

(2022) 09 GAU CK 0003

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4946 Of 2022

Central Administrative Tribunal

APPELLANT

Vs

Union Of India And 3 Ors.

RESPONDENT

Date of Decision : 06-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 323A
Tribunal (Conditions of Service) Rules, 2021 — Rule 2(2), 3(5)(a), 4, 4(3), 4(4), 5, 11
Tribunal Reforms Act, 2021 — Section 3(b), 3(1), 3(2), 3(3), 3(6), 3(7)
Companies Act, 2013 — Section 413

Citation : (2022) 09 GAU CK 0003

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : A Ahmed, P Mahanta, R B Gohain, D Thaosen, Cks Baruah

Final Decision : Dismissed

Judgement

[1] Heard Mr. K N Choudhury, learned Senior counsel assisted by Mr. P Mahanta for the petitioners. Also heard Mr. Sanjay Jain, learned Assistant Solicitor General of India (ASGI), assisted by Mr. CKS Baruah, learned Central Government Counsel (CGC) who submits that he will be representing all the respondents including the respondent No. 4.

[2.] Although the matter is listed in the motion column today, the respondent Nos. 1, 2 & 3, against the writ petition filed on 30.07.2022, have filed their counter affidavit. The petitioners in response to the counter affidavit have also filed their affidavit-in-reply on 24.08.2022.

[3.] Mr. Sanjay Jain, learned ASGI submits that as the pleadings are complete and importantly, in view of the issue involved, the matter may be taken up for final disposal. Mr. K N Choudhury, learned Senior counsel for the petitioners, on the other hand, submits that as the respondent No. 4 has not been served notice, the same may be done so as not to prejudice him. To this submission, the learned ASGI submits that since the respondent No. 4 has already joined as the

Chairman of the CAT, Guwahati Bench, he can represent the respondent No. 4 as well. In view of such submission and as the parties have already made their respective submissions to some extent, Court has decided to some extent, Court has decided to proceed with the matter and hear the counsels for the rival parties for final disposal of the case.

[4.] Petitioner No. 1 is the CAT, Guwahati Bench, Bar Association while the petitioner No. 2 is the Secretary of the said Association. The writ petition is filed by the petitioners with the following prayer:-

"In the facts and circumstances, it is therefore, most respectfully prayed that, Your Lordship may be pleased to admit this petition, call for the records, issue Rule, calling upon the Respondents to show case (s) as to why:-

a) A writ in the nature of Quo-warranto shall not issue declaring respondent No. 4 is not entitle to hold the post of the Chairman of Central Administrative Tribunal

b) A writ in the nature of certiorari shall not issue for setting aside and quashing the order of appointment dated 29.07.2022

c) A writ in the nature of mandamus directing the SCSC to recommend incumbents strictly in term of Act of 2021 and Rules of 2021

d) A writ in nature of mandamus directing the respondent authorities to forebear from giving effect to the impugned order of appointment dated 29.07.2022

e) Call for the records of recommendation of the SCSC to see as to whether any application form without mandatory information as sought in the prescribed form and without being accompanied by the requisite documents as required under the prescribed form has been entertained and considered and if it has been considered to quash and set aside the same.

f) Direct the respondents to exclude the incomplete applications forms as mandated by the rules and a specific term of advertisement dated 04.04.2022 and to hold/make selection/recommendation afresh strictly in terms of the Tribunals Reforms Act, 2021 and the Tribunal (Conditions of Service) Rules, 2021 framed thereunder by giving requisite preference to the existing Acting Chairman and Members having sufficient adjudicatory experience who had applied for the post of Chairman, Central Administrative Tribunal.

g) Pass such order or orders as this Hon'ble Court may deem appropriate in the interest of justice."

INTERIM RELIEF as prayed for:

Pending final disposal of the present Writ Petition, the petitioner prays that this Hon'ble Court pleased to: Stay the order of appointment order dated 29.07.2022

Grounds of Interim Relief

If the aforesaid interim relief as prayed for is not granted, great injustice would

be caused to the applicants for ignoring their significant experience in Central Administrative Tribunal as required additional weightage of the past services as mandated under Rule 2(2) of the Rules of 2021.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

