

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 1046/2016

Date of C.A.V. : 24.01.2018

Date of Order : 23.03.2018

Between :

Tejavath Jogram, S/o Late Topa,
Aged about 55 years, Occ : Practising Advocate,
H.No.7-1-57/2A/S2, Shanmukh Apartment,
Dharam Karan Road, Near M.C.H.Play Ground,
Beside Kanya Gurukul School, Ameerpet,
Hyderabad-16.

... Applicant

And

1.Union of India, Rep. by its Secretary,
Ministry of Law and Justice,
Department of Legal Affairs,
Shastri Bhavan, New Delhi.

2.Union of India, Rep. by its Secretary,
Ministry of Personnel and Training,
New Delhi.

... Respondents

Counsel for the Applicant	...	Mr.Tejavath Jogram (Party-in-Person)
Counsel for the Respondents	...	Mrs.K.Rajitha, Sr.CGSC

CORAM:

<i>Hon'ble Mr.Justice R.Kantha Rao</i>	<i>...</i>	<i>Member (Judl.)</i>
<i>Hon'ble Mrs.Minnie Mathew</i>	<i>...</i>	<i>Member (Admn.)</i>

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

This OA is filed to declare the action of the respondents in not appointing the applicant as Judicial Member in Income Tax Appellate Tribunal as illegal, arbitrary and violative of Article 335, 14, 16 and 21 of the Constitution of India and to direct the respondents to appoint the applicant to the post of Judicial Member, Income Tax Appellate Tribunal basing on the results of the interview conducted on 09.06.2014 in respect of the notification dated 20/26.04.2013.

2. The applicant, a practicing Advocate in the High Court of Hyderabad for the States of Telangana and Andhra Pradesh applied for the post of Judicial Member, Income Tax Appellate Tribunal (ITAT) in response to the advertisement dated 17.04.2013. The notification was issued for recruitment of 20 Judicial Members and 28 Accountant Members in the ITAT. Out of 20 posts of Judicial Members, 02 posts were reserved for the candidates belong to Scheduled Tribe (ST) category. The applicant belongs to Lambada community, which is a Scheduled Tribe.

3. The applicant appeared for the interview on 09.06.2014. The Selection Board which interviewed the candidates recommended 25 candidates (20 in the main list and 5 in the wait list) for appointment as Judicial Members of ITAT. The name of the applicant was recommended for appointment to the post of Judicial Member in wait list under ST category. The empanelment of the applicant however according to him was not within his knowledge, he learnt

through reliable sources that some persons who appeared in the interview were selected and joined in the service, but he did not receive any communication from the respondents. He approached the 1st respondent under Right To Information Act on 03.07.2015 and thereafter received communication from the 1st respondent rejecting to furnish the information sought for by him. He filed an appeal under Section 19 (1) of the RTI Act 2005, but there was no response. Some time thereafter the applicant received communication dated 22.07.2016 in response to the representation dated 12.05.2016 made by him to the Hon'ble Minister of Law and Justice that his candidature was not accepted for the post of Judicial Member which is meant for ST reserved vacancy. It is, in these circumstances, the applicant filed the present OA to direct the respondents to appoint him as Judicial Member, ITAT against the ST reserved vacancy.

4. Respondents 1 and 2 contended inter alia in their reply statement as follows :

After the Selection Board recommended the name of the applicant for appointment to the post of Judicial Member in wait list under the ST category, the proposal was submitted to Department of Personnel and Training seeking approval of the Appointment Committee of the Cabinet (ACC). The Department of Legal Affairs obtained the reports from the Intelligence Bureau in respect of all the candidates who were recommended by the Selection Board. After obtaining the reports the DOP&T vide OM dated 09.04.2015 inter alia informed that the ACC has not approved the appointment of the applicant as Judicial Member in the ITAT. Thus according to the respondents in view of the adverse IB inputs the ACC

did not approve the appointment of the applicant for appointment to the post of Judicial Member. As regards the applicant's contention that initial rejection of the candidature of one Sri Inturi Rama Rao for appointment of Judicial Member in ITAT and subsequent consideration as per the orders of the Hon'ble High Court, it is submitted by the respondents that the Hon'ble Supreme Court in Writ Petition (Civil) No.202/2013 filed under Article 32 of the Constitution by Sri Inturi Rama Rao on the ground that the Union of India made a statement before the Hon'ble Supreme Court in Civil Appeal Nos.6567-6569 of 2010 that vacancies in future will be made only after amendment of the Rules are carried out and subsequently the Hon'ble Supreme Court in its judgement dated 23.09.2014 in Writ Petition (Civil) No. 202/2013 observed that the Union of India has initiated the process of further appointment without amending the Rules and therefore, the version of the respondents is that it is a policy decision of Union of India and implementation thereof but it has no bearing on the present case. It is submitted that in the present case the appointment of the applicant was not approved by the competent authority in view of the adverse IB inputs, therefore making reference of the judgement of the Hon'ble Supreme Court in W.P.(C) No.202/2013 (Sri Inturi Rama Rao Vs. Union of India) by the applicant in the present case is misleading. Thus according to the respondents the rejection of the candidature of the applicant for appointment to the post of Judicial Member in ITAT is because of the adverse inputs made by Investigation Bureau.

