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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 17th May, 2019**

+ W.P.(C) 5361/2019 & CM APPL.23607-23608/2019

PUNEET SHARMA

..... Petitioner

Through Mr.Gaurav Bhardwaj, Mr.Abhishek
Maratha, Ms.Nupur Sharma,
Mr.Parveen Sehrawat, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through Mr.Ravi Prakash, CGSC for UOI with
Mr.Farman Ali, Mr.Aman Malik,
Advocates

+ W.P.(C) 5365/2019 & CM APPL.23632-23633/2019

MOHINDER KAUR SAHLOT AND ANR.

..... Petitioners

Through Mr.Anupam Lal Das, Senior
Advocate with Mr.Krishanu Barua,
Mr.P.C. Yadav, Mr.Subhash C.
Aacharya, Ms.Neha Gupta, Advocates

versus

UNION OF INDIA

..... Respondent

Through Mr.Ravi Prakash, CGSC for UOI with
Mr.Farman Ali, Mr.Aman Malik,
Advocates

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The petitioners have challenged the selection process for the post of Member of Income Tax Appellate Tribunal.
2. Vide circular dated 06th July, 2018, the Government invited applications for appointment to the posts of Member (Judicial/Accountant), Income Tax Appellate Tribunal (ITAT). The qualifications of the Judicial

Member, ITAT as given in para 5(a) of the circular are reproduced hereunder:

“5 QUALIFICATIONS:-

(a) JUDICIAL MEMBER:- A person shall not be qualified for appointment as a Judicial Member unless:- (i) he has for at least ten years held a judicial office in the territory of India; or (ii) he has been a Member of the Indian Legal Service and has held a post in Grade-II of the Service or any equivalent or higher post for at least three years; or (iii) he has been an advocate for at least ten years.

Explanation for the purpose of (a) above:

(i) In computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) In computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.”

(Emphasis Supplied)

3. The Search-Cum-Selection Committee (SCSC) for recruitment of Members of the Income Tax Appellate Tribunal invoked Rule 4A of Income-tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 which empowers them to evolve its own procedure for selection of the Members. The Committee took note of the guidelines for appointment to the post of Members in Tribunals under the purview of Appointments Committee of the Cabinet (ACC) contained in the Department of Personnel & Training (DoP&T) O.M. No.9/19/2016-EO (SM.II) dated 08th January, 2018 according to which the Selection Committee/Search-cum-Selection Committee short-list candidates (two or three times the number of

vacancies) in the first round. The Committee in its meeting dated 01st May, 2019 decided to consider only complete applications received by 20th August, 2018. The Committee further resolved to call for interview 24 most experienced applicants from the profession i.e. practicing advocates and others (from the list prepared in decreasing number of experience) belonging to unreserved category against 9 unreserved posts. The Committee decided to hold the interviews of the short-listed candidates in the Supreme Court on 20th and 21st May, 2019. Learned Standing counsel for the Central Government has produced the sealed envelope containing the minutes of the Search-cum-Selection Committee dated 01st May, 2019 which have been seen and returned back.

4. Learned counsels for the petitioners urged at the time of the hearing that the aforesaid procedure of short-listing the candidates for interview is arbitrary and violative of Article 14 of the Constitution; no communication was received with respect to any benchmark or criteria for initial scrutiny after the circular dated 06th July, 2018; all candidates who applied for the post were called for interview by the Selection Committee since the inception of the ITAT; the process of selecting only few applicants for the purposes of interview, while rejecting others without any intelligible differentia being applied in classification is discriminatory; no opinion of the Selection Board is put forth to the effect as to what makes the process of calling all the applicants as 'not practicable'; resorting to Rules framed under Article 309 of the Constitution of India is a drastic step when the statute i.e. Income Tax Act, 1961 provides for well defined eligibility criteria for the candidates to be selection as Members of ITAT; the respondent authority cannot change the rule of the game midstream and

distinguishing between candidates having 10 years of law practice from those having 20 years of law practice is an unintelligible classification and violative of Article 14 of the Constitution of India. Reliance is placed on *Manjushree v. State of Andhra Pradesh*, (2008) 3 SCC 512 and *Uttar Pradesh Power Corporation Ltd. v. Ayodhya Prashad Mishra*, (2008) 10 SCC 139, *B. Amrutha Lakshmi v. State of Andhra Pradesh*, (2013) 16 SCC 440 and *Prakash Chand Meena v. State of Rajasthan*, (2015) 8 SCC 484.

