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DISCLAIMER

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Anything contained in this document would not lead to any legal claim on part of an individual for any purpose.

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File No.14/19/2014-EO(SM.II)  
INFORMATION NOTE (09.10.2017)

The Appointments Committee of the Cabinet (ACC) has approved the appointment of Ms. Madhumita Roy as Judicial Member in the Income Tax Appellate Tribunal (ITAT) in the scale of pay prescribed in the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 for a period of three years or till her attaining the age of 62 years, whichever is earlier, in compliance with the order dated 28.06.2017 of the High Court of Calcutta in WP No.281/2016.

2. Necessary communication in this regard has been sent to the Department of Legal Affairs.

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**IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction**

**BEFORE:**

**The Hon'ble Acting Chief Justice Nishita Mhatre  
And  
The Hon'ble Justice Tapabrata Chakraborty**

**W.P.C.T. 281 of 2016**

**Madhumita Roy  
VS  
THE Union of India & Ors.**

**For the Appellant** : **Mr. Pranab Dutta,  
Mr. S. K. Dutta  
Mr. Soumya Mazumder**

**For the State** : **Mr. Subir Sanyal  
Mr. Ritwik Pattanayak  
Mr. Sudarsan Lamba**

**Heard on** : **June 28, 2017**

**Judgement on** : **June 28, 2017**

**Tapabrata Chakraborty, J. :**

The subject matter of challenge in the present writ petition is an order dated 9<sup>th</sup> November, 2016 passed by the Central Administrative Tribunal, Calcutta Bench in original application being OA 350/00979/2016.

Mr. Dutta, learned senior advocate appearing for the petitioner submits that in response to a notification dated 17<sup>th</sup> April, 2013 issued by the respondent no.2 for filling up 20 vacant posts of Judicial Members in the Income Tax Appellate Tribunal, the petitioner offered her candidature for a post under the unreserved category by an application dated 4<sup>th</sup> June, 2013. Upon scrutiny of such application, the petitioner was found eligible. Had the petitioner's application been incomplete, the same could have been rejected at the threshold in terms of clause 11(VI) of the notification dated 17<sup>th</sup> April, 2013. Thereafter the petitioner was called for an interview on 31<sup>st</sup> May, 2014 and he duly participated in the same but the final result of such selection was not intimated and as such the petitioner was constrained to approach the learned Tribunal praying for issuance of a direction upon the respondents to immediately complete the selection process and to take a final decision on the petitioner's application. The said original application was admitted and the parties were directed to exchange their affidavits. Pursuant to such direction affidavits were exchanged. The learned Tribunal also directed production of records and upon contested hearing the original application was dismissed on 9<sup>th</sup> November, 2016 observing that "*the applicant did not submit the income tax return for the year 2010-2011*".

Drawing the attention of this Court to the documents annexed at pages 53 and 54 of the writ petition, Mr. Dutta submits that the petitioner duly filed the income tax return for the assessment year 2010-2011 on 31<sup>st</sup> March, 2011 and also paid the total tax and interest amount of Rs.10,782/- on 28<sup>th</sup> March, 2011 and as such the learned Tribunal arrived at an erroneous conclusion that the petitioner did not submit the income tax return for the year 2010-2011.

Being prima facie satisfied with such argument as advanced, we directed Mr. Sanyal, learned advocate appearing for the respondents to produce the original records pertaining to the selection process and pursuant to such direction the original records were produced. Upon perusal of the same, we noticed that in the para-wise comments of the respondent nos.1 and 2 it was noted in para 10(i) that the “*Central Board of Direct Taxes (CBDT) in its report, inter alia, has stated that the Income Tax Return for the financial year 2010-11 in respect of Ms. Madhumita Roy was not available. (Further reply may be added by the DoPT)*”. The said draft note was thereafter forwarded to the Directorate of Personnel & Training for addition/modification of the statements, if any. Subsequent thereto, the Under Secretary to the Government of India, Department of Personnel & Training by a letter dated 12<sup>th</sup> January, 2017 observed that the observations made in the said letter be considered by the

Department of Legal Affairs for appropriate modifications. In para 2(ii) of the said letter it was observed that *“In para 10(i), the line “the Central Board of Direct Taxes (CBDT) in its report, interalia, has stated that the Income Tax Return for the financial year 2010-11 in respect of Ms. Madhumita Roy was not available” may be considered for deletion”*.

