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

+ **LPA 52/2018**

PRATAP SINGH AHLUWALIA Appellant
Through: Mr. Manu Mridul and Mr.Navneet
Tripathi, Advocates

versus

UNION OF INDIA & ANR Respondents
Through:Mr. Akshay Makhija, CGSC with
Mr. Aditya Goyal, Advocate.

+ **LPA 60/2018**

TAPAN KUAMR DEO Appellant
Through: Mr.Achintya Dwivedi and
Mr.B.P.Padhye, Advocates.

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Akshay Makhija, CGSC with
Mr.Aditya Goyal, Advocate.

CORAM:

JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

JUDGMENT
20.11.2018

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Dr. S. Muralidhar, J.:

1. These appeals are directed against the common judgment dated 2nd February, 2018 passed by the learned Single Judge dismissing the writ petitions of the present Appellants who pleaded that the Appointments

Committee of the Cabinet ('ACC') had committed an error in rejecting their candidature for appointment as Presiding Officers of the Debt Recovery Tribunal ('DRT') in the Jaipur and Aurangabad Benches.

2. Both the Appellants, who are practising Advocates, responded to an advertisement dated 30th October, 2015 inviting applications to fill up four 'clear' vacancies and 11 anticipated vacancies in the post of Presiding Officer of DRT at various Benches including those at Jaipur and Aurangabad. Both Appellants were called for interviews by the Selection Committee which was presided over by a sitting Judge of the Supreme Court of India. These interviews took place on 30th March, 2016. Both Appellants were recommended by the Selection Committee for being appointed to the post of Presiding Officer DRT - the Appellant in LPA No. 52/2018 was recommended for the DRT at Jaipur and the Appellant in LPA No. 60/2018 for the DRT at Aurangabad. They were asked to communicate the willingness to accept the appointment which each of them did within the time stipulated.

3. While the Appellants were waiting for their respective letter of appointment, a fresh notification dated 29th September, 2016 was issued inviting applications for the posts of Presiding Officers at various DRTs including Jaipur and Aurangabad. This led to the Appellants making an inquiry about their non-appointment.

4. Thereafter, while the Appellant in LPA No. 52/2018 filed in WP(C) No. 10196/2016 in this Court the Appellant in LPA No. 60/2018 filed in WP(C)

No.10338/2016. On 25th January, 2017 a common order was passed disposing of both writ petitions after noting the submission on behalf of the Respondents that the cases of both Appellants were pending consideration before the ACC and a decision was expected soon. However, when for more than six months there was no response, applications were filed by both the Appellants in this Court. In those proceedings, the Respondents produced copies of the office memorandum dated 8th August 2017 informing each of the Appellants that the proposal for their respective appointments as Presiding Officers of the DRT had been declined by the ACC.

5. Thereafter fresh writ petitions were filed by both the Appellants. While the Appellant in LPA 52 of 2018 filed W.P. (C) No. 7053 of 2017, the Appellant in LPA 60 of 2018 filed W.P. (C) No. 7050 of 2017 in this Court challenging the decision of the ACC. These two writ petitions have been dismissed by the impugned common judgment of the learned Single Judge.

6. Before the learned Single Judge, the main submission of the Appellants was that the ACC had acted arbitrarily in differing from the recommendation of the Selection Board and previous decision of the ACC without giving any reasons. The learned Single Judge called for and examined the records and observed as under:

“5. The record of ACC in a sealed cover has been produced for perusal of this Court, for passing appropriate orders in these petitions. The sealed cover is opened and file regarding appointment of Presiding Officers in DRT is perused and thereupon, it becomes apparent that the Selection Committee, after interviewing the candidates, had recommended the names of candidates (including petitioners) for the post of Presiding

Officers of DRT on 30th March, 2016 and the said recommendation was placed before the ACC on 1st February, 2017 and the case of petitioners was deferred while calling for a fresh report from Intelligence Bureau. It becomes apparent on perusal of the file produced that case of petitioners was resubmitted along with fresh IB Report but ACC on 1st August, 2017, after perusal of IB Report, has declined the proposal for appointment of petitioners as Presiding Officers of DRT in Aurangabad and Jaipur. After perusal of the file, it has been put in a sealed cover and returned to learned Additional Solicitor General.”