5. Learned counsel for the respondent urged at the time of hearing that:

5.1 The petitioners are reading Section 252 of the Income Tax Act, 1961 erroneously inasmuch as Section 252 provides for minimum practice of 10 years for advocates to be considered for the post of Member, Judicial ITAT. It is submitted that Section 252 of the Income Tax Act, 1961 is to be read in conjunction with the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules 1963 which have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India.

5.2 Conjoint reading of Section 252 of Income Tax Act, 1961 and Rule 4A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 provides that the Selection Board/Committee is well within their rights and powers to evolve its own procedure for selection and where the Selection Board is of the opinion that it shall not be practicable to call all the candidates for interview, it shall short-list the candidates for this purpose by adopting such criteria which shall not be less than a person who has been practicing as an Advocate for at least twenty years and who has net taxable income of not less than Rs.1,40,000/- (after allowable

exemptions or deductions) for selection of judicial member, ITAT. It is further provided that Selection Board may adopt such criteria as it may deem fit, but which shall not be less than the eligibility criteria prescribed under Sub-sections (2) and 2(A) of Section 252 of the Income Tax Act, 1961 (43 of 1961) and Rule 3 in case of candidates belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes categories.

- 5.3 The Committee, in its meeting dated 01st May, 2019, decided that only those applications which are complete in all respects and filed on or before the last date of submission i.e. 20th August, 2018 shall be considered.
- 5.4 649 applications were received by Department of Legal Affairs' circular dated 06th July, 2018 for 37 members (Judicial/Accountant) in ITAT. Considering the huge number of applications received for the above-mentioned posts, the interim Search-cum-Selection Committee deemed it fit to conjointly read Section 252 of the Income Tax Act, 1961 and Rule 4A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963. Considering the above provisions, guidelines, status of applications and on perusal of list of candidates in decreasing order of their experience, the interim Search-cum-Selection Committee decided to call 24 most experienced applicants who were practicing Advocates for interview.
- 5.5 The above-mentioned principle has been upheld by the Supreme Court in catena of judgments wherein it has been held that if the number of applications are enormous in number with reference to the number of posts available to be filled up then the Selection Board has no option

but to short-list such applications on some rational and reasonable basis. In this regard, reliance is placed on *Madhya Pradesh Public Service Commission v. Navnit Kumar Potdar*, (1994) 6 SCC 293. Relevant portion of the aforesaid judgment is extracted and reproduced hereunder for ready reference:

“9. ...Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences. If with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience...

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13 ...where the selection is to be made purely on the basis of interview, if the applications for such posts are enormous in number with reference to the number of posts available to be filled up, then the Commission or the Selection Board has no option but to short-list such applicants on some rational and reasonable basis.”

- 5.6 Reliance is also placed on *Unin of India v. T. Sundararaman*, AIR 1997 SC 2418 and *Arun Tewari v. Zila Mansavi Shikshak Sangh*, AIR 1998 SC 331.
- 5.7 The petitioner in W.P.(C) 5365/2019 submitted the application after the last date of submission prescribed in the circular dated 06th July, 2018 and therefore, his candidature was rejected by the Committee.
- 5.8 The petitioner in W.P.(C) 5361/2019 is having only 13 years of practice as an Advocate and therefore, his name is not amongst the short-listed candidates.
6. On careful consideration of the rival contentions of the parties, this

Court is of the view that Rule 4A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 empowers the Selection Board to evolve its own procedure. The aforesaid Rules are not subject matter of challenge before this Court. The decision of the Committee to short-list the candidates is reasonable and not arbitrary. Reference be made to *Madhya Pradesh Public Service Commission v. Navnit Kumar Potdar* (supra) in which the Supreme Court upheld the action of Madhya Pradesh Public Service Commission to call for interview only 71 applicants out of 188 applicants on the ground that only candidates with 7½ years experience be called for interview whereas five years experience was the eligibility criteria.

7. In W.P.(C) 5365/2019, the complete application of the petitioner was submitted after the last date mentioned in the circular dated 06th July, 2018 which was rejected. There is no infirmity in the rejection of the petitioner's application on the ground of having been submitted after the due date.

8. There is no merit in both these writ petitions which are hereby dismissed. Pending applications are disposed of.

9. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

MAY 17, 2019

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