5. Contending as above, the respondents sought to dismiss the OA.

6. We have heard Sri Tejavath Jogam, Party-in-Person and Smt.K.Rajitha,

learned Senior Central Government Standing Counsel for the respondents.

7. The point for determination in the present OA is as to whether the rejection of the candidature of the applicant for the post of Judicial Member, ITAT by the respondents is proper and justified.

8. From the counter affidavit filed by the respondents the reason for rejection of the candidature of the applicant is the adverse inputs made by the IB against the applicant. We have perused the material papers available on record and also the original documents summoned from the respondents including the report of the Intelligence Bureau wherein it is alleged that adverse remarks are made against the applicant. The IB inputs against Teajouath Jogram – the applicant herein at Sl.No.25 of the IB report are as follows :

“Teajouath Jogram (DoB : January 4, 1961) enrolled himself as an Advocate with the Bar Council in 2001 and has been practising before AP High Court. Earlier, he was a clerk in Bank of India at Warangal. Later after being promoted as an Officer in the Bank, he served in Tamil Nadu, Kerala and Andhra Pradesh. In 2001, he had to leave the service on compulsory retirement following allegations of claiming fake TA and medical claims. He allegedly floated an outfit, namely Bank of India Employees SC/ST Association, while serving at Chennai (1993-1995). He claimed himself its General Secretary and used this position to pressurise the Officers for getting favours.

He had not come to notice for links with any political Party or communal organisation.”

9. Basing on the above inputs made by the IB the candidature of the applicant for appointment as Judicial Member, ITAT was rejected by the respondents.

10. The short question which requires consideration in the present OA is whether there is any basis for the remarks made by the IB, if so, basing on the said

remarks if proved to be true, whether the candidature of the applicant is liable for rejection.

11. In the course of arguments the applicant admitted that there was a departmental enquiry against him while he was working as Bank Officer. However, he contends that merely because there was some departmental enquiry followed by compulsory retirement the respondents are not justified in rejecting his candidature. He also submitted that he challenged the compulsory retirement order before the Hon'ble High Court and the Division Bench of the Hon'ble High Court in W.A.No.205/2002 by setting aside the order passed by the Learned Single Judge in W.P.No.18372/2001 held that the order of compulsory retirement passed against him is unjustified and accordingly set aside the same. He submits that the Bank of India preferred an appeal to the Hon'ble Supreme Court, but he was not properly represented by the counsel before the Hon'ble Supreme Court. He filed the copies of the judgements of the Hon'ble Supreme Court in C.A.No.298/2005, the judgement in W.P.No.18372/2001 and the judgement in W.A.No.205/2002.

12. The applicant was appointed as Clerk in Bank of India in the year 1982. In 1993 he was promoted as Junior Management Officer Scale-I and was posted to Tamilnadu. Two years thereafter he was transferred to Hyderabad. He was working as an Officer at Secunderabad Branch during the period from 06.01.1996 to 30.03.1998. He was on deputation to Visakhapatnam from 22.02.1997 to 25.02.1997 for mobilization of shares. While he was on deputation, he submitted certain bills claiming travelling expenses, lodging and boarding charges and halting

allowance for the said period. The Bank having noticed that the amounts claimed by the applicant were inflated, issued a charge memo and initiated departmental enquiry. The enquiry officer submitted a report on 13.01.2000 holding that the applicant was guilty of the charges levelled against him. The Disciplinary Authority concurred with the findings of the enquiry officer and imposed the punishment of compulsory retirement from service on him w.e.f. 14.07.2001. Being aggrieved, the applicant preferred a Writ Petition No.14786/2001 challenging the order of compulsory retirement. The Writ Petition was disposed of by the Hon'ble High Court on 20.07.2001 directing the respondents to exhaust the alternative statutory remedy by filing an appeal under Regulation 17 of Bank of India Employees (Discipline and Appeal) Regulations, 1976. He preferred an appeal and by order dated 30.08.2001 the Appellate Authority dismissed the appeal of the applicant and confirmed the order of the Disciplinary Authority. The applicant again preferred another Writ Petition No.18372/2001 assailing the order of compulsory retirement. Learned Single Judge of the Hon'ble High Court of A.P. dismissed the said Writ Petition by an order dated 27.09.2001. Aggrieved by the said order, the applicant filed Writ Appeal No.205/2002. The Division Bench of the Hon'ble High Court reversed the finding of the Learned Single Judge and set aside the punishment of compulsory retirement passed against the applicant pursuant to the disciplinary proceedings initiated against him. The Bank of India challenged the judgement of the Division Bench of the Hon'ble High Court in Civil Appeal No.298/2005 before the Hon'ble Supreme Court. From the judgement of the Hon'ble Supreme Court it is evident that the applicant herein

was represented by an Advocate and the said Advocate submitted arguments before the Hon'ble Supreme Court. The Hon'ble Supreme Court in its elaborate judgement reversed the findings recorded by the High Court in the Writ Appeal and upheld the decision of the Learned Single Judge. The Hon'ble Supreme Court held as follows :

