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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 19.07.2019

+ W.P.(C) 7707/2019 & CM APPLN. 32020-21/2019

TAPAN KUMAR DEO Petitioner
Through Mr. Achintya Dwivedi, Adv.

versus

UNION OF INDIA AND ANR. Respondents
Through Ms. Maninder Achharya, ASG with
Mr. Arun Bhardwaj, CGSC with Mr.
Nikhil Bhardwaj, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner has challenged the decision of Appointments Committee of the Cabinet (ACC) declining the proposal of appointment of the Petitioner as Presiding Officer in the Debt Recovery Tribunal (hereinafter referred to as "the DRT") at Aurangabad, as reflected by information submitted by the respondent No.1 in this Court on 19.11.2018 by a letter dated 15.11.2018 of respondent No.2 wherein stated that "The appointment Committee has declined the proposal for appointment of Petitioner to the post of Presiding Officer in Debt Recovery Tribunal, at Aurangabad", however, without giving any reasons for declining the proposal.

2. The Petitioner is also challenging the order dated 20.05.2019 passed by Director, ACC, declining to consider the representation made by the petitioner.

3. Counsel appearing on behalf of the petitioner submits that the petitioner has a right for an appointment to the post of Presiding Officer of Debt Recovery Tribunal at Aurangabad as he was selected for the said post as per the Debt Recovery Tribunal (Procedure for Appointment as Presiding Officer of the Tribunal) Rules, 1998 (Appointment Rules) made under the provisions of Recovery of Debts due to Banks and Financial institutions Act, 1993(DRT Act).

4. He further submitted that the Division Bench of this Court vide its order dated 12.10.2018 in LPA 60 of 2018 after examining the record and IB report had passed an order for reconsideration of matter afresh by the ACC.

5. The LPA was heard on merit and vide order dated 20.11.2018 dismissed the appeal when the Standing Counsel for Respondent No.1/Union of India informed the Court that ACC has declined to approve the appointment afresh.

6. It is further submitted that in the closing paragraph the Court observed that the final decision dated 15.11.2018 taken by ACC on the basis of its assessment of the materials before it is not the subject matter of the appeal.

7. The Petitioner after going through the OM dated 15.11.2018 released by DOPT realized that the same has been passed without going through the Court's order dated 12.10.2018. Accordingly, the petitioner moved a representation on 10.12.2018 to Hon'ble Prime Minister on as he heads the ACC bringing to his notice the anomalous decision which was taken without considering the directions of the Court in order dated 12.10.2018. Meanwhile, the petitioner had withdrawn the SLP filed in the Supreme Court as he had moved the representation.

8. Learned counsel for the petitioner further submits that the representation which was marked to Director, ACC, DOPT was disposed of on 30.04.2019 by an order that this does not pertain to them and it concerns Department of Financial Services.

9. Being aggrieved, the petitioner was constrained to move another representation to the Hon'ble Prime Minister on 01.05.2019 which was again marked to Director, ACC who vide order dated 20.05.2019 again

opined that the matter is closed as the same has been considered by the High Court. The Director, ACC failed to consider that this Court in appeal had seen the file and observed that there is nothing against the petitioner.

10. Learned counsel for the petitioner submits that the petitioner after having been selected in the interview conducted by the Selection Committee headed by a sitting Judge of the Hon'ble Supreme Court as per the provisions of the Appointment Rules, vide the letter dated 11.4.2016 was intimated of the decision of the Selection Committee for recommending his name for the post of Presiding officer, Debt Recovery Tribunal at Aurangabad and in the said letter he was asked to give his willingness to accept the said post immediately.

11. Vide letter dated 13.4.2016, the petitioner conveyed his willingness to accept the said post and thereafter he returned the files of clients including the Banks on whose panel he was empanelled as an advocate and appearing regularly for the Banks in the DRT at Cuttack, Odisha.

12. The petitioner was telephonically informed by the Registrar, DRT, Aurangabad on 02.09.2016 that through video conference, the Joint Secretary to the Government of India, Department of Financial Services, Ministry of Finance, had intimated the DRT, Aurangabad that the person

who was selected would join soon and petitioner is the only person selected for the post of Presiding Officer of DRT, Aurangabad.