7. The learned Single Judge then examined the decisions relied upon by the Appellants viz., *Union of India v. N. P. Dhamania* 1995 Supp (1) SCC 1, *Major General H.M. Singh v. Union of India* (2014) 3 SCC 670, and of this Court in *Sunil Alag v. Union of India* 221 (2015) DLT 199 (DB) and observed as under:

“6. Upon hearing and on perusal of file produced and decisions cited, I find that Supreme Court in *N.P. Dhamania* (*supra*) has emphatically declared that it is open to the Appointing Authority to differ with the recommendations made by the Selection Board, as the recommendation is advisory in nature and is not binding upon the Appointing Authority and there is no need for ACC to communicate the reasons for not making appointments. The aforesaid legal position has been noticed by Supreme Court in its later decision in *Major General H.M. Singh* (*supra*) but in the facts of the said case, Supreme Court has ruled that ACC ought to have considered the recommendation on merit and suitability of the candidate. A Division Bench of this Court in *Sunil Alag* (*supra*) has dwelt upon the aspect of overturning of expert opinion by bureaucratic input and decision of not to promote candidate as Scientist, was quashed. Supreme Court's decisions in *Major General H.M. Singh* (*supra*) and decision of a Division Bench of this Court in *Sunil Alag* (*supra*) are of no assistance to the case of petitioners, as it is not the question of merit or suitability but is of a

vital importance of an adverse report from Intelligence Bureau.”

8. In these circumstances, the learned Single Judge was of the view that the decision of the ACC appeared to be justified “in the light of fresh report from the Intelligence Bureau.”

9. When the present appeals were heard on 12th October 2018 before the predecessor Division Bench, the records were again produced. The order dated 12th October, 2018 of the Division Bench reads thus:

“The appellants had applied for the post of Presiding Officer, Debt Recovery Tribunal at Jaipur and Aurangabad respectively. Their applications were duly considered and the appellants were directed to appear before the Selection Committee comprising of a Sitting Judge of the Supreme Court of India; Secretary, Department of Economic Affairs; Secretary, Department of Legal Affairs; Deputy Governor, RBI; and Secretary, Department of Financial Services on 13.03.2016. The names of the candidatures of the appellants were recommended and forwarded to the ACC. The ACC declined the appointments, which has led to the filing of the present appeals.

The original record was called to Court and has been examined. We find that the Intelligence Bureau (IB) report in both the cases cannot be termed as prima facie adverse. However, without expressing any opinion on the merit of the matter, we are of the considered view that the matter be remanded back to the ACC for fresh consideration expeditiously. We request the ACC to re consider the matter afresh within four weeks.

List on 20.11.2018.”

10. Mr. Akshay Makhija, learned Central Government standing counsel for the Respondents today informed the Court that the ACC did undertake a fresh consideration of the case concerning the appointment of both

Appellants. It found no reason to differ from the view already expressed by it. This Court then proceeded to hear the appeals on merits.

11. The main submission of Mr. Manu Mridul and Mr. Achintya Dwivedi, learned counsel for the two Appellants, based on the decisions of the Supreme Court in *Union of India v. N. P. Dhamania* (*supra*) and *R. S. Mittal v. Union of India 1995 Supp (2) SCC 230*, is that the ACC has acted arbitrarily in differing from the view expressed by the Selection Committee, without giving any reasons. It is submitted that the ACC was bound to give reasons and further communicate those reasons to each of the Appellants. It is further submitted that it was incumbent on the learned Single Judge, who called for and perused the records, to have directed the Respondents to provide to both the Appellants the copies of the relevant record and the reasons for the rejection of their candidature.

12. Counsel for the Appellants further submitted that while according to the learned Single Judge the record disclosed that the report of the Intelligence Bureau (IB) was adverse, the Division Bench which heard the present appeals in its order dated 12th October, 2018, after perusing the same record expressed the view that the IB report in the case of both Appellants could not be termed as *prima facie* adverse. Since this was the only reason for rejection of a candidature, the Division Bench requested the ACC to reconsider the matter. The Appellant in LPA No. 52/2018, in addition to the submissions made by his counsel, stated that it is only from the impugned judgment of the learned Single Judge that he came to know that a second IB report had been called for by the ACC. According to him, he ought to have

been given the reasons why the ACC called for a fresh IB report in his case.

13. Mr. Makhija in his reply referred to the impugned judgment of the learned Single Judge and pointed out how the records were shown not only to the learned Single Judge but also to the Division Bench. He further pointed out that the Division Bench on perusal of the record commented that the view of the ACC on the report of the IB could be ‘subjective’ and therefore requested the ACC to again look into the matter.

