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

Date of Decision: - 28.05.2019

\+ W.P.(C) 5316/2019 & C.M.No.23474/2019

SHRI K.C.GHUMARIA ..... Petitioner

Through Mr.P.S.Patwalia, Sr.Adv with Mr.Avinash Lakhanpal & Mr.Dhiraj Kumar, Advs.

versus

UOI & ORS. ..... Respondent

Through Mr.Zoheb Hossain, Adv for R-1 & 3. Mr.Arun Bhardwaj, CGSC.

CORAM:
HON'BLE MR.JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 & 227 of the Constitution of India assails the order dated 01.05.2019 passed by the Principal Bench, Central Administrative Tribunal, New Delhi dismissing O.A.No.1166/2019. The original application (O.A.) was preferred by the petitioner seeking a direction to the respondents to expeditiously consider his candidature for the post of Member, Central Board of Direct Taxes (CBDT) as per the Office Memorandum dated 04.12.2018 and/or Office Memorandum dated 04.07.2018 inviting applications for the said post by following the applicable rules and guidelines.

2. The petitioner, an officer of the 1982 batch of the Indian Revenue Service (IRS), is presently holding the post of Principal

Chief Commissioner of Income Tax, Patna. On 04.07.2018, an Office Memorandum (OM) was issued by the respondent no. 1 indicating therein that some posts of Member, CBDT were likely to fall vacant in the year 2018-19 and, therefore, all eligible officers were directed to forward their applications to their cadre controlling authority by 03.08.2018. The essential qualifications to the said post, as mentioned in this OM, read as under:-

> *" (i) having fifteen years of experience in administering and running the direct tax administration in the Central Government with ten years of experience in the field formations of Central Board of Direct Taxes;*
> *(ii) having high professional merit and excellence; and*
> *(iii) having impeccable reputation of integrity."*

3. In response to the OM, the petitioner submitted his application on 09.07.2018. After receiving applications from the eligible candidates, the respondents sent a brief to the Selection Committee for selecting candidates for the post of Member, CBDT for the vacancies arising in 2018-19, in accordance with the recruitment rules. This brief has been produced before us by the learned counsel for the respondents. Pursuant to the selection–which was approved by the Appointment Committee of the Cabinet, three officers of the IRS, namely, Ms. Neena Kumar, Mr. Akhilesh Ranjan, and Mr. Prasana Kumar Dash, were appointed to the said post vide Office Order dated 06.11.2018. They were the senior most officers who had offered their candidature. Upon learning that only three

vacancies had been filled, even though the fourth vacancy had arisen in the mean time pursuant to the retirement of Mr. Arbind Modi on 30.09.2018, the petitioner submitted a representation on 27.11.2018, requesting them to consider his candidature for the said vacancy.

4. While the petitioner's representation was pending, the respondents issued the OM dated 04.12.2018 inviting applications for the one vacant post of Member, CBDT in response whereto, the petitioner again submitted his application for appointment to the said post on 24.12.2018. On the same day, however, the respondents sent their reply to the petitioner's representation dated 27.11.2018 wherein, in the light of their OM dated 04.12.2018, the petitioner was asked to apply afresh for the post of Member, CBDT.

5. The petitioner, thereafter, submitted another representation to the respondent no. 2 seeking review of his candidature to the post of Member, CBDT on the ground that, having been placed at the fourth position in terms of seniority, he ought to have been considered in the selection process initiated pursuant to OM dated 04.07.2018 in the light of the fact that the fourth vacancy, an anticipated vacancy for the year 2018-19, was to become available on the superannuation of Mr.Arvind Modi on 30.09.2018. Thus, the petitioner requested, in his representation, that the process of filling up the said vacancy be concluded as per the 2006 Guidelines. Receiving no response from the respondents, the petitioner, who belongs to the Scheduled Tribe (ST) category also approached the National Commission for Scheduled Tribes and, though certain recommendations were made by the Commission, the petitioner's grievance was not redressed.