Since no explanation was forthcoming as to why the Under Secretary to the Government of India, Department of Personnel & Training asked the respondent nos.1 and 2 to modify the statements in para 10(i) of the note, we directed the said Under Secretary, Department of Personnel & Training to be personally present before us. Pursuant to such direction, the Under Secretary is present in Court today and Mr. Sanyal, learned advocate representing him submits that the Appointments Committee of Cabinet (hereinafter referred to as ACC) did not give any reason as to why the petitioner’s candidature was not approved and as such the Department of Personal and Training thought it fit that the decision of the ACC should not be supplemented with any reason on the part of the Department of Legal Affairs to the effect that *“the Income Tax Return for the financial year 2010-11 in respect of Ms. Madhumita Roy was not available”* and as such the Department of Personnel & Training requested the Department of Legal Affairs to delete such observation.

The records further reveal that by a memorandum dated 30<sup>th</sup> January, 2015 issued by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, the report in respect of the petitioner was forwarded in which it was observed that *“Return for A. Y. 2010-11 is not available”*.

We have given our thoughtful consideration to the arguments advanced by the learned advocates appearing on behalf of the respective parties with reference to the pleadings and the records. Indisputably, the petitioner’s candidature was not rejected at the threshold in spite of the reasoning given at present before us that the petitioner's income tax return for the assessment year 2010-11 was not available with the authorities. In the petitioner’s application the income tax return for the year 2010-11 and the receipt towards payment of tax and interest of Rs.10,782/- were duly annexed. The said application and the documents annexed thereto were duly scrutinised and the petitioner was called for the interview.

The records further disclose that eight candidates from the main list and two candidates from the wait list were offered appointment in respect of the vacancies under the unreserved category and that the petitioner was placed in the wait list at serial number 3. Out of the candidates who were offered

appointment, one candidate resigned, one candidate refused to join and one candidate could not join since he was not relieved by his parent department. Thus, there are existing vacancies under unreserved category and the same are yet to be filled up.

From the original records produced before us we find that the ACC did not consider the petitioner's claim for appointment since her income tax return record pertaining to the assessment year 2010-2011 was not available with Central Board of Direct Taxes. For such non-availability of record in the office of the authorities, the petitioner cannot suffer. The documents annexed to the writ petition clearly reveal that the petitioner duly filed the income tax return and paid the tax for the year 2010-2011 and such fact could not be disputed by the authorities. Thus, in our opinion, the learned Tribunal arrived at an erroneous finding that the petitioner did not submit the income tax return for the assessment year 2010-2011 and as such the order impugned is not sustainable in law.

For the reasons discussed above, we set aside the impugned order dated 9<sup>th</sup> November, 2016 passed by the learned Tribunal in OA 350/00979/2016 and direct the ACC to consider the petitioner's candidature afresh for appointment to the post of Judicial Member under unreserved category in the Income Tax

Appellate Tribunal in the light of the observations made above and to take a final decision and to communicate the same to the petitioner within a period of six weeks from date.

It is made clear that the petitioner's candidature should not be rejected on the ground that the petitioner's income tax return for the year assessment year 2010-11 is not available as reported by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes.

Till such decision of ACC is communicated to the petitioner and for a week thereafter one post of Judicial Member under unreserved category shall be kept vacant.

With the above observations and directions the writ petition is disposed of.

There shall be no order as to costs.

Urgent certified photocopy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

**(Nishita Mhatre, A.C.J.)**

**(Tapabrata Chakraborty, J.)**