

**Open Court**

**Central Administrative Tribunal, Allahabad Bench  
Circuit Bench at Nainital**

**Original Application No.331/01788/2012  
This the 30th day of August, 2018**

**Hon'ble Mr. Justice Bharat Bhushan, Member (J)**  
**Hon'ble Mr. Mohd. Jamshed, Member (A)**

Rajeshwar Prasad son of late Sri Mahendra Pal r/o 76, Paras Majestic, E-8, Trilanga, Near Rajiv Gandhi College, Bhopal-462039.

Applicant

By Advocate: Sri A.K. Pandey  
Versus

1. Union of India through 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 President ,Income Tax Appellate Tribunal, Pratishtha Bhawan, (Old Central Govt. Offices Building), 3<sup>rd</sup> & 4<sup>th</sup> Floor, 101, M.K. Road, Mumbai-400020.

Respondents

By Advocate: Sri Tek Chandra Agrawal for Respondent No.1  
Sri Dharmendra Tiwari proxy counsel for Sri R.K. Srivastava for Respondent No. 2

**ORDER**

**HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)**

The applicant has challenged the denial of the selection to the post of Judicial Member in the Income Tax Appellate Tribunal (in short ITAT). The applicant has moved this Original Application (in short O.A.) under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"8.1 Issue a direction in the nature of certiorari quashing the implied rejection of the applicant's candidature on account of he being non-selected in the select list prepared by the respondents.

8.2 Issue a further order or direction in the nature of mandamus, commanding the respondents to appoint

the applicant to the post of J.M. ITAT after considering the applicant's qualification, experience and outstanding service record.

8.3 Issue any other order or direction which this Hon'ble Tribunal may deem fit and consider proper under the circumstances of the case.

8.4 Award the exemplary compensation to the applicant for wrong harassment of the applicant."

2. The brief facts of the case are that the applicant had joined as Assistant Registrar in the Income Tax Appellate Tribunal on 1.12.1995 after being nominated by the Union Public Service Commission as direct recruit against a substantive vacancy. He continuously worked in that position till 31.7.2007 when he departed to join Commercial Tax Appellate Tribunal, Government of Madhya Pradesh on deputation basis. The applicant has referred to various claims of harassment by the Departmental seniors.

3. The applicant was selected as a Member, Commercial Tax Appellate Board on deputation basis by High Powered Committee of State of Madhya Pradesh. The applicant functioned there for three years and 4 months. The applicant claims to have adjudicated certain cases of great magnitude, some of them are stated to have been confirmed by the Hon'ble High Court.

4. On 16.11.2010, the Government of Uttarakhand appointed the applicant as Adviser to the State of Uttarakhand. It appears that while serving as Member, Commercial Tax Appellate Board, Bhopal, the applicant came across a advertisement for filling up the 22 vacant posts of Judicial member and 13

vacant posts of Accountant Members. The applicant applied for the post of Judicial Member. He routed his application through Government of Madhya Pradesh where he was serving at that point of time and also through ITAT, his parent Department. He also submitted an advance copy. Advance copy as well as copy forwarded by the Government of Madhya Pradesh were received by the Ministry in time but the ITAT did not forward the application of the applicant. The applicant said to have made several attempts for forwarding his application. Ultimately he claims that on the intervention of the Hon'ble Chairman of Selection Committee, his application was sent to the Selection Committee.

5. The applicant claims that two members of the Selection Committee namely Union Law Secretary as well as President , ITAT were not favourably inclined. He claims that for that reason, his application had not been forwarded earlier.

6. Applicant claims that his experience of working on analogous post as Member, Commercial Tax Appellate Board, Bhopal was not given due weightage. It appears that the Selection Committee selected 11 Judicial Members. The applicant alleges that his experience as Member, Commercial Tax Appellate Board was not made available to the Committee. Resultantly, the applicant was not selected.

7. The Counter Reply filed by the respondents are available on record wherein the Department has denied any allegation of bias. The respondents have also submitted that Secretary of

Law Department as well as the then President of ITAT have also retired. The applicant appeared for interview before Selection Committee in February, 2011. The respondents have further claimed that allegation of bias has not been established by independent evidence.

8. Heard Sri A.K. Pandey, learned counsel for applicant, Sri Tek Chandra Agrawal for respondent No. 1 and Sri Dharmendra Tiwari proxy counsel for Sri R.K. Srivastava, respondent No. 2.

9. It is pertinent to point out that at the initial stage of this O.A., the then Division Bench of this Tribunal had passed the order dated 21.12.2012 which is quoted below:-

**“Applicant has also prayed for interim relief and requested that one post be kept reserved. Considering the averments made in the O.A. we deem it appropriate to direct the respondents not to fill up one vacancy till the disposal of this O.A.”**

10. It is, therefore, apparent that one post of Member (Judicial) in ITAT is still vacant. We do not think that the relief claimed by the applicant can be granted. The applicant has sought a direction commanding the respondents to appoint the applicant to the post of Judicial Member, ITAT. This is beyond the jurisdiction of this Tribunal. The post of Member, ITAT obviously is the post to be filled by selection. The members of the ITAT are selected by the empowered Selection Committee after considering the various qualifications of the candidates.

This Tribunal in their judicial capacity cannot ask the respondents to act in a particular fashion.

11. Learned counsel for applicant has requested that his grievance would be redressed if respondents are directed to place his candidature before the selection committee for consideration along with his full particulars of his experience.

12. Considering all the facts and circumstances of the case, we therefore, direct the respondent No.1 to place the candidature of applicant for consideration before selection committee, constituted for selection of candidates for the vacancy which has been kept vacant on account of interim order passed by this Tribunal on 21.12.2012. Respondent No. 1 is also directed to send all the relevant information including the information about the experience of applicant of working as Member, Commercial Tax Appellate Board, Bhopal to the Selection Committee. Respondent No. 1 is further directed to place the matter before selection committee as expeditiously as possible, preferably within two months from the date of copy of this order is placed before them.

13. The O.A. is finally disposed off in terms of the aforesaid order. No order as to cost.

**(MOHD. JAMSHED)**  
**MEMBER (A)**

**(JUSTICE BHARAT BHUSHAN)**  
**MEMBER (J)**

**HLS/-**