

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS 21st DAY OF *August*, TWO THOUSAND NINETEEN

PRESENT:

HON'BLE MR. P. MADHAVAN, MEMBER (J)

HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/01447/2015

C. Venguedesvaran
No. 2, Bungalow Street
Periakalapet, Pondicherry.

....Applicant

By Advocate M/s V. Ajayakumar

Vs

1. Union of India represented by the Government of Puducherry Through the Superintending Engineer-I Electricity Department, Puducherry.
2. Satish. R, R/o No.1, M.I.G. Housing Board Kurumbapet, Puducherry.
3. Vijayakumar. V, R/o No.26, Thamarai Kula Natham Bahour, Puducherry.
4. Remy Vimal, R/o No.11, Savariyar Koil Street Murungapakkam, Puducherry.
5. Pravinkumar.T, R/o No. 39, P.W.D. Street Bahour Post, Puducherry,

... Respondents

By Advocates : Mr. R. Syed Mustafa (R1)

M/s Sai, Bharath & Ilan (R3 & R5)



ORDER

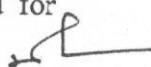
(Pronounced by Honble Mr. T. Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "1. To declare that the rejection of the application of the applicant is illegal and invalid.
2. To call for the records of the first respondent in respect of the select list dated 4.9.2015 for the post of Construction Helper and to quash the same in respect of the selection of respondents 2 to 5 and consequently to direct the first respondent to appoint the applicant to the post of Construction Helper with all other consequential benefits with effect from the date on which the respondents 2 to 5 are appointed and to pass such other or further orders"

2. The brief facts of the case as submitted by the applicant are as under:

The applicant possess SSLC and ITI Electrician Trade Certificate and belongs to 'OBC' category of Puducherry and he is entitled for reservation. The applicant is also a meritorious sports person. The first respondent issued a notification dated 3.6.2015 for filling up 270 vacancies of Construction Helper. It is notified that 100% of marks obtained in ITI Examination and 50% of marks in the 10th Examination will be taken up for selection and 10 marks for apprenticeship training and 1.5 marks for each year of employment seniority. The applicant secured 131.2 marks whereas the party respondents No.2 to 5 had secured lesser marks than the applicant. But the name of the applicant does not figure in the select list, even though he is entitled for



appointment. According to the applicant there are 270 vacancies out of which 5% is earmarked for sports persons which comes to around 14 posts. Hence the applicant has filed the instant O.A. seeking the aforesaid reliefs on the following grounds:

- (a) The applicant is entitled to get appointment to the post of Construction Helper on the basis of his merit and denial of the same is most arbitrary and discriminatory and so is illegal.
- (b) The select list published by the respondent shows that the entire list has been published without specifying each category, as a result of which the candidates who are selected under the Unreserved list and the reserved list are mixed together, as a result of which the rule of reservation has been ignored by the respondent. It is a well established rule that the first 50% of the selected candidates are to be treated as Unreserved category and the remaining has to be listed on the basis of the reservation of each category. Hence, the entire select list itself is illegal.
- (c) The age relaxation for the O.B.C candidates is 3 years and 5 years relaxation for M.S.P candidates, so that the total age limit of the candidates will be 40 years whereas the applicant was only 36 years and 11 months as on 6.7.2015 which is the cut of date as per the notification. Hence denying the application of the applicant is most arbitrary and is illegal.



(d) The respondents 2 to 5 are having lesser marks and are coming under the M.S.P. Category whereas the applicant has got 131.2 marks and so the applicant is entitled to get selection and appointment to the post of Construction Helper.

3. Per contra, the respondents in their reply statement have stated that in pursuance of the notification dated 3.6.2015 for filling up 270 vacancies of Construction Helper the applicant having fulfilled the conditions stipulated in the recruitment notification applied for the said post. 104 applications were received under the Meritorious Sports Persons (MSP) quota. The Committee constituted to scrutinise and make recommendations drew a provisional select list of Meritorious Sports Persons and recommended 14 candidates under MSP category for selection to the said post, Since the applicant secured only 25th rank, his name could not be recommended for selection under the MSP quota. Further the applicant could not be considered under General or OBC category as he had crossed 35 years of age by then. Hence the respondents pray for dismissal of the OA.

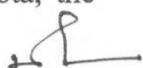
4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. In regard to the above facts and circumstances, the point for consideration in this O.A. is whether the applicant meets the eligibility criteria as prescribed in the recruitment rules for appointment to the post of Construction Helper under the quota meant for meritorious sports persons.



