

**THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 08.08.2013

+ **LPA 510/2013**

**BRIDGE AND ROOF COMPANY INDIA LTD.  
EXECUTIVES' ASSOCIATION**

.....Appellant

versus

**UNION OF INDIA AND ORS.**

.....Respondents

AND

+ **LPA 511/2013**

**MUKESH JHA**

.....Appellant

versus

**UNION OF INDIA AND ORS.**

..... Respondents

**Advocates who appeared in this case:**

For the Appellant : Mr Kirti Uppal, Sr. Advocate with Mr Deepak Bhattacharya and Mr Sujeet Kumar Mishra in LPA No.510/2013.  
Mr A.K. Panda, Sr. Advocate with Ms Harman Guliani and Mr Sanjeev Jha in LPA No. 511/2013.

For the Respondent : Mr Rajeev Mehra, ASG with Mr Jatan Singh, Mr Kartikey Mahajan, Mr Soayib Qureshi and Ms Shruti Aggarwal for UOI.  
Mr Ashish Wad and Ms Kavika Bhutani for R-4.

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED, ACTING  
CHIEF JUSTICE**

**HON'BLE MR JUSTICE VIBHU BAKHRU**

## **JUDGMENT**

### **VIBHU BAKHRU, J**

1. These two appeals are directed against the order dated 11.07.2013 passed by a learned Single Judge in the writ petition being W.P.(C) No. 1722/2013. The appellant in LPA 510/2013 is an association of the executives of respondent no. 4 company and the second petitioner in the aforementioned writ petition. The appellant in LPA 511/2013 was the first petitioner in the above referred writ petition. The appellants in the present appeals are hereinafter collectively referred to as the 'appellants' and the appellant in appeal no. 511/2013 is referred to as the 'appellant'. Respondent no. 4 is a subsidiary of Bharat Yantra Nigam limited, a company held by the Government of India. As such respondent no. 4 is a Central Public Sector Enterprise (CPSE) and is hereinafter referred to as the respondent company.

2. The appellants had filed the writ petition, *inter alia*, seeking a direction to the respondents to comply with the Office Memorandum dated 24.07.2007 and dated 17.12.2008 read with Office Memorandum dated 07.08.2012 pertaining to the appointment of Chief Executives and functional Directors in sick/loss making Central Public Sector Enterprises (CPSE). Essentially, the appellants are seeking an extension of the tenure of the appellant as the Chairman-cum-Managing Director of the respondent company till he attains the age of 65 years. The appellants contend that the appellant is entitled to the extension of his service tenure beyond the age of

superannuation on the basis of the policy of the Government to grant extension of tenure to members of the Board of Directors of sick Central Public Sector Enterprises who have contributed to the turnaround of the sick CPSE.

3. The learned single judge held that the appellant had no right to extension of his tenure as sought by the appellants and dismissed the writ petition by an order dated 11.07.2013 which is impugned in the present appeals. As both the appeals are directed against the same order and raise a common issue, they have been taken up together.

4. The facts relevant to consider the controversy in the present appeals are as under:

5. The appellant joined the respondent company on 20.12.1977 on probation as a grade III employee. The appellant was successively promoted over the years and was functioning as a Chief General Manager (Finance & Accounts) of respondent company from 01.01.2004 to 31.03.2005. He was appointed as Director (Finance) of respondent no. 4 company by an order dated 01.04.2005 for a period of 5 years from the date of assumption of charge or till his superannuation. He continued to function as a Director (Finance) till 30.04.2007. The appellant was appointed as the Managing Director of the respondent company by an order dated 01.02.2007 issued by the Government of India. The said order is quoted below: -

### **“ORDER**

In exercise of the powers conferred on him under Article 10 of the Articles of Association of M/s Bridge & Roof Company (India) Limited (B&R), Kolkata, the President is pleased to appoint Shri Mukesh Jha, Director (Finance), B&R as Managing Director, M/s Bridge & Roof Company (India) Limited (B&R), in Schedule 'B' scale of pay of Rs.25750-650-30950/-, for a period of five years from the date of taking charge of the post, on or after 01.05.2007 or till the date of his superannuation or until further orders, whichever is the earliest.

