

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 1255 of 2013

Heard on: 27.9.2019

Date of order: 20.11.19

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Ashraful Mondal,
Son of Nayan Mondal,
Aged about 20 years,
Unemployed youth,
Residing at Vill. Palladaha,
PO. Kataganj,
Dist. North 24 Parganas,
Pin 741250, West Bengal.

Applicant

Versus

1. Union of India,
Through the General Manager,
Eastern Railway,
Fairlie Place,
17, N.S. Road,
Kolkata - 700001.
2. The Chief Personnel Officer,
Eastern Railway,
Fairlie Place,
17, N.S. Road,
Kolkata - 700001.
3. The Chief Works Manager,
Kanchrapara Workshop, Kanchrapara,
Dist. North 24 Parganas,
Pin : 743145.
4. Workshop Personnel Officer,
Kanchrapara Workshop, Kanchrapara,
Dist. North 24 Parganas,
Pin : 743145.

-----Respondents.

For the Applicant : Mr. B. Chatterjee, Counsel

For the Respondents : Mr. S.K. Mukherjee, Counsel
Ms. T.P. Sinha, Counsel

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ORDER

PER Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with non-selection in Group 'D' category of posts for the year 2012-2013 (sports quota), the applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

" a) An order quashing and/or setting aside the impugned communication and the decision contained in the said communication dated 18.7.2013.

b) An order directing the respondents to grant appointment to the applicant against sports quota for which the applicant participated in the selection in the category of Kabadi (all rounder).

c) An order directing the respondents to produce entire records pertaining to the said selection where the applicant participated in original and to give inspection of the said record to the applicant or his counsel before the final hearing of the original application.

d) An order quashing and/or setting aside any appointment made against the same post or the post against sports quota, Kabadi (all rounder), if any, made in the meantime by initiating a fresh Recruitment Process.

e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. Heard both Ld. Counsel examined pleadings and documents on record.

3. The submissions of the applicant, as canvassed through his Ld. Counsel, is that the applicant had responded to a notification dated 21.12.2012 (Annexure A-1 to the O.A.), for appointment to the post of Kabadi (Men) Allrounder and had participated in the selection process.

That, the respondent authorities neither declared the result of the said selection nor did they intimate any reasons for cancelling the selection of the applicant. The applicant represented before the authorities concerned and, being aggrieved, with their inaction, approached the Tribunal in O.A. No. 566 of 2013 which was disposed of by directing the respondent No. 3 to decide on the applicant's representation in accordance with law. That, thereafter, the respondent authorities issued a cryptic order informing him that the selection committee had declared him unsuitable based on his overall performance

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and, hence, being further aggrieved, the applicant has approached the Tribunal in the instant O.A.

4. The respondents, in their written statement, and also in their compliance report submitted in response to the directions of Tribunal dated 28.2.2019, has advanced the following arguments:-

(a) That, in response to notification dated 21.12.2012, the applicant applied for appointment against sports quota and appeared before the trial committee for assessment of his skill in the game as well as his physical fitness. The applicant also furnished certain certificates in his support.

(b) The trial committee found him fit on the basis of overall assessment, and, thereafter, the applicant was directed to appear before the recruitment committee for recruitment as a Sports person against sports quota for the year 2012-2013 in the discipline of Kabadi (Men) Allrounders in Group 'D' category of posts. The applicant obtained 57 marks out of total of 100 and was thereafter considered unsuitable. The performance record of the applicant, annexed as Annexure R-2, reveals that the applicant has received 30 out of 40 marks in games skill, physical fitness and coaches' observation. The applicant further received 20 against 50 marks for assessment of recognized sports achievement as per norms, 4 out of 5 marks in educational qualification and 3 out of 5 marks against general intelligence, personality etc. Having received 57 marks out of 100 in all, the applicant was declared unsuitable as he failed to obtain the requisite qualifying marks.

