(2019) 07 DEL CK 0170

In the Delhi High Court

Case No : Civil Writ Petition No. 6875, 6899 Of 2019, Civil Miscellaneous Application No. 28623, 28688 Of 2019

Monica Anand Kumar APPELLANT

Vs

Union Of India RESPONDENT

Date of Decision : 17-07-2019

Acts Referred:

Income Tax Act, 1961 — Section 252
Income Tax Appellate Tribunal Members (Recruitment And Conditions Of Service) Rules, 1963 — Rule 4A

Citation : (2019) 262 DLT 327

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Hemant Gupta, Alok Sharma, Sunakshi Gupta, Ravi Prakash, Farman Ali, Mohd.Shahan Ulla, Arun Bhardwaj

Final Decision : Dismissed

Judgement

J.R. Midha, J

1. The petitioners have challenged the selection process for the post of Member of Income Tax Appellate Tribunal.

2. Vide circular dated 06th July, 2018, the Government invited applications for appointment to the posts of Member (Judicial/Accountant), Income Tax

Appellate Tribunal (ITAT). The qualifications of the Judicial Member, ITAT as given in para 5(a) of the circular are reproduced hereunder:

â??5 QUALIFICATIONS:-

(a) JUDICIAL MEMBER:- A person shall not be qualified for appointment as a Judicial Member unless:- (i) he has for at least ten years held a

judicial office in the territory of India; or (ii) he has been a Member of the Indian Legal Service and has held a post in Grade-II of the Service or any equivalent or higher post for at least three years; or (iii) he has been an advocate for at least ten years.

Explanation for the purpose of (a) above:

(i) In computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held

any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a

State, requiring special knowledge of law;

(ii) In computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial

office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an

advocate.â??

(Emphasis Supplied)

3. The Search-Cum-Selection Committee (SCSC) for recruitment of Members of the Income Tax Appellate Tribunal invoked Rule 4A of Income-tax

Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 which empowers them to evolve its own procedure for selection of

the Members. The Committee took note of the guidelines for appointment to the post of Members in Tribunals under the purview of Appointments

Committee of the Cabinet (ACC) contained in the Department of Personnel & Training (DoP&T) O.M. No.9/19/2016-EO (SM.II) dated 8th January,

2018 according to which the Selection Committee/Search-cum-Selection Committee short-list candidates (two or three times the number of vacancies)

in the first round. The Committee in its meeting dated 01st May, 2019 decided to consider only complete applications received by 20th August, 2018.

The Committee further resolved to call for interview 24 most experienced applicants from the profession i.e. practicing advocates and others (from

the list prepared in decreasing number of experience) belonging to unreserved category against 9 unreserved posts. The Committee decided to hold

the interviews of the short-listed candidates in the Supreme Court on 20th and 21st May, 2019.

4. The petitioner in W.P.(C) 6875/2019 and two other candidates namely Puneet Sharma and Mohinder Kaur Sahlot filed two writ petitions bearing

W.P.(C) 5361/2019 and W.P.(C) 5365/2019 to challenge the aforesaid procedure for short listing of candidates. Both these writ petitions were

dismissed on 17th May, 2019 on the ground that Rule 4A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service)

Rules, 1963 empowers the Selection Board to evolve its own procedure. This Court further held that there was no infirmity in the decision of the

Committee to short-list the candidates.

5. After first round of interviews, the Search-Cum-Selection Committee decided to call the candidates with 19 years of experience in the second

round of interview, which is under challenge in these petitions.

6. The petitioner urged at the of hearing that the Search-Cum-Selection Committee can consider the candidates having less than 20 years of

experience in terms of Section 252 of the Income Tax Act and Rule 4A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions

of Service) Rules, 1963. The grievance of the petitioners is that the Search-Cum-Selection Committee cannot fix a ceiling of 19 years. It is submitted

that if the Search-Cum-Selection Committee could not find suitable candidates out of the candidates having experience of 20 years and above, the

Search-Cum-Selection Committee should consider all the candidates having experience from 10 years to 20 years. The petitionersâ?? grievance is

limited to the decision of the Search-Cum-Selection Committee to consider candidates with 19 years of experience. The petitioners seeks setting aside

of the decision of the Search-Cum-Selection Committee. The petitioner in W.P.(C) 6875/2019 submits that all the candidates having experience of 10

years and above be called for interview whereas the petitioner in W.P.(C) 6899/2019 submits that only two petitioners before this Court be called for

interview as other candidates having experience of 10 years and above, have not approached this Court.

7. Learned Standing Counsel for the respondent urged at the time of hearing that the Search-Cum-Selection Committee is empowered to evolve its

own procedure in Rule 4A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 and there is no

infirmity in the decision of the Search-Cum-Selection Committee to call the candidates with 19 years of experience. It is submitted that on conjoint

reading of Section 252 of the Income Tax Act, 1961 and Rule 4A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of

Service) Rules, 1963, the Search-Cum-Selection Committee can short-list the candidates below 20 years of experience, which is not disputed by the

petitioners. It is further submitted that the petitioner have no locus standi to maintain this petition as the petitioner in W.P.(C) 6875/2019 has 14 years

of experience and the petitioner in W.P.(C) 6899/2019 has 15 years of experience.

8. This Court is of the view that Rule 4A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963

empowers the Search-Cum-Selection Committee to evolve its own procedure. It is not in dispute that on conjoint reading of Section 252 of the Income

Tax Act, 1961 and Rule Rule 4A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963, the

candidates with less than 20 years of experience can be short-listed and called for interview. In that view of the matter, the decision of the Search-

Cum-Selection Committee to short-list candidates with 19 years of experience cannot be said to be arbitrary. Reference be made to Madhya Pradesh

Public Service Commission v. Navnit Kumar Potdar (supra) in which the Supreme Court upheld the action of Madhya Pradesh Public Service

Commission to call for interview only 71 applicants out of 188 applicants on the ground that only candidates with 7Â½ years experience be called for

interview whereas five years experience was the eligibility criteria.

9. There is no merit in both these writ petitions which are hereby dismissed. Pending applications are disposed of.

10. Copy of this judgment be given dasti to learned counsels for the parties under signature of Court Master.