- (7) We entirely agree with the reasons recorded by the learned Single Judge. The reasoning of the learned Single Judge is in consonance with the well-settled principles of law enunciated by this Court in a catena of decisions.*
- (8) We dismay to notice that the Division Bench of the High Court upset the well reasoning recorded by the learned Single Judge by re-appreciating the evidence.*
- (9) The Division Bench of the High Court also noticed that the High Court under Article 226 would not interfere with the findings recorded at the departmental enquiry by the Disciplinary Authority or the Enquiry Officer as a matter of course. The High Court also recorded that the Court cannot sit in appeal over those findings and assume the role of the Appellate Authority.*
- (10) Having said that the High Court summersaulted and re-appointed the entire evidence and then upset the well reasoning recorded by the learned Single Judge.*
- (16) As already noticed the charge of the respondent was violation of Regulation 3(1) of Bank of India Officer Employees (Conduct) Regulations, 1976. The Regulation require that every officer employee shall at all times take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a Bank Officer.*
- (17) In the view that we have taken the impugned order of the Division Bench of the High Court is unsustainable in law. It is accordingly set-aside. The order of the learned Single Judge is restored. The Writ Petition filed by the respondent shall stand dismissed. The appeal is allowed.*

13. The contention of the applicant is that solely basing on the inputs submitted by the IB rejecting his candidature for appointment to the post of Judicial Member, ITAT cannot be made by the respondents. According to him he

was appointed as a Government Pleader in the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh by order dated 07.11.2017, if really there is any stigma against his conduct, the Government of Telangana would not have appointed him as a Government Pleader and therefore his candidature for the post of Judicial Member, ITAT cannot be rejected basing on the inputs submitted by the IB.

14. In support of his contention that his candidature is not liable for rejection solely on the basis of IB inputs, he relied on the judgement in the case of ***K.Vijaya Lakshmi Vs. State of Andhra Pradesh, represented by its Secretary, Home (Courts 1), Department and another reported in (2013) 2 SCC (L&S) 68,*** wherein the Hon'ble Supreme Court held as follows :

“29. In view of this constitutional and legal framework, we are clearly of the view that the High Court has erred firstly on the administrative side in discharging its responsibility under [Article 234](#) of the Constitution, and then on the Judicial side in dismissing the writ petition filed by the appellant, by drawing an erroneous conclusion from the judgment in the case of Kali Dass Batish (supra). Having stated so, the Court can not grant the mandamus sought by the appellant to issue an appointment order in her favour. As held by this Court in para 17 of Harpal Singh Chauhan Vs. State of U.P. reported in 1993 (3) SCC 552, the court can examine whether there was any infirmity in the decision making process. The final decision with respect to the selection is however to be left with the appropriate authority. In the present matter the Division Bench ought to have directed the State Govt. to place all the police papers before the High Court on the administrative side, to enable it to take appropriate decision, after due consideration thereof.”

15. The principle underlying the judgement relied on by the applicant is that in matters relating to judicial appointments the judicial review of an administrative decision is not totally excluded. In the instant case the question requires determination is whether having regard to the above referred material

the respondents are justified in rejecting the candidature of the applicant. The candidature of the applicant was not rejected on the ground that he was affiliated to any political party or that he was office bearer of an organization. His candidature was rejected on the ground that while working as a Bank Officer he faced disciplinary enquiry which resulted in the punishment of compulsory retirement which was ultimately confirmed by the Hon'ble Supreme Court. The fact that he was compulsorily retired from service, the matter ultimately went upto Hon'ble Supreme Court and the Hon'ble Supreme Court ultimately concurred with the order passed by the Disciplinary Authority is not in dispute. The post in respect of which the applicant seeking appointment is that of a quasi judicial authority. By confirming the order of compulsory retirement passed against the applicant the Hon'ble Supreme Court took the view that the applicant is not fit to hold the post of a Bank Officer. Therefore, it is not possible for us to take a view that in spite of the judgement of the Hon'ble Supreme Court confirming the compulsory retirement we can issue a direction to the respondents to appoint him to the post of quasi judicial authority. Therefore, in our considered view the respondents are justified in rejecting the candidature of the applicant for the post of the Judicial Member of ITAT.

16. For the foregoing reasons, we absolutely see no merit in the OA and accordingly dismiss the same without any order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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