[5.] From the above abstract, it may be seen that the grievances projected by the petitioners is with regard to the mode and manner in which the Chairman of Central Administrative Tribunal (CAT), Guwahati Bench has been filled up by appointing the respondent No. 4 to the said post. Mr. K N Choudhury, learned Senior counsel by referring to the various provisions under the Administrative Tribunals Act, 1985 (Act of 1985), the Tribunal Reforms Act, 2021 (Act of 2021) and the Tribunals (Conditions of Service) Rules, 2021 (Rules of 2021) submits that the relevant provision for appointing the Chairman of CAT, Guwahati Bench has not been followed by the respondent authorities concerned. He submits that the Chairperson and the Member of the Tribunal is to be appointed by the Central Government, on the recommendation of a Search-cum-Selection Committee (SCSC) comprising of a Chairperson who shall be the Chief Justice of India or a Judge of Supreme Court nominated by him and 2 (two) members who are Secretaries to the Govt. of India and nominated by the Government. The committee shall also comprise of 1 (one) member who shall be outgoing Chairperson of the Tribunal in case of appointment of a Chairperson of the Tribunal and a sitting Chairperson, in case of appointment of a member of the Tribunal. By further referring to Section 3 (6) of the Act of 2021, the learned Senior counsel submits that the SCSC shall determine the procedure for making its recommendations and sub-Section (7) of Section 3 provides that notwithstanding anything contained in any judgment, order or decree of any Court, or in any law for the time being in force, the SCSC shall recommend a panel of two names for appointment to the post of Chairperson or Member, as the case may be, and the Central Government shall take a decision on the recommendations made by that committee, preferably within three months from the date of such recommendation.

[6.] The learned Senior counsel further submits that as per Rule 4 of the Rules of 2021, the procedure for selection of the post of Member and Chairperson of CAT is provided. Importantly, sub-Rule (4) of Rule 4 provides that the committee is to make its recommendation based on the overall assessment of eligible candidates including assessment through personal interaction after taking into account the suitability, record of past performance, integrity as well as adjudicatory experience keeping in view the requirements of the Tribunal shall recommend a panel of two names for every post for which selection is being done in accordance with the provisions of sub-Section (7) of Section 3 of the Act of 2021. Mr. K N Choudhury also refers to Rule 11 of the Rules of 2021 and submits that the Chairpersons and Members are entitled to draw allowances and benefits as are admissible to a Govt. of India officer holding Group 'A' post carrying the same

pay.

[7.] Mr. K N Choudhury, learned Senior counsel submits that the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Govt. of India issued a vacancy circular on 04.04.2022 inviting applications for filling up of one post of Chairman, CAT and as per paragraph No. 4 of the circular, the SCSC is required to scrutinize the applications with respect to suitability of application for the post by giving due weightage to qualification and experience of the candidates and shall shortlist candidates for conducting personal interaction. Paragraph No. 6 of the circular also provides for application procedure wherein the bio-data of the applicant is to be submitted as per the proforma at Annexure-I amongst others. He submits that as per paragraph No. 9 of the circular, any application received after due date or without necessary annexures will not be entertained. He submits that against the information required in Serial Nos. 9, 10 & 11 of Annexure-I of the application form, the respondent No. 4 did not furnish any information. Further, according to the information of the petitioners, no personal interaction was conducted during the selection process and by giving undue weightage on the seniority of the respondent No. 4, as a Judge and also as Chief Justice of a High Court, he was recommended for the post of Chairman.

[8.] The learned Senior counsel submits that under Section 3 (b) of the Act of 2021, the SCSC can determine the procedure for making its recommendations but the SCSC having decided to cause the publication of a vacancy circular in terms of the Rules 4(3) of the Rules of 2021, the SCSC is bound to follow the mode of selection as contained in Rule 4(4) of the Rules of 2021 i.e. by making an overall assessment on eligible candidates including the assessment through personal interaction after taking into account the suitability, record of past performance, integrity as well as adjudicatory experience keeping in view the requirements of the Tribunal. However, the SCSC clearly gave such provisions a go by and arbitrarily decided to recommend the respondent No. 4 by giving due weightage to his seniority and position in the Bench. Mr. K N Choudhury also submits that it is a well settled principle of law that when the manner and mode of doing a thing in a particular manner is prescribed, the same has to be done in that manner alone and not in any other way. Under the facts and circumstances, the learned Senior counsel submits that the appointment of respondent No. 4 should be interfered with and the respondent authorities directed to process the selection for the post afresh.