2. The appointment can be terminated by either side by giving three months notice or pay in lieu thereof without assigning any reason. The President, however, reserves the right not to accept Shri Mukesh Jha's resignation if a vigilance case is pending or contemplated against him.

3. The detailed terms and conditions of his appointment will be issued separately in due course."

6. The post of the Managing Director was re-designated as Chairman-cum-Managing Director on 18.07.2007. It is relevant to note that the age of superannuation for Board Members of the respondent company is 60 years. The appellant was born on 09.10.1952 and thus would superannuate on 31.10.2012 (i.e. the last day of the calendar month during which he turned 60). The five year term of the appellant on the post of the Chairman Cum - Managing Director expired on 30.04.2012 i.e. prior to the appellant attaining the age of superannuation. The Appointments Committee of Cabinet (ACC) did not approve any further extension of services of the appellant beyond 30.04.2012 as at the material time, there were two vigilance cases pending and an inquiry with respect to the same was being conducted. The vigilance inquiry continued from 01.05.2012 to 19.09.2012

(for a period of 8 months and 14 days). It is for the reason of the pendency of the inquiry that the appellant was not granted extension of his term beyond 30.04.2012 till his superannuation. Since, the name of the appellant was cleared in September 2012, the appellant was allowed to rejoin services of the respondent company on 19.09.2012 till the date of his superannuation.

7. The services of the appellant were further extended for a period of 4 months and 18 days beyond 31.10.2012 (the date of superannuation) by an order dated 01.11.2012. While, it is contended on behalf of the appellants that this extension was pursuant to the policy of the Government to extend the tenure of employees who had contributed to the turnaround of a sick CPSE, the same is disputed by the respondents. It is asserted by the respondents that the extension of the service of the appellant for the period of 4 months and 18 days beyond 31.10.2012 was solely on account to compensate the appellant for break in service from 01.05.2012 to 19.09.2012, prior to his date of superannuation.

8. It is not disputed that the Public Sector Enterprises Selection Board recommended that the tenure of the appellant be extended beyond 31.10.2012 for a further period of 3 years till 31.10.2015. However, the said proposal was rejected by the Appointments Committee of the Cabinet on 19.02.2013. This proposal was again placed before the competent authority and was rejected in view of the earlier rejection.

9. The appellant has contended that as per the Office Memorandum dated 24.07.2007 issued by respondent no. 1, the appellant is entitled for an

extension of tenure beyond the age of superannuation till he attains the age of 65 years. The relevant extract of the said Office Memorandum on the basis of which the appellant is claiming such entitlement to extension of his tenure is quoted below:-

“2. The Government has considered this matter and the Competent Authority has decided that in the case of sick/loss making CPSEs for which revival plan has been approved by the Government, the following relaxation would be provided:-

(i) In case, any Board level incumbent of such CPSE has contributed exceedingly well in the turn around of that sick CPSE, his tenure may be extended till he attains the age of 65 years. Since, the selection process to a board level post is being initiated by Public Enterprises Selection Board (PESB) one year prior to the due date of superannuation of the incumbent, the proposal for extension of tenure beyond the age of superannuation will have to be initiated at least one year prior to the date of superannuation of the incumbent. In case, the balance period of tenure of incumbent is less than one year at the time of approval of revival package by the Government, such proposal for extension of tenure may be initiated immediately after approval of revival package by the Government. The decision on the extension of tenure beyond the normal retirement age will be taken as per the extant procedure for extension of tenure of Board level executives, i.e. joint appraisal by PESB followed by the approval of the competent authority. Further, such extension would be subject to annual review or the performance of the incumbent to be conducted by Secretary of the concerned administrative Ministry.”

10. The appellant has also relied upon the Office Memorandum dated 07.08.2012 and the same is quoted as under:-

“No 18(11)/2005 OM

Government of India  
Ministry of Heavy Industries & Public Enterprises  
Department of Public Enterprises

Public Enterprises Bhawan,  
Block No.14, CGO Complex,  
Lodi Road, New Delhi-110003

Dated the 7<sup>th</sup> August, 2012

**OFFICE MEMORANDUM**

Sub: Incentive scheme for chief Executives and Functional Director in sick/loss making Central Public Sector Enterprises (CPSEs) under revival package approved by the Government.