6. The petitioner then approached this Court by way of a writ petition being W.P.(C) No.3045/2019, which was dismissed as withdrawn on 03.04.2019 with liberty to approach the Tribunal. The petitioner, accordingly, approached the Tribunal by way of his aforesaid OA wherein he, by placing reliance on the Guidelines for selection of Chairman and Members of Central Board of Direct Taxes (CBDT) and Central Board of Excise and Customs (CBEC) dated 13.07.2006 (hereinafter referred to as '2006 Guidelines') issued by the Cabinet Secretariat with the approval of Hon'ble the Prime Minister for empanelment for the post of Member CBDT/CBEC, contended that it was incumbent upon the respondents to prepare a panel for all the vacancies anticipated in that financial year. The petitioner also contended before the Tribunal that the Selection Committee was required to prepare a panel of eligible candidates comprising of 1.5 times the number of vacancies, which procedure was not followed while issuing the order dated 06.11.2018 whereby only three officers were appointed despite there being four vacancies of the said post accruing in the financial year 2018-19.

7. The Tribunal, vide its impugned order, has dismissed the petitioner's O.A. by observing as under:

> *"7. The 4th vacancy has arisen w.e.f. 01.10.2018. It may be true that in the guidelines relied upon by the applicant, it was observed that a panel of 1.5 times the available number of vacancies be prepared. However, it is not known whether the guidelines are still in force or whether any subsequent decision has been taken.*
> *Either way, the alleged failure to implement the guidelines, cannot vitiate the proceedings.*

8. When the applicant made a representation dated 27.11.2018 ventilating his grievance, he was issued reply dated 24.12.2018, which reads as under;-

> *"It is informed that the vacancy of Member, CBDT w.e.f. 01.10.2018 vice Shri Arbind Modi during the financial year 2018-19 has been re-circulated vide this Department's circular dated 04.12.2018, inviting applications upto 03.01.2019. You may apply afresh for the post of Member, CBDT against the said vacancy."*

9. By the time the reply was given, the respondents have already initiated steps for selection of candidates against the one post of Member through OM dated 04.12.2018. The applicant is said to have responded to the same. It is brought to our notice that the Selection Committee met on 03.04.2019, to select candidate for the post notified on 04.12.2018.

10. In this scenario, we do not find any basis to grant any relief in this OA.

11. It is stated that the applicant is attaining the age of superannuation on 30.09.2019. We observe that in the event the applicant being selected and his selection being approved by the ACC, the feasibility of issuing orders before he attains the age of superannuation, be considered."

8. Aggrieved by the Tribunal's order rejecting his O.A., the petitioner has approached this Court. Mr. P.S.Patwalia, learned Senior Counsel for the petitioner submits that the Tribunal has erroneously rejected the O.A. on the basis of presumptions and has failed to consider that the mandate of the 2006 Guidelines required the respondents to include the fourth vacancy accruing on 30.09.2018, while making selections pursuant to the OM dated 04.07.2018. He submits that the Tribunal failed to appreciate that

the 2006 Guidelines were deliberately ignored by the respondents in order to deprive the petitioner of fair consideration. He submits that being the fourth senior-most officer in the panel of candidates under consideration for appointment to the vacancies, notified vide OM dated 04.07.2008, he was most likely to have been appointed to the fourth vacancy. He, thus contends that, therefore, the respondents' decision to segregate three vacancies and separately invite fresh applications for the fourth vacancy, vide circular dated 04.12.2018, was coloured by arbitrariness and malafide. He submits that the arbitrary decision of the respondents' to initiate fresh selection process for the post of Member, CBDT vide circular dated 04.12.2018 deserves to be set aside and that the petitioner ought to be considered for the fourth vacancy along with the same persons who were in the panel of eligible candidates in the selection process initiated vide OM dated 04.07.2018. Though the petitioner has not pleaded a case of malafides, and has not impleaded anyone personally to answer such a plea, he has suggested the possible influence that may have been responsible for the aforesaid infraction of guidelines.

