



**Central Administrative Tribunal  
Principal Bench, New Delhi**

**O.A. No. 2381/2019**

Reserved on : 11.09.2020

Pronounced on : 28.10.2020

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. A. K. Bishnoi, Member (A)**

Shri Bhavnesh Saini (Group 'A')  
S/o Late Shri K.C.Saini  
Aged about 60 years  
Presently working as Judicial Member  
Income Tax Appellate Tribunal  
R/o K-66 GF, Jangpura Extension  
New Delhi – 110014

... Applicant

(Through Mr.Nilansh Gour, Advocate)

Vs.

1. Ministry of Law and Justice  
Department of Legal Affairs  
Through its Secretary  
4<sup>th</sup> Floor, Shastri Bhawan  
New Delhi – 110 001.
2. Income Tax Appellate Tribunal  
Through its President  
Pratistha Bhawan  
Old C.G.O. Building  
101, M.K.Road  
Mumbai – 400 020
3. Intelligence Bureau (India) (IB),  
Through its Director  
35, Sardar Patel Marg  
Chanakyapuri, Delhi – 110 021

... Respondents

(Through Mr.Hanu Bhaskar, Advocate)



## ORDER

**Justice L.Narasimha Reddy, Chairman :**

The applicant was appointed as Judicial Member of the Income Tax Appellate Tribunal (ITAT) on 07.08.2000. He served at various Benches of the Tribunal across the Country. The appointment to the post of Vice President of the Tribunal is from among the Members and through process of selection. The steps to fill seven vacancies of Vice President commenced in August 2018. The applicant was within the zone of consideration and was at Sl.No.6 in the seniority list, prepared for this purpose. The Selection Committee (for short Committee) was constituted in accordance with the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963. The Committee made its recommendations on 28.08.2018. The name of the applicant did not find place in the list of selected candidates. On the other hand four members who were junior to him were selected. The Appointment Committee of Cabinet (ACC) approved the same and consequential orders were issued on 08.10.2018. The applicant submitted a detailed representation on 22.10.2018. According to him his non-selection was on the basis of IB report and has requested for omission of the report, from consideration. The representation was rejected through order dated 22.01.2019. This OA is filed challenging the IB report in respect of the applicant and the order dated 22.01.2019 through which his representation was rejected.



Further, he sought review of the selection and for consideration of his case for the post of Vice President, ITAT.

2. The applicant contends that ever since he was appointed as Member of ITAT, he rendered unblemished service and at no point of time, anything adverse to him was noticed, much less communicated to him. He contends that the selection is guided by certain parameters, such as, the number of orders authored by the Member during each year, the instances where the orders were reserved for different spells of time, the number of days, the Member went on leave, and the best orders authored by the Member each year and reported in the law journals, and that though he fulfilled all the parameters, he was not selected.

3. The applicant states that the IB report which was called for about him was taken into account and without communicating any remarks contained therein or verifying the truth or otherwise thereof, he was denied selection, even while his juniors were selected and appointed. The applicant further stated that some of the selected candidates faced adverse remarks from the High Courts and even CBI recommended action and despite that, they were selected. Various other grounds are also urged.



4. The respondents filed a detailed counter affidavit. According to them the appointment to the post of Vice President is through process of selection and hardly seniority becomes relevant thereafter. They submit that the Selection Committee made it amply clear that it perused of the IB report in respect of the Members, within the zone of consideration and all of them are clear from vigilance angle and their integrity has been certified by their respective departments, and in that view of the matter the contention of the applicant is devoid of substance. The plea of the applicant that he was wrongfully denied the selection to the post of Vice President is also denied. A preliminary objection is also raised as regards the maintainability of the OA. All the contentions raised by the applicant are dealt with in detail in the counter affidavit.

5. We heard Sh. Nilansh Gaur, learned counsel for the applicant and Sh. Hanu Bhaskar, learned counsel for the respondents.

6. The applicant became the Member of the ITAT in the year 2000. There exists a President at the helm of the ITAT and there are 9 posts of Vice President. The appointment is through selection from among the Members. The Search-cum-Selection Committee (SCS) constituted for this purpose comprises of the learned Judge of



the Hon'ble Supreme Court, nominated by the Hon'ble Chief Justice of India, the President of ITAT and Secretary Department of Legal Affairs. Since there were 7 vacancies, the zone of consideration comprised of 14 Members, arranged in the order of seniority. The name of the applicant figured at Sl.No.6 thereof. The Committee met on 11.02.2018 and decided the method of selection. The second meeting was held on 08.08.2018 and the selection was completed. As mentioned earlier, the applicant was not selected. Out of the 7selected Members, 3 are senior and 4 are junior to the applicant. The recommendations of the Committee were accepted by the ACC and consequential orders of appointment were issued. The representation made by the applicant was rejected.

