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

+ W.P.(C) 847/2018

ASHWANI GOYAL

..... Petitioner

Through: Mr. Rakesh Mishra, Advocate

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Kirtiman Singh, CGSC with
Mr. Waize Ali Noor, Mr. Prateek Dhanda and
Mr. Saeed Qadri, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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30.01.2018

1. The petitioner, a Chartered Accountant by profession; suffering from a locomotor disability, is aggrieved by the judgment dated 28.09.2017 passed by the Tribunal, dismissing his O.A. No.4337/2015, praying *inter alia* for quashing a Gazette Notification dated 29.08.2015, published by the respondent No.1/Ministry of Law and Justice, appointing 12 candidates against 20 vacancies of Judicial Members and 15 candidates against 28 vacancies of Accountant Members in the ITAT, wherein his name did not feature. Further, the petitioner had sought directions to the respondents to consider appointing him as an Accountant Member in the ITAT against the vacancies notified, in terms of O.M. dated 22-25.05.2015, issued by the respondent No.2/DOPT on the subject of "Special Recruitment Drive to fill up the Vacancies for Persons with Disabilities".

2. The facts as recorded in the impugned order are that a Circular dated 17.04.2013 was issued by the respondent No.1, inviting applications for appointment to the posts of Judicial Member and Accountant Member in the ITAT. The petitioner, who is a Chartered Accountant by profession and a person suffering with locomotor disability in one arm, had applied for the subject post in the Orthopedically Handicapped (OH) category. There were 28 posts of Accountant Members and out of the said 28 posts, one post was reserved for a person who is orthopedically handicapped. Interviews for the subject posts were conducted by the Selection Board comprising of four persons, namely, a sitting Judge of the Supreme Court of India, the Secretary, Department of Legal Affairs, the President, ITAT and the then Additional Solicitor General of India.

3. The interviews for selecting the Judicial/Accountant Members were held by the Selection Board on 27.04.2017. The petitioner had duly appeared in the interview. Thereafter, the Selection Board had recommended 25 candidates for appointment as Judicial Members and 35 candidates for appointment as Accountant Members in the ITAT. As regards the single post of Accountant Member reserved for the OH candidate, the Selection Board recommended the name of Shri Dinesh Kumar Dikshit in the main list and Smt. Padmavathy S. in the wait list. The proposal of the Selection Board was forwarded to the ACC for approval. The ACC granted approval only in respect of 21 candidates (18 in the main list and 3 in the wait list) for the post of Judicial Member and 31 candidates (25 in the main list and 6 in the wait list) for the post of Accountant Member. However, the names of the recommendees for the single post of Accountant Member reserved for the OH candidate were not approved by the ACC. In terms of the Gazette

Notification dated 29.08.2015-04.09.2015 issued by the Government of India, only 12 Judicial Members and 15 Accountant Members were selected against 20 and 28 vacancies respectively.

4. Having regard to the fact that the name of the petitioner had neither been recommended for being included in the main list or in the wait list for the post of Accountant Member reserved for the OH candidate, the Tribunal has opined that the respondents were under no obligation to consider his case. As a result, the original application filed by the petitioner was dismissed. Aggrieved thereby, the petitioner has filed the present petition.

5. It is clear from the facts noticed above that the petitioner's candidature was duly considered for the subject post, but the Selection Board did not recommend his name. It is a settled legal position that a candidate is entitled to being considered for appointment to a post but he cannot insist that his candidature must be accepted as that decision rests with the appointing authority. In the present case, admittedly, the petitioner was called for an interview by the Selection Committee and his candidature considered. However, his name was not short listed by the Selection Committee for appointment and nor was he placed in the wait list.

6. Learned counsel for the petitioner submits that even if the petitioner's name was not recommended for the post of Accountant Member reserved for the OH candidate, yet the Tribunal ought to have proceeded to examine the second relief in the O.A., which was for giving effect to OM dated 22/25.05.2015, issued by the respondent No.2/DOPT on the subject of "Special Recruitment Drive to fill up the Vacancies for Persons with Disabilities".

7. We are of the opinion that the Tribunal was under no obligation to undertake such an academic exercise at the behest of the petitioner, when his name had not even been recommended by the Selection Board for appointment to the post of Accountant Member, reserved for the OH candidate, either in the main list or for that matter, in the wait list. Had the name of the petitioner been recommended by the Selection Board in either of the aforesaid lists, it would have been a different matter. The issue with regard to implementation of the OM dated 22-25.05.2015 can be considered by the Tribunal in an appropriate case, but there was no reason for it to have returned any findings on the second relief, in a vacuum, once the first prayer in the O.A. had been rejected.

8. The petition is dismissed as meritless.

HIMA KOHLI, J

REKHA PALLI, J

JANUARY 30, 2018

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