13. Counsel for the petitioner submits vide the present petition the petitioner seeks directions quashing and setting aside the decision of the Appointments Committee of the Cabinet declining the proposal for appointment of petitioner as Presiding Officer in the DRT at Aurangabad, vide OM dated 15.11.2018 and order dated 20.05.2019 passed by Director, ACC on representation made by the Petitioner. Consequentially, issue a writ in the nature of mandamus or such other directions to the respondents to appoint him the Presiding officer at Aurangabad or any other place as per the selection.

14. It is not in dispute that challenging the order of the ACC, petitioner has filed writ petition bearing no.10338/2016 and the same was disposed of vide order dated 25.01.2017 directing the ACC to reconsider the candidature of the petitioner for the post of Presiding Officer of the DRT. Thereafter, the candidature of the petitioner was rejected by ACC on 08.08.2017.

15. Being aggrieved again, the petitioner filed another writ petition bearing no. 7050 of 2017 and the same was dismissed vide order dated 02.02.2018.

16. Being aggrieved by the aforementioned order, the petitioner filed LPA 60 of 2018 and vide order dated 12.10.2018, the Division Bench of this Court observed that *“IB report cannot be termed as prima facie adverse. Director ACC-DOPT is present in the Court. The Court directs ACC to consider the matter afresh.”* Thereafter, the ACC has taken its view and re-affirmed its view, accordingly, the same was brought to the notice of the Court, however, vide order dated 20.11.2018, the LPA was dismissed by a detailed order. Against the said order, the petitioner preferred SLP before the Hon'ble Supreme Court and the same was dismissed as withdrawn on 18.01.2019.

17. It is important to note that the petitioner after going through the DOPT letter dated 15.11.2018 realized that it has been passed without considering the Court's order dated 12.10.2018. Thereafter, the petitioner sent a representation to Hon'ble Prime Minister of India as he heads the ACC through e-mail and prayed for review of order dated 15.11.2018

released by DOPT alongwith copy of High Court order dated 12.10.2018 passed in LPA 60/2018.

18. It is not in dispute that after dismissal of the LPA on merit and by the detailed order, the petitioner approached the Hon'ble Supreme Court by filing SLP. Meanwhile, sent a representation to Hon'ble Prime Minister of India as he heads the ACC through email and prayed for review of order dated 15.11.2018 released by DOPT alongwith copy of High Court order dated 12.10.2018 in LPA 60/2018.

19. Since the office of the Prime Minister after reconsidering rejected the representation, therefore, the petitioner withdrew the SLP and filed the present petition challenging the review order dated 15.11.2018.

20. As noted above, the petitioner filed the writ petitions and the same was dismissed. Thereafter, the petitioner filed the LPA and the same was also dismissed on merit by this Court. Thereafter, he filed the SLP and meanwhile the petitioner filed the representation to the Prime Minister being the Chairman of the ACC and thereafter withdrawn SLP.

21. It is not in dispute that the appointment in question is to be made finally by ACC collectively. However, the selection is to be made by the

Selection Committee headed by a sitting Judge of the Hon'ble Supreme Court of India.

22. After selection, the selection is to be approved by ACC and the Prime Minister of India is Chairman of the said Committee. The Prime Minister alone has no power, to decide any of the issue of the appointment, however, that has to be tested before the ACC. When the writ petitions and LPA were dismissed and thereafter challenged the same before the Supreme Court by way of SLP, then there was no occasion to make representation to the Prime Minister. It seems, the petitioner has been misguided. Therefore, the representation made to the Prime Minister, which was declined, has no relevance in the case of the petitioner.

23. By making representation at the wrong fora, will not create cause of action, therefore, this writ petition is not maintainable.

24. The petition is, accordingly, dismissed.

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25. In view of the order passed in the present writ petition, these applications have been rendered infructuous and are, accordingly, disposed of.

**(SURESH KUMAR KAIT)
JUDGE**

JULY 19, 2019/ms