

ITEM NO.17

COURT NO.11

SECTION PIL

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

WRIT PETITION (CIVIL) NO(S).202 OF 2013

INTURI RAMA RAO

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ANR.

Respondent(s)

(WITH APPLN. (S) FOR DIRECTIONS AND OFFICE REPORT)

Date : 23/09/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE R.K. AGRAWAL

For Petitioner(s)

Mr. Nidhesh Gupta, Sr. Adv.  
Mr. Atul Kumar, Adv.  
Mr. Amit Kumar, Adv.  
Mr. Avijit Mani Tripathi, Adv.

For Respondent(s)

Mr. Tushar Mehta, ASG  
Mr. Shiv Mangal Sharma, Adv.  
Ms. Usha Reddy, Adv.  
Mr. Vivek Ranjan Mohanty, Adv.  
Mr. D.S. Mahra, Adv.  
Mr. B.V. Balaram Das, Adv.UPON hearing the counsel the Court made the following  
O R D E RThe writ petition is disposed of in terms of the  
signed order.[VINOD LAKHINA]  
COURT MASTER[ASHA SONI]  
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.202 OF 2013

INTURI RAMA RAO . . .PETITIONER

VERSUS

UNION OF INDIA & ANR. . .RESPONDENTS

ORDER

This writ petition under Article 32 of the Constitution of India has been filed seeking the following reliefs:

"(a) Writ of Mandamus directing the Respondent No.1 as (sic) the Accountant Member of ITAT in lieu of the selections already made and/or issue appropriate writ of order for the enforcement of its order dated 17-09-2009 in SLP(C) No.13681 of 2007; and

(b) Direct the respondent to (sic) petitioner as AM of ITAT in pursuance of the selection list of 2005;"

The case has a long chequered history and for an effective adjudication of the entitlement of the petitioner - Inturi Rama Rao to the reliefs prayed for a brief recital of the relevant facts will be necessary.

By an advertisement dated 21<sup>st</sup> January, 2005, 13 posts of Accountant Members and 9 posts of Judicial Members in the Income Tax Appellate Tribunals of the country were advertised.

A Select List of 18 persons, 13 for the post of Accountant Member and 5 for the post of Judicial Member was finalized. There was a waiting list also prepared by the Selection Committee and insofar as the present proceedings are concerned, the petitioner was placed at

Serial No.2 of the said Waiting List for appointment as Accountant Member.

A Public Interest Litigation was instituted in the Madras High Court to give effect to the selections made by way of appointment of the selected candidates. The writ petition was answered in the affirmative and the said order of the High Court was affirmed by dismissal of the Special Leave Petition (Civil) No.13681 of 2001 filed by the Union of India. Thereafter, it appears that the Select List was approved by the Appointment Committee of the Cabinet (ACC) and 11 vacancies of Accountant Members were filled up whereas 5 vacancies of Judicial Members were also filled up. Two vacancies of Accountant Members remained

vacant as the two candidates who were selected were not cleared by the Vigilance. The petitioner who was placed at Serial No. 2 in the Waiting List, therefore, perceived a right to be appointed against one of the vacant posts of Accountant Member.

As appointment was not forthcoming, the petitioner moved the Central Administrative Tribunal, Hyderabad Bench by filing O.A. No.1036 of 2008 along with O.A. No.1024 of 2008 and O.A. No.1037 of 2008 which were transferred to Principal Bench of Central Administrative Tribunal at New Delhi. Appropriate relief was granted by the learned Tribunal. The order of the Central Administrative Tribunal was affirmed by the Delhi High

Court in the Writ Petitions filed by the Union of India.

As against the order of the Delhi High Court, the Union of India filed Special Leave Petition (Civil) Nos. 13606-13608 of 2009 which were converted into Civil Appeal Nos. 6567-6569 of 2010. The said appeals were allowed by order dated 17<sup>th</sup> November, 2011. Review Petitions as also the Curative Petition filed by the present petitioner (Respondent in Civil Appeal Nos. 6567-6569 of 2010) have also been dismissed. It is in the aforesaid circumstances that the present writ petition under Article 32 of the Constitution of India has been filed seeking the reliefs earlier noticed.

A reading of the judgment dated 17<sup>th</sup> November, 2011 passed by this Court in Civil Appeal Nos. 6567-6569 of 2010 arising out of Special Leave Petition (Civil) Nos. 13606-13608 of 2009 would go to show that this Court had perceived a difference between the main list of selected candidates and the wait-listed candidates. As appointments of the candidates in the main list (16 in number) had already been made, this Court thought it proper not to affirm the directions for appointment of the wait-listed candidates as made by the Central Administrative Tribunal and the High Court in the orders under challenge before it and, instead, accepted the contentions made by the Union of India that it would be making further appointments only after amendment of the

Rules, which contemplated amendment, we are told at the Bar, pertained mainly to the eligibility of the candidates. It is an admitted fact that amendment to the Rules as contemplated and stated before this Court in Civil Appeal Nos. 6567-6569 of 2010 has not been effected till date. Rather it is not in dispute that a fresh selection process has been initiated in the year 2013 on the basis of the unamended Rules and the selection process has been completed and the appointments are awaited.

As the judgment dated 17<sup>th</sup> November, 2011 passed by this Court in Civil Appeal Nos. 6567-6569 of 2010 has been reiterated by this Court by dismissal of the Review Petitions and the Curative Petition has also been dismissed and even

otherwise we do not consider it necessary to express a view different from those recorded in the order dated 17<sup>th</sup> November, 2011 in the aforementioned Civil Appeals i.e. Civil Appeal Nos. 6567-6569 of 2010. However, taking the aforesaid order as it is, what we find is that notwithstanding the statement made on behalf of the Union of India before this Court that vacancies in the future will be made only after the amendments in the Rules are carried out, the Union of India has initiated a process to make further appointments without amending the Rules. If persons eligible under the then existing Rules which are in force even today are to be considered for appointment, surely, the petitioner, who is a wait-listed candidate, will also have to be considered for appointment by consideration of his entitlement for

appointment as in the year 2007 when the appointments on the main-list were made and the two vacancies arose giving rise to the issue of operation of the waiting list. What follows from the above is that even accepting the order dated 17<sup>th</sup> November, 2011 passed by this Court in Civil Appeal Nos. 6567-6569 of 2010, in view of the subsequent facts and events that have occurred, namely, action of the Union of India in resorting to a fresh process of selection and appointment without amendment of the Rules, the right of the petitioner to be considered for appointment on the basis of his position in the Waiting List has once again come to fore which needs to be resolved by an appropriate order.

We, therefore, allow this writ petition and direct consideration of the case of the petitioner for appointment on the basis of his position in the Waiting List against one of the two vacancies that had arisen on account of two of the candidates in the merit list not having been granted the vigilance clearance. This will be done by the concerned Authority within 30 days from the date of receipt of a copy of this order.

The writ petition shall stand disposed of in the above terms.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(R.K. AGRAWAL)

NEW DELHI  
SEPTEMBER 23, 2014