURTHER NOTE THAT ONLY A SHOW CAUSE NOTICE HAS BEEN ISSUED BY THE RESPONDENTS TO WHICH THE APPLICANT HAD ALREADY SUBMITTED THE REPLY. THE FINAL DECISION HAS NOT YET BEEN TAKEN IN THE MATTER BY THE RESPONDENTS. THEREFORE, WE ARE OF THE VIEW THAT IT WOULD BE APPROPRIATE TO REMIT THE MATTER BACK TO THE RESPONDENTS TO TAKE A FINAL VIEW IN THE MATTER CONSIDERING THE REPLY SUBMITTED BY THE APPLICANT IN RESPONSE TO SHOW CAUSE NOTICE. SINCE THE APPLICANT HAS SUBMITTED THAT HE IS STILL PARTICIPATING AT NATIONAL LEVEL AND HAVE RECEIVED AWARDS, THE RESPONDENTS SHALL TAKE INTO ACCOUNT THESE FACTS WHILE DECIDING THE MATTER IF THE APPLICANT PRODUCES NECESSARY EVIDENCE TO THAT EFFECT. THE APPLICANT IS PERMITTED TO SUBMIT FURTHER REPRESENTATION TO THE RESPONDENT AUTHORITY BY PROVIDING FURTHER MATERIAL TO JUSTIFY HIS INCLUSION UNDER THE MSQ CATEGORY. THE APPLICANT IN THIS OA HAS ALSO MENTIONED THAT ALTHOUGH THE RESPONDENTS HAVE SELECTED HIM ON THE BASIS OF SPORTS CERTIFICATES BUT EVEN OTHERWISE ALSO HE HAD GOOD PERFORMANCE DURING SELECTION PROCESS AND

PRESUMES THAT HE MAY ALSO BE SELECTED ON HIS OWN BASED ON HIS PERFORMANCE DURING SELECTION PROCESS. THIS ASPECT MAY ALSO BE LOOKED INTO BY THE RESPONDENTS WHILE CONSIDERING THE MATTER HOLISTICALLY. THE RESPONDENTS SHALL, THEREFORE, TAKE INTO CONSIDERATION THE ENTIRE FACTS AND DECIDE WHETHER THE APPLICANT IS ENTITLED TO BE CONSIDERED UNDER THE MSQ AS THERE IS NO MISREPRESENTATION ON THE PART OF THE APPLICANT.

11. IN VIEW OF DISCUSSIONS MADE HEREINABOVE, WE DISPOSE OF THE PRESENT OA WITH A DIRECTION TO THE RESPONDENTS TO CONSIDER THE MATTER AND PASS APPROPRIATE SPEAKING ORDER WITHIN TWO MONTHS FROM THE DATE OF RECEIPT OF A COPY OF THIS ORDER. IN CASE OF ANY ORDER ADVERSE TO THE INTEREST OF THE APPLICANT IS PASSED, IT SHALL BE GIVEN EFFECT TO AFTER GIVING ONE MONTHS' TIME SO THAT THE APPLICANT WILL HAVE AN OPPORTUNITY TO SEEK REDRESSAL AT APPROPRIATE FORUM, IF SO DESIRED. NO ORDER AS TO COSTS.

(SURESH KUMAR MONGA)
PRADHAN)

(PRASANNA KUMAR

MEMBER (J)
MEMBER (A)

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