

**Central Administrative Tribunal
Principal Bench**

OA No.4337/2015

Order Reserved on: 30.05.2017

Pronounced on:28.09.2017

***HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)***

Ashwani Goyal,
S/o Shri Madhusudan Goyal,
Fresh Appointment
Aged 41 years,
R/o Moh. Bhadwar Ganj, Ujhani,
Distt. Budaun (UP) 243639.

-Applicant

(By Advocate Shri S.K. Rungta, Senior Advocate with Shri Prashant Singh)

-Versus-

1. Union of India, through
Secretary to Govt. of India,
M/o Law & Justice,
Department of Legal Affairs,
Dr. Rajendra Prasad Road,
Shastri Bhawan,
New Delhi-110001.
2. Union of India, through
Secretary to Govt. of India,
M/o Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
North Block,
New Delhi-110001.

-Respondents

(By Advocate Shri Rajesh Katyal)

ORDER

Hon'ble Mr. K.N. Shrivastava, Member (A):

Through the medium of this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:

“b) Quash the impugned result/appointments published vide publication in official Gazette vide Notification dt. 29th August 2015 to the extent it does not include any person with disability for appointment even against one vacancy notified reserved for the said category.

c) Direct the respondents to consider the appointment of the applicant to the post of Accountant Member in Income Tax Appellate Tribunal against the vacancies notified vide said circular dt. 17.4.13 either against one vacancy reserved for locomotor disabled and/or against other backlog vacancies which ought to have been reserved as a part of ongoing special recruitment drive in terms of office memorandum dt. 22-25/5.15 issued by respondent No.2 under the directions of Hon'ble Apex Court on the basis of his interview held on 27.4.15 and if found successful appoint him with all consequential benefits.”

2. Factual matrix of this case is as under:

2.1 The applicant is a person with locomotor disability in one arm.

He is a Chartered Accountant. In response to Annexure 'D' circular/advertisement dated 17.04.2013 of Department of Legal Affairs, Ministry of Law and Justice, inviting applications for appointment to the posts of Judicial Member and Accountant Member, Income Tax Appellate Tribunal (ITAT), the applicant applied for the post of Accountant Member. The qualification prescribed for the said post was as under:

“(b) **ACCOUNTANT MEMBER:** A person shall not be qualified for appointment as an accountant member unless; (i) he has for at least ten years been in the practice of accountancy (a) as a chartered accountant under the Chartered Accounts Act, 1949 (3 of 1949; or (b) as a registered accountant under any law formerly in force; or (c) partly as such registered accountant and partly as such chartered accountant; or (ii) he has been a member of the Indian Income Tax Service Group ‘A’ and has held the post of Additional Commissioner of Income Tax or any equivalent or higher post for at least three years)”.

2.2 The circular/advertisement indicated that there were 28 posts of Accountant Member to be filled up, out of which one post was reserved for a person who is Orthopedically Handicapped (OH). It also indicated that OH person with the following disability will be considered for appointment subject to production of medical certificate and medical examination by the appropriate Medical Board:

- i) One Arm
- ii) One Leg
- iii) Both Legs
- iv) Low vision

2.3 The interview for selecting the Judicial/Accountant Member for ITAT was held on 27.04.2017 in which the applicant participated. The grievance of the applicant is that despite a post of

Accountant Member being reserved for a person with OH disability, no candidate against the said post has been selected for the said post, as is evident from the impugned Annexure 'A' gazette notification of Government of India dated August 29-September 04, 2015. It is stated that in the impugned gazette notification, only 12 Judicial Members and 15 Accountant Members have been selected against the vacancies of 20 and 28 respectively. It is further stated that no candidate belonging to disability category has been selected as Accountant Member.

2.4 Aggrieved by the impugned Annexure 'A' gazette notification, the applicant has filed the instant OA praying for the reliefs as indicated in para-1 supra.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply in which they have broadly averred as under:

3.1 In terms of Rule 4 (1) of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 (for short, ITAT Rules), recruitment to the posts of Judicial/Accountant Member of ITAT is made on the recommendations of a Selection Board, comprising of the following:

- a) a nominee of the Minister of Law;
- b) the Secretary to the Govt. of India, Ministry of Law (Department of Legal Affairs);
- c) The President (or the Senior vice-President) of the Tribunal; and
- d) such other person, if any, not exceeding two, as the Minister of Law may appoint.

3.2 In response to the advertisement/circular dated 17.04.2013, the applications received were scrutinized and a list was prepared by the Department of Legal Affairs of the candidates to be called for interview. The interviews were conducted by the Selection Board consisting of the following:

- i) Hon'ble Mr. Justice T.S. Thakur, the then Judge, Supreme Court of India -Chairman.
- ii) Shri P.K. Malhotra, Secretary, Department of Legal Affairs-Member
- iii) Shri H.L. Karwa, then President, ITAT – Member
- iv) Shri L. Nageshwara Rao, the then Additional Solicitor General of India, now Judge of Supreme Court of India.