9. On the other hand, Mr. Zoheb Hossain, learned counsel for the respondents, while supporting the impugned order, submits that the present petition has become infructuous as the petitioner's application is already being considered for the post of Member, CBDT pursuant to his application dated 24.12.2018 and that, therefore, no prejudice has been caused to him thus far. He submits that the entire premise of the petitioner's claim is based on the 2006

Guidelines which stand substantially superseded by the subsequent guidelines issued by the Cabinet Secretariat on 26.09.2014 (hereinafter referred to as "2014 Guidelines") amending the selection procedure. He further submits that the petitioner, being in the zone of consideration for the second and third vacancies arising for the post of Member, CBDT, was fairly assessed for appointment to the said post by the Selection Committee on 16.09.2018 and that the said assessment resulted in the selection of only three suitable candidates despite the availability of four vacancies. He further submits that now that the petitioner has applied for and is being considered for the fourth vacancy notified in December 2018, no prejudice can be said to have been caused to him as the panel of eligible candidates constituted for the selection process instituted vide OM dated 04.12.2018 has placed the petitioner in the zone of consideration with the same officers who were in the panel of candidates in the initial selection process conducted vide OM dated 04.07.2018. He, therefore, contends that the other candidates vis-a-vis whom the petitioner would be assessed are the same and that, no ground survives for the petitioner to be aggrieved by the fresh selection process. In support of his aforesaid contention, Mr. Hossain has also produced before us the Note prepared for the Selection Committee pursuant to the OM dated 04.12.2018. He has also produced before us the minutes of the Selection Committee held on 16.09.2018.

10. Mr. Hossain further submits that, even otherwise, heavy reliance placed on the 2006 Guidelines by the petitioner is wholly

misplaced, as these executive instructions - in the nature of guidelines, merely serve the purpose of providing guidance to the respondents on the form, manner and mode of conducting the selection process; these guidelines do not bestow any legally enforceable right of consideration and appointment upon the petitioner. In support of his contention, he places reliance on ***Union of India & Ors. v. S.L. Abbas*** (1993) 4 SCC 357 and ***Union of India v. Col. D.B. Bhide*** 1997 (41) DRJ (DB).

11. The final contention advanced by Mr. Hossain is that once the Central Board of Direct Taxes (Chairman and Members) Recruitment Rules, 2017 (hereinafter referred to as '2017 Recruitment Rules') confer wide discretion on the Selection Committee to formulate its own method of assessing candidates applying for the post of Member, CBDT, the decision of the Selection Committee to fill only three existing vacancies cannot be questioned and that too merely on the plea that since there were four vacancies, including one anticipated vacancy, all of them had to be filled. In support of his contention, he places reliance on ***Ravi Dastane v. Union of India & Ors.*** 2019 (4) SCALE 39 and ***Durga Devi and Ors. v. State of H.P. & Ors.*** (1997) 4 SCC 575. He further submits that the impugned decision of the Selection Committee, which is a body possessing the requisite expertise to select Members to the CBDT, was a careful exercise of its executive prerogative and, therefore, does not warrant the interference of this Court. He contends that, in the light of the aforesaid, the present petition deserves to be dismissed.

12. We have considered the rival contentions of the parties and perused the record.

13. Since the entire fulcrum of the petitioner's case rests on the 2006 guidelines, while the respondents rely on the 2014 guidelines as also the 2017 Recruitment Rules, it would be apt to first refer to the relevant extracts thereof. The extract of the 2006 guidelines, in so far as they are relevant for the purposes of the present matter, reads as under:-

> *" Guidelines for selection of Chairman and members of Central Board of Direct Taxes (CBDT) and Central Board of Excise and Customs (CBEC)*
>
> *Reference is invited to do letter No. A.(2026-5/2006-Ad) dated the 2nd May, 2006 from the Revenue Secretary to the Cabinet Secretary, on the subject mentioned above.*
>
> *2. The Prime Minister has approved that selection for appointment to the post of Chairman and Members of the CBDT and CBEC shall henceforth be regulated by the following Guidelines:-*
>
> *(a) circulation of the vacancies for the positions in CBDT/CBEC shall be limited to the CBDT/CBEC and TAT/CESTAT:*
>
> ***(b) in order to save time, instend to circulating each vacancy separately, a panel valid for one year (calculated on the basis of number of anticipated vacancies X 1.5 rounded to the nearest whole number) will be prepared. After ACC has approved this panel, selection will be made strictly in the order given in the panel, with approval of the Finance Minister.*** *In case it is felt that a deviation from the pane is necessary, the same will be sent with full justification*

to the ACC for approval with the concurrence of the Finance Minister.

