

**(2011) 11 MAD CK 0162**

**Madras High Court**

**Case No:** Writ Petition No. 7715 of 2010 and M.P. No. 3 of 2010

Uttam Bir Singh Bedi

APPELLANT

Vs

Union of India and Others

RESPONDENT

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Date of Decision: Nov. 30, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 252, 252(5), 255
- Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 - Rule 7A, 7C

Hon'ble Judges: Elipe Dharma Rao, J; D. Hariparanthaman, J

Bench: Division Bench

Advocate: Vijaynarayan, S.C. for M/s. Karthik, for the Appellant; M. Ravindran, Addl. Solicitor General, assisted by Mr. K. Mohanamurali, ACGSC for R1 and R 2 and Mr. S. Vijayakumar for R 4, R 7 and R 8, for the Respondent

Final Decision: Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Elipe Dharma Rao, J.

The petitioner, a Judicial Member of the income tax Appellate Tribunal, Chennai, is challenging the appointment of the fourth respondent/Mr. P. Mohanarajan as Vice President of the income tax Appellate Tribunal (ITAT in short) in these writ proceedings.

2. The petitioner would contend that the high level Selection Committee has been misguided by the Annual Confidential Reports (ACRs in short) of all the eligible candidates placed before it. According to the petitioner, the third respondent/President of the ITAT has no right or authority to write Annual Confidential Reports of the Members and the first respondent cannot act like a reviewing authority. The petitioner, without prejudice to the above contention, would further contend that the ACRs were not liable to be taken into account, unless

they had been communicated to the concerned officers, their representations obtained and considered by the competent authority, in terms of the judgment of the Honorable Apex Court in Dev Dutt vs. Union of India AIR 2008 SC 2513. According to the petitioner, the fourth respondent is junior to him and only based on the incorrect and incomplete information furnished by the official respondents, in the sense the damaging observations made by the Honorable Apex Court against the fourth respondent in Rajiv Ranjan Singh vs. Union of India W.P. (Crl.) No. 197-198 of 2004, dated 21.8.2006 reported in Current Tax Reports (SC) 53/2006 156 Taxman 512 (SC)] were not placed before the Selection Committee, the Selection Committee proceeded to make its recommendations and the first respondent proceeded to appoint the fourth respondent as Vice President, in supersession of the petitioner.

3. It is also the contention of the petitioner that the post of Vice President ceased to be a promotion/selection post in view of the upgradation of the post of Members to the level of Vice President w.e.f. 1.1.2006 and consequential merger of the pay scales of both the posts. On such and other grounds, the petitioner has filed Original Application No.1001 of 2009 before the Central Administrative Tribunal, Chennai.

4. The official respondents have contended that the Selection Committee, headed by a sitting Judge of the Honorable Supreme Court, has taken into consideration various aspects and since merit alone is the criteria for selection, the Selection Committee has recommended the name of the fourth respondent and there is no reason whatsoever to cause interference into the findings arrived at by the Selection Committee.

5. The Central Administrative Tribunal, Chennai has accepted the contentions urged on the part of the official respondents and further taking into consideration the fact that the fourth respondent, after getting selected as Vice President, has attained superannuation on 6.11.2009, has dismissed the original application filed by the petitioner, resulting in him approaching this Court with this writ petition.

6. After hearing all the parties at length, two points that arise for consideration are:

1. Whether the post of Vice President is a promotional post to that of the Member of the ITAT or not?

2. Whether the President of the ITAT is having any authority or right to record the Annual Confidential Reports of the Members. If so, whether the first respondent/Government of India is having any right to review the ACRs of the Members?

POINT No.1:

7. The Vice Presidents of ITAT are appointed from amongst the Members in terms of Rule 7A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963, which reads as follows:

The Central Government may appoint from among the Members one or more persons as Vice-President or, as the case may be, Vice Presidents of the Tribunal to assist the President in the discharge of his functions.

8. A Selection Committee has been constituted under Rule 7C, consisting of a sitting Supreme Court Judge, to be nominated by the Chief Justice of India, the President and the Secretary, Ministry of Law and Justice (Department of Legal Affairs) based on merit, shall recommend persons for appointment as President, Senior Vice-President and Vice-Presidents. Therefore, the criteria for selection are merit.

9. The contention of the petitioner is that consequent to the merger of both the posts of Members and Vice Presidents w.e.f. 1.1.2006, the post of Vice President ceased to be a promotional post to that of the Member. According to him, prior to 1.1.2006, the vice Presidents and the Members were placed in the pay scales of Rs.24050-26000 and Rs.22400-26000 respectively, however, w.e.f. 1.1.2006, both the posts of Vice President and Members are placed in the same scale of pay i.e. Rs.75500-80000 and hence, the process of selection of Vice Presidents, which was valid till 1.1.2006, was ceased to be valid from 1.1.2006 in view of the merger of both the pay scales and therefore, the Members cannot be subjected to selection process for placing them in the same scale of pay.