14. The above submissions have been considered. The present appeals concern the appointments to the post of Presiding Officer of the DRT which is a statutory tribunal set up under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereafter 'the DRT Act'). The Statement of Objects and Reasons of the DRT Bill noted that its purpose was the creation of special tribunals “with special powers of adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms”. It was noted that the existing procedure for recovery of debts due to banks and financial institutions had blocked a significant portion of their funds in unproductive assets, “the value of which deteriorates of which the passage of time.”

15. It is necessary to note that the constitutional validity of the DRT Act was challenged in several High Courts in the country. The challenge to the DRT Act before this Court succeeded as in ***Delhi High Court Bar Association v. Union of India AIR 1995 Del 323***, this Court held that the DRT Act was unconstitutional on several grounds. Relevant to the present appeals, it was held *inter alia* that the DRT Act eroded the independence of the judiciary on

two counts. One was that the jurisdiction of civil courts had been truncated and vested in the DRT. The second was that the High Court had no role to play in the appointment of the presiding officers of the DRT. The Union of India then appealed to the Supreme Court.

16. The Supreme Court in *Union of India v. Delhi High Court Bar Association (2002) 4 SCC 275* reversed the decision of this Court and upheld the validity of the DRT Act. On the aspect of the constitution and functioning of the DRTs the Supreme Court observed:

“The manner in which a dispute is to be adjudicated upon is decided by the procedural laws which are enacted from time to time. It is because of the enactment of the Code of Civil Procedure that normally all disputes between the parties of a civil nature would be adjudicated upon by the civil courts. There is no absolute right in anyone to demand that his dispute is to be adjudicated upon only by a civil court. The decision of the Delhi High Court proceeds on the assumption that there is such a right. As we have already observed, it is by reason of the provisions of the Code of Civil Procedure that the civil courts had the right, prior to the enactment of the Debt Recovery Act, to decide the suits for recovery filed by the banks and financial institutions. This forum, namely, that of a civil court, now stands replaced by a banking tribunal in respect of the debts due to the bank. **When in the Constitution Articles 323A and 323B contemplate establishment of a tribunal and that does not erode the independence of the judiciary, there is no reason to presume that the banking tribunals and the appellate tribunals so constituted would not be independent, or that justice would be denied to the defendants or that the independence of the judiciary would stand eroded.**

Such tribunals, whether they pertain to Income-tax or Sales-tax or Excise and Customs or Administration, have now become an essential part of the judicial system in this country. Such

specialised institutions may not strictly come within the concept of the judiciary, as envisaged by Article 50, but it cannot be presumed that such tribunals are not an effective part of the justice delivery system, like courts of law. It will be seen that for a person to be appointed as a Presiding Officer of a Tribunal, he should be one who is qualified to be a District Judge and, in case of appointment of the Presiding Officer of the Appellate Tribunal he is, or has been, qualified to be a Judge of a High Court or has been a member of the Indian Legal Service who has held a post in Grade-I for at least three years or has held office as the Presiding Officer of a Tribunal for at least three years. **Persons who are so appointed as Presiding Officers of the Tribunal or of the Appellate Tribunal would be well versed in law to be able to decide cases independently and judiciously.** It has to be borne in mind that the decision of the Appellate Tribunal is not final, in the sense that the same can be subjected to judicial review by the High Court under Articles 226 and 227 of the Constitution.” (emphasis supplied)

17. The above observations will have to be kept in view while examining the provisions of the DRT Act and the Rules thereunder pertinent to the appointment of Presiding Officers of the DRTs.

18. With the creation of the DRTs, cases concerning claims of banks and financial institutions pending in the civil courts, and in the Original jurisdiction of some of the High Courts, including this Court, stood transferred to such DRTs. Fresh cases of the said nature were filed before the DRTs. Appeals against the orders of the DRT are provided to an Appellate Tribunal in terms of Section 8 of the DRT Act.

19. Section 4 (1) of the DRT Act states that the DRT “shall consist of one person only (hereinafter referred to as the Presiding Officer) to be appointed

by notification, by the Central Government.” Section 5 states that a person shall not be qualified to be appointed as Presiding Officer of the DRT unless “he is, or has been, or is qualified to be, a District Judge.” By an amendment to the DRT Act with effect from 26th May 2017, Section 6 A has been inserted which inter alia provides that the “qualifications, appointment, term of office, salaries, allowances...” of the Presiding Officer of the DRT after the commencement of Part XVI of Chapter VI of the Finance Act 2017 shall be governed by the provisions of Section 184 of that Act. However the proviso to Section 6 A clarifies that a Presiding Officer appointed prior thereto would continue to be governed by the DRT Act and the rules made thereunder. In the present case, it is not in dispute that the case of the Appellants would be governed by the DRT Act and the rules thereunder.

