

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.915 OF 2018

WITH

MISCELLANEOUS APPLICATION NO.137 OF 2020

DISTRICT : KOLHAPUR

Shri Shirish Shankar Mali,)
Age 36 years, occ. Student, R/at Plot No.318/5,)
R.K. Nagar, Tal. Karveer, District Kolhapur 416013)..Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
School Education & Sports Department,)
Mantralaya (Annex), Mumbai 400032)
2. The Commissioner,)
The Sports & Youths Services,)
Balewadi Sports Complex, Mahalunge, Pune-45)
3. The Joint Director,)
The Sports & Youths Services,)
Balewadi Sports Complex, Mahalunge, Pune-45)
4. The Divisional Deputy Director,)
The Sports & Youths Services,)
Kolhapur Region, Kolhapur)

5. The Maharashtra Public Service Commission,)
5th floor, Cooperage Telephone Exchange Bldg.,)
M.K. Road, Cooperage, Mumbai 400021)..Respondents

Ms. A.S. Patki – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
Shri A.P. Kurhekar, Member (J)
RESERVED ON : 16th March, 2020
PRONOUNCED ON : 18th June, 2020
PER : Shri P.N. Dixit, Vice-Chairman (A)

J U D G M E N T

1. Heard Ms. A.S. Patki, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The controversy is regarding non-issuing of Sports Validity Certificate to the applicant to enable him to get the benefit of 5% reservation from sports quota.

Brief facts:

3. On 21.12.2012 the applicant participated in the game of 'Tug of War' and was adjudged as third rank. The Government issued GR dated 1.7.2016 changing the earlier position and clarified that it would be mandatory for the candidates to obtain sports validity certificate before making application for sports quota. Accordingly, applicant applied for

the sports validity certificate on 30.7.2016 to the Deputy Director of Sports (Exh.F page 56 of OA).

4. On 8.6.2017 the Deputy Director of Sports rejected the same and the reason mentioned was that as per the GR dated 1.7.2016 the game 'Tug of War' is no longer recognized for 5% reservation. The applicant made an appeal against the same on 17.7.2017. The same was decided on 4.9.2017 and he was informed that the GR dated 1.7.2016 clarifies that the game of 'Tug of War' is not considered as recognized game and hence his appeal is rejected. On 28.9.2017 the applicant made second appeal before the Commissioner, Sports. On 22.6.2018 respondent no.1 clarified that the GR dated 1.7.2016 does not recognize the game of 'Tug of War' for reservation as sports candidate (Exh.M-1 page 83). Accordingly, respondent no.2 (Commissioner, Sports) on 1.10.2018 rejected the second appeal of the applicant and clarified that he cannot claim the benefits of GR dated 19.1.2017 and hence the earlier decision of not considering him eligible for sports validity certificate is confirmed (Exh.Q pg.88 of OA).

5. Meanwhile, the applicant filed Writ Petition No.3558 of 2018 in the Hon'ble Bombay High Court seeking direction to the concerned respondents to issue him sports validity certificate. However, as per order dated 20.3.2018 the applicant withdrew the writ petition with liberty to approach this Tribunal for redressal of his grievance. He was given liberty accordingly (Exh.U pg.210 of OA). The applicant has filed the present OA accordingly with the following prayers:

"9(a) Be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, order or direction thereby direct the respondents no.1 to 4 to issue verification certificate on his application on to extend the benefit of 5% sports reservation quota.

(b) Be pleased to quash and set aside impugned order dated 1.10.2018 passed by the Ld. Commissioner, Sports and Youth Services, Government of Maharashtra.”

(Quoted from page 21-B of OA)

6. He has filed MA No.137 of 2020 with the following prayers:

“10(b) Be pleased to direct the respondent no.4 to issue provisional verification certificate with number which is required at the time of submission of online form as per the advertisement dated 28.2.2020 and such other examination.”

(Quoted from page 5 of MA)

Grounds in support of his prayers:

7. Respondent no.1 had issued GR on 30.4.2005 stating that 5% of the seats would be reserved for sportsman. Particularly in Para 4 B, GR stated that if the applicant had participated in the individual or team game and represented the State in National Tournament and adjudged as 1st, 2nd or 3rd and if the tournament was organized by the body affiliated with Indian Olympic Association, then the participants could be eligible to be considered for reservation. The schedule along with the GR recognized ‘Tug of War’ as one of the games. On 11.7.2011 Indian Olympic Association de-recognized several associations which had organized their tournaments (Exh.C pg.30). On 30.12.2013 respondent no.1 issued GR stating that the fact of de-recognition was not brought to the notice of the State as well as players and therefore with a view to ensure that the sportsmen are not rejected, the Government clarified that if the certificate was issued for re-verification up to 28.2.2014 it would be presumed that the Association was recognized by the Indian Olympic Association (Exh.D pg.33).