(c) The policy guidelines as contained in the CPO Srl No. 5/2011 dated 13.1.2011 provides that the minimum qualifying marks for recruitment through open advertisement is 60 marks for recruitment against sports

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quota in PB-1. As the applicant failed to obtain 60 marks, he was declared unsuitable. The said guidelines having been annexed as R-3 by the respondents, Para 8.2.17 is extracted as below:-

"8.2.17 Minimum qualifying marks for recruitment through Open Advertisement in different Grade Pay and Pay Bands, observing the criteria as mentioned in Para 8.2.16 above, shall be as follows:-

S. No.	Name of Pay Band/Scale	Grade Pay	Pay Band	Minimum Qualifying Marks
		(In Rupees)		
(i)	PB-1	2800	5200-20200	70 marks
(ii)	PB-1	2400	5200-20200	
(iii)	PB-1	2000	5200-20200	65 marks
(iv)	PB-1	1900	5200-20200	
(v)	PB-1	1800	5200-20200	60 marks

Note: The offer of appointment shall be given purely on the basis of merit. In case more than one sportsperson score the same marks, preference should be given to younger candidate to decide the merit."

(d) Annexure R-2, namely the performance record clearly states that the assessment of recognized sports achievements is to be made and graded as per norms.

Accordingly, on 28.8.2019, the respondent authorities were directed to clarify as follows:-

- Why the applicant scored 20 marks against 50 marks meant for assessment of recognized sports achievement and what were the norms in terms of which such marks was accorded to him.
- If the applicant is HS qualified, why 4 marks have been allotted against 5 marks against educational qualifications.

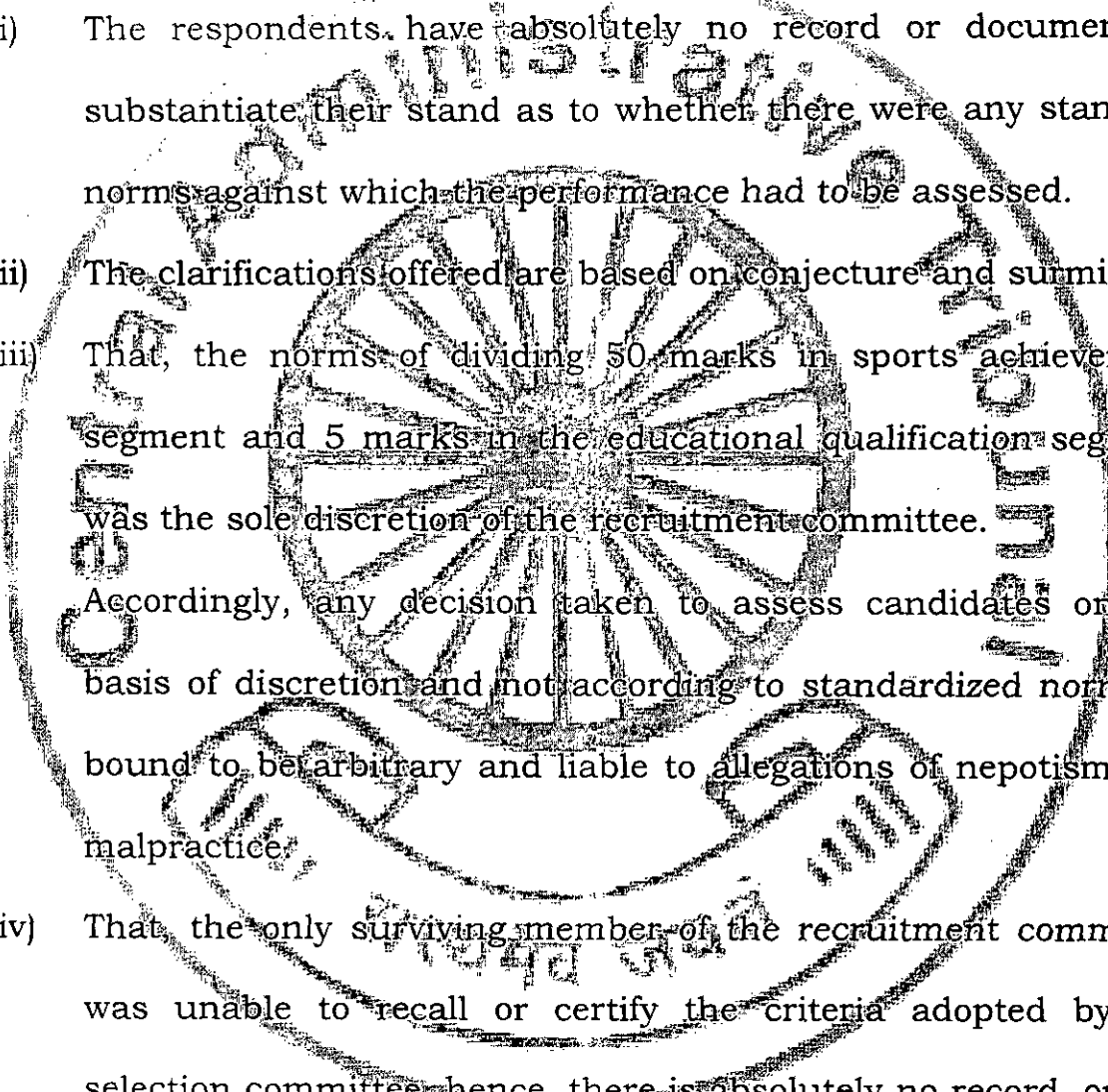
In reply, the respondents have submitted as follows with supplied emphasis:-