20. Rule 3 (1) of the DRT (Procedure for Appointment as Presiding Officer of the Tribunal), Rules 1998 (‘Rules’) states that for the purposes of the appointment to the post of a Presiding Officer, “there shall be a Selection Committee consisting of:

“(i) The Chief Justice of India or a Judge of the Supreme Court of India as nominated by the Chief Justice of India;

(ii) the Secretary to the Government of India in the Ministry of Finance (Department of Economic Affairs);

(iii) the Secretary to the Government of India in the Ministry of Law and Justice;

(iv) the Governor, of the Reserve Bank or the Deputy Governor of the Reserve Bank nominated by the Governor of the Reserve Bank;

(v) Secretary or Additional Secretary to the Government of India in the

Ministry of Finance, Department of Financial Services.]

21. Further Rule 3 (2) states that the Chief Justice of India or the Judge of the Supreme Court shall be the Chairman of the Selection Committee. Rules 3 (5) and 3 (6) read as under:

“(5) The Selection Committee shall recommend persons for appointment as Presiding Officer

(i) from amongst the persons on the list of candidates prepared by the Ministry of Finance after inviting applications;

(ii) from amongst judicial officers nominated by a High Court.

(6) The Central Government shall on the basis of the recommendations of the Selection Committee make a list of persons selected for appointment as Presiding Officer and the said list shall be valid for a period of two years. The appointment of a Presiding Officer shall be made from the list so prepared.”

22. Rules 3 (5) and (6) makes it plain that what the Selection Committee does is to ‘recommend’ persons for appointment as Presiding Officers. Thereafter the Central Government, on the basis of those recommendations, prepares a list for persons selected for such appointment. There is nothing in the DRT Act or in the Rules to indicate that the recommendations of the Selection Committee are binding on the Central Government. To be fair, none of the counsel for the Appellants argued that those recommendations are in fact ‘binding’ on the Central Government.

23. It is also important to note that where appointments to the posts of Members of statutory tribunals are made, there is an established procedure

evolved by the Department of Personnel and Training of the Government of India that the names recommended by a Selection Committee for appointments to such statutory Tribunals have to be verified as to their antecedents by the IB. Thereafter the report of the IB along with the recommendations of the Selection Committee are placed before the appointing authority for the final decision. In this sequence, therefore, when the Selection Committee makes its recommendation, it does not have the IB report before it. For the appointing authority, therefore, the input of the IB becomes the additional factor to consider before deciding on the appointment of the candidate.

24. In the present case, no doubt that the two Appellants were recommended by the Selection Committee on 30th March 2016 for appointment as Presiding Officers of the DRT. Their names were thereafter sent for verification to the IB. The IB reports along with the recommendation of the Selection Committee were thereafter placed before the ACC which comprises the Prime Minister of India (who is the Chairman of the ACC) and the Union Minister for Home Affairs in the first instance on 1st February 2017. The ACC on that date did not take a decision as to the appointments of the two Appellants. The ACC called for a fresh IB Report in respect of the two Appellants. Thereafter for the second time on 1st August 2017, the ACC considered the case of the two appellants along, in light of the fresh IB report and decided not to appoint them as Presiding Officers. This was then communicated to each of them by separate Om dated 8th August, 2017.

25. In examining the legality of the decision of the ACC in the above

circumstances, one of the first issues that would arise is the scope of the jurisdiction of the writ court under Article 226 of the Constitution. The legal position in this regard is well settled. It is confined to examining essentially the correctness of the decision making process and not the decision itself. The questions that would normally arise are whether the statutorily mandated procedure has been followed? Was the decision based on relevant materials? Did any extraneous factors/materials influence the decision? Was it vitiated by malice in law or facts? Are the reasons for the decision discernible? To satisfy itself on these aspects, the writ Court can, and invariably should, call for the records.