7. The applicant is under the impression that the Committee did not recommend his name on account of an adverse IB report. Obviously for that reason he made a specific prayer in the OA to set aside and expunge the IB report and its inputs. However, on a perusal of the minutes of the meeting, it is evident that not only in respect of the applicant, but also in respect of all the Members who are within the zone of consideration, there was no adverse IB report. The same is evident from para-6 of the minutes of the meeting of the Committee. It reads as under :

*"The Committee also perused the IB inputs in respect of the above said fourteen Members (Judicial/Accountant) of the ITAT. The*



*Committee also observed that all the persons in the zone of consideration are clear from vigilance angle and their integrity has been certified by the administrative department.”*

8. Therefore, the very plea raised by the applicant in this behalf is not supported by record. On the other hand his doubt about the IB report is dispelled by the observation made by the Committee.

9. Normally the selection of candidates takes place, depending on the satisfaction of the Members of the Committee. In such cases substantial scope for subjectivity exists. In the instant case however, a set of parameters is adopted with a view to inject an element of objectivity. They are as under :

- I. Number of orders authored during each year;
- II. Number of appeals which were reserved for orders for more than one month, one to two months and more than three months, during each year;
- III. Number of days during each year on leave; and
- IV. Five to ten best orders authored each year, which were reported in Law journals to be submitted by the Members.

10. The Committee has before it, the relevant material on the core aspects, pertaining to all the Members. The Committee has



made a clear observation that it has perused the relevant statements on the first three aspects and the copies of the 5-10 best orders of each of the Members, within the zone of consideration. Thereafter it proceeded to select the Members, for the post of Vice President.

11. Not only the applicant herein, but also the Members at Sl.No.1, 2 and 3 in the list reflected in the zone of consideration were not selected.

12. Once the principal ground urged by the applicant, based on IB report is found to be not tenable, the verification shifts to other areas. It is fairly well settled that the Selection Committee is conferred with the power to choose the candidates within the zone of consideration, depending upon its satisfaction. The occasion to interfere with the selection would arise, if only, the unsuccessful candidate is able to plead and prove any malafides on the part of the Members of the Selection Committee. The applicant did not whisper a word about the same, obviously because he did not even entertain any doubt in that behalf. The only area left out is about the exercise of the discretion of the Members.



13. The very purpose of adopting the selection process is to ensure that a relative assessment of the merit of the persons within the zone of consideration, is undertaken. If the selections were based upon seniority alone, the process would turn out to that of promotion simplicitor. The purpose of having the zone of consideration, to the extent of double the number of vacancies is to enable the Committee to choose the best among them.

14. The sharp distinction between Merit-cum-Seniority on the one hand and Seniority-cum-Merit on the other hand, was explained by the Hon'ble Supreme Court, in a catena of judgements. Some of them were referred to in ***U.V.Mahadkar v. Subhash and Chavan (2016) 1 SCC 536***. It was observed in para 12 as under :

*"It is well settled that there is a sharp distinction between "merit-cum-seniority" and "seniority-cum-merit". In the former case, the merit shall have to be given preference over the seniority. It is only when the senior most candidate has no merit and he is not suitable to be appointed on the selection post, merely because of seniority, then the Committees have to select a meritorious candidate. The question as to the distinction between the two is no longer res integra."*

15. The scope of interference with the selection process was also dealt with extensively by the Hon'ble Supreme Court in several cases. It was held and reiterated that whenever the process of selection is invoked, the views expressed by the expert bodies need



to be treated as final, and the only occasion to examine the correctness of the selection process is, when the aggrieved party alleges and convinces the court as to the malafides on the part of the members of the Selection Committee. Reference in this behalf can be made to certain judgements of the Hon'ble Supreme Court.