8. On 1.7.2016 respondent no.1 issued GR and clarified that the earlier position is changed namely the concerned departments used to conduct recruitment and after the declaration of results in written examination, in case of selected candidates claiming to be sportsman, the department used to refer their cases to the Director of Sports to find out whether they are in possession of sports validity certificate. As this created certain anomalies since candidates who were not holding sports validity certificate used to apply for reservation under the sports category, the GR dated 1.7.2016 made it binding that the aspiring candidates should obtain the sports validity certificate before applying and it was mandatory to enclose copy of the sports validity certificate along with the application form. If the applicant failed to do so, his claim to be considered under the sports category was to be rejected (Exh.E pg.37).

9. On 19.1.2017 the respondent no.1 issued clarification to the GR dated 1.7.2016 (Exh.G pg.64). The relevant portion from the same reads as under:

“क. सदर शासन निर्णय खालील प्रकरणी लागू राहिल :-

१. दिनांक ०१ ऑगस्ट, २०१६ पुर्वी शासन सेवेत खेळाडूंच्या ५ टक्के आरक्षणांतर्गत निवड झालेल्या खेळाडूंचे प्रमाणपत्र, संबंधित नियुक्ती प्राधिकरणाकडून, क्रीडा व युवकसेवा संचालनालयास प्राप्त झाल्यास सदर प्रमाणपत्रांची पुनर्पडताळणी करून देण्यात येईल.
२. दिनांक ११ फेब्रुवारी, २०११ ते दिनांक ३१ डिसेंबर, २०१३ दरम्यान राष्ट्रीय /राज्यस्पर्धेमध्ये सहभाग घेऊन प्राविण्य प्राप्त केलेल्या खेळाडूंच्या आगामी प्रमाणपत्र पडताळणीच्या प्रस्तावांकरीता व त्या अनुषंगाने आयुक्त, क्रीडा व युवकसेवा संचालनालय/संबंधित विभागीय क्रीडा उपसंचालक यांच्याकडे, ५ टक्के खेळाडू आरक्षणांतर्गत प्रमाणपत्र पडताळणीच्या प्रलंबित प्रकरणासंदर्भात लागू राहिल.”

(Quoted from page 65 of OA)

10. According to the applicant as per provisions in GR dated 19.1.2017 the applicant is entitled to the benefits of GR of 2005. However, it is

necessary to direct the respondents no.1 to 4 to issue verification certificate on the application of the applicant to extend the benefit of 5% sports reservation quota. According to applicant three persons namely S/Shri Harshvardhan Vallabhrao Deshmukh, Ashish Ashokrao Deshmukh and Sanjay Sarjerao Khot who were part of the same championship have received sports validity certificate and thus got the benefit of 5% reservation quota (para 6.22 pg. 17). Similarly Shri Indrajeet Anandrao Bhise also received the benefit under the GRs dated 30.4.2005 and 19.1.2017.

11. Ld. Advocate for the applicant has relied on the judgment and order of this Tribunal in OAs No.699/2016 (Shri Indrajeet Anandrao Bhise Vs. The State of Maharashtra & Ors.) and 818/2016 (Shri Shridhar Shamrao Khadke Vs. The State of Maharashtra & Ors.) decided on 23.2.2017. In these cases the applicants participated in a tournament held in January 2012 and they were considered as selected. After their selection when the department referred their cases to the Director of Sports, the Director of Sports had declared the certificate as invalid. However, since the candidate has been selected, the Tribunal directed the respondents to consider his case in the light of GR dated 19.1.2017 and set aside the order declaring his certificate as invalid.

12. Ld. Advocate for the applicant urged that similar benefit needs to be given in the present case, in the light of above judgment dated 23.2.2017.

Submissions by the respondents:

13. Respondents no.2 & 3 have filed their affidavit together. Respondent no.5 has filed separate affidavit. The respondents have contested the claims made by the applicant.

14. Respondents no.2 & 3 states that contrary to the claim made by the applicant that the OA is within the jurisdiction of the Tribunal, the same is not true and correct. The affidavit states as under:

“5. With reference to contents of Paragraph No.4, I say that the contents of this para are not true and correct, hence denied by the present Respondents. The Respondents want to bring attention of Hon’ble Tribunal to the Section 15 of Administrative Tribunal Act, 1985. It is not the contention of the Applicant that, he has applied for the post in the recruitment drive commenced from the Public Service Commission and his claim has been denied by the Respondents. As per the said provision, the jurisdiction of Hon’ble Tribunal is limited only to the recruitment, matters concerning recruitment to any Civil Services of the State or any civil post under the State. Therefore it is humbly submitted that the Hon’ble Tribunal has no jurisdiction to entertain such claims until his candidature has been rejected at any time in recruitment process. The Applicant has approached to the Hon’ble Tribunal at very premature stage. Therefore, this Original Application filed by the Applicant deserves to be dismissed in limine.