6. It is contended by the learned counsel for the applicant that the applicant is entitled to compete for the post under Reserved category despite his availing age concession under sportsman quota. In support of his contention, reliance has been placed on the judgement in the case of Jitendra Kumar Singh and another Vs. State of Uttar Pradesh & others (2010 (1) SLR SC 526). The learned counsel for the respondent submits that as per the extant instructions it is very clear that the persons obtaining age relaxation under the Meritorious Sports Persons quota have to compete for the post earmarked for them on obtaining age relaxation.

7. Admittedly, the applicant in pursuance of the Recruitment Notification dated 03.06.2015 to fill up the post of Construction Helper (Work Charged) in the Electricity Department, Government of Puducherry applied for the said post under the Meritorious Sports Persons quota. The mode of selection of candidates for recruitment to the said post is in accordance with G.O.Ms.No.45 dated 22.01.2015. On the basis of marks obtained by the candidates, the Recruitment Committee in their meeting held on 04.09.2015 drew a provisional merit list of 172 candidates in the order of merit including Ex-servicemen/Meritorious Sports Persons/Physically Handicapped persons and published the same in the Notice Board. Out of 104 applications received under Meritorious Sports Persons quota, the Recruitment Committee drew a merit list of Meritorious Sports Persons and recommended the names of 14 candidates. As per the Rank of medal merit list under the MSP quota, the

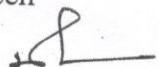


name of the applicant was placed at Rank No.25. Undisputedly, under the MSP quota, more meritorious persons in sports are to be selected and accordingly the other two candidates namely Respondents 2 and 5 who had secured more ranks than the applicant under the MSP quota were selected and appointed. Further with regard to age, the applicant cannot be considered under General or OBC category since he had crossed 35 years of age as on the crucial date.

8. Further, the Department of Personnel and Administrative Reforms vide OM No.14015/1/76-Estt (D) dated 04.08.1980 have issued consolidated instructions on incentives for sports persons, according to which, the respondents have awarded marks and rankings under MSP quota to the candidates and based on which selections have been made. The relevant portion of the said OM reads as follows:-

“Subject: Appointment of meritorious sportsmen to Group C and D posts in relaxation of the procedure.
General Scheme:-

Under this Department's O.M. No. 14/1/72-Estt. (D) dated 28.12.72 orders were issued that the Secretary of the Ministry/Department or the Head of Department under it may recruit a meritorious sportsmen to a class III or class IV service/post (now Group C & D) in the Ministry/ Department/ Establishment, as the case may be, direct recruitment to which is made otherwise than through a competitive examination held by the Union Public Service Commission, subject to the provisions contained in that O.M. with the coming into being on the Staff Selection Commission, recruitment to group C posts have generally to be made through the Staff Selection Commission. The entire policy of recruitment of sportsmen in various Departments/Offices has since been



examined and the following orders are issued for providing for relaxation of recruitment rules to the extent mentioned below:-

ELIGIBILITY :-

Appointments under these orders can be made of a sportsman considered meritorious with reference to the following criteria:-

Sportsmen who have represented a State or the country in the National or International competition in any of the games/sports mentioned in the list at Annexure (A).

(ii) Sportsmen who have represented their University in the Inter-University Tournaments conducted by the Inter-University Sports Board in any of the sports/games show in the list at Annexure 'A'.

(iii) Sportsmen who have represented the State Schools Teams in the National Sports/Games for Schools conducted by the All India School Games Federation in any of the games/sports shown in the list of Annexure 'A'.

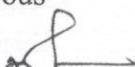
(iv) Sportsmen who have been awarded National Awards in Physical Efficiency under the National Physical Efficiency Drive.

No such appointments can be made unless, the candidate is, in all respects, eligible for appointment to the post applied for, and in particular in regard to age, educational or experience, qualification prescribed under the Recruitment Rules applicable to the post, except to the extent to which relaxations thereof have been permitted in respect of class, category of persons to which the applicant belongs.

Posts to which applicable

Appointment of meritorious sportsmen can be made to any post in Group C or Group D which under the Recruitment Ruler applicable thereto, is required or permitted to be filled by direct recruitment, otherwise than through the Union Public Service Commission.

No such appointment shall be made to any post in Group A or Group B by direct recruitment. A meritorious



sportsmen can be considered for appointment under sub para(a) above notwithstanding the fact that he is already in the service of the Government.

In making appointments to any post under the Government by promotion, no preference shall be given to meritorious sportsman though that fact may be taken into account in assessing the overall merit.

3. Extent of such recruitment

Ministries/Departments of Government of India can recruit meritorious sportsmen in any year in relaxation of the recruitment procedure, to the extent that these including all other reservations under existing orders do not exceed 50% of the total number of vacancies proposed to be filled by direct recruitment.