"It is pertinent to point out that the Recruitment Committee consisted of 3 members namely, Sri P. Chakraborty, Member of the Recruitment Committee & Sports Officer and Ex. Dy. CEE (P&D)/E. Rly./Kanchrapara and Sri A. Rudra, Member of the Recruitment Committee and Ex. Dy. CME (G)/E. Rly./Kanchrapara. Among these three members Sri Aich/Ex. WPO/E. Rly./Kanchrapara has already superannuated and Sri A. Rudra/Ex. Dy. CME(G)/E. Rly./Kanchrapara has died while in service. Sri P. Chakraborty, sole remaining Member of the Recruitment Committee & Sports Officer and Ex. Dy. CEE (P&D)/E. Rly./Kanchrapara has communicated clarification in terms of the Tribunal's order dated 28.8.2019 vide letter No. CEE/KMRC/MISC/2019/2357 dtd. 25.9.2019. That it can be envisaged from

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the clarification communicated by Sri P. Chakraborty, Member of the Recruitment Committee & Sports Officer and Ex. Dy. CEE (P&D)/E. Rly./Kanchrapara **that the norms of dividing 50 marks in the sports achievement segment and 5 marks in the educational qualification segment was the sole discretion of the Recruitment Committee.** That, awarding of marks in the sports achievement segment as well as for educational qualification was framed by the recruitment committee with a view to ensure good result in sports. That, since out of 3 members of the Recruitment Committee, only Sri P. Chakraborty, Member of the Recruitment Committee & Sports Officer and Ex. Dy. CEE (P&D)/E. Rly./Kanchrapara is available in the Railway and 2 others i.e., the then Ex. WPO/KPA has already superannuated and Ex. Dy. CME/G/KPA, A. Rudra expired, **it is not possible for Sri P. Chakraborty at such a distant date to certify the criteria adopted by the selection committee as that time with signature of all three members."**

From the above contentions of the respondents, the following transpires:-

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- (i) The respondents have absolutely no record or document to substantiate their stand as to whether there were any standard norms against which the performance had to be assessed.
 - (ii) The clarifications offered are based on conjecture and surmise.
 - (iii) That, the norms of dividing 50 marks in sports achievement segment and 5 marks in the educational qualification segment was the sole discretion of the recruitment committee.
Accordingly, any decision taken to assess candidates on the basis of discretion and not according to standardized norms is bound to be arbitrary and liable to allegations of nepotism and malpractice.
 - (iv) That, the only surviving member of the recruitment committee was unable to recall or certify the criteria adopted by the selection committee; hence, there is absolutely no record, or any proceedings brought before us to substantiate that the marks awarded in the course of the above noted selection process was merit based, objective, founded on standardized norms or prepared by the committee members upon due deliberation, upon application of mind or with reference to rules or guidelines of the authorities.
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5. At this juncture, we refer to the notification dated 21.12.2012 (Annexure A-1 to the O.A.) which lays down the following norms (as extracted) for education qualification, requisite sports qualification and for sports discipline.