3.3 The Selection Board recommended 25 candidates, (20 in the main list and 5 in the wait list), for appointment as Judicial Members and 35 candidates (28 in the main list and 7 in the wait list) for appointment as Accountant Members of ITAT. The recommendations made by the Selection Board were processed and a proposal for their appointment was submitted to ACC for approval. However, ACC approved only 21 candidates (18 in the main list and 3 in the wait list) for the posts of Judicial Member and 31 candidates (25 in the main list and 6 in the wait list) for the posts of Accountant Member, out of which 16 Judicial Members and 15 Accountant Members have been appointed so far.

3.4 The applicant had appeared before the Selection Board for interview on 27.04.2014. Based on his performance, the Board did not recommend his name for the post of Accountant Member.

3.5 As regards the lone post of Accountant Member reserved for OH candidate, the Selection Board recommended the name of Shri Dinesh Kumar Dikshit in the main list and that of Smt. Padmavathy S. in wait list. Both these names have not been approved by the ACC.

3.6 The applicant was neither recommended for inclusion in the main list nor in the wait list for the post of Accountant Member

reserved for OH candidate. Hence, the question of considering him for the said appointment simply does not arise.

4. The applicant filed rejoinder to the reply filed on behalf of the respondents, in which he has, by and large, reiterated the averments made in the OA.

5. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 30.05.2017. Arguments of Shri S.K. Rungta, learned senior counsel with Shri Prashant Singh, learned counsel for the applicant and that of Shri Rajesh Katyal, learned counsel for the respondents were heard. Shri Rungta submitted that a post of Accountant Member was reserved for a candidate of OH category and hence non-selection of an OH person to that reserved post was not in order. He further submitted that the Hon'ble Supreme Court in the case of **Jai Narain Ram v. State of U.P. and Others**, [(1996) 1 SCC 332] has held that where SC candidates selected for a reserved post did not join, denial of appointment to equal number of SC candidates, who although not selected, had obtained marks equal to that obtained by the last SC candidate selected or had stood immediately below him was unconstitutional. The respondents ought to have considered the applicant for appointment against the vacancy meant for OH category.

6. Per contra, Shri Rajesh Katyal, learned counsel for the respondents argued that the applicant was not considered by the Selection Board both for the main list as well as for the reserved list. Hence, there was no question of considering him for appointment even if the post reserved for OH category has remained unfilled.

7. We have considered the arguments of the learned counsel for the parties and have perused the pleadings, as brought out by the respondents. Against the lone post reserved for OH category, the Selection Board had recommended names of Shri Dinesh Kumar Dikshit in the main list and that of Smt. Padmavathy S. in the wait list. The applicant was not at all considered by the Selection Board for the said post. In these circumstances, we find substantive merit in the contention of the learned counsel for the respondents that the applicant was not eligible for such consideration by the respondents in the event of the post remaining vacant due to ACC not considering the Selection Board recommended candidates for the post.

8. We have gone through the judgment of the Hon'ble Apex Court in **Jai Narain Ram** (supra). In that case the recruitment was for 15 posts of Treasury Officers-Accounts Officers in U.P. Finance and Accounts Services. Four of these posts were reserved for SC candidates. The U.P. Public Service Commission (PSC) had

recommended names of four selectees against these reserved posts. No wait list was prepared as the State Government had not asked for it. All the four selectees did not join. Had there been a wait list prepared, the appellant therein Shri Jai Narain Ram would have been at No.4 in the wait list. Consequent to non-joining of the posts by the four selectees, he would have got appointment due to his being in the wait list. The Hon'ble Apex Court directed the UP PSC to recommend the name of the appellant therein for appointment. The operative part of the judgment reads as under:

“7. Right to seek appointment to a post under Article 14 read with Articles 16(1) and (4) is a constitutional right to equality. The State failed to perform its constitutional duty to requisition the P.S.C. to recommend the next qualified persons to the posts reserved for scheduled castes. Under these circumstances, the denial of appointment to the appellant and three others above him is unconstitutional, Therefore, the respondents are not justified in denying the claim of the appellant for the appointment to the above post.

8. The P.S.C. is, therefore, directed to recommend the name of the appellant for appointment in the first category, i.e. Treasury Officers and Accounts Officers, within a period of six weeks from the date of the receipt of the order and the State is directed to issue order of appointment to the appellant within a period of six weeks thereafter.”

9. We find that the facts of the case in **Jai Narain Ram** (supra) are entirely different from those in the instant case. In **Jai Narain Ram** (supra), since wait list was not drawn and consequently the vacancies reserved for SC category candidates remained unfilled due to the selected candidates not joining, the Hon'ble Apex Court directed the UP PSC to recommend the name of the appellant, Shri

Jai Narain Ram for appointment. In the present case, as noticed by us hereinabove, the Selection Board had in fact selected Shri Dinesh Kumar Dikshit in the main list and Smt. Padmavathy S. in the wait list for the lone post reserved for OH category. The Selection Board had not at all considered the applicant for appointment against the said post and accordingly did not include his name both in the main list as well as in the wait list. Hence, the ratio laid down in **Jai Narain Ram** (supra) by the Hon'ble Apex Court does not apply to the present case. As the applicant had not been recommended by the Selection Board even for the wait list, the respondents were not at all obliged to consider his case.

10. In the conspectus of the discussions in the foregoing paras, the OA is dismissed being found devoid of any merit.

11. There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’