



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE R DEVDAS

WRIT PETITION NO. 2274 OF 2025 (GM-RES)

BETWEEN:

JUSTICE PADMARAJ NEMACHANDRA DESAI
FORMER JUDGE, HIGH COURT OF KARNATAKA,
SON OF NEMACHANDRA J DESAI,
AGED ABOUT 64 YEARS,
HAVING ITS RESIDENTIAL ADDRESS AT,
APARNA ELINA APARTMENT, 1603, WING A ,
NEAR YESHWANTPUR RAILWAY STATION,
TUMAKURU ROAD, BENGALURU - 560 022.

...PETITIONER

(BY SRI. UDAY HOLLA SR. COUNSEL FOR
SRI. PRATEEK RATH & GIRISH KUMAR B.M., ADVOCATES)

AND:

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS, DEPARTMENT OF PERSONNEL
AND TRAINING (AT DIVISION) NORTH BLOCK,
NEW DELHI - 110 001.
2. THE JOINT SECRETARY
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS, DEPARTMENT OF PERSONNEL
AND TRAINING (AT DIVISION) NORTH BLOCK,
NEW DELHI - 110 001





3. THE ESTABLISHMENT OFFICER
GOVERNMENT OF INDIA,
DEPARTMENT OF PERSONNEL AND TRAINING,
NORTH BLOCK,
NEW DELHI - 110 001.

...RESPONDENTS

(BY SRI. SHANTHI BHUSHAN H., DSGI)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH / SET ASIDE THE ORDER BEARING NO.A-11013/1/2023-AT DTD. 07.11.2024 ISSUED BY R-2 VIDE ANNEXURE-A BY VIRTUE OF WHICH THE PETITIONER HAS BEEN DEBARRED FOR A PERIOD OF THREE (3) YEARS AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE R DEVDAS

ORAL ORDER

The petitioner is a Former Judge of this Court and is aggrieved of the impugned order dated 07.11.2024 at Annexure-A, passed by the 2nd respondent-Joint Secretary to the Government of India, Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training, (AT-Division) North Block, New Delhi.



2. Learned Senior Counsel Sri.Udaya Holla, appearing for the petitioner submits that it is not disputed that the petitioner responded to the Vacancy Circular dated 18.12.2023 and filed his application for appointment as a Judicial Member of Central Administrative Tribunal on 05.01.2024. However, on 14.07.2024, the petitioner was appointed as "One-Man Commission" to enquire into the allegations of allotment of sites in the Mysore Urban Development Authority. The petitioner assumed charges as "One-Man Commission" on 18.07.2024. Thereafter, an order was passed by the 2nd respondent on 05.08.2024 stating that the President of India was pleased to appoint the petitioner as a Judicial Member in the Central Administrative Tribunal and he was advised to join the Central Administrative Tribunal at Hyderabad Bench within 30 days from the date of issuance of the order, failing which it was directed that the appointment shall be treated as 'cancelled'.

3. No sooner the petitioner received such a communication, the petitioner immediately wrote back to



the 2nd respondent on 14.08.2024 thanking the President of India for selecting and appointing the petitioner as a Judicial Member. However, it was brought to the notice of the 2nd respondent that the petitioner has been appointed as an "One-Man Commission" of enquiry and he has commenced his work in the Commission. It was also stated that the term of the Commission is for six months. It was therefore stated that under such circumstances the petitioner is constrained to decline the offer made by the 2nd respondent, for the present.

4. Thereafter, the 2nd respondent passed another order on 07.11.2024 stating that the President of India was pleased to treat the appointment of the petitioner as 'cancelled'. Thereafter, the impugned order was issued by the 2nd respondent stating that in terms of the OM dated 16.07.2009, the petitioner is debarred for a period of 3 years w.e.f., 21.10.2024 for consideration of appointment outside the cadre and in any Autonomous Body/Statutory Body/Regulatory Body. It was also stated that the order has been issued in compliance with the Order of the



Appointments Committee of the Cabinet vide a communication No.6/12/2024-EO (SM.II) dated 21.10.2024.