(c) if a panelist whose turn has come for Member has less than one year of residual service on the date of occurrence of vacancy, he will be passed over without any further procedure;

(d) however, if the vigilance status has changed, the matter will be referred to the Selection, committee, which will give its recommendation to the Finance Minister for his approval;

(e) since there are a few vacancies already, the first panel may be made valid for all existing vacancies and those that are anticipated upto 31st March, 2007. ***Thereafter panel will be made for vacancies anticipated to arise in one financial year.*** *The, panels will be kept secret and ACC procedure shall be considered final, at any point of time in respect of panelists above the last one appointed;"(emphasis supplied)*

14. The relevant extract of the 2014 Guidelines reads as under:-

" (i) Application shall be invited for all anticipated vacancies during the next financial year simultaneously.

(ii) Selection shall be made for each vacancy separately from the eligible officers as per the provisions of the existing recruitment rules.

(iii) A uniform system of marking ACRs/APARs.. may be followed for calculating the total marks of the last 10 years available ACRs.

(iv) For each vacancy, three Senior most officers, who are willing, eligible as per the recruitment rules as on the date of occurrence of vacancy and clear from vigilance angle shall be considered. Out of total of these three officers one officer will be short listed by the Committee taking into consideration the APAR rating as well as other aspects like experience general reputation, extra ordinary contribution, special remarks in the APAR, overall service record etc.

(v) Procedure at "iv" shall be repeated by excluding the short listed officers for each of the anticipated vacancies

during the year…….*"(emphasis supplied)*

15. The relevant schedule and provisions of the 2017 Recruitment Rules, prescribing the qualifications for the said post, reads as under:-

(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
(2). Member	*06 (2017)*	*General Central Service, Group 'A', Gazetted, Non-Ministerial*	*Level 17 in the pay matrix Rs.2,25,000/-*	*Selection*	*Not Applicable*

(7)	*(8)*	*(9)*	*(10)*
Not applicable	*Not applicable*	*Not applicable*	*Not applicable*

(11)	*(12)*	*(13)*
Deputation/Absorption Officers of the Central Government having one year regular service in level 15 in the pay matrix Rs.1,82,200-Rs.2,24,400/- and possessing the following essential qualifications, namely:- (i) Having fifteen years of experience in administration in the Central Government with ten years of experience in the filed formations of the Central Board of Direct Taxes; (ii) Having high professional merit and excellence; and (iii) Having impeccable reputation of integrity	*Not applicable However, a Selection Committee with the following composition shall make selection of eligible officers to be appointed to this post by the Central Government. (i) Cabinet Secretary-Chairman. (ii) Principal Secretary/Additional Principal Secretary to Prime Minister – Member (iii) Home Secretary – Member (iv) Secretary (Personnel) Department of*	*Consultation with Union Public Service Commission not necessary.*

Note 1: The normal eligibility conditions of maximum age of 56 years on the date of closing of applications shall not be applicable in cases of absorption. *Note 2: No person with less than one year residual service on the date of occurrence of vacancy shall be eligible for appointment against the vacancy.*	*Personal and Training – Member* *(v) Secretary, Department of Revenue – Member* *Note 1: The Cabinet Secretary may co-opt Chairman, Central Board of Direct Taxes for Selection Committee meetings.* *Note 2: The Selection Committee may devise ways to assess candidates.*	

16. Before we deal with the petitioner's primary submission that his non-consideration by the Selection Committee in the selection process conducted pursuant to the OM dated 04.07.2018, besides being contrary to the 2006 Guidelines, has caused grave prejudice to him, we may deal with his submission that in the subsequent selection process, which is currently underway, he will be evaluated with a new set of officers. However, from the record produced before us viz. the note prepared by the respondents for the Selection Committee pursuant to the OM dated 04.12.2018, we find that the said apprehension is wholly unfounded and, in fact, the petitioner would now be assessed with the same set of officers, with whom he would have been assessed by Selection Committee in its meeting held on 16.09.2018, had the said Committee proceeded to prepare a panel for the fourth anticipated vacancy. As noticed above, when the respondents sent the note for the Selection Committee constituted pursuant to the OM dated 04.07.2018, the same related not only to

