

KUDRAT SANDHU

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v.

UNION OF INDIA AND ANR.

(Writ Petition (Civil) No. 279 of 2017)

FEBRUARY 22, 2018

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**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]**

*Tribunals – Chairperson/Judicial/Administrative/Expert/
Technical members – Selection of – After considering the
suggestions filed, along with modifications, order passed by Supreme
Court on 9 February 2018 as an interim arrangement to govern
selection in all Tribunals – However, since some of the Search-cum-
Selection Committees (SCSC) had already proceeded with their work
prior to the said interim order, matter listed for further hearing
wherein inter alia Union of India was directed to file status of selection
process by the Committees – Tabular chart filed by Union of India
indicating the status of selection process in respect of 19
Tribunals – Tribunal-wise position with regard to the selections
analysed by Supreme Court and directions given in respect of each
of the Tribunal – Tribunal, Appellate Tribunal and Other Authorities
(Qualification, Experience and Other Conditions of Service of
Members) Rules, 2017.*

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CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.
279 of 2017

Under Article 32 of the Constitution of India.

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WITH

W. P. (C) Nos. 558, 561, 640, 1016, 788, 925, 1098 and 1129 of
2017

W. P. (C) No. 33 of 2018.

Arvind P. Datar, C. A. Sundaram, Mohan Parasaran, Sidharth
Luthra, Sr. Advs., Ms. Maneesha Dhir, Karan Batura, Ms. Anushree
Prashit Kapadia, Ms. Priyanka Rathi, Ms. Ruchira Goel, Vikramaditya,
Arun Monga, Ms. Divya Sharma, Ms. Mayuri Raghuvanshi, Nikhil Swami,
V. K. Verma, Nikhil Nayyar, Rupesh Kumar, Anand Varma, K. Krishna
Kumar, Annam D. N. Rao, Advs. for the Petitioner.

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A K. K. Venugopal, AG, S. S. Shamsbery, Ms. Shraddha Deshmukh, Rukmini Bobde, Kumar Shashank, Mukesh Kumar Maroria, Zoheb Hossain, Ashok Mathur, Mrs. Anil Katiyar, Advs. for the Respondents.

The following order of the Court was delivered:

ORDER

B 1. On 9 February 2018, an interim order was passed by this Court after considering the suggestions filed during the course of hearing. The suggestions read as follows:

C “1. Staying the composition of Search-cum-Selection Committee as prescribed in Column 4 of the Schedule to the Tribunal, Appellate Tribunal and Other Authorities (Qualification, experience and other conditions of service of members) Rules, 2017 both in respect of Chairman/Judicial Members and Administrative Members. A further direction to constitute an interim Search-cum Selection Committee during the pendency of this W.P. in respect of both Judicial/Administrative members as under :

D a. Chief Justice of India or his nominee - Chairman
E b. Chairman of the Central Administrative Tribunal - Member
c. Two Secretaries nominated by the Government of India - Members

2. Appointment to the post of Chairman shall be made by nomination by the Chief Justice of India.

F 3. Stay the terms of office of 3 years as prescribed in Column 5 of the Schedule to the Tribunal, Appellate Tribunal and other Authorities (Qualification, experience and other conditions of service of members) Rules, 2017. A further direction fixing the term of office of all selectees by the aforementioned interim Search-cum Selection Committee and consequent appointees as 5 years.

G 4. All appointments to be made in pursuance to the selection made by the interim Search-cum-Selection Committee shall be with conditions of service as applicable to the Judges of High Court.

H 5. A further direction to the effect that all the selections made by the aforementioned interim selection committee and the

consequential appointment of all the selectees as Chairman/
Judicial/Administrative members for a term of 5 years with
conditions of service as applicable to Judges of High Court shall
not be affected by the final outcome of the Writ Petition.” A

2. The learned Attorney General had no objection to the above
suggestions being adopted as an interim arrangement to govern the
selections to all tribunals, except for the fourth and fifth suggestions
recorded above. The Learned Attorney General suggested that the above
two suggestions may be re-cast as follows: B

“4. All appointments to be made in pursuance to the selection
made by the interim Search-cum-Selection Committee shall abide
by the conditions of service as per the old Acts and the Rules. C

5. A further direction to the effect that all the selections made by
the aforementioned interim selection committee and the
consequential appointment of all the selectees as Chairman/
Judicial/Administrative members shall be for a period as has been
provided in the old Acts and the Rules.” D

3. The Court accepted the suggestions together with the
modifications which were desired by the Attorney General. The operative
direction reads thus:

“In view of the aforesaid, we accept the suggestions and direct
that the same shall be made applicable for selection of the
Chairpersons and the Judicial/Administrative/Technical/Expert
Members for all tribunals.” E

4. Since some of the Search-cum-Selection Committees (SCSC)
have already proceeded with their work prior to the above order, the
case was listed for further hearing on 12 February 2018. The following
order was passed: F

“As some Committees had proceeded, the matter was listed for
further hearing. We have heard learned counsel for the parties.
Mr. Rohit Bhat, learned counsel assisting the learned Attorney
General for the Union of India shall file the status of the selection
process by the Committees, by 13.2.2018. G

Mr. Arvind Datar, Mr. C.A. Sundaram and Mr. Mohan Parasaran,
learned senior counsel shall also file through their Advocates-
on-Record a joint memorandum with regard to which tribunals H

A are covered and not covered. The same shall be filed by 10.30 a.m. on 13.2.2018.