6. With reference to contents of Paragraph No.5, I say that the contents of this para are also not true and correct, hence denied by the present Respondents. The Respondents want to bring attention of Hon’ble Tribunal to the Section 21 of Administrative Tribunal Act, 1985. Though the Applicant’s appeal has been dismissed by Respondent No.2 on 1.10.2018, the appeal of the Applicant is not pertaining to any dispute relating to any specific recruitment of the State. Therefore, no cause of action arises to file present Original Application to the Hon’ble Tribunal.”

(Quoted from page 213 of OA)

15. According to the respondents the applicant has not made out any specific case for his eligibility to any of the specific post advertised by respondent no.5.

16. The affidavit mentions that the GR dated 1.7.2016 superseded GR dated 30.4.2015 and prescribe different schemes. The affidavit states as under:

“13.4 The procedure and conditions prescribed by the scheme of Government Resolution dated 1.7.2016 are different from the Government Resolution dated 30.4.2005 in few aspects. The power to verify sports certificate is decentralized and assigned to the Divisional Deputy Directors of Sports and Youth Services. As per the new policy, the games, which are included in the Olympic, Commonwealth and Asian, are only considered as valid for entitlement of job in sports quota.

15.3 It is very much clear from the Government Resolution dated 1.7.2016 that the games which are included in the Olympic, Commonwealth and Asian Games are only considered as valid for obtaining sports validity certificate. Admittedly, the game namely Tug of War is not included in the Olympic, Commonwealth and Asian Games. Therefore, apparently the Applicant is not entitled for the benefit of sports reservation as prescribed by the Government Resolution dated 1.7.2016. The decision of the Divisional Deputy Director, Kolhapur Division, Kolhapur is proper, legal and valid.

15.4 It is denied that, the provisions of Government Resolution dated 1.7.2016 are not applicable to the Applicant. It is further denied that, clause 2 (c) (ii) of Government Resolution dated 19.1.2017 are applicable to the case in hand. The interpretation of the said Government Resolution should be made as a whole and by considering the apex policy of the Government in respect of sports reservation. It is submitted that, the Government Resolution dated 19.1.2017 is supplementary and not supplanting to the Government Resolution dated 1.7.2016.”

(Quoted from pg.217-218 of OA)

17. According to the respondents GR dated 19.1.2017 is not applicable to the case of the applicant since he was not selected in any examination

and his case has not been referred to by any department for verification as laid down in the GR dated 19.1.2017.

18. The case of the applicant was examined by the Joint Director, Sports after giving him the opportunity of hearing. After examining relevant documents and clarification received from the Government of Maharashtra, respondent no.2 declared the applicant as not eligible to take benefit under sports quota (para 23 of reply pg.220).

19. As far as the reference to other persons who have received the benefit of sports validity certificate is concerned, the affidavit states that the concerned candidates were held eligible as per the policy in existence at the time of verification of sports certificate. All these candidates referred to by the applicant were earlier selected and then their cases were referred to the Director of Sports for obtaining sports validity certificate. The cases mentioned of all these candidates are prior to the GR issued on 1.7.2016. In case of Shri Indrajeet A. Bhise he was also selected earlier and his case was forwarded to the Director of Sports in October, 2014. Hence, the above judgment dated 23.2.2017 of this Tribunal had directed the respondents to consider the case in view of GR dated 19.1.2017. Accordingly Shri Bhise was held eligible on 19.2.2017 for Group B post.

20. On the other hand the case of present applicant is covered as per the provisions under GR dated 1.7.2016. At the relevant time the GR dated 1.7.2016 superseded GR dated 30.4.2015. The affidavit states as under:

“30.1 It is submitted that, the Government Resolution dated 30.4.2005 is superseded by Government Resolution dated 1.7.2016. As per the new policy of the Government, the games which are included in the Olympic, Commonwealth and Asian Games are only

considered as valid for reservation under sports quota. Though the Government has extended the benefit of relaxation of condition by the Government Resolution dated 19.1.2017, the said relaxation is subject to the apex policy of Government Resolution dated 1.7.2016. As stated earlier, the Government Resolution dated 19.1.2017 is supplementary to the original policy and not supplanting to the Government Resolution dated 1.7.2016.

30.2 The Respondents want to bring attention of Hon'ble Tribunal to the Clause (b) of the Government Resolution dated 19.1.2017 which provides that, for the verification of sports certificates issued by derecognized Associations, provisions of Government Resolution dated 1.7.2016 will be applicable. Hence, the Applicant cannot be considered as valid under sports quota on the strength of his participation and merit in the Tug of War Championship as claimed by him.

