

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01.07.2019

+ **W.P.(C) 12060/2018**

SHRI SUNIL TANWAR

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr Jaideep Singh and Mr Hisham Eslam,
For the Respondents: Mr Jasmeet Singh, CGSC with Mr Kavindra
Gill, Mr Aditya Madaan and Mr Srivats
Kaushal, Advocates for R-1 and R-2.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the decision of the respondents to confer the Dronacharya Award, 2018 on respondent no. 4 recognizing him as an outstanding coach in the discipline of Athletics. The petitioner further prays that directions be issued to respondent no. 2 (Ministry of Youth Affairs and Sports) and respondent no. 3 (Dronacharya Selection Committee, 2018), to consider the nomination of the petitioner for the said award based on the merit system, as per the scheme for Dronacharya Award for Outstanding Coaches in Sports and Games (amended as on 03.02.2016) (hereafter 'the Scheme').

2. The petitioner is a national level coach with the Sports Authority of India. The petitioner trained the athlete, Sh. Devendra Jhajaria for the International Paralympics Committee Athletics World Championship, Doha, Qatar, 2015 wherein Sh. Devendra Jhajaria secured a silver medal. Subsequently, he won a gold medal at the Para Olympics, 2016 held in Rio De Janeiro, Brazil with the petitioner as his coach. Devendra Jhajaria was also conferred with the Rajiv Gandhi Khel Ratna Award in 2017.

3. On 22.02.2018, respondent no.2 issued a notification inviting nominations for eligible outstanding coaches in sports and games for the Dronacharya Award, 2018.

4. Sh. Devender Jhajaria, nominated the name of the petitioner for the Dronacharya Award, 2018 under Clause 6.2 of the Scheme. As per the said clause, the previous year's Rajiv Gandhi Khel Ratna Awardee can nominate a coach for the Dronacharya Award in respect of the discipline in which he himself was awarded.

5. On 23.04.2018, the petitioner's nomination was received by the Paralympic Committee of India (bearing Reg. No 280/94-95), in person as well as via speed post.

6. On 07.09.2018, respondent no. 2 issued a notification No. I-12013-1/2018-SP-IV, wherein it invited nominations for the Dronacharya Award, 2018 in respect of coaches associated with coaching of sports persons who participated in the Commonwealth Games, 2018 and Asian Games, 2018.

7. On 16.09.2018, respondent no.3 held a meeting for the deliberation and selection of nominees for the conferment of the Dronacharya Award, 2018. In terms of the marking criteria, respondent no. 4 was awarded a score of 9.67; the petitioner was awarded a score of 20.40; Shri Gaurav Khanna (Para-Badminton coach) secured a score of 80.00; and Shri John Cristopher Nirmal Kumar (Para-Swimming coach) obtained 26.85 marks.

8. On 17.09.2018, respondent no.3 forwarded the names of the nominees to respondent no.2 for the conferment of the Dronacharya Award, 2018 under two categories namely, the regular category and the lifetime category. The name of the petitioner was not included, whereas the name of respondent no. 4 was included for his contribution in the discipline of athletics under the regular category.

9. On 20.09.2018, the petitioner made a representation before respondent nos. 2 and 3 for considering his nomination.

10. On 25.09.2018, the Dronacharya Award, 2018 was conferred on respondent no. 4 by the Union of India (respondent no.1) on recommendation of respondent no.3, under Regular Category in athletics. The petitioner contends that the said conferral is against the scheme of the Dronacharya Award for Outstanding Coaches in Sport and Games (as amended on 03.02.2016).

11. The petitioner thereafter filed applications under the Right to Information Act, 2005 seeking details with reference to the process of deciding the person upon whom the Dronacharya award is to be

conferred. Respondent no. 2 responded to the said applications by a letter dated 05.11.2018 by attaching a copy of the marks statements of all eligible nominations for Dronacharya awards and a copy of the minutes of the Selection Committee recommending the Dronacharya Award, 2018. Aggrieved by the said decision, the petitioner has filed the present petition.