26. That has happened not once, but twice. Both the learned Single Judge and the predecessor Division Bench have indeed perused the records and seen the IB reports. Neither the learned Single Judge nor the Division Bench has been able to be persuaded about any error in the procedure adopted or that any extraneous factors influenced the decision of the ACC. Again, it is not the case of the Appellants, that the IB reports were not relevant material. Therefore, the scope of review gets narrowed even further to whether such IB reports could form the valid basis for the ultimate decision? It must also be noted here that it is not the case of either Appellant that the decision of the ACC not to appoint each of them was vitiated by malice in law or in fact.

27. While the learned Single Judge was satisfied that the IB reports were adverse, and that the 'fresh IB report' formed a valid basis for the decision of the ACC, the Division Bench was of the view that the IB reports "cannot be termed as prima facie adverse." However, that too was a tentative view.

The Division Bench was careful to add: “Without expressing any opinion on the merit of the matter, we are of the considered view that the matter be remanded back to the ACC for fresh consideration expeditiously.” That exercise has also been undertaken. The ACC has reconsidered the case and reiterated its decision.

28. Undoubtedly there was a subjective element involved in the manner in which the IB reports have been responded to at the different stages in the present case. The question that arises is this: Whose assessment of an IB report should prevail? Can a writ Court, only because it might differ with the ACC’s response to the IB report, substitute its decision for that of the ACC? The answer is obviously in the negative. Even in the present case, when the Division Bench took a ‘prima facie’ view which was different from that of the Single Judge on the nature of the IB report, it remanded the matter to the ACC for a fresh consideration. That is indeed the outside limit of the scope of the writ jurisdiction. In the considered view of this Court, it is for the authority, in the statutory scheme governing such appointment, which has to take the final decision to appoint, to take a call on such IB report. The writ Court does not and cannot possibly, sit in appeal over that decision. Of course, there are instances where malice in law and/or in fact, demonstrated to exist to the satisfaction of the Court, might persuade the Court to interfere. However, as already noted, that is not the ground of challenge here.

29.1 This is of course not the first time that such issues have arisen before the Constitutional Courts. Reference may be made to one such instance in

Union of India v. Kali Dass Batish (2006) 1 SCC 779, where the Supreme Court was dealing with the question of appointments to the posts of Judicial Members of the Central Administrative Tribunal (CAT) in terms of the Administrative Tribunals Act, 1985 (AT Act). In terms of Sections 6 and 7 of the AT Act, no appointment of a Member shall be made, except after consultation with the Chief Justice of India. The two Respondents whose names had been recommended by a Selection Committee chaired by the nominee of the Chief Justice of India, who was a sitting Judge of the Supreme Court of India, and the Secretaries of the Ministries of Law and Justice (Department of Legal Affairs), Personnel and Chairman of the CAT, were nevertheless not appointed as the IB reports subsequently sought were adverse. The noting of the Secretary (Personnel), on the basis of such report, that the Respondents need not be appointed was concurred with by the Chief Justice of India when the files were sent to him. While the second Respondent failed in his challenge before the Jharkhand High Court, the first Respondent succeeded in a similar challenge before the Himachal Pradesh High Court. Both judgments were in appeal before the Supreme Court.

29.2 While agreeing with the Jharkhand high Court and reversing the Himachal Pradesh High Court, the Supreme Court observed:

“It must be remembered that, a member of an Administrative Tribunal like the CAT exercises vast judicial powers, and such member must be ensured absolute judicial independence, free from influences of any kind likely to interfere with independent judicial functioning or militate thereagainst. It is for this reason, that a policy decision had been taken by the Government of India that while considering members of the Bar for appointment to such a post, their antecedents have to be verified by the IB. The

antecedents would include various facts, like association with anti-social elements, unlawful organizations, political affiliations, integrity of conduct and moral uprightness. All these factors have necessarily to be verified before a decision is taken by the appointing authority to appoint a candidate to a sensitive post like Member of the CAT.”

