

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY**

WRIT PETITION No. 12336 OF 2018

ORDER: (Per the Hon'ble the Chief Justice Raghvendra Singh Chauhan)

The petitioner has challenged the legality of the order dated 23.03.2018, passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad ('Tribunal', for short), in O.A. No. 1046 of 2016, whereby the learned Tribunal has dismissed the O.A. filed by the petitioner. In the O.A., the petitioner had sought a direction to the respondents therein to appoint him to the post of Judicial Member in the Income Tax Appellate Tribunal, on the basis of the interview conducted on 09.06.2014, in pursuance of the notification dated 20/26.04.2013.

The brief facts of the case are that the Union of India, the respondent No. 1, had issued a notification dated 17.04.2013, for recruitment of twenty Judicial Members, and twenty-eight Accountant Members in the Income Tax Appellate Tribunal ('ITAT', for short). In pursuance of the said notification, the petitioner, a practicing Advocate, had applied for the post of Judicial Member in the ITAT. The petitioner belongs to Lambada community, a Scheduled Tribe. On 09.06.2014, the

petitioner appeared for the interview. The Selection Board recommended twenty-five candidates (twenty in the main list, and five in the wait list) for being appointed as the Judicial Members of ITAT. The petitioner's name was also recommended for appointment to the post of Judicial Member in the wait list under the ST category. But as the petitioner did not hear from the respondents, on 03.07.2015, the petitioner approached the respondent No. 1 under the Right to Information Act, 2005. The respondent No. 1 rejected the request of the petitioner for furnishing the information sought by him. Aggrieved thereby, the petitioner filed an appeal under Section 19(1) of the Right to Information Act. But there was no response. Therefore, on 12.05.2016 the petitioner submitted a representation to the Ministry of Law and Justice. However, by letter dated 22.07.2016 the petitioner was informed that his representation, for reconsideration of his candidature for the post of Judicial Member in the ITAT, has been rejected. Hence, challenging his non-selection to the said post, the petitioner filed the O.A. before the learned Tribunal.

Before the learned Tribunal, the respondents admitted that the petitioner's name was kept in the waiting list under the S.T. category. Moreover, his name

was submitted to the Department of Personnel and Training for seeking approval of the Appointment Committee of the Cabinet ('ACC'). In turn, the Department of Legal Affairs, sought the report from the Intelligence Bureau with regard to all the candidates who were recommended by the Selection Board, including the petitioner. Since the Intelligence Bureau had given an adverse report against the petitioner, the ACC decided not to appoint the petitioner to the post of Judicial Member in the ITAT.

After hearing both the parties, by order dated 23.03.2018, the learned Tribunal dismissed the O.A. filed by the petitioner. Hence, the present writ petition before this Court.

Mr. Jogram Tejavath, the party-in-person, has raised the following contentions before this Court:-

Firstly, he belongs to the Scheduled Tribe of the Lambada. For past many years, he has been working for the rights and interests of his community. Therefore, people are aggrieved by his actions. Hence, false cases have been registered against him.

Secondly, even if there was an adverse report by the Intelligence Bureau, an opportunity of hearing should have been given to him to clarify the position. Therefore,

his case for appointment could not have been rejected outrightly without giving an opportunity of hearing to him. Hence, his rights under the principles of natural justice have been violated.

Lastly, this aspect has not been appreciated by the learned Tribunal. Therefore, the impugned order deserves to be set aside by this Court.

On the other hand, the learned counsel for the respondents submits that merely because the petitioner is campaigning the cause of his community, people have not taken it otherwise. Therefore, the contention that false cases have been lodged against him is a misplaced contention.

Secondly, while the petitioner was working in Bank of India, an allegation was made against him that he had submitted fake Travel Allowance ('TA') bills, and medical claims. A departmental enquiry was held against him; he was punished with compulsory retirement. The petitioner had challenged the punishment order. Although he had lost before a learned Single Judge of this Court, a Division Bench of this Court had set aside the order of the learned Single Judge. According to the learned Division Bench, the punishment was an unjustified one. Hence, it was set aside by the learned

Division Bench. However, the Bank of India had preferred an S.L.P. before the Hon'ble Supreme Court. The Apex Court had set aside the judgment of the learned Division Bench, and had restored the punishment order, and the judgment of the learned Single Judge. Thus, the allegations about the petitioner's integrity, were proved in the departmental enquiry, and upheld by the Hon'ble Supreme Court. Hence, the ACC was justified in rejecting his case for appointment.

Thirdly, before the candidature of an applicant is rejected for appointment, there is no need to give him an opportunity of hearing. For, it is for the employer to decide the suitability of a candidate for a particular post. Hence, the principles of natural justice cannot be invoked in such a case. Therefore, the learned counsel has supported the impugned order.

In rejoinder, the petitioner-in-person submits that since his case was not well represented before the Apex Court, he had lost his case before the said Court. But, according to him, there is no truth in the allegations levelled against him. Therefore, the ACC should have ignored the adverse report submitted by the Intelligence Bureau against him.

Heard the petitioner-in-person, and the learned counsel for the respondents, and perused the impugned order.

The petitioner-in-person has not placed any evidence to establish the fact that people are against him only due to his raising the concerns about his tribal community. Therefore, the first contention raised by the petitioner-in-person is clearly unacceptable.

The Intelligence Bureau Report, as reproduced by the learned Tribunal, is as under:-

“Teajouath Jogram (DoB: January 4, 1961) enrolled himself as an Advocate with the Bar Council in 2001 and has been practicing before AP High Court. Earlier, he was a clerk in Bank of India at Warangal. Later after being promoted as an Officer in the Bank, he served in Tamil Nadu, Kerala and Andhra Pradesh. In 2001, he had to leave the service on compulsory retirement following allegations of claiming fake TA and medical claims. He allegedly floated an outfit, namely Bank of India Employees SC/ST Association, while serving at Chennai (1993-1995). He claimed himself its General Secretary and used this position to pressurize the Officers for getting favours.

He had not come to notice for links with any political party or communal organization.”

The petitioner-in-person does admit that allegations were levelled against him that he had submitted fake TA and medical claims. However, according to the

petitioner-in-person, the said allegation was false and frivolous. But, the stand being taken by the petitioner-in-person is clearly untenable. For, the said allegation was established in the departmental enquiry. And the petitioner was compulsorily retired from service. Despite the fact that he had challenged the punishment order, the same was upheld by the learned Single Judge of this Court, and eventually even by the Apex Court. Therefore, the petitioner-in-person is unjustified in claiming that the allegation was a false one. After all, the authenticity of the allegation had been established in the departmental enquiry. The finding of the enquiry officer was upheld all the way to the Apex Court.

It is, indeed, trite to state that when a candidate applies for an appointment, he does not have the right of an appointment, but only has a right of consideration. It is the employer who is empowered to consider the eligibility, and the suitability of a candidate. Therefore, even if a candidate may be eligible, he may not be suitable for a particular post. Considering the fact that a Judicial member of ITAT has to be the person of impeccable reputation, of unquestionable integrity, the adverse remarks in the Intelligence Bureau Report

certainly justifies the rejection of the petitioner's case by the ACC.

Needless to say, while considering the suitability of a candidate, and while rejecting his candidature, there is no requirement that the candidate has to be given an opportunity of hearing. Therefore, the petitioner-in-person is unjustified in claiming that his rights under the principles of natural justice have been violated.

For the reasons stated above, this Court does not find any merit in the present writ petition; it is hereby dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(A. ABHISHEK REDDY, J)

15th November, 2019

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