For the purpose of making appointment of meritorious sportsmen, the appointing authorities may at their discretion notify to the Staff Selection Commission, in all case where the recruitment to the posts have been entrusted to that Commission, vacancies reduced by up to 5% thereof and may fill such vacancies so held back by appointing meritorious sportsmen subject to the overall limitations mentioned in sub-para(a)above.

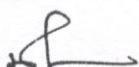
4. Seniority

Where sportsmen are recruited through the Employment Exchange or by direct advertisement and are considered along with other general category candidates, they may be assigned seniority in the order in which they are placed in the panel for selection.

Where recruitment to a post is through a selection made by the S.S.C., whether by a competitive examination or otherwise, the sportsmen recruited by the departments themselves should be placed enable junior to those who have already been recommended by the S.S.C. The Interse-seniority of sportsmen will be in the order of selection.

5. Procedure

An application received by the appointing authority or a higher authority from a sportsmen belonging to any of the categories mentioned above, may be considered by the



Ministries/Department or the Head of the Department, as the case may be, in light of the evidence which the applicant may furnish of his having represented in any of the competitions mentioned in the previous paragraphs, and subject also to the applicant fulfilling the requisite qualifications relating to education, age etc. as may be laid down in the rules for the post/service for which he is a candidate. Normally certificates awarded by the authorities mentioned in Annexure 'B' should alone be taken into account while considering the eligibility of an applicant in terms of above paragraphs. Appointments may be made of such a candidate after the Ministries/Department or Head of the Department, as the case may be, is satisfied about the eligibility of the candidate under these orders as well as his suitability for the post in all respects. Where the appointing authority is subordinate to a Head of Department, such authority may make a recommendation in this regard to the Head of the Department, along with the necessary details, for obtaining his concurrence in the proposed appointment of the candidate. The orders contained in these O.M. will not affect the orders relating to reservations for SC/ST and Ex-servicemen which may be in force from time to time. In other words, the vacancies filled in accordance with these orders in a year shall be taken into account in calculating the total number of vacancies in the service/post during that year for purpose of applying the reservation orders.

6. These orders apply to all Ministries and Departments of Government of India including the Ministry of Railways and Communications (P&T) and any existing scheme if any of the Ministries/Departments shall, from the date of issue of these orders, be subject to the conditions and restrictions herein specified, except to the extent of such modifications as may be accepted by Government in view of special circumstances prevailing therein.

7. A consolidated annual statement showing the number of sportsmen of the eligible categories appointed to Group C and Group D posts/service in a calendar year may be sent to the Welfare Division of the Department of Personnel by each Ministry/Department in the proforma



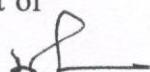
given in Annexure 'C' by the 31st March, of the following year.

8. Provisions contained in this O.M. supersede all instructions issued from time to time in the past, on the subject.

Following the above instructions of the DP&AR, marks have been awarded to the candidates under the MSP quota. As per the Rank of merit list under Meritorious Sports Persons quota, the Respondents No. 2,3,4,5 were placed at 3rd, 4th 1st and 5th positions in the provisional select list respectively whereas, the applicant had secured 25th position under the MSP quota. Hence the rejection of the candidature of the applicant was purely on the basis of merit and as per the order of preference in sports quota. We do not see any illegality or infirmity in the award of marks and ranking to the applicant. Further the applicant has not alleged any malafide against the selection committee in the process of selection. Keeping in view the settled law that a candidate who is not successful in the selection, is not entitled to assail the selection process. The applicant having come to know that he is not successful in the selection cannot take a u-turn subsequently and as an after thought challenge the same.

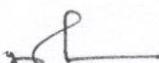
9. The Apex Court has, in the case of Madan Lal vs State of J & K (1995) 3 SCC 486 has held as under:-

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of



marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of „, Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors(AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, 'the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we



are certainly not acting as a court of appeal over the assessment made by such an expert committee".

The above decision of the Apex Court has been followed (reproducing the above two paragraphs) in the case of Madras Institute of Development Studies vs K.Sivasubramaniyan (2016) 1 SCC 454.

10. In view of the fact that the applicant is over aged, he is non-suited to be considered under the general or OBC quota and the applicant cannot compare his marks with any other General/OBC category. The applicant's comparison, having obtained age relaxation under the meritorious sports persons quota should be restricted to candidates under sports quota only. As there have been more meritorious candidates, rightly he could not be accommodated under the meritorious sports persons quota. Further, the order cited by the learned counsel for the applicant is not relevant to the facts of the present case.

11. In the conspectus of the above facts and circumstances of the case, the OA is liable to be dismissed and is accordingly dismissed. No order as to costs.