10. True, on and from 1.1.2006, the pay scales of both the Members and the Vice Presidents have been fixed as Rs.75500-80000. But, it can only be called as unification of the pay and not the merger of both the posts. Had it been a merger, the post of Member would not have been in existence on and after 1.1.2006. While on the part of the respondents 1 and 2 it has been strenuously argued that though the pay of both the posts is one and the same, the pay band differs, nothing has been placed before us by the petitioner to pooh-pooh this stand of the respondents 1 and 2.

11. The ITAT is headed by a President, followed, in hierarchy, by one Senior Vice President, Nine Vice Presidents and Judicial and Accountant Members (totaling 126). The ITAT is constituted at 27 cities of the country as Benches. The provisions of Sections 252 and 255 of the income tax Act confer a statutory power upon the President to constitute Benches. In [The President, Income Tax Appellate Tribunal Vs. Mr. A. Kalyanasundaram, The Union of India \(UOI\) and The Deputy Registrar, Central Administrative Tribunal, Chennai Bench](#), a Division Bench of this Court has held that the position of President of the ITAT is like the position of the Chief Justice of the High Court, as it is the Chief Justice who decides which Judge is to sit in which Bench and at which place (in High Courts where there are Benches in two or more cities). Therefore, there cannot be any doubt that the President of ITAT exercises a prerogative right of constituting the Benches and transferring the members and others from one Bench to other.

12. u/s 252(5), the President can delegate his powers and functions, for the sake of administration, in respect of the Benches either on Senior Vice President or on Vice Presidents of the Benches. The delegation of powers of the President could only be to either a Senior Vice President or to the Vice Presidents, but not to the Members. Therefore, even though the pay of the Vice President and the Members has been unified, it cannot, in any way be called that the posts of Vice President and Member have been merged. When the scheme of things contemplated under the income tax Act, as narrated above, would keep the Vice President over and above the level of Member, the reliance placed by the petitioner on O.M.No.AS14017/66/2008-Estt RR, dated 9.3.2009, to bring home the point "where all posts in a particular grade have been granted a higher replacement pay scale/grade pay, as per upgradation recommended by the 6th CPC, suitability of the incumbents need not be assessed for granting them the higher replacement scale/grade pay and here also, there is no need for the incumbents to complete any minimum eligibility service in the earlier scale of pay", will have no application since it is the well established principle of law that "no administrative order or G.O. can arrogate or override the statutory provision".

13. Therefore, we have no hesitation to hold that since the post of Vice President carries higher responsibilities, with higher pay band, it is definitely a promotional post from that of the Member. This point is answered accordingly.

POINT No.2:

14. From the voluminous materials placed before us, we are able to see that the President of the ITAT has recorded the ACRs. of the petitioner, which were reviewed by the first respondent, as a Reviewing Authority. The gist of the ACRs. from the year 2002-03 to 2007-08 has been placed before us. From the remarks in the ACRs. of the petitioner, it is seen that though he is a hard working and knowledgeable person, he behaves in a rude manner with the colleagues and his rigid tendency and non-adjustable nature has invited many problems, resulting in his frequent transfers.

15. While the Selection Committee met for selection of the Vice President, these ACRs are also seem to have been placed before the Committee. It is but natural that the ACRs of the petitioner, which do not depict the petitioner in a bright light, would have weighed against him. Therefore, an argument has been advanced on the part of the petitioner that the President cannot write his ACRs and in turn, the first respondent cannot act like a Reviewing Authority.

16. The ITAT is a judicial body and under the provisions of Sections 252 and 255 of the income tax Act, statutory powers are conferred on the President, including delegation of powers to the Senior Vice President or the Vice President. The President exercises administrative control over the Benches. But, no provision of the income tax Act or for that matter the Income Tax Appellate Tribunal Members

(Recruitment and Conditions of Service) Rules, 1963 confer any power on the President to write the ACRs of the Members. When a question has arisen as to whether the President of the Customs, Excise and Service Tax Appellate Tribunal can write the ACRs of the Members, in Revenue Secretary vs. Syed Liaquath Peeran 2007 (208) ELT 331 (Madras), a Division Bench of this Court, speaking through one of us (Justice Eliphe Dharma Rao) has held that the "President not competent authority and having no power to write ACRs of Members." Pursuant thereto, it is seen from the proceedings of the Government of India, Ministry of Finance, Department of Revenue in R-20011-32/2010-ADIC-CESTAT, dated 28.10.2010, that the President, CESTAT, who used to write ACRs of its Members till the above said order of this High Court, dated 1.12.2006, is not writing ACRs. of its Members. We have also been informed by the learned counsel appearing on either side that though an appeal has been preferred before the Honorable Apex Court as against the above said order of this Court, (but, no SLP number has been furnished by either of the parties), no stay order has been passed by the Honorable Apex Court.