A. In ***Dr.J.P.Kulshreshtha and Ors vs Chancellor, Allahabad, (1980) 3 SCC 418***, it was observed as under :

*6. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or in educational question, the court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the court out. To respect in authority is not to worship it unquestioning. It is illegal since the bhakti cult is inept in the critical field of law. In short, while dealing With legal affairs which have an impact on academic bodies, the views of educational experts are entitled to great consideration but not to exclusive wisdom. [911 G-H,912 B-D]*

B. In ***K.A.Nagamani vs. Indian Airlines & Ors (2009) 5 SCC 515*** – the following observation was made :

*22. It is not the case of the appellant that her case was not at all considered for promotion to the post of Deputy Manager (Maintenance/Systems). It is clear from the record that the claim of the appellant for promotion was duly considered along with other eligible candidates including respondent nos. 3 and 4 who were ultimately found eligible and suitable for*



*promotion. The Selection Board having assessed the ratings of each of the previous three years' annual performance appraisals and performance of the appellant in the interview found her not suitable for promotion. The respondent nos. 3 and 4 had outstanding ratings in their annual performance appraisals and were found suitable by the Selection Board. We cannot sit in appeal over the assessment made by the Selection Board and substitute our own opinion for that of the Board. In the result, we find the decision to select and appoint respondent nos. 3 and 4 is not vitiated for any reason whatsoever.*

C. In ***Vijay Syal and Another vs. State of Punjab and Ors., (2003) 9 SCC 401*** the Hon'ble Supreme Court took the view that in the absence of plea of malafides, the courts cannot review the assessment made by expert bodies. It was held \_\_

*As can be seen from the difference of marks secured by the candidates in interview, it does not appear abnormal or per se does not smell of any foul play or does not appear patently arbitrary. The lowest of the marks given in the interview are 11.5 and the highest are 22.87. Further marks secured in the interview and the marks secured in written test are also not grossly disproportionate. This apart, out of total marks of 240, only 25 marks were earmarked for interview. So 25 marks for interview out of 240 as against 200 for written test and 15 marks for qualification and other activities do not admit an element of arbitrariness or give scope for use of discretion by members of the Interview Committee recklessly or designedly in giving more marks to show favour in interview so as to give an advantage or march to an undeserving candidate of their over others who had shown extraordinary merit in written test. From the chart, we find among the candidates, marks secured in the written test were between 119 to 128 except in one case belonging to Scheduled Castes were 114. This apart, the marks secured in the interview are based on the assessment of the Interview Committee. Normally, it is not for the court to sit in judgment over such assessment and particularly in the absence of any mala fides or extraneous considerations attributed and established. The interview marks of 25 as against total marks of 240, cannot be taken as excessive. It comes*



to 10.4%. Possibly the selection would have been vitiated, if the marks for interview were 100 as against 150 marks for written test as sought to be made out. Unfortunately, for the appellants, their misrepresentation in this regard, is unfolded very clearly as already stated above. Further, the appellants, knowing the criteria fixed for selection and allocation of marks, did participate in the interview; when they are not successful, it is not open to them to turn around and attack the very criteria. The High Court in the impugned order has found that the criteria contained in Annexure R-I filed in the writ petition was published and that such criteria was adopted earlier also in respect of other selections.

D. Extensive discussion with reference to various precedents was undertaken in ***Basavaiah vs. H.L.Ramesh & Ors (2010) 8 SCC 372***. The discussion was summed up as under :

45. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fide has been alleged against the experts constituting the selection committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realize and appreciate its constraints and limitations in academic matters.

E. Similar view was expressed in ***Osmania University vs. Abdul Rayees Khan & Anr (1997) 3 SCC 124*** and ***Km. Neelima Misra vs. Dr. Harinder Kaur Paintal And Ors, (1990) 2 SCC 746***.

16. The freedom and the latitude given to the Selection Committee is almost, unlimited. It is only when malafides are attributed that an occasion may arise to review it. In the instant



case there is not even a remote indication of the applicant doubting the impartiality of the SCSC Committee. The objectivity of the exercise undertaken by the SCSC can be discerned from a mere perusal of the minutes. The case of the applicant was considered. His doubt that the I.B. report may have resulted in non-consideration of his case, turned out to be the one, without basis. Further, he was not the only one, to have been superceded. Three of seniors also could not make to the selection.

17. We do not find any merit in the OA and accordingly dismissed. There shall be no order as to costs.

**(A.K.BISHNOI)**  
**MEMBER (ADMN.)**

**(JUSTICE L.NARASIMHA REDDY)**  
**CHAIRMAN**

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