

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

OA No. 20/509/2018, MA 555/2018 & MA 814/2018

Date of CAV: 20.12.2018

Date of Pronouncement: 28.01.2019

Between:

Hanumanthu Ganesh, S/o. H. Malleswara Rao,
Aged about 27 years, Occ: Sportsperson,
R/o. 45-1-8/16, Muslim, Thatichetlapalem, Visakhapatnam – 16.

... Applicant

And

1. Union of India, Rep. by its Secretary,
Department of Posts, Ministry of Communications,
Government of India, Dak Bhavan,
Sansad Marg, New Delhi – 110 001.
2. The Chief Postmaster General,
Andhra Pradesh Circle,
Vijayawada, Andhra Pradesh – 520013.
3. The Assistant Director (Rectt & Welfare),
O/o. Chief Postmaster General,
A.P. Circle, Vijayawada – 520 013.
4. Biswajit Gogoi, S/o. Not known,
R/o. Avatar Complex, Naharani pathi,
Dispur Last Gate, Guwahati, PO-Dispur, Assam – 781006.

... Respondents

Counsel for the Applicant ... Mr.A. Raghuram, Advocate
For Mr. N. Ashwani Kumar

Counsel for the Respondents ... Mrs.K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed challenging the order No Wlf/Sports Rectt/2017 dt 23.5.2018 issued by the respondents in regard to recruitment to the postman cadre under sportsman quota.

3. Brief facts of the case are that the applicant is a sportsman in the arena of power lifting and has won medals at National, State and University level championship competitions. The respondents issued a notification dated 30.12.2017 for appointment of sportsman to the posts of Postal Asst, Sorting Asst, Postman and Multi Tasking staff. The applicant is eligible to compete for the vacancy declared in the cadre of Postman/Postal Assistant for Power lifting discipline. The clause 3 of the notification has specified the order of preference in terms of participation at National, State etc to consider candidates for selection. Results were announced on 23.5.2018. Applicant though, participated at the National level and won a gold medal in 2017, was not selected whereas the 4th respondent who participated at the Zonal and State level was shortlisted violating clause 3 of the notification. Hence the OA.

4. The contentions of the applicant are that the respondents have blatantly violated clause 3 of the notification. Further, in the notification issued in the year 2015 local language was a condition but when it came to the year 2017 this condition was removed, which the applicant claims is irregular. Generally while selecting sportsman, field trials are conducted and those found fit are considered for selection. Merely based on certificates selecting a sportsman lacks transparency and is violative of Articles 14 and 21 of the Constitution.

5. Respondents contend that as per clause 3 of the notification dated 30.12.2017 sportsmen have to be selected based on the descending order of preference commencing from participation/ securing a medal in International, National, University, School level etc. A committee selected the 4th respondent since he represented the State of Assam and secured bronze medal in National

Competition i.e Federation Cup Power lifting Championship at Jammu. The selection is provisional and is subject to verification of educational and sports certificates. In contrast, the applicant participated only at Senior National, Junior National and University level tournaments. The notification issued in 2015 referred to by the applicant was cancelled. Besides, there is also no provision in the recruitment rules for incorporation of local language and conduct of field trials of sportsman for selection and hence not included in the notification.

6. Heard the learned counsel and went through the documents submitted, in detail. The learned counsel for the applicant has vehemently argued that the Federation cup certificate issued is not for a National level competition. The learned counsel for the respondents resisted with equal force claiming that the certificate was issued by Indian Power lifting Federation recognised by the Min. of Youth Affairs and Sports, G.O.I. and that the 4th respondent won a bronze medal.

7A. Facts on record indicate that the stance of the respondents in regard to the non inclusion of local language and conduct of field trials for sportsman in the notification is correct since such conditions are not laid down in the recruitment rules. The notification of 2015 has been cancelled by the respondents and hence is of no relevance for the present OA.