5. Learned Senior Counsel however submits that the OM referred to by the 2nd respondent in the impugned order clearly provides at Clause (a) that the department should take the consent from the selected candidates before sending the ACC proposal to the Secretariat. Clause (c) would provide that if the candidate does not join within 30 days, the Administrative Department/ Ministry would issue a 15 days notice to either join or to face debarment, clearly spelling out the consequences of debarment. It is submitted that such a notice was not issued by the 2nd respondent. It is submitted that the mandatory requirement in terms of the Clause (a) was also not complied and no consent was taken by the petitioner before the proposal was forwarded to the Secretariat. Learned Senior Counsel would further submit that the non-acceptance of the offer at the hands of the petitioner was not deliberate and the reasons were clearly



made known to the 2nd respondent in the communication dated 14.08.2024.

6. Learned Senior Counsel would therefore submit that if the 2nd respondent had applied his mind to the communication made by the petitioner, he would not have passed the impugned order. It is submitted that it is not mandatory that every case of non-acceptance would call for an order of debarment. The extreme step of debarment would follow only after compliance of many of such requirements even in terms of the OM referred to in the impugned order.

7. Per contra, learned Deputy Solicitor General of India, would point out to the declaration that would be given by every candidate who makes such an application in the Proforma and submits that the petitioner has clearly declared that he shall not withdraw his candidature after the meeting of the Selection Committee; that he will not decline the appointment, if selected for appointment by the ACC; that he shall join within 30 days from the date of issuance of the order of appointment; that the petitioner is



aware that in case, he would violate any of the conditions mentioned at Sl.No.2 to 4, the Government of India is likely to bebar the petitioner for a period of 3 years for consideration of appointment outside the cadre and in any Autonomous Body/Statutory Body/Regulatory Body. The respondents have filed statement of objections and along with the statement of objections, the respondents have also produced the applicable Circulars and OMs, which have been referred to in the impugned order.

8. Heard the learned Senior Counsel for the petitioner, learned Deputy Solicitor General of India for the respondents and perused the petition papers.

9. As rightly pointed out by the learned Senior Counsel, the OM dated 16.07.2009 referred to in the impugned order requires at Clause (a) that the concerned department should take the consent from the selected candidates, before sending the proposal to the Secretariat. No material has been placed on record by the respondent to show that before sending the proposal or application given by the petitioner, his consent was sought for.



Clause (c) of the OM requires that if any candidate does not join within 30 days, a notice of 15 days was required to be sent to the petitioner either to join or to face debarment. Here again, no material has been placed by the respondents to show that such a notice was issued to the petitioner. On both counts, the 2nd respondent has erred, since the 2nd respondent has not complied with the requirements in terms of the OM and not the petitioner.

10. Further, as rightly submitted by the learned Senior Counsel, if such steps were taken as provided in the OM, the fact situation would not have called for such an extreme step to debar the petitioner. If the respondents had complied with the requirement of Clause (a) of the OM and if they have sought for consent of the petitioner before forwarding the proposal to the Secretariat, the petitioner would have informed the respondents that he has already been working as "One-Man Commission" and therefore, he would be able to accept the proposal nor would he have given consent. Further, even at the second step where Clause (c) of the



OM requires a notice of 15 days to be issued to the petitioner, if the 2nd respondent had complied with the such a requirement and issued a notice to the petitioner, then the petitioner would have still given such a reply and again the 2nd respondent would have considered such a reply as found at Annexure-L dated 14.08.2024.

11. It is also found that the Vacancy Circular dated 18.12.2023, in paragraph No.4 provides that the final selection will be done on the basis of overall evaluation of the candidates done by the Committee based on the qualification, experience and **"personal interaction"**. The learned Senior Counsel is right in his submission that such 'personal interaction' was never called for and the petitioner was never made aware that he would be called upon to give his consent.

(emphasis supplied)

12. This Court is therefore of the considered opinion that not every case of declining to accept the offer of appointment would call for debarment. The 2nd respondent has mechanically passed the impugned order going by the



conditions and provisions that would governing the appointment to the post of Judicial Member of the Central Administrative Tribunal. However, if the 2nd respondent had followed the procedures as contemplated in the OM and the Vacancy Circular, the 2nd respondent would have never issued such impugned order debarring the petitioner.

13. Consequently, the writ petition is ***allowed***. The impugned order dated 07.11.2024 at Annexure-A, issued by 2nd respondent-Joint Secretary to the Government of India, Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training, New Delhi, is hereby quashed and set aside.

14. Pending Interlocutory Application(s), if any, stand(s) disposed of.

**Sd/-
(R DEVDAS)
JUDGE**

DL
CT: JL