

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2697/2016

Order Reserved on : 25.07.2018

Pronounced on : 17.08.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

Hon'ble Ms. Aradhana Johri, Member (A)

A. K. Rastogi,
R-13/69, Raj Nagar,
Ghaziabad-201002.

... Applicant

(By Mr. Bharat Sangal, Advocate)

Versus

1. Ministry of Corporate Affairs
through its Secretary,
'A' Wing, 5th Floor, Shastri Bhawan,
New Delhi-110001.
2. Department of Personnel & Training
through the Director,
Ministry of Personnel, Public Grievances and Pensions,
North Block, New Delhi.
3. Department of Empowerment of Persons with
Disabilities, through its Secretary,
5th Floor, Paryavaran Bhawan,
CGO Complex, New Delhi-110003. ... Respondents

(By Mr. Deepak Bhardwaj, Advocate)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant retired from the Government service on attaining the age of superannuation. He aspired to become a

Technical Member of the National Company Law Tribunal (NCLT). It appears that he was not selected. He filed this OA claiming the following reliefs:

- “a) Issue a direction directing/commanding the Respondents to make reservation for persons with disabilities with respect to the 14 posts of Technical Members of NCLT, and
- b) Direct Respondent No.1 to make recruitment of one technical member of NCLT out of the candidates with disabilities who had appeared in the interview against the advertisements dated 10.08.2015;
- c) Award the cost of the Application in favour of the Applicant, and
- d) Pass such other and further orders as this Court may deem fit and proper in the facts and circumstances of this case.”

2. The applicant contends that he is a physically disabled person, and that he made a representation on 06.01.2014 to the Ministry of Corporate Affairs with a request to provide 3% reservation for persons with disabilities in the context of appointment of Members to the NCLT, but his request was not acceded to. He places reliance upon the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and various office memoranda issued by the DoP&T.

3. We heard Shri Bharat Sangal, learned counsel for the applicant, and Shri Deepak Bhardwaj, learned counsel for the respondents.

4. Whatever be the merits of the case, we are not inclined to entertain the OA. The reason is that the services of the Members of NCLT are not within the purview of this Tribunal. The jurisdiction of the Tribunal is defined under Section 14 of the Administrative Tribunals Act, 1985. The appointment and service conditions of the Members of NCLT are governed by the Companies Act, 2013, and they are not at all under the purview of the Tribunal. We, therefore, decline to entertain the OA for want of jurisdiction.

5. Further, if the relief is granted to the applicant, as prayed for, it would involve amendment to the relevant provisions of law. In this regard, a direction needs to be given to the respondents to amend the law providing for reservation, as prayed for by the applicant. It hardly needs any mention that making or amending the law is purely in the domain of the Legislature, and if it is in respect of a subordinate legislature, it is the Executive. The caution sounded, if not administered by the Hon'ble Supreme Court in this behalf becomes relevant. In

Mallikarjuna Rao & others v State of Andhra Pradesh & others

[(1990) 2 SCC 707], the Hon'ble Supreme Court observed as under:

“11.It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowlingly to any such advice.”

6. Though an attempt was made to convince us to adjudicate this OA, by referring to certain observations made in the earlier set of proceedings, we do not find any clear direction or finding in this behalf. We, therefore, decline to entertain the OA, and the same is dismissed as not maintainable. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/