B. Coming to the notification per se, a sizzling analysis of the conditions laid down in the notification when contrasted with the decision taken by the respondents will enable to discover truth and uphold justice as elaborated below.

1. Clause 8 (3) of the notification specifies that sports certificate has to be signed by the Secretary of the National Federation or Secretary of the

State Association of the Game concerned. Under clause 14 note (iii) certificates issued by President/others of the Sports Board will not be entertained.

Can the respondents accept any other certificate signed by any other authority?

The answer is a definite 'no'. It is seen that the certificate enclosed by the respondents vide MA 814/18 indicates that the certificate submitted by the 4th respondent issued by the Indian Powerlifting Federation is signed by the President and the Honorary Genl. Secretary of the Federation instead of the Secretary which is against clause 14 (iii) of the notification. There is an ocean of a difference between a Honorary Gen. Secretary and a Secretary. In other words respondents have accepted an invalid certificate in selecting the 4th respondent and therefore their action is grossly irregular.

2. Respondents claimed in their reply statement that the 4th respondent was selected since he participated in the Federation cup in power lifting championship and that it is a National level competition. Were they right in taking such a view?

No, they were not. Even a cursory glance of the certificate shows that the word 'National' was struck off in the certificate, implying that it was not a National level event. Thus the very premise of selecting the 4th respondent is in serious doubt. Further, it is seen that the certificate issued by the Indian Powerlifting Federation was signed by Honorary Gen. Secretary, whereas Form-2 certifying the participation/wining medal etc which was to be appended was signed by the General

Secretary. Foot note in form-2 has, in no uncertain terms, made it abundantly explicit that it shall have to be signed by the Secretary. Both the designated authorities i.e. the Hony. Gen. Secretary and the General Secretary are not competent to issue the certificate and the Form-2, as per the notification. Generally a sports body has a President, Secretary and a Treasurer who are pivotal in managing the sports body. The Secretary is in charge of the administration and hence Postal Directorate in its wisdom has prescribed that the certificate and the form-2 are to be signed by the Secretary. In the present case they are signed by two different authorities and that too, by those who were not competent to sign. This should have raised an alarm bell amongst the respondents to verify but the warning was ignored for reasons best known to the respondents. Therefore, primarily the certificate indicates that it is not a national level event. Secondly, incompetent authorities have signed the certificate and form-2. Based on these two profound infirmities it was not proper on part of the respondents to select the 4th respondent. It raises doubts in the minds of the candidates as to whether all was well with the selection process.

3. Note 4 under clause 3 of the notification stipulates that if there is any doubt about the status of a tournament the matter will be decided by the DOP&T in consultation with Dept of Sports and Youth affairs. Did the respondents make any such effort in this direction?

As can be seen from the records no such effort whatsoever has been made. On the contrary the certificate on which the respondents totally banked has the word 'National' deleted, which would raise a doubt in anyone's mind as to whether the competition is of National or Zonal

level or any other level. The respondents went ahead by stating in their reply dated 6.6.2018 at para 4 as under:

“ Sri Biswajit Gogoi represented the State and secured bronze medal in senior National competition ie Federation cup power lifting championship”

When the word ‘National’ has been struck off, the respondents presuming that it is National Competition is bereft of rudimentary logic. The proper course of action open to the respondents was to consult DOPT and Dept. of Sports & Youth affairs, which was not done. Incidentally the respondents have adopted the guidelines laid down by DOPT in F.No. 14034/01/2013 dt 3.10.2013 in issuing the notification referred to. DOPT is the nodal agency and by committing errors pointed out the respondents have deviated from the guidelines issued by DOPT which, in fact, is the nodal agency and has a final say in the matter. To put it straight, in regard to matters of employment the respondents are not empowered to presume things and decide when glaring omissions were obviously evident. The action of the respondents, to say the least, is arbitrary, unreasonable and irrational.

4. Clause 10 (d) of the notification ordains that certificates issued by incompetent authorities shall be ignored. Did the respondents adhere to this guideline?

