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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1943/1998

New Delhi, this 20th day of December, 1999

Hon'ble Shri S.P. Biswas, Member(A)
Hon'ble Shri Kuldeep Singh, Member(J)

Praveen Kumar Bansal
GF 21, Hans Bhavan
B.S. Zafar Marg, New Delhi ... Applicant

(By Shri S.K. Ray, Advocate)

versus

Union of India, through

1. Secretary
Department of Legal Affairs
Ministry of Law & Justice
New Delhi
 2. President
Income Tax Appellate Tribunal
Old CGO Building
Maharishi Karve Road
Mumbai-400020
 3. Registrar
Income Tax Appellate Tribunal
Old CGO Building
Maharishi Karve Road
Mumbai-400 020 ... Respondents
- (By Shri N.S. Mehta, Sr. Advocate for R-1 and
Shri Harishankar, Advocate for R-2 and R-3)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a Member (Accounts) of Income Tax Appellate Tribunal (ITAT for short), is aggrieved by A-1 order dated 30.9.98 by which Respondent No.1 has terminated his services exclusively on account of having "been found to be in excess of five vacancies of Accounts Members in the general category". Consequently, the applicant has sought reliefs in terms of issuance of directions to the respondents to (i) quash the said order and (ii) reinstate him back to the duties as Member(Accounts) of ITAT by adhering to past practice of making appointment from the panel of candidates within the select list during the validity of the panel. Other ancillary reliefs have also been sought for.

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2. We consider it appropriate to mention background facts in brief for proper appreciation of legal issues involved herein. These are as under:

(A). This is applicant's second round of visit to this Tribunal. Earlier in the first round ex-parte interim stay was refused initially but after hearing both parties, the respondents were directed to "restore to the applicant status quo ante the receipt of the impugned termination order i.e. prior to 5.10.98 till the final hearing of the case". This relates to this Tribunal's status quo ante order dated 13.11.98.

(B) While the matter stood as before, as many as five other ITAT Members (3 belonging to judicial side and two to Accounts category) had earlier approached this Tribunal for interim directions by filing individual OAs on apprehension of termination of their services. By an order dated 5.10.98, respondents were directed to maintain their status quo as on that date. Interim orders passed were extended from time to time which forced the respondents to file five different MAs praying for vacation of the interim orders. This Tribunal after hearing the relevant parties (applicant herein was not a party in those five OAs) dismissed those MAs for vacation of interim orders by its order dated 6.11.98. The Union of India took both the orders of this Tribunal dated 6.11.98 as well as 13.11.98 to Hon'ble High Court of Delhi by means of filing CW Nos.5786 and 6044/98. Delhi High Court by its order

dated 9.4.99 set aside the aforesaid impugned orders. Against that SLPs were filed in Hon'ble Supreme Court, who on 29.4.99 while dismissing the SLPs directed that all these OAs be heard and disposed of in terms of law preferably within two months. The matter was thus remitted to this Tribunal. Applicant herein, however, did not approach the apex court.

(C) These five OAs (applicant's OA not being included) filed by similarly placed ITAT Members were dismissed and disposed of by a common order in terms of details given in paras 52 and 55 of order dated 9.8.99. Para 52 reads as under:

"the impugned orders dated 30.8.98 are neither illegal nor arbitrary, nor do they violate Articles 14 and 16 of the Constitution to warrant our judicial interference."

Relevant portion of para 55 reads as under:

"Nevertheless in the event that applicant Shri G.C.Gupta and any other similarly situated applicants can be so adjusted within their own category, and as per their panel position, in place of candidates from the Select List dated 27.8.97 without violating the legal principles laid down by the apex court noted above as well as relevant rules, instructions and accepted past practice, we hold there would be no legal impediment for respondents to consider their cases afresh for appointment as Member, ITAT. This action be taken within two months from the date of receipt of a copy of this order."

3. The issues raised in applicant's OA before us need not be examined separately. This is because all the pleas taken by the applicant herein stand well examined in the group of other 5 OAs decided by the Tribunal on 9.8.99 and that the respondents are placing their entire reliance only on this order (i.e. order dated 9.8.99) while opposing the claims of the applicant in this OA.

We are in full agreement with the views expressed by the coordinate Bench of this Tribunal in the aforesaid order and do not find any ground whatsoever to take a different stand.

4. We find that the applicant's case gets well covered in terms of the directions of this Tribunal given in para 55 of its order as aforesaid.

5. It is seen that Shri T.K.Sharma who was at Sl.No.1 in the panel (waiting list herein) in the judicial category was adjusted/appointed against Shri M.L.Sahni of the same category who resigned on 1.6.98. Shri Sahni was in the main select list. It is the stand of the respondents that the adjustment of Shri T.K.Sharma is not in violation of any rules/instructions since that was done well before the order of termination i.e. 30.9.98. The question therefore arises is whether the applicant herein could be adjusted within his own category (Accounts) as per his panel position in place of any other candidate from the main select list dated 27.8.97 of the same category without violating any law/regulations/instructions and accepted practice. We have since examined applicant's plea in terms of para 55 of this Tribunal's order dated 9.8.99 and find that applicant's case could be adjusted without there being any violation of law/norms laid down on the subject. We find that the Union of India while submitting its rejoinder dated 21.1.99 in the writ petitions before the Hon'ble High Court of Delhi admitted that:

"In fact, ever since the policy decision was taken to keep the validity of the panel for a maximum period of 18 months or till the next panel is prepared, whichever is earlier, the aforesaid decision has been strictly adhered to."