[9.] Mr. Sanjay Jain, learned ASGI by referring to Section 3(6) of the Act of 2021 submits that the SCSC has clearly been given the liberty to determine the procedure for making its recommendations and accordingly, the SCSC proceeded to make the criteria for short listing candidates for the post in its 100th meeting. For the stream of High Court Judges, the criteria decided to be adopted was; (a) experience in adjudication (length of services as High Court Judge) and; (b) residual tenure of more than 4 years as on 01.07.2022. As for Members of CAT

(Administrative or Judicial), the criteria decided to be adopted was; (a) experience in adjudication (length of service as Member) and; (b) residual tenure of more than 4 years as on 01.07.2022. Keeping in view the length of judicial service, adjudicatory administrative experience including residuary term, the SCSC short-listing 6 (six) candidates conforming the criteria as decided in its earlier meeting and directed to carry out due diligent in respect of them. The committee also decided that in case of candidates from stream of High Court Judges was suitability will be ascertained by committee based on documents/ records provided in the applications. Subsequently, the committee in its 103rd Meeting had noted that the respondent No. 4 being the senior most Judge amongst all the candidates with wide experience in service and constitutional law and standing of over 13 years as a Judge of High Court of Bombay and in aggregate, a little over 15 years and also, coupled with the fact that he is the only one who has the experience of working as a Chief Justice of a High Court, found him to be the most suitable candidate for the post in question. Accordingly, after going through the records of service, judicial as well as administrative experiences accumulated and keeping in mind, the Intelligence Bureau reports in respect of the eligible shortlisted candidates, the SCSC recommended two names in the order of merit for the post and the name of the respondent No. 4 was at the top. The recommendation of the committee was approved by the competent authority vide Communication dated 28.07.2022 and accordingly, the respondent No. 4 was appointed to the post vide Order issued on 29.07.2022. The respondent No. 4 assumed the charge of the Office of Chairman, CAT, Guwahati Bench on 30.07.2022.

[10.] The learned ASGI further submits that the vacancy circular issued on 04.04.2022 is an Executive Order and that the same cannot override the statutory provisions as contained in Section 3(6) of the Act of 2021. He further submits that any grievance regarding dispensation of interaction can only be raised by the second shortlisted candidate and not the petitioners. He also submits that the respondent No. 4 had clearly provided the details of his adjudicating experiences against Serial No. 9 of the application form and as for Serial No. 10, 11 & 12 of the application form, the respondent No. 4 as a retired Chief Justice of a High Court was not required to provide the details as it is not applicable to his case. The petitioner Nos. 1 & 2 do not have the right to determine as to who should be the Chairman of the CAT. At best, it would only be the participants who applied for the post who can raise any sort of grievance. He, therefore, submits that the writ petition is without any merit and the same should be dismissed. Mr. Sanjay Jain, learned ASGI, in support of his submission has relied upon the following authorities:-

(1) Common Cause (Registered Society) & Ors. vs. Union of India, (2018) 9 SCC 382.

(2) National Company Law Tribunal Bar Association vs. Union of India, (2022) SCC Online SC 985.

(3) Shri. Ashok Tanwar & Anr. Vs. State of H.P & Ors., (2005) 2 SCC 104.

[11.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. In order to appreciate the controversy being raised, let us first examine the relevant provisions relating to the appointment of Chairman of CAT. The CAT was created under the Act, 1985 (Act of 1985) promulgated under Article 323 A of the Constitution of India. Pursuant to the Act of 1985, the CAT was established w.e.f. 01.11.1985 to adjudicate and resolved disputes relevant to conditions of service and recruitment to the all India service and Central service. Prior to the enactment of the Act of 2021, the CAT used to be headed by the Chairman having its office in the CAT, Principal Bench and only Judges of the High Court were eligible to be appointed as Chairman. However, after promulgation an Act of 2021, the Members already working in the CAT for prolonged period of time were made eligible to be appointed as Chairman.

[12.] Chapter-II of the Act of 2021 deals with the conditions of service of Chairperson and Members of the Tribunal. Section 3(1)(2) & (3) of Chapter-II, which is relevant to the present case may be abstracted hereunder for ready perusal:-

"CHAPTER II

CONDITIONS OF SERVICE OF CHAIRPERSON AND MEMBERS OF TRIBUNAL

3. (1) Notwithstanding anything contained in any judgment, order or decree of any Court, or in any law for the time being in force, the Central Government may, by notification in the Official Gazette, make rules to provide for the qualifications, appointment, salaries and allowances, resignation, removal and other conditions of service of the Chairperson and Member of a Tribunal after taking into consideration the experience, specialization in the relevant field and the provisions of this Act.

Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as a Chairperson or Member.

(2) The Chairperson and the Member of a Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee constituted under sub-section (3), in such manner as the Central Government may, by rules, provide.

(3) The Search-cum-Selection Committee, except for the State Administrative Tribunal shall consist of---

(a) a Chairperson, who shall be the Chief Justice of India or a Judge of Supreme Court nominated by him;

(b) two Members, who are Secretaries to the Government of India to be nominated by that Government;

(c) one Member, who----

(i) in case of appointment of a Chairperson of a Tribunal, shall be the outgoing Chairperson of that Tribunal; or

(ii) in case of appointment of a Member of a Tribunal, shall be the sitting Chairperson of that Tribunal; or”

[13.] From the above abstract, it may be seen that the Chairperson and the Member of a Tribunal is to be appointed by the Central Government on the recommendation of a SCSC in such manner as provided by the Rules framed by the Central Government. The SCSC will comprise of a Chairperson who shall be the Chief Justice of India or a Judge of the Supreme Court nominated by him. There shall be two Members who are Secretaries to the Govt. of India and nominated by the Government along with one Member who shall be outgoing Chairperson in case of an appointment of a Chairperson and a sitting Chairperson in case of appointment of a Member.

[14.] Section 3(6) of the Act of 2021 further provides that the SCSC shall determine the procedure for making its recommendations and Section 3(7) further provides that notwithstanding anything contained in any judgment, order or decree of any Court, or in any law for the time being in force, the SCSC shall recommend a panel of two names for appointment to the post of Chairperson or Member as the case may be, and the Central Government shall take a decision on the recommendations made by that committee, preferably within 3 (three) months from the date of such recommendation.

[15.] The Rules of 2021 was framed in exercise of the powers conferred by Section 3 of the Act of 2021. Rule 3(5)(a) provides that a person shall not be qualified for appointment as Chairman, unless he (i) is or has been a Judge of a High Court or

(ii) has for a period of not less than 3 years, held office as Administrative Judicial Member in the CAT. Further, Rule 4 of the Rules of 2021 provides for the selection for posts of Members and Chairperson and Rule 5 provides for selection for re-appointment. Rule 4 & 5 of the Rules of 2021 may be abstracted below for ready perusal.

“4. Selection for posts of Members and Chairpersons.----- (1) The Committee may cause a vacancy circular to be issued through the Member-Secretary, giving details of the posts of Members proposed to be filled up, including the following----

(a) number of existing and anticipated vacancies;

(b) qualifications;

(c) salary and allowances;

(d) format for application; and

(e) last date for filing of applications,

in Form-I after making such modifications as may be deemed fit.

(2) The Committee shall scrutinize, or cause to be scrutinized, every application received in response to the circular, against the qualification and may shortlist such number of eligible candidates for personal interaction as it may deem fit.

(3) For the post of Chairperson, the Committee may, either cause a vacancy circular to be issued and call for applications or search for suitable persons eligible for appointment and make an assessment for selection to the post of Chairperson.

(4) The Committee shall make its recommendations based on the overall assessment of eligible candidates including assessment through the personal interaction after taking into account the suitability, record of past performance, integrity as well as adjudicatory experience keeping in view the requirements of the Tribunal and shall recommend a panel of two names for every post for which selection is being done in accordance with the provisions of sub-section (7) of section 3 of the Act.

5. Selection for re-appointment.--- (1) An application for re-appointment shall be considered in the same manner as that for the original appointment, preferably, alongwith all the persons shortlisted in response to the vacancy circular otherwise.

(2) While making its assessment for suitability to a post, the Committee shall give additional weightage to the persons seeking re-appointment for their experience in the Tribunal and while doing so, shall take into account, the performance of the person while working as a Member or a Chairman in the Tribunal.”

[16.] From the above abstract, it may be seen that the committee may cause a vacancy circular to be issued through the Member Secretary giving details of the posts of Members proposed to be filled up. In respect of the post of Chairperson, the committee may either cause a vacancy circular to be issued and call for applications or search for suitable persons eligible for appointment and make an assessment for selection to the post of Chairperson. The committee shall make its recommendations based on the overall assessment of eligible candidates including communication through personal interaction after taking into account, the suitability, record of past service, integrity as well as adjudicatory experience keeping in view the requirements of the Tribunal and shall recommend a panel of two names for every post for which selection is being done in accordance with sub-section (7) of Section 3 of the Act of 2021. In case of re-appointment, the same shall be considered in the same manner preferably along with the persons shortlisted in response to the vacancy circular and the committee shall keep additional weightage for the experience in the Tribunal by taking into account the performance of the person concerned.