Contentions

12. The petitioner claims that he is entitled to the Dronacharya award for Para Athletics since his score was higher than respondent no.4. The learned counsel appearing for the petitioner referred to the criteria for awarding Dronacharya awards. He pointed out that Olympic Games and Para Olympics were given equal weightage and coaches who trained athletes for the said two events would be entitled to 80 marks for a Gold Medal won by the coached athlete, 70 marks for a Silver Medal and 55 marks for a Bronze Medal. He emphasized that there was no distinction in the marking criteria between the medals won in Olympic Games and in Para Olympics. He contended that the decision of respondent no.3 to treat Para Olympics as a separate sports discipline while taking athletics as a separate sports discipline, is erroneous. He submitted that Para Olympics is an event and includes several sports disciplines such as Para Athletics, Para Swimming, etc. Whereas respondent no.3 had treated athletics and other sports as separate disciplines, it had bundled all para sports under one discipline. He submitted that this was contrary to the Scheme.

13. The petitioner contends that respondent no. 4 was conferred the award with reference to the athlete, Sonu Kumar. The said athlete had won a bronze medal in Asian Junior Athletics Championship, 2016 with the respondent no.4 as his coach. The petitioner contends that an unfair distinction was made by the respondents with reference to Olympics and Paralympics, whereas the Scheme did not make any such distinction.

14. He further contended that treating para sports as a single discipline was violative of Article 14 of the Constitution of India and amounted to hostile discrimination against persons with disabilities. He also submitted that such a decision also violated Section 3 of the Rights of Persons with Disabilities Act, 2016, which mandates that the appropriate government would ensure that persons with disabilities enjoy right to equality, life, dignity and equal respect.

15. Next, he contended that the amendment to the Scheme was ill-timed and was done to confer an unfair and un-deserving advantage to respondent no. 4. He claims that the said amendment placed the coaches of the Para Asian Games, 2019 and Para Commonwealth Games, 2018 in a disadvantageous position as the said games were held after the announcement of the awards in question. Whereas the coaches of sportspersons who had participated in Commonwealth Games, 2018 and Asian Games were considered for the Dronacharya award; coaches of Para Asian Games, 2018 were excluded.

Reasons and Conclusions

16. There is no dispute that respondent no.4's score as per the criteria set out under the scheme is lower than the petitioner's score; whereas respondent no.4 scored 9.67, the petitioner's score was 20.40. Thus, if Athletics and Para Athletics were to be considered as the same discipline, then the petitioner would undoubtedly be entitled to preference over respondent no. 4 on account of his higher score. However, respondent no. 3 had not considered Para Athletics and Athletics as the same discipline or even separately. However, Para Athletics was not considered as a separate discipline of sports. Respondent no.3 had proceeded to consider Para Sports as a single discipline and para athletics was considered as a part of that discipline. Accordingly, in terms of the criteria, two coaches with the highest marks in the said discipline were considered for the Dronacharya Award. Since Sh. Gaurav Khanna and Sh. Cristopher Nirmal Kumar had secured 80.00 and 26.85 in the sports of Para Badminton and Para swimming respectively, their scores were higher than the petitioner's. Concededly, the said two coaches were considered by respondent no.3 for being conferred the Dronacharya Award.

17. In view of the above, the central controversy to be addressed is whether the decision of respondent no.3 to consider Para Sports as a single discipline is arbitrary, unreasonable or falls foul of the Scheme. The expression 'sports discipline' has not been defined under the Scheme and therefore, respondent no.3 would have full discretion to determine as to which sport constitutes a discipline for the purposes of conferring the award as per the criteria specified under the Scheme.

Different sports also have various events, as an illustration, athletics would also include a marathon, 100 mtr. race and other different track and field events. The sporting events in the said sport are materially different and it could be argued that the same ought not to be clubbed as a single discipline. In this regard, respondent no.3 would have the discretion as to classify as to which sporting events constitute a particular discipline. This of course would have to be premised on a rational basis including perception of a sport as a sport discipline. Keeping in mind the aforesaid view, respondent no. 3 has classified Para Sports as a single discipline. It was contended that this was done on the basis of the level of participation and the general level of competition. In this view, this Court is unable to accept that the said classification is unreasonable or arbitrary as contended by the petitioner.

