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

% *Date of Judgment : 22nd November, 2019*

\+ W.P.(C) 9126/2019, C.M.37691/2019

UNION OF INDIA AND ANR. ..... Petitioners

Through: Mr.Ravi Prakash, CGSC with Mr.Farman Ali, Adv.

versus

ASHOK KUMAR SAROHA AND ORS. ..... Respondents

Through: Mr.Viraj R.Datar, Mr.Surjeet Singh and Ms.Meenal Duggal, Advts. for R-1.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. ***(ORAL)***

1. The present petition is directed against an order dated 09.08.2019 passed by the Central Administrative Tribunal ('Tribunal') in O.A. No.1841/2019 whereby the O.A. has been allowed.
2. In this case two respondents had approached the Tribunal since their applications for selection to the post of Member, Income Tax Appellate Tribunal ('ITAT') were not considered as valid since all their APARs were not received before the stipulated date i.e. 30.08.2018. The stand of the respondents, who were applicants before the Tribunal, was that they had no control over their department and once the APARs had been recorded it was for the department to forward the same alongwith other documents to the Selection Committee.

3. The O.A.s were disposed of with the direction that the case of the appellants be considered by the Selection Committee for appointment to the post of Member, ITAT without taking into account the aspect of delay as regards the receipt of APARs. It is this order that has been assailed before us in this writ petition.

4. While issuing notice in the matter the following order was passed by this Court:

> *"The Department of Legal Affairs vide a Circular dated 06.07.2018 invited applications of 37 Members (Judicial/Accountant) in the Income Tax Appellate Tribunal (ITAT). As per the Circular, the last date for submission of the application was 20.08.2019. Reliance is placed on paragraph 12 (iv), (v) and (vi) of the Circular, which we produce below:*
>
> > *"12. HOW TO APPLY*
> >
> > *.....*
> >
> > *(iv) Candidates in Government service should submit their application (s) through proper channel only.*
> > *(v) Application in the following format, duly completed and signed by the candidates, (in the case of Government servants through proper channel with up-to-date CR dossiers, cadre clearance and vigilance clearance) should reach Shri Suneel Sachdeva, Under Secretary to the Govt. of India, Ministry of Law and Justice, Department of Legal Affairs, Dr.Rajendra Prasad Road, Shastri Bhawan, New Delhi-110001 <u>by 20.08.2018 at the latest</u>.*
> > *(vi) Incomplete applications and applications received after the last date will not be entertained."*
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> > *(<u>Emphasis added)</u>*

The submission of learned counsel for the petitioner is that despite a cut-off date having been fixed, the Tribunal has issued a direction to the committee to permit the respondents to appear in the interview despite the fact that the papers were not submitted prior to the cut-off date.

Having regard to the fact that the cut-off date was fixed in the Circular, in our view, prima facie such a direction could not be issued.

Notice to show cause as to why the petition be not admitted, returnable for 18.09.2019.

Till the next date of hearing, the operation of the impugned order 09.08.2019 shall remain stayed.

Copy of the order be given dasti under signatures of the Court Master, as prayed."

5. Mr. Ravi Prakash, learned counsel appearing for the petitioners submits that the Selection Committee was formed on 02.04.2019. It is further contended that as per Rule 4-A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules 1963, the Committee is authorised to evolve its own procedure for selection of members; and that accordingly, the Committee decided to evolve its own procedure for such selection. Relevant extracts of the Minutes of the First Meeting of the interim Search-Cum-Selection Committee ('Committee') for Recruitment of Members in the ITAT read as under:

"3. The Committee also noted the guidelines/ procedure for verification of character and antecedents for appointment to the post of member in Tribunals under purview of the ACC, as contained in Department of Personnel & Training (DoP&T) O.M.No.9/19/2016-EO(SM.II) dated 8th January,

2018, which is as under: -

(i) The respective Selection Committee / Search-cum-Selection Committee shall short-list candidates (2 or 3 times the number of vacancies) in the first round.
(ii) Verification of character and antecedents of the short-listed candidates shall be made by the administrative Ministry/Department through Intelligence Bureau (IB).
(iii) Based on the clearance from IB, the Selection Committee shall thereafter recommend a panel of candidates, which shall be submitted for consideration of the ACC by the Administrative Ministry / Department after obtaining the requisite approval of the concerned Ministry-in-charge.

4. The details of applications received in response to the advertisement issued by the Department of Legal Affairs vide Circular dated 6th July, 2019 were perused by the Committee.

5. The Committee considered the agenda note of the meeting and after due deliberations decided that all applications from the eligible candidates, complete in all respects as per advertisement, including those from Government servants, which have been received on or before the due date i.e. 20th August, 2018, shall only be considered. The Committee clarified that mere receipt of advance copies within the given time will not be sufficient and only applications received through proper channel complete in all respects will be considered."

6. The submission of Mr. Ravi Prakash, learned counsel for petitioners, is that once the Committee had fixed the cut-off date from receipt of all applications, such date could not have been extended by anyone except the Committee itself; and the communication dated 30.08.2018 issued by the Department of Revenue forwarding the respondents' ACR/APARs to the Ministry of Law, cannot override the decision of the Committee. Mr. Ravi Prakash further submits that the Committee

has taken a considered and firm decision in the matter and that no incomplete application has been accepted or considered beyond 20.08.2018.

7. Mr.Viraj R. Datar, learned counsel for respondents, however submits that as far as respondent no.1 is concerned, he had made his application through proper channel and there was no reason for him to think that the application would not be forwarded with complete paper work or that one ACR/APAR would be omitted to be sent for no discernible reason. He submits that the action of the department against respondent No.1 is mala fide since 15 officers had applied, out of which 14 applications have been forwarded with incomplete documents and only one application with complete documents was sent to the Committee.

8. We have heard learned counsel for the parties and have considered their rival contentions.

9. After giving our anxious consideration to the matter however, we find no infirmity in the decision of the Committee since for any selection process a cut-off date must be fixed, failing which there would be no finality to the recruitment process; and subsequent documents would be furnished by various candidates from time-to-time, especially in view of the fact that in this case, the Committee found 287 incomplete applications. Mr. Datar submits that since the department has been unable to give any reason for not sending the complete application of respondent no.1; and since furnishing of the APAR for the year 2016 – 2017 was only in the control of the department, respondent no.1 should not be made to suffer. In the circumstances however, he says that respondent no.1 would make a representation to the Committee to

enable it to examine the grievance of respondent No.1 since otherwise a competent departmental candidate would lose-out in the recruitment process.

10. Accordingly, we dispose of the writ petition with the observation that if a representation is made within 3 days, the Committee would examine the same.

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11. The application is disposed of in view of the order passed in the present writ petition.

12. *Dasti*.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 22, 2019
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