[17.] The tenure of the previous incumbent holding the post of Chairman of CAT, Guwahati Bench was up to 31.07.2021 and after the incumbent demitted his office, the senior-most amongst the sitting Members, Hon'ble Ms. Manjulla Das, Judicial Members of Guwahati Bench was authorized to act as Chairman of the Tribunal w.e.f 01.08.2021. According to the petitioners, she was initially appointed as Judicial Members from 27.09.2011 to 26.09.2016 and thereafter, for a second term as Judicial Member from 13.09.2017 to 31.07.23021. The same was followed by her appointment as acting Chairperson w.e.f. 01.08.2021 till the joining of the office by the respondent No. 4. Therefore, according to the petitioners, she possessed adjudicatory experience of about 10 years inclusive of experience as Judicial Member and Chairperson and therefore, she is eligible to be given due weightage as per Rule 4(4) of the Rules of 2021. Besides this, she also possessed significant experience as a practicing Advocate of the Gauhati High Court and CAT for more than 25 years. Pursuant to the vacancy circular issued on 04.04.2022, the eligible candidates for the post of Chairman of Tribunal were required to apply for the post in the prescribed format as appended in the Annexure-I of the advertisement and there was a specific indication that any application submitted that annexures will not be entertained. Besides this, in column Nos. 10 & 11 of the prescribed format in proforma Annexure-I, vital information such as experience with brief write-up in handling the case before relevant Courts/Tribunals and also a write-up on 5 (five) major achievement was required to be furnished. Although, the acting Chairman gave all such details, preferences in the selection was given to the respondent No. 4 who otherwise had submitted incomplete proforma.

[18.] The learned ASGI has produced the relevant records and from a perusal of the same, it is seen that the SCSC in its 99th Meeting decided, inter alia to issue vacancy circular for inviting applications for the post of Chairman in CAT, Guwahati Bench and accordingly, the circular was issued on 04.04.2022 and the last date of submitting application was 26.04.2022. In response to the same, a large number of applications including that of the respondent No. 4 and Ms. Manjulla Das, Acting Chairman, CAT were received. The applications were placed before the SCSC and the SCSC in its 100th Meeting decided to lay down the criteria for the short listing the candidates. The criteria decided to be adopted was to consider experience in adjudication i.e. length of service as High Court Judge or Member CAT and secondly, the residual tenure of more than 4 years as on 01.07.2022. The SCSC also decided that the suitability from the stream of High Court Judges will be ascertained based on the documents/records provided in the application. In the 103rd Meeting, the SCSC considering the experience and records of the respondent No. 4, found him to be the most suitability candidate for the post of Chairman, CAT.

[19.] As already noticed herein above, sub-section (6) of Section 3 of the Act of 2021 provides that the SCSC shall determine the procedure for making its recommendations and accordingly, the SCSC in its 100th Meeting decided to adopt certain criteria. Merely because a decision was taken to issue a vacancy

circular, the SCSC cannot be bound by such circular alone. Moreover, the circular has been issued in terms of the Rules of 2021 which itself is framed under the provisions of Section 3 of the Act of 2021.

[20.] From a perusal of the application, submitted by the respondent No. 4, it can be seen that he has given the details of his adjudicating experiences against column No. 9 and besides this, his educational qualification and work experience as an Advocate in column Nos. 7 & 8 respectively. In respect of the details sought against column No. 10, 11 & 12, the same has been answered as not applicable (NA). Column No. 10 is with regard to the experience along with a brief write-up in handling cases before relevant Courts/Tribunals. The respondent No. 4 admittedly has an overall experience of working as a Judge and Chief Justice of a High Court for over 15 years and therefore, there is no question of him giving his experience in handling cases before Courts and Tribunals. In respect of column Nos. 11 & 12, the same are with regard to major achievements, receiving of awards, honours and making publications, if any. The respondent No. 4 has not given any details against the two columns and that by itself cannot be a ground to reject his application. It may be seen that as per Serial No. 9 of the vacancy circular, what is mandated is submission of the Annexures. The SCSC upon perusing the applications submitted by each applicant has taken a decision to shortlist the respondent No. 4 along with another candidate and neither the other shortlisted candidate nor any of unsuccessful candidates are before this Court with any sort of grievance in the selection process. Therefore, the objections raised by the petitioners through this writ petition even if it is in the form of quo warranto in my considered view would not be maintainable. A lot of emphasis has been placed by the petitioners as regards there being no interaction but such an objection can only be available to the other shortlisted candidate or to the other applicants and not to the present petitioners.