18. Before proceeding further, it would be relevant to refer to Clauses 7, 8, 9 and 10 of the criteria for giving the Dronacharya Awards to the coaches as specified in the Scheme. The said clauses are set out below:-

“7. Normally not more than 5 awards could be given in any calendar year. Out of these, 2 will be earmarked for lifetime contribution in coaching. This condition can be relaxed only in exceptional circumstances to be recorded in writing. Further, not more than 1 award will be given in each discipline in either of the two categories of Dronacharya Award.

8. In a particular sports discipline, names of not more than 2 coaches with the highest marks as per the criteria brought out in the table above will be considered by the Selection Committee.

9. Selection Committee will recommend the final list of coaches for the Awards as per the marks obtained in terms of the criteria indicated above.

10. Selection Committee may not mechanically recommend Dronacharya Award to the recipient of the highest marks across discipline. But in a particular sports discipline, award will be recommended only for the recipient of the highest aggregate marks.”

19. It is apparent from clause 10 of the criteria as quoted above that it was not necessary for respondent no.3 to recommend the Dronacharya Award in favour of the coach receiving the highest marks across discipline. However, respondent no.3 was required to ensure that in any particular sports discipline, the award is recommended only for the recipient of the highest aggregate marks as per the said criteria. Concededly, athletics and para athletics cannot be considered as a single discipline. Therefore, there was no requirement for respondent no.3 to recommend the petitioner for the Dronacharya Award in place of respondent no.4 on account of the petitioner's score being higher. Respondent no.3 had recommended respondent no.4 in the category of athletics and, therefore, the petitioner was not eligible for to be considered for such an award in that category.

20. The petitioner had not achieved the highest score in the field of Para Sports. Admittedly, Mr Gaurav Khanna and Mr Cristopher Nirmal Kumar had both scored higher marks than the petitioner. The petitioner had contended that the respondent no.3 had not awarded any marks to him, however, that would make no difference since respondent no.3 had also not awarded any marks to Sh. Gaurav Khanna and Sh. Cristopher Nirmal Kumar. The learned counsel appearing for the petitioner also does not dispute that if Para Sports is to be considered as a single discipline, the petitioner would be outside the zone of consideration. By virtue of clause 8 of the stipulated criteria in a particular sports discipline, not more than two coaches with the highest marks were required to be considered by respondent no.3.

21. It is also relevant to note that none of the coaches from the field of Para Sports have been conferred the Dronacharya Award. Clause 7 of the Scheme expressly stipulates that not more than five awards are required to be given in any calendar year. Thus, it is apparent that coaches from all disciplines cannot be accommodated each year. Thus, the decision of respondent no.3 to not confer Dronacharya Award to any of the coaches in the field of Para Sports cannot be faulted.

22. In any event, the petitioner's prayer that the respondents be permitted to confer the Dronacharya Award to him cannot be accepted.

23. The contention that the Scheme had been granted to favour respondent no. 4 is also unpersuasive. There is also no material on record to indicate that the scheme had been introduced to include respondent no. 4 alone. In terms of the amendment, all nominated coaches who had trained athletes for participation in the Commonwealth Games, 2018 and Asian Games, 2018 were considered for the Award in question. The fact that Para Asian Games were held after the Dronacharya Award 2018 had been conferred, does not render the amendment to the scheme as arbitrary or unreasonable.

24. Before concluding further, it is relevant to refer to Para 11.7 of the Scheme, which expressly provides that “*the decision of the Government of India in respect of matters covered by this Scheme and interpretation of the provisions of this scheme shall be final and no appeal shall lie against them*”.

25. The petitioner has failed to establish that the decision of the respondents is capricious, *mala fide* or wholly unreasonable so as to fail the *Wednesbury* test (that is no sensible person could arrive at this decision). Therefore, no interference by this court is warranted.

26. It is also necessary to observe that Awards are conferred as an incentive and as such there is no inherent right vested with the respondent to receive such Awards. It is also necessary to recognize that such awards cannot be based on a mathematical formula. There is a significant subjective element in the decision making process which

cannot be captured in an objective marking scheme. The respondents must necessarily have a wider discretion in making such decisions.

27. In view of the above, the petition is unmerited and is, accordingly, dismissed.

JULY 01, 2019
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VIBHU BAKHRU, J