Orders reserved.”

B 5. The Attorney General has in pursuance of the proceedings which took place on 12 February 2018 filed a tabular chart indicating the status of the selection process in respect of 19 tribunals. Written notes have been filed by Mr Vikas Singh, Senior Advocate and by Mr Vijay Kumar Verma, Advocate (appearing respectively in Writ Petition (Civil) No. 279 of 2017 and companion cases and Writ Petition (Civil) No. 640 of 2017).

C 6. The tabular chart submitted by the Attorney General indicates the following details individually in respect of 19 tribunals:

- (i) Whether the SCSC has been constituted;
- (ii) Whether advertisements have been issued for judicial and/or technical (or expert) members;
- D (iii) Whether applications have been received;
- (iv) Whether the process of shortlisting or, as the case, may be holding interviews has been completed; and
- E (v) Whether appointments have been made.

The written submissions filed by Mr Vikas Singh, Learned Senior Advocate and Mr Verma, Advocate indicate that substantial steps have taken place in the selection process for the Central Administrative Tribunal and it is desirable that appointments be made expeditiously.

F 7. We will now analyse the position in regard to the selections, tribunal-wise.

CESTAT

G We have been apprised of the fact that in respect of the Central Excise and Service Tax Appellate Tribunal (CESTAT), applications were received for judicial and technical members pursuant to advertisements issued under the directions of the SCSC. Interviews have been conducted and the Appointments Committee of the Cabinet has approved the proposal for filling up vacant posts of judicial members. The above position indicates that the process of selection has been substantially completed. Hence, we clarify that the selection process in respect of the

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CESTAT may be completed and will not be affected by the order of this Court dated 9 February 2018. A

DRT and DRAT

8. For the Debts Recovery Tribunal, the chart submitted by the learned Attorney General indicates that the selection process has been completed and appointments of Presiding officers have been made. This being the position, the selection process in respect of the DRT shall not be affected. In respect of the DRAT also, the selection process has been completed and will hence be taken to its logical conclusion. B

CAT

9. In respect of the Central Administrative Tribunal, the chart submitted by the learned Attorney General indicates that after the constitution of the SCSC, vacancies were advertised and applications have been received both for judicial and administrative members. Two meetings have been held by the SCSC for judicial members; shortlisting criteria were finalised and 67 candidates have been shortlisted. In the above situation, the selection process for judicial members of CAT shall proceed unhindered by the previous directions dated 9 February, 2018 and shall be taken to its logical conclusion. Since no substantial steps have taken place in regard to the appointments of Administrative members of CAT, the directions contained in the order dated 9 February 2018 shall apply. C
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NCLAT

10. As regards the National Company Law Appellate Tribunal, the chart submitted by the learned Attorney General indicates that the existing selection committee has the same composition as provided for in the new rules. Advertisements inviting applications were issued and 141 applications have been received by the SCSC. We clarify that the selection process for the NCLAT shall continue and shall not be affected by the interim directions dated 9 February 2018. F

NCDRC

11. For the appointment of the President of the National Consumer Disputes Redressal Commission, the applications received have been forwarded to the Chief Justice of India by the Ministry for Consumer Affairs, Food and Public Distribution. A recommendation is to be made G

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A by the CJI in terms of Rule 4 read with Item No. A of Column No. 4 of Serial No. 16 of the relevant Rules.

12. For judicial and non-judicial members of NCDRC, the SCSC has shortlisted candidates. Recommendations have been made by the SCSC in February 2018. The selection process has been substantially completed. It may proceed to its logical conclusion without being affected by the directions dated 9 February 2018. However, it is made clear that the appointment of President of NCDRC is to be made by a nomination of the CJI.

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C 13. For the Authority for Advance Ruling, a nomination was received by the Union government from the Chief Justice of India. However, before the appointment was made, the nominated candidate died. A fresh nomination is to be made by the CJI.

D 14. The Chairperson of the Search and Selection Committee for selection of the Vice Chairman, nominated by the Chief Justice of India has made recommendations.