They did not. It is not known as to why the respondents have ignored the norms laid down in their own notification instead of ignoring the improper certificate submitted by the 4th respondent. This does vitiate the selection process.

5. Clause 10 (f) states that applications without required certificates shall be rejected. Have the respondents acted on this instruction?

Again the respondents have failed to follow their own instructions specified in notification. The required certificate was the one certifying that the 4th respondent participated in a National event and that the certificate was to be signed by the Secretary. As the certificate submitted by the 4th respondents does not satisfy either of the criteria, the application submitted by the 4th respondent ought to have been rejected. Instead it was not only accepted but the 4th respondent was selected against norms laid down by the respondents themselves. Transparency has been compromised and it has become an eventual casualty.

6. Clause 13 (a) prescribes the condition that self attested photo copies of certificates are to be submitted. Was this verified?

No, it was not. The respondents submitted the Indian Power lifting Federation ‘Certificate of Honour’ issued to 4th respondent in regard to participation of the 4th respondent in Federation Cup as an enclosure to the MA 814 of 2018 filed by them. The certificate submitted by the 4th respondent was not self attested as required by the notification issued by the respondents.

C. Respondents claimed that a committee has gone into the process of selection but they did not submit the proceedings of the selection committee confirming their assertion. It is surprising that a committee has overlooked so many glaring mistakes and the need to follow conditions stipulated in the notification. Such mistakes may become a cause for lack of trust in the

recruitment process adopted by the respondents. It is too serious a matter which has ramifications on the future of the youth of this country. As alleged by the applicant, there was lack of application of mind by the respondents to such a serious and sensitive issue like recruitment to permanent posts on a regular basis. The respondents organisation represents the State and they need to conduct themselves as a model employer in all respects as observed by Honourable Supreme Court in 2013 (2) SCC 516. More so, in matters relating to recruitment, on which millions of unemployed youth bank their hopes aspiring for a secure future. The system has to be so operated that it instils confidence in the recruitment process. Unfortunately it was not to be, in regard to the case in question. The approach adopted by the respondents makes it evident that they have made a selection based on wrong premises, presumptions and against the basic norms scribed in the notification. With a plethora of infirmities inflicting the selection process, the selection has to go.

D. It needs no reiteration that the aforesaid facts make it explicit that the respondents have not followed the guidelines laid down in the notification issued by them. Rules are framed to be followed and not to be violated. If they do not follow who will? Honourable Supreme Court has taken a serious view of violation of rules as under:

“The Hon’ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that “*Action in respect of matters covered by rules should be regulated by rules*”. Again in **Seighal’s case (1992) (1) supp 1 SCC 304** the Hon’ble Supreme Court has stated that “*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*” In another judgment reported in (2007) 7 SCJ 353 the Hon’ble Apex court held “*the court cannot de hors rules*”

E. In view of the aforesaid, the applicant has made out a case which succeeds. The selection process conducted in selecting the 4th respondent under

the aegis of the 2nd respondent has thus been vitiated since it is against rules, arbitrary, discriminative and against law. The OA is accordingly allowed.

F. Consequently the respondents are directed to consider as under:

- i) To cancel the selection of the 4th respondent as it was not made as per terms and conditions stipulated in the notification No. WLF/Sports Rectt/2017 dated 30.12.2017.
- ii) As many irregularities have been observed in the recruitment conducted by the 2nd respondent, it would be proper and appropriate for the 1st respondent to verify and decide as to whether other candidates were selected strictly as per the terms and conditions of the notification dated 30.12.2017 to uphold justice.
- iii) Time allowed to implement the order is 3 months from the date of receipt of this order.
- iv) Interim order dt. 07.06.2018 is vacated and MA No. 555/2018 is accordingly allowed.
- v) MA No.814/2018 shall stand disposed of.
- vi) There shall be no order to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)**

Dated, the 28th day of January, 2019

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