17. Therefore, following the above order of this Court, we hold that the President of the ITAT has no power or authority to write the ACRs of the Members. Further, being a judicial body, the ITAT should have a judicial autonomy and therefore, the first respondent cannot act like a Reviewing Authority. Point No.2 is answered accordingly.

18. Since in the case on hand, the ACRs recorded by the President and reviewed by the first respondent seems to have thrown the petitioner to a disadvantageous position, when compared to other competitors and since the remarks made against the fourth respondent by the Honorable Apex Court in Rajiv Ranjan Singh vs. Union of India (cited supra), were also not placed before the Honorable Selection Committee, we have no hesitation to hold that no proper material has been placed before the Honorable Selection Committee to arrive at a just conclusion.

19. In these circumstances, without going into many other aspects urged on behalf of all the parties, we set aside the order of the Tribunal and resultantly, this writ petition entitles to be allowed. Conduct of the petitioner:

20. We are very much pained to see that the entire material on record would depict a gloomy picture about the petitioner that he is arrogant and would always throw to winds the well established judicial conventions. Instances of keeping the matters for writing dissenting orders for months together and fighting with the other Members on silly aspects are some of them. This has very much disturbed us. Personal enmity or difference of opinion, if any between the Judges or the authorities discharging quasi-judicial functions, must take a back seat and it is the bounden duty of the Judges to maintain utmost decorum on off the dais. Deviations in this regard by the Judges would result in loss of confidence about the entire judiciary by the Public and the Bar. The allegations made against the petitioner by the respondents that he sans such decorum are quite alarming. It is also to be mentioned that there is no

allegation made against the petitioner touching his integrity. Therefore, what comes to be known is that the petitioner is rigid even to his colleagues - whether junior or senior - and behaves in a harsh manner with them and he seems to have not maintaining any cordial relation with any of his colleagues or for that matter with the Bar also, further throwing to winds the judicial conventions. Keeping the matters circulated by other members without either accepting or offering any dissent order also does not seem to be in good lines with the established judicial conventions. From this, we understand, that the petitioner is transferring his personal feelings against his colleagues into the orders circulated by them and nurturing unnecessary hatred and ill-feelings.

21. No institution could survive in a democracy unless it earns public esteem; and it can earn the public esteem only by discharging its duties impartially and expeditiously. Judiciary is no exception for this principle. While constructive criticism is always welcome, cynical attitude retards rather than helps to remedy the defects. It is not often realized that any uniformed criticism or loose talk from any quarter, though for the moment it appears to be innocuous, may ultimately destroy the prestige of the Judiciary and the confidence of the public reposed therein. The impartiality of the Judges has to be not only actual but also manifest and apparent. This is in conformity with the oft-repeated maxim-"Justice must not only be done but also appear to be done."

22. No justification whatsoever was advanced and can be advanced for such an intentional default and the casual attitude of the officers/officials concerned in the hierarchy. These authorities are instrumentalities of the State and the officers are empowered to exercise the power on behalf of the State. Such exercise of power attains the greater significance when it arises from statutory provisions. The level of expectance of timely and just performance of duty is higher, as compared to the cases where the power is executively exercised in discharge of its regular business. The well established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office.

23. People occupying higher positions in the society and enjoying the respect and benefits attached to such exalted positions at the cost of the taxpayer's money, must adorn the positions in a responsive manner and to be role models for others to follow. Nobody has raised his little finger against the petitioner about his honesty and integrity, but all the allegations are pinpointed towards his arrogant behavior and ignoring the judicial conventions. All these would force us to direct the petitioner to mend his ways and conduct himself in a dignified manner and follow the established judicial conventions, so as to maintain the decorum on and off the dais.

24. Though the fourth respondent has retired from service on 6.11.2009, after serving as Vice President, since we are of the considered view that sufficient

material necessary for determination of the merit of the eligible candidates has not been placed before the Honorable Selection Committee, without going into many other aspects urged on behalf of all the parties, we set aside the order of the Tribunal and allow this writ petition with a request to the Honorable Selection Committee to re-consider the claim of the petitioner, de hors, the ACRs illegally recorded by the President and reviewed by the first respondent. We hope and trust that the Honorable Selection Committee would complete the entire exercise within two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.