

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALLAHABAD BENCH, ALLAHABAD

(This the **11<sup>th</sup>** Day of **August**, 2021)

**Original Application No.330/00388/2020**

(U/S 19, Administrative Tribunal Act, 1985)

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)**

**Hon'ble Mr. Tarun Shridhar, Member (Administrative)**

Rajeshwar Prasad, aged 58 years, Son of Late Mahendra Pal R/o 20 Bodh Ashram, New Colony, Firozabad.

..... **Applicant**

**By Advocate: Shri A.K. Pandey**

**Shri Himanshu Pandey**

Versus

1. Union of India through the Secretary, Department of Legal Affairs, Ministry of Law and Justice, Govt. of India, "A" Wing, 4<sup>th</sup> Floor, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001.
2. The Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Govt. of India, "A" Wing, 4<sup>th</sup> Floor, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001.

..... **Respondents**

**By Advocate: Shri Aman Malik**  
**Shri M.K. Sharma**

**O R D E R**

**Delivered by Hon'ble Mr. Tarun Shridhar, Member (A)**

Shri A.K. Pandey, learned counsel for the applicant and Shri Aman Malik and Shri M.K. Sharma, learned counsel for the respondents are present.

2. The applicant Shri Rajeshwar Prasad claims that he is the most suitable candidate to hold the position of Member (Judicial) in the Income Tax Appellate Tribunal (ITAT) and the Search Cum Selection Committee (SCSC) has been unfair by not recommending his candidature for this position. He accordingly seeks a

direction to the respondents to re-evaluate his merit vis-à-vis other candidates and take an appropriate decision accordingly. It is pertinent to mention outrightly that the applicant has agitated the matter earlier in OA No.1788/2012 and it is pursuant to the direction in that OA that his case has been reconsidered by the SCSC who have again not assessed the applicant as meritorious enough to deserve a recommendation for the position of Member (Judicial).

2 The applicant to this effect seeks the following reliefs:-

- “(i) *Issue an appropriate order or direction in the nature of certiorari quashing the order dated 25.11.2019 communicating denial/non recommendation of the candidature of the applicant for the post of Judicial Member in Income Tax Appellate Tribunal.*
- (ii) *Issue another order or direction in the nature of mandamus, commanding the official respondents to comply with the order/direction of this Hon’ble Tribunal dated 30.08.2018 passed in O.A. No.1788 of 2012 (Rajeshwar Prasad Versus Union of India & another) within a stipulated period of time, as may be determined by this Hon’ble Tribunal.*
- (iii) *Issue a further order or direction in the nature of mandamus, commanding the official respondents to evaluate inter-se merit of the candidates appointed qua vacancy of Judicial Members in 2010 and if it is found that the applicant is having more meritorious stature than the selected candidates in 2011 then to appoint the applicant as Judicial Member ITAT against the vacancy kept reserved under the orders of this Hon’ble Tribunal.*
- (vi) *Issue any other order or direction which this Hon’ble Tribunal may deem fit and consider proper under the circumstances of the case.*
- (v) *Award the exemplary compensation to the applicant for wrong harassment of the applicant.*

3. Learned counsel for the applicant argues that the respondents have not complied with the order of the Tribunal in letter and spirit as it was expected that they would objectively assess the background and experience of the candidate and thereafter take a well considered appropriate decision. He further mentions that the committee has only gone through the technical formality of implementation of the order of the Tribunal without going into its spirit i.e. an objective appreciation of the applicant’s merits. To establish this point, he argues that this Tribunal in OA No.1788/2012 has given a categorical direction that the candidature of the applicant be evaluated alongwith and in relation to all relevant information, including his

judicial experience, available on record. Vide an interim order in the same OA, one vacancy of the Member (Judicial) has been kept vacant which, according to the learned counsel, is a pointer to the fact that the candidate's merit has been recognised by the Tribunal. At the same time it needs a mention here that the Tribunal had also observed in the said OA that relief claimed by the applicant cannot be granted to him as the post of Member is to be filled by selection on the recommendation of the Selection Committee.

