

**Central Administrative Tribunal
Principal Bench**

OA No.2714/2019

New Delhi, this the 23rd day of October, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Shri K.C. Ghumaria, IRS
Group 'A', Pr. Director General Administration
And TDS Delhi, R/o 108, Himat Nagar East
Gopal Pura, Tonk Road
Jaipur (Rajasthan). ...Applicant

(By Advocates: Shri Avinash Lakhanpal and Shri Dhiraj Kumar)

Vs.

1. Union of India
Ministry of Personnel, Public Grievance & Pensions, through its Under Secretary (EO-SM II), Department of Personnel & Training, Secretariat of the Cabinet North Block, New Delhi-110001.
2. Union of India, Ministry of Finance
Department of Revenue
Through its Secretary
North Block, New Delhi.
3. The Cabinet Secretary
Rashtrapati Bhawan, New Delhi-110004.
4. The Central Board of Direct Taxes
Through its Chairman, North Block
New Delhi-110001.
5. Mr. Prabash Shankar, Member, CBDT
North Block, New Delhi-110001. ...Respondents

(By Advocates: Shri Hanu Bhaskar and Shri Zoheb Hossaim)

ORDER (ORAL)**Justice L. Narasimha Reddy:-**

The applicant was an officer of the IRS of 1982 batch and was holding the post of Director General of Administration. Steps were initiated for appointment to the post of Member, Central Board of Direct Taxes (CBDT) by issuing a Memorandum dated 04.07.2018. The applicant was within the zone of consideration. There were three vacancies available by the time the Selection Committee met and the names of three officers, who were incidentally senior to the applicant, were selected. At that stage, the applicant filed OA No.1166/2019. His plea was that the 4th vacancy arose in the same calendar year and recommendations ought to have been made for that post also. The respondents took the plea that only such of the vacancies as were available by the time the Selection Committee met, could be taken into account and no recommendation would be made vis-à-vis an anticipated vacancy. The OA was dismissed on 01.05.2019. It was, however, observed that the steps for filling up of the vacancy, that arose in October, 2019, shall be expedited and

process shall be completed before the applicant attains the age of superannuation.

2. The applicant filed Writ Petition No.5216/2019 against the Order in the OA No.1166/2019. The Writ Petition was allowed and the Order in the OA was set aside. It was, however, directed that the process of selection of the candidate, against a vacancy, shall be completed before the applicant attains the age of superannuation.

3. The applicant filed Contempt Case(C) No.649/2019 before the Hon'ble High Court alleging that the direction, contained in the Writ Petition, was not complied with. It was brought to the notice of the High Court that through an Order dated 28.08.2019, an incumbent was already selected and appointed as Member. Taking the same into account, the contempt case was closed on 17.09.2019.

4. This OA is filed challenging the Order dated 28.08.2019, through which, the 5th respondent herein, was appointed as Member of CBDT.

5. The applicant contends that though he was much senior to the 5th respondent and was meritorious in all respects, the appointing authority has deliberately chosen the 5th respondent. Various other contentions are also urged.

6. We heard Shri Avinash Lakhpal, learned counsel for the applicant, Shri Hanu Bhaskar and Shri Zoheb Hossaim, learned counsel for the respondents, at length.

7. The brief background of the case is furnished in the preceding paragraphs. The applicant was making efforts to get selected as a Member of CBDT. It may be true that four vacancies arose in the calendar year 2019. The fact, however, remains that by the time the Selection Committee met, only three vacancies were available and the 4th one arose only in October, 2019. Therefore, recommendations were confined only to those three vacancies and three seniors to the applicant were appointed. The plea of the applicant that the recommendations ought to have been made vis-à-vis the 4th vacancy also, did not weigh with this Tribunal in OA No.1166/2019. Though the Hon'ble

High Court allowed the Writ Petition filed against that in the ultimate analyses, the relief granted was in same terms. To be precise, even while dismissing the O.A., this Tribunal observed in para 11 as under:-

“11. It is stated that the applicant is attaining the age of superannuation on 30.09.2019. We observe that in the event the applicant being selected and his selection being approved by the ACC, the feasibility of issuing orders before he attains the age of superannuation, be considered.”

8. The direction issued by the Hon’ble High Court reads as under:-

“21.....At the same time, keeping in view the fact that a period of seven months has already elapsed from the date of appointment of the other three candidates as Member, CBDT on 06.11.2018, as also the fact that the petitioner will reach the age of superannuation in just four months, i.e., on 30.09.2019, we direct the respondents to complete the selection process initiated pursuant to the OM dated 04.12.2018 within a period of six weeks from today.”

9. Be that as it may, the Selection Committee met on 27.06.2019 and recommended the name of the 5th respondent. The resultant order of appointment was issued on 28.08.2019.

10. We would have certainly examined the various questions of fact and law raised by the applicant, but for the fact that he retired from service on 30.09.2019. Even if the points urged by the applicant are found to be meritorious, no relief can be granted to him. Further, it is not even pleaded that the 5th respondent was not within the zone of consideration or that he does not hold the requisite qualifications. Once an officer is within the zone of consideration, and was found fit, it is the discretion of the Selection Committee. The applicant did not allege any malafide also against the Members of the Selection Committee. This OA has become infructuous. We, therefore, dismiss it.

There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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