In other words, the life of panel in the present case is 18 months. It is also seen that the applicant herein, placed at Sl.No.1 in the waiting list on the Accounts side, is seeking adjustment against Shri Deb Nath, who reportedly died on 7.11.98. Shri Deb Nath joined services in June, 1998 and unfortunately died within six months. As admitted by the respondents, if the life of the panel is for a year-and-a-half, then the present select list and panel will have its validity atleast till upto end of February, 1999 and hence adjustment of the applicant (No.1 in the panel/waiting list) cannot be denied against Shri Deb Nath of the main select list, as directed by the coordinate Bench of this Tribunal in para 55 of the order dated 9.8.99 as aforequoted.

6. That apart, we find that our stand as aforesaid gets well supported by the judgement of the Hon'ble Supreme Court in the case of A.P.Aggarwal Vs. Govt. of NCT of Delhi & Anr. 1999(7) SCALE 136 decided on 16.11.99. The apex court in this case found that the appellant had all the requisite qualifications and had applied for the post of Member, Sales Tax Appellate Tribunal (STAT for short) under the Govt. of NCT of Delhi. The post advertised in November, 1996 was for one only. The Selection Committee recommended a panel of two names for consideration of appointment by the Central Government.

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One Shri M.L. Sahni who was Member of the Delhi Higher Judicial Service as well as the appellant in this case were both on the panel. Shri Sahni joined the post on 14.9.97 and since he was also concurrently in the select panel for the post of Member, ITAT, he resigned from the post of Member, STAT on 4.1.98. The appellant represented his claim for appointing him as Member, STAT in place of Shri Sahni. His plea was rejected both by the Tribunal as well as the Hon'ble High Court. The Central Government instead of appointing the appellant, who was the only other person in the panel (i.e. waiting list in that case), issued fresh advertisement considering that the post originally advertised had already been filled up by Shri Sahni and panel ceased to exist.

7. The apex court examined the legality of fresh advertisement and denial of appointment to the appellant who was in No.1 waiting list/panel therein. The apex court found that the appellant's case was well covered within the provisions of OM dated 14.5.87 wherein it was provided that reserve list can be operated in case where the vacancy is created by the candidate resigning the post or in the event of his death within a period of six months from the date of his appointment to the post subject to the condition that operation of the list would be limited to statutory post or that of scientific/technical/academic nature. The apex court also held that even if it is to be said that the instructions contained in the OM dated 14.5.87 are discretionary and not mandatory, such discretion is

coupled with the duty to act in a manner which will promote the object for which the power is conferred and also satisfy the mandatory requirement of the Statute. It was not therefore open to the Government to ignore the panel which was already approved and accepted by it and resort to a fresh selection process.


8. While laying down the law as aforesaid, their Lordships also referred to two other decisions by them in the cases of S.Vidyarti Vs. State of UP (1999)1 SCC 212 and R.S.Mittal Vs. UOI 1995 (suppl.2) SCC 230. In these two cases as well the apex court laid down the principle that needs to be followed while considering a candidate who is in the panel/waiting list.

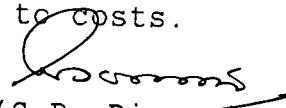
9. We find that applicant's case is covered on all fours by the provisions of OM dated 14.5.87. The vacancy caused by the reported demise of Shri Deb Nath was within six months of his appointment to the post and in any case before the panel could come to an end by February, 1999. In other words, based on Government of India policy of maintaining validity of a panel for 18 months, any vacancy arising out of contingency of death or resignation could be adjusted upto February, 1999. The select list recommended by the Selection Committee has been accepted and operated even with respect to an official belonging to waiting list/panel though in the judicial side. It is not the case of the respondents that the applicant is not competent to fill up the post. It is not also feasible to make ad hoc local arrangement

to fill up such a vacancy. Nor is it desirable to keep the vacancy for a long time or till completion of fresh recruitment. Nor have the respondents finalised the next select list subsequent to fresh advertisement made on 15.9.97 for 29 fresh posts.

10. Based on the law laid down by the apex court as well as directions of the Tribunal in its order dated 9.8.99, applicant's case deserves to be allowed on merits and we do so with the following orders:

- (i) The order dated 30.9.98 (Annexure A-1) shall stand quashed and set aside;
- (ii) Respondents shall be at liberty to have the report of Shri Deb Nath's death verified and if found correct, shall consider adjusting the applicant against Shri Deb Nath and issue of order of reinstatement accordingly within a period of two months from the date of receipt of a copy of this order;
- (iii) The intervening period from the date of termination till reinstatement shall be adjusted against leave of the kind due to the applicant for the purpose of counting seniority. There shall, however, be no backwages for this period.
- (iv) There shall be no order as to costs.


(Kuldip Singh)
Member(J)


(S.P. Biswas)
Member(A)

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