the then existing three vacancies, but also to the fourth anticipated vacancy arising on 30.09.2018. In respect of the said fourth anticipated vacancy, the three officers enlisted for consideration were the petitioner (as the senior-most candidate) and the two others junior to him. In the note prepared for the Selection Committee, pursuant to the notification dated 04.12.2018, the petitioner, by virtue of his seniority, has been placed at serial no.1 in the list of three officers being considered for the post consequent to the vacancy notified on 04.12.2018 and the other two officers, whom we deem it unnecessary to name, are the very same officers who were named for consideration by the Selection Committee for the fourth vacancy (anticipated). This grievance of the petitioner, therefore, is not sustainable and as a matter of fact no prejudice would be caused to him on this account.

17. The matter, however, does not end here. The issue which still needs to be considered is as to whether the panel should have been prepared in respect of the fourth anticipated vacancy while making selections pursuant to the OM dated 04.07.2018? The answer to this question would be material as, in the event the petitioner is found to be more meritorious than the other two officers who are in consideration for the said post alongwith him, it will affect the date from which he would be appointed as Member, CBDT.

18. What emerges from a combined reading of the two OMs dated 13.07.2006 and 26.09.2014, is that the 2014 Guidelines do not supersede the 2006 Guidelines while addressing the requirement of considering candidates against all the anticipated vacancies arising in

a particular financial year. The 2006 Guidelines are categorical on this aspect and the 2014 Guidelines do not contain anything contrary to the same; therefore, we have no hesitation in rejecting the respondent's contention that the said requirement stood superseded or diluted in any manner by OM dated 26.09.2014.

19. Now we come to the next question: Whether the 2006 Guidelines could be simply ignored by merely stating that the 2017 Recruitment Rules gave wide discretion to the Selection Committee to devise its own procedure. On this aspect, as well, we are unable to agree with the respondents. No doubt, the Selection Committee has a very wide discretion in the manner of assessing candidates, but that cannot mean that despite four vacancies being reported, the Selection Committee can, without even assigning any reasons therefor, decide to select candidates for only three vacancies. This would be permissible only in the event the Selection Committee finds that no candidate was fit for being selected to the fourth vacancy. This, admittedly, is not the case here. The minutes of the Selection Committee, produced before us, show nothing of the kind and, therefore, the decision not to select a suitable candidate against the fourth vacancy, no doubt falls foul of the guidelines. We are of the view that once the mandate given to the Selection Committee was to select four candidates, which it failed to do when it instead forwarded only three names, without assigning any reasons, the respondents themselves ought to have referred the matter back to the Selection Committee, requesting the selection of a suitable candidate for the fourth anticipated vacancy.

20. The plea of the respondents that the guidelines are merely advisories which may or may not be followed by the Department, needs to be noted only to be rejected. It is trite law that as long as the guidelines supplement the Recruitment Rules and are not contrary to the same, they ought to be followed, unless there are cogent reasons for deviating therefrom. The decisions in ***S.L. Abbas (supra), Col. D.B. Bhide (supra), Ravi Dastane (supra), and Durga Devi (supra)*** relied upon by the respondents also lay down the aforesaid positions and, in fact, support the claim of the petitioner.

21. Even though we find the respondents' action, of not selecting an eligible candidate for the fourth vacancy in the meeting of the Selection Committee held on 16.09.2018, to be in contravention of the guidelines; but, in the facts of the present case, as the respondents are considering the petitioner alongwith the same two officers with whom he would have been assessed on 16.09.2018, had the Selection Committee made its recommendations for the fourth vacancy as well, we refrain from interfering with their decision dated 16.09.2018. At the same time, keeping in view the fact that a period of seven months has already elapsed from the date of appointment of the other three candidates as Member, CBDT on 06.11.2018, as also the fact that the petitioner will reach the age of superannuation in just four months, i.e., on 30.09.2019, we direct the respondents to complete the selection process initiated pursuant to the OM dated 04.12.2018 within a period of six weeks from today.

22. For the aforesaid reasons, the impugned order passed by the

Tribunal is quashed and the writ petition is allowed in the above terms.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

MAY 28, 2019
sr/rr