31. With reference to contents of Ground Nos.(II) and (III), I say that the contents of Ground No. II and III raised by the Applicant are not proper, legal and valid hence denied by the present Respondents. As stated earlier, the provisions of Government Resolution dated 30.4.2005 cannot not be made applicable in the present case. In the Government Resolution dated 19.1.2017, the Government has taken decision to consider sports certificate of the sportsman as valid who participated in the events organized by authorized sports Associations and authorized sports federations during the period 11.2.2011 to 31.12.2013 who were derecognized by decision of Indian Olympic Association dated 11.7.2011 and directed to consider them eligible subject to provisions of Government Resolution dated 1.7.2016.

31.1 The Government Resolution dated 1.7.2016 prescribes that the games which are included in the Olympic, Asian and Commonwealth games are only considered as valid for sports reservation. Therefore, the Applicant's claim of sports reservation on the strength of

participation and merit in the Tug of War Championship cannot be considered as valid.

32. *With reference to contents of Paragraph No.(IV), I say that the contents of Ground No. 4 raised by the Applicant is not proper, legal and valid hence denied by the present Respondents. It is denied that the Government Resolution dated 19.1.2017 is clarificatory in nature. This Government Resolution prescribes relaxation to the condition of recognition of Sports Associations and Sports Federations during the period 11.2.2011 to 31.12.2013 with certain conditions.*

32.1 *It is submitted that the provisions of Government Resolution dated 19.1.2017 are made applicable to the candidates in consonance with the provisions of Government Resolution dated 1.7.2016. The Government Resolution dated 19.1.2017 does not give any independent benefit to the Applicant without applying the provisions of Government Resolution dated 1.7.2016.*

(Quoted from pg.224-226 of OA)

21. According to the affidavit the applicant does not fulfill basic conditions prescribed by the apex policy decision dated 1.7.2016 and hence the question to apply subsequent GR dated 19.1.2017 does not arise. The respondents mention that the applicant is not entitled for the verification report in affirmative. Hence, the respondents have urged that the OA is without any foundation and therefore deserves to be dismissed.

22. Issue for consideration:

(1) Whether the case of the applicant is covered by GR dated 19.1.2017? Answered in negative.

Observations and findings:

23. As far as merits of the OA are concerned, we find that the cases referred to by the applicant claiming discrimination, are of persons who have received the benefits of sports quota, and had all applied before issuing of the GR dated 1.7.2016. All these persons were selected by the concerned selecting authority and selecting authority have referred their cases for sports validity certificate to the Director of Sports. The judgment relied on by the Ld. Advocate for the applicant also pertains to a candidate who was selected prior to 1.7.2016 and hence the Tribunal had directed the respondents to consider his case as per the provisions of the GR dated 19.1.2017.

24. On the other hand during final hearing the Ld. Advocate for the applicant discloses that after 2012 the applicant had appeared for the examination of PSI but did not qualify and hence was not selected. As he was not selected there was no question of referring his case to the Director of Sports for issuing sports validity certificate. The above discussion clarifies that there is no discrimination against the applicant as being projected by the applicant. Facts in judgment by the Tribunal in OA No.699/2016 are different and hence not relevant in the present case.

25. The applicant had approached the respondents to consider his case and his case was examined in detail in the first appeal as well as in the second appeal. The appellate authority has examined the relevant provisions of the GR and came to the conclusion that in the light of new policy issued by GR dated 1.7.2016 the applicant is not eligible to be considered for issuing sports validity certificate.

26. In order to overcome cases of candidates who did not possess sports validity certificate, the Government had issued GR dated 1.7.2016

superseding all the earlier GRs. According to the same it was mandatory for the applicant to obtain sports validity certificate before participating in any selection process. As the game of Tug of War was derecognized, the Director of Sports has expressed his inability to recognize the same and thus came to the conclusion, “not to issue sports validity certificate to the applicant”. The GR dated 19.1.2017 is applicable to those who had been selected prior to issue of GR on 1.8.2016 and is not applicable to the persons like applicant who would like to participate in selection process after 1.8.2016.

27. We have examined the order issued by Respondent No.2 who was second appellate authority and has issued the order on 1.10.2018. The order provides adequate reasons for dismissing the appeal by the applicant. The decision is based on provisions of GR dated 1.7.2016 and provisions of GR dated 19.1.2017 are not applicable to the applicant.

28. It is a fact that when the applicant had opportunity to get selected, he failed to do so. After 1.7.2016 the Government has taken decision to change the policy. Expectation of the applicant that the policy should be reverted and he should be considered eligible for issuing sports validity certificate for the game of Tug of War, even when it is de-recognized, is not legally valid and not acceptable.

29. For the reasons stated above, Original Application as well as Misc. Application stands dismissed. No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)
18.6.2020

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
18.6.2020

Dictation taken by: S.G. Jawalkar.