4. Learned counsel also draws attention to the directions of the Hon'ble Supreme Court in letter Patent Appeal No.464/2019 wherein it was held that SCSC should strictly follow the statutory provisions of Section 252 of the Income Tax Act and the procedure enumerated there. He further quotes the direction of Hon'ble Delhi High Court which observed that the SCSC deviated from the prescribed procedure. Learned counsel also draws strength to his argument by the decision of Hon'ble Apex Court which in the case of State of M.P. & ors. Vs. Sanjay Kumar Pathak and others reported in (2008) 1 SCC 456 held that if a vacancy exists and it is not filled up, there must be some reasonable explanation for not filling it. Quoting from further judgments, he claims that the Hon'ble Apex Court has held that if a reasonable or rational explanation for not considering a meritorious candidate is not made or sufficiently explained, it would be violative of Article 14 of the Constitution.

5. Learned counsel for the respondents would vehemently argue that the applicant is making a baseless charge against the committee which is not only a highly empowered body but comprises eminent persons headed by a sitting Judge of the Hon'ble Supreme Court of India. The Committee has decided that only those general category candidates who secure more than 50% marks in interview shall be considered for selection. The case of the applicant has been re-evaluated on two occasions and on both these occasions he was not found to meet the benchmark. He

also points out that on both the occasions the Chairman of the Committee was a different Judge of the Hon'ble Supreme Court of India and both arrived at the same inference. He points out that it is quite obvious that the applicant is alleging a baseless bias against all the Members of the Committee.

6. Learned counsel further points out that the Hon'ble Supreme Court in Durga Devi & Ors. Vs. State of H.P. & ors. has held that the Tribunal cannot sit as a scrutinizing agency to evaluate the merits of the candidates for selection to a post. This is a function to the selection committee and the Tribunal cannot arrogate to itself the power to judge the comparative merits. He further buttresses his arguments by quoting Hon'ble Supreme Court in Dalpat Abasaheb Solunke and ors. Vs. Dr. B.S. Mahajan & ors. that it is unnecessary for the Courts to sit in appeal over the decision of the Selection Committee and to embark on an exercise of scrutinizing the merits or fitness of the candidates which is the sole prerogative of the Selection Committee. He places further reliance upon the Apex Court judgment in Major General I.P.S. Dewan Vs. Union of India & ors. wherein the Hon'ble Apex Court observed that the Selection Committee is not obliged to record the reasons for not selecting a person. It also held that the Principle of the right of citizen cannot be invoked in the matters of selection on merits of the candidates.

7. We have heard the learned counsel of both the parties and perused the entire record.

8. We are very clear in our opinion that the applicant does not deserve the relief that he has sought by virtue of the present OA. The merit of all the applicants has been evaluated by the SCSC comprising a sitting Judge of Supreme Court, Secretary law, Chairman, ITAT and the Additional Solicitor General of India on one occasion, and by a committee comprising Secretary, Border Management in place of ASGI on another. It is irresponsible to make unsubstantiated allegations against the members,

or even to cast an iota of doubt on their fairness. No one, including us, can or should appropriate the authority to substitute the assessment made by the committee by our own evaluation. There are absolutely no grounds, whatsoever, to question the recommendations of the SCSC.

9. There is also a serious doubt in our mind whether this OA should have been entertained in the initial stage itself as the position the applicant is seeking cannot strictly be termed as a civil service as defined in the Act and Rules of the Central Administrative Tribunal. It is a statutory position wherein the person is to discharge judicial/quasi-judicial functions. Therefore, we are of the view that the issue of jurisdiction should have been adjudicated before further proceedings in the petition. We also find that it is not a case of a regular recruitment to a service or a civil post, an issue on which this Tribunal has the jurisdiction. This is a case of a selection through a specially empowered committee to a high level statutory post; on this ground too the issue of jurisdiction should have been adjudicated before considering the issues raised by the applicant.

10. In view of the discussion above, we find the OA to be devoid of any merit and it is accordingly dismissed. No order as to costs.

(Tarun Shridhar)  
Member(Administrative)

(Justice Vijay Lakshmi)  
Member(Judicial)

RKM/