

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

Date of Decision: February 02, 2018

+ **W.P.(C) 7050/2017 & C.M.29264/2017**

TAPAN KUMAR DEO Petitioner

Through: Mr. Achintya Dvivedi &
Mr. B.P.Pandey, Advocates

Versus

UNION OF INDIA & ANR. Respondents

Through: Mr.Sanjay Jain, Additional Solicitor
General with Mr. Akshay Makhija,
CGSC, Ms. Vidhu Mohan, Mr. Aditya
Goyal, Mr. Seerat Deep Singh &
Ms.Sneh Suman, Advocate

+ **W.P.(C) 7053/2017 & C.M. 29268/2017**

PRATAP SINGH AHLUWALIA Petitioner

Through: Mr.Vivek Sood, Senior Advocate with
Ms.Prachi Gupta, Mr.Manu Mridul &
Ms.Spandana Gunda, Advocates

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr.Sanjay Jain, Additional Solicitor
General with Mr. Akshay Makhija,
CGSC, Ms. Vidhu Mohan, Mr. Aditya
Goyal, Mr. Seerat Deep Singh &
Ms.Sneh Suman, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

1. In the above captioned two petitions, quashing of two separate Office Memorandums (O.Ms.) of 8th August, 2017 is sought, as vide impugned O.Ms., Appointments Committee of the Cabinet (ACC) has declined the proposal to appoint petitioners- *Tapan Kumar Deo* and *Pratap Singh Ahluwalia* in Debt Recovery Tribunals (DRT) in Aurangabad and Jaipur.

2. Since challenge to the impugned O.Ms. in these petitions is on identical grounds, therefore, with the consent of learned counsel for the parties, these petitions have been heard together and are being disposed of by this common judgment.

3. Learned counsel for petitioners submits that the proposal to appoint petitioners as Presiding Officers of DRT in Aurangabad and Jaipur was duly made by the Selection Committee headed by a sitting Supreme Court Judge and the said proposal has been arbitrarily declined vide impugned O.Ms. Reliance is placed upon Supreme Court's decision in *Major General H.M. Singh, VSM to Union Of India & Anr.*(2014) 3 SCC 670 and a decision of Division Bench of this Court in *Sunil Alag Vs. Union of India & Anr.* 221 (2015) DLT 199 (DB) to submit that the Appointments Committee of the Cabinet (*hereinafter referred to as 'ACC'*) did not record any reason to negate the merit and suitability of *Major General H.M. Singh*, though he was duly recommended by the Selection Board and decision of ACC was set aside. It is submitted that the impugned O.Ms. deserve to be quashed, as these O.Ms. are bereft of any reason.

4. On the contrary learned Additional Solicitor General appearing for respondents relies upon a three Judge Bench decision of Supreme Court in *Union of India & Ors. Vs. N.P. Dhamania & Ors.* 1995 Supp (1) SCC 1 to submit that the recommendation of Selection Committee is of advisory nature and is not binding upon the Appointing Authority and that it is open to the Appointing Authority to differ with the recommendation of the Selection Board in public interest and that there is no need to communicate reasons to the officer concerned.

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.

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.

7. In the considered opinion of this Court, the impugned orders of declining to appoint petitioners as Presiding Officers of Debt Recovery Tribunals appears to be well justified in the light of fresh report from Intelligence Bureau.

8. In view of aforesaid, finding no substance in these petitions, they are dismissed. Pending applications are also dismissed as infructuous.

**SUNIL GAUR
(JUDGE)**

FEBRUARY 02, 2018

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