29.3 The Supreme Court in *Union of India v. Kali Dass Batish* (supra) observed that it was “most irregular” on the part of the Himachal Pradesh High Court:

“to have sat in appeal over the issues raised in the IB report and attempted to disprove it by taking affidavits and the oral statement of the Advocate General at the Bar. We strongly disapprove of such action on the part of the High Court, particularly when it was pointed out to the High Court that, along with the proposals made by the Government, the Minister of State had specifically directed for submission of the IB report to the Chief Justice of India for seeking his concurrence, and that this was done. We note with regret that the High Court virtually sat in appeal, not only over the decision taken by the Government of India, but also over the decision taken by the Chief Justice of India, which it discarded by a side wind. In our view, the High Court seriously erred in doing so. Even assuming that the Secretary of the concerned department of the Government of India had not apprised himself of all necessary facts, one cannot assume or impute to a high constitutional authority, like the Chief Justice of India, such procedural or substantive error. The argument made at the Bar that the Chief Justice of India might not have been supplied with the necessary inputs has no merit. If Parliament has reposed faith in the Chief Justice of India as the paterfamilias of the judicial hierarchy in this Country, it is not open for anyone to contend that the Chief Justice of India might have given his concurrence without application of mind or without calling for the necessary inputs. The argument, to say the least, deserves summary dismissal.”

29.4 Further, the Supreme Court observed:

“In this matter, the approach adopted by the Jharkhand High Court commends itself to us. The Jharkhand High Court approached the matter on the principle that judicial review is not available in such a matter. The Jharkhand High Court also rightly pointed out that mere inclusion of a candidate's name in the selection list gave him no right, and if there was no right, there could be no occasion to maintain a writ petition for enforcement of a non-existing right.”

29.5 The only difference in the present case is that the final appointment of the Presiding Officer of the DRT does not require, in terms of the provisions of the DRT Act and Rules, consultation with the Chief Justice of India whereas in the above case, in terms of the AT Act, it did. In the present case, the ACC was the final authority. The fact that the ACC called for a fresh IB report is an indication that it wanted to be doubly sure before acting on the first report of the IB. This could be viewed as an extra check against arbitrariness arising from a subjective assessment of the person preparing the IB report. There was no need for the ACC to disclose why it was asking for a fresh IB report. Much less was there any requirement in law for ACC for the Respondents to inform the Appellants why the ACC asked for a fresh IB report.

30.1 The decision in ***Union of India v. N.P. Dhamania*** (*supra*) requires to be discussed next as it has been relied upon by counsel on both sides. That case was concerned with the question whether it was open to the ACC to differ from the recommendation of the Departmental Promotion Committee (‘DPC’) which was seized of preparing a list of officers for promotion to level two of the Senior Administrative Grade of the Indian

Telecommunication Services. It must be recalled that in the present case, we are concerned with appointments to the post of Presiding Officers of DRTs, purely by a selection process. By their very nature, such appointments have to be governed by parameters different from that which might govern the preparation of a list of officers for promotion to a higher level post.

30.2 Be that as it may, in *Union of India v. N.P. Dhamania* (*supra*) the ACC chose to differ from the recommendations of the DPC “without assigning any reason”. As noted in para 14 of the decision “the counsel for the Union of India was unable to produce any material to show that the reasons have been assigned for differing from the DPC.” The Supreme Court therefore felt that the name of the Respondent in that case ‘cannot be arbitrarily dropped’. Further in para 20, it was noted:

“If the file had contained reasons something could be said in favour of the appellant. But, that is not the case here. Then the question would be whether the reasons recorded are required to be communicated to the officer concerned. Our answer is in the negative. There is no need to communicate those reasons. When challenged it is always open to the authority concerned to produce the necessary records before the court.”

30.3 The two propositions that emerge from the above decision in *Union of India vs. N.P.Dhamania* are that (i) there is no requirement for the ACC to communicate to the persons concerned the reasons why it was differing from the recommendations of the DPC and (ii) when such decision is challenged it is incumbent on the authority to produce necessary records before the Court.

30.4 In the present case records were indeed produced before both the learned Single Judge and the Division Bench. The records disclose the reasons why the ACC has differed with the recommendations of the Selection Committee and these have in turn been discussed by the learned Single Judge in the impugned judgment.

31. The decisions in *R. S. Mittal v. Union of India* (*supra*) and of this Court in *Sunil Alag v. Union of India* (*supra*) are distinguishable on facts and are of no assistance to the Appellants.

32. It is not as if the record did not contain any material that could justify the decision of the ACC. The question is one of perception of those materials. What that perception should be and what the decision based on such perception should be, is best left to the ACC. While the DRT Act and Rules provide the broad guidelines for such exercise, the precise parameters on which the ACC will assess the materials is again not capable of being reviewed by judicially manageable standards. In other words, the final decision taken by the ACC on the basis of its assessment of the materials before it is not a subject matter of appeal before this Court.

33. The appeals are accordingly dismissed. A copy of this order be given dasti under the signature of the Court Master.

S.MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 20, 2018

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