[21.] The Apex Court in *Common Cause (A Registered Society) & Ors. (supra)* was dealing with a challenge made to the appointment of the respondent Nos. 2 & 3 in that case to the post of Central Vigilance Commissioner (CVC) and Vigilance Commissioner (VC), on the ground of violation of principles of impeccable integrity and institutional integrity. The Apex Court finding no ground to quash the appointments, declined to interfere with the appointments and held that judicial review is concerned with whether the incumbent possessed requisite qualification for appointment and the manner in which the appointment came to be made or the procedure adopted was fair, just and reasonable. In judicial review, the Court cannot sit over the choice of the selection. It is for the executive to select the personnel as per law or procedure. Suitability of a candidate for appointment to a post is to be judged by the appointing authority and not by the Court unless the appointment is contrary to the statutory rules/provisions. The Court should keep in mind the difference between judicial review and merit review. Judicial determination is confined to the integrity of the decision-making process by the selection committee. If the decision is influenced

by extraneous considerations or selection is made in breach of the statute or rules, it can be set aside. The Government is not accountable to the Courts for the choice made but the Government is accountable to the Courts in respect of lawfulness/legality of its decisions.

[22.] In the case of *L. Chandrakumar vs. Union of India & Ors.* (1997) 3 SCC 261, one of the issues raised before the Apex Court was that the appointment of Administrative Members should be discontinued and that there was the need for change in respect of appointments to tribunals and supervision of their functioning by an independent body or authority. Rejecting such contention, the Apex Court held that the setting up of tribunals is founded on the premise that specialist bodies, comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of Judicial Members and those with grass-root experience would best serve this purpose. To hold that the Tribunal should consist only of Judicial Members would attack the primary basis of the theory pursuant to which they have been constituted. Since the Selection Committee is now headed by a Judge of the Supreme Court, nominated by the Chief Justice of India, the Court held that there was reason to believe that the committee would take care to ensure that Administrative Members are chosen from amongst those who have some background to deal with such cases.

[23.] In *National Company Law Tribunal Association (supra)* challenged was made by the Association to the notification dated 20.09.2019 issued by the Ministry of Corporate Affairs appointing 28 candidates as members of the National Company Law Tribunal for a tenure of 3 years on the ground that the same was contrary to the provision of Section 413 of the Companies Act, 2013. As per the said notification, the term of office of the judicial and technical members of the tribunal was shortened from 5 years to 3 years or until attaining the age of 65 years, whichever is earlier. Rejecting the challenge, the Apex Court held that such an argument cannot be acceded to at the request of the Bar Association when the Members themselves have not moved this Court. Entertaining such a plea is fraught with consequences for the members whose term has not been extended. Some have applied afresh in the selection process which is under way. Moreover, the Court is not dealing with a situation of removal, but one in which the term of office as per the impugned notification dated 20th September 2019 has come to an end. The issue in regard to the term of appointment being less than the term prescribed statutorily has only been raised towards the tail end of the tenure and by the Bar Association and not the Members themselves. Entertaining the submissions of the petitioner would incidentally lead the Court into an evaluation of the suitability, character and performance of individual Members in a petition to which they are not parties. Such an exercise would, in the circumstances, be wholly inappropriate. The Apex Court went on to observe that the interest of the Bar Association which had moved the proceedings is that the vacancies in the Tribunal should be filled up

expeditiously so that work does not suffer and the functioning of the Tribunal is not hampered. The Bar Association cannot have a choice in regard to who should be a Member of the Tribunal.

[24.] Coming to the present case, as already noticed herein before, none of the unsuccessful applicants are before this Court challenging the selection of the private respondent No. 4 to the post concerned and therefore, the observation and decision of the Apex Court in the above mentioned case is found to be squarely applicable to the present case.

[25.] Thus, upon due consideration of the matter in its entirety and upon perusal of the records as well, I am of the considered view that the petitioners have not made out a case for the interference of this Court. In the result, the writ petition fails and is accordingly dismissed. No. costs.