"4. EDUCATIONAL QUALIFICATION: Candidates should have passed minimum Educational Qualification of Class - 10th pass or ITI or equivalent.

5. Outstanding sports persons who are Class-VIII and have sports norms identical to 6-B mentioned below including up to 8th position in Olympics or Gold Medal in Asian Games can be considered for recruitment in (-) 1S Pay Band in Scale Rs. 4440-7440/- without carrying any Grade Pay. Such sports persons will be given the regular Pay Band of Rs. 5200-20200/- along with the Grade Pay Rs. 1800/- only on acquiring the minimum educational qualification required for PB-1, GP Rs. 1800/- or passing the requisite training test.

6. Required Sports qualification:

A)i) Norms for Sports Discipline:

Represented the country in Common wealth Championship (Junior/Senior category) or, Asian Championships/Asia Cup (Junior/Senior Category) or, South Asian Federations (SAF) Games (Senior Category) or, USIG (World Railways) Championships (Senior Category) or at least 3rd position in Federation Cup Championships (Senior Category) or Represented State or equivalent Unit, except in Marathon and Cross Country, in Senior/Youth/Junior National Championships or at least 3rd Position in Senior State Championship for all Units and Districts of the State.

ii) For Recruitment in Volleyball and Kabaddi disciplines, the following age group of Junior National Championships will be considered as Sports norms.

Game	Age Group
Volleyball	Under-19
Kabaddi	Under-19

No proceedings of the recruitment committee have been brought before us whereby it could be detected as to how the applicant has not met the norms as laid down in the recruitment notification. The fact that the sole surviving member of the recruitment committee has admitted that the norms were based on discretion and not on the objective standards laid down in the notification, defeats any confidence in the recruitment process.

6. Hence, we are unable to repose any faith in the decisions of the recruitment committee as far as the applicant is concerned, and, in particular, when the applicant vociferously submits that he had met all the standards as laid down in the notification.

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In **Union Public Service Commission v. Hiranyalal Deb (1988) 2 SCC 242**, the Hon'ble Apex Court had ruled that it is the exclusive function of the selection committee to categorize the candidates in the light of relevant records as well as to determine what norms are to be applied in assessing the candidate. The selection/recruitment committee in the instant matter has not been able to establish, let alone clarify the settled norms.

In **Abdul Salam v. University of Kerala 1997(2) KLT 223** it was held that while discharging its function, the selection committee must apply the same norms, tests and relevant rules.

In the instant O.A., the respondents have failed to establish that norms were determined as per Rules and that applicant was assessed as per the settled norms.

Such capricious and arbitrary action devoid of objectivity calls into question the veracity of the selection process.

7. Accordingly, we set aside the assessment of the applicant's performance made by the said recruitment committee at Annexure R-2 and we remand this matter back to the respondent No.2, who is the Chief Personnel Officer, Eastern Railway, Fairlie Place, Kolkata to re-examine the matter, particularly, in the light of the representation made by the applicant on 24.3.2013 (Annexure A-8 to the O.A.) and to decide afresh, particularly, in terms of the norms as laid down in the notification. Needless to say, the orders of the authority dated 18.7.2013 (Annexure A-10 to the O.A.) which is a cryptic statement informing the applicant that he was found unsuitable is also set aside.

In case, the applicant deserves to be empanelled, the concerned authority will decide only after notifying and hearing other empanelled candidates.

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The entire process should be completed within a period of 16 weeks from the date of receipt of a copy of this order. The decision should be communicated forthwith to the applicant thereafter.

8. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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