APTEL

E 15. The Chairperson of the SCSC has been nominated for recommending the appointment of Chairperson of the Appellate Tribunal for Electricity. The Committee has initiated the process and is ascertaining willingness of eligible persons. The work of the Committee may proceed unhindered by the order dated 9 February 2018.

F 16. In the case of certain other tribunals, the chart submitted by the Attorney General is extracted below:

Sl No.	Tribunal / Appellate Tribunal and Other Authorities	Existing Vacancy	Whether SCSC constitute under New Rules. If yes, its composition	Status of selection process	Total Number of applications as received	Interviews conducted	Selection made / Final Appointment
1	Appellate Tribunal under SAFEMA Act	1 Vacancy for Member	SCSC constituted for post of member.	Advertised on 11.10.2017	12 applications received	NA	NA

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2	Railway Claims Tribunal	02 Vacancies to the post of Vice Chairman – Technical 3 vacancies to the post of Technical Member Judicial Member-08 posts	SCSC Constituted.	VC/Tech- Proposal put up to Board for circulation of Vacancy Notice For post of Technical Member- 1 st Round meeting held on 7.02.2018 and IB clearance sought Proposal put up to Board for circulation of Vacancy Notice	NA	NA	NA
3	Securities Appellate Tribunal	Nil	SCSC Not constituted.	N.A.	N.A.	N.A.	N.A.
4	Airport Appellate Tribunal	01 vacancy for post of Chairman	SCSC Constituted.	Vacancy circulate issued	17	Interviews not yet conducted	NA
5	Telecom Disputes Settlement and Appellate Tribunal (TDSAT)	One vacancy in respect of a Member will arise on 12.5.2018	SCSC Constituted.	Advertisement for the post of Member, TDSAT will be issued in a day or two so as to fill the vacancy arising on 12.05.2018	NA	NA	NA

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A	6	Appellate Board Under Trade Marks Act	01 vacancy for post of Vice Chairman, 01 vacancy for post of Technical Member (Trade Mark), 01 vacancy for post of Technical Member (Patent) and 02 vacancies for post of Technical Member (Copy right)	SCSC Not yet constituted.	Vacancies advertised in November, 2017	09 applications received for post of Vice Chairman, 14 applications received for post of Technical Member (Trade Mark), 17 applications received for Technical Member (Patent) and 15 applications received for Technical Member (Copy right)	NO	NO
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E	7	Film Certification Appellate Tribunal	02 vacancies for post of Members w.e.f. 30.12.2017	SCSC not constituted, although the process for constituting the same has been initiated.	NA	NA	NA	NA
F	8	Armed Forces Tribunal	8- Administrative Members 8- Judicial Members	Composition of the Selection committee under the old rules and the SCSC under the new rules for vice chairperson, judicial member and administrative member is the same.	Advertisement issued on 20.07.2017 (for the post of 6 Administrative Member);	NA	NA	NA
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			The earlier selection committees are therefore continuing.	Advertisement issued on 08.08.2017 – for the post of 1 Judicial Member; Advertisement issued on 06.11.2017 - for the post of 7 Judicial Members and 2 Administrative Members			
9	National Green Tribunal	Chairperson- 01 Judicial Members – 05 Expert Member- 07 Note : Apart from the above vacancies, Justice M.S. Nambiar, Judicial Member superannuated on 2.01.2018 and Shri S.B. Sajwan Expert Member superannuated on 9.12.2017.	SCSC Constituted	Process initiated Date of advertisement – 29.08.2017	83 applications received for post of Judicial Member and 169 applications received for post of expert members	Date is awaited	NA
10	Income Tax Appellate Tribunal	President – 01	SCSC not yet constituted.	NA	NA	NA	NA
	Vice President 6 vacancies	SCSC Constituted	NO	NA	NA	NA	NO
		Member- 24 vacancies	SCSC not yet constituted.	NA	NA	NA	NA

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A For the Armed Forces Tribunal (AFT), the composition of the Selection Committee under the old rules and the SCSC under the new rules for vice chairperson, judicial members and administrative members is the same. Recommendations have been made. The selection may hence proceed for AFT (Serial No. 8 above).

B 17. As regards the selection of the President of the ITAT, a recommendation has already been made. Hence, the selection process will be taken to its logical conclusion. The SCSC for the rest of the tribunals in the above chart (other than Serial No. 8) shall be governed by the interim directions dated 9 February 2018.

C 18. In all cases where the CJI has nominated the Chairperson of the SCSC for making recommendations for appointment of Chairperson / President / Presiding Officer of any tribunal and the Committee has begun its work by holding a meeting, the process will continue on the basis of the terms and conditions and eligibility stated in the advertisement issued or, as the case may be, as notified on the directions of the SCSC

D for ascertaining expression of interest.

19. All recommendations made or to be made by any SCSC as referred to above for appointment of Chairperson and/or members shall be processed further without being affected by the order dated 9 February 2018.

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