The undersigned is directed to refer to this Department's OM of even number dated 24<sup>th</sup> July, 2007 and 17<sup>th</sup> December, 2008 (copies enclosed) on the subject mentioned above.

2. The government had issued the above office orders in order to attract Board level executives capable of turning around sick CPSE's by providing for extension of tenure beyond the age of superannuation till 65 years and a lumpsum incentive upto maximum of Rs.10 lakhs per annum to such board level incumbent of CPSE's including CMD who have contributed to the turnaround of the concerned sick CPSE.

3. It has been brought to the notice of this Department that in many cases the board level incumbents including CMD, who have played an effective role in turning around the sick CPSE have not been given the benefits of the above schemes. Such a position defeats the basic objective behind the introduction of the above schemes and also adversely ....the achievement of turnaround .... included in the revival package of the concerned CPSE's.

4. It has, therefore, been decided to impress upon the concerned administrative Ministries/Department to implement the benefits of achievers' as envisaged vide above referred DPE OM dated 24<sup>th</sup> July, 2007 and 17<sup>th</sup> December, 2008 in turnaround CPSEs to letter and spirit which would be consistent with the Government policy for strengthening and revival of sick CPSE's.

5. All administrative Ministries/Department are required to take necessary action, as applicable, in terms of provisions contained in above referred DPE OM dated 24<sup>th</sup> July, 2007 and 17<sup>th</sup> December, 2008."

Encl:-As above

Sd/-  
(Arun Kumar Sinha)  
Joint Secretary to the Government of India  
Tel: 24360204"

11. The appellants have drawn our attention to various documents on record which indicates that the respondent company has been considered as a CPSE whose performance has been turned around. The appellants have also brought to our notice that respondent company was adjudged as the "best turnaround Central Public Sector Enterprises in India for the year 2011" by respondent no. 1 and the Indian Chamber of Commerce.

12. Mr Rajeev Mehra, learned ASG appearing on behalf of the respondents has disputed the claim of the appellants that respondent company was a sick company during the tenure of service of the appellant as the Managing Director or as Director (Finance) of the respondent company. It is, thus, contended that the Office Memorandum dated 24.07.2007 would not be applicable to the appellant or any other board member of the respondent company.

13. Mr Rajeev Mehra, learned ASG has also drawn our attention to the resolution dated 06.12.2004 which records the decision of the Government to establish a Board for Reconstruction of Public Sector Enterprises for the purposes of making recommendations with regard to revival of Sick Public Sector Enterprises. Paragraph 4(a) of the said Resolution dated 06.12.2004 provides for the criteria under which a Public Sector Undertaking could be considered as being 'sick'. The relevant extract of the Resolution is quoted below:-

“4. Operational Modalities

In the context of the Board's functioning and in making recommendations on revival matters, the Board and the Ministries concerned shall observe the following modalities:-

- (a) All sick CPSEs will be referred to the Board for revival/restructuring. For the purposes of the Board's consideration, company will be considered 'sick' if it has accumulated losses in any financial year equal to 50% or more of its average net worth during four years immediately preceding such financial year and/or a company which is a sick company within the meaning of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA).
- (b) Other loss making CPSEs may be considered by the Board either *suo moto* or upon reference by the administrative Ministry, if it is of the opinion that the revival/restructuring is necessary for checking the incipient sickness (incurring loss for two consecutive years) and making the CPSE, profitable, keeping the industry specific business environment in view.”

14. It is admitted by the parties that the question whether the respondent company was sick has to be determined on the touchstone of the definition of a sick CPSE as contained in the resolution dated 6.12.2004.

15. The learned ASG has handed over a printed copy of the Annual Report of the respondent company for the year 2011-12. The penultimate page of the said report gives the highlights of the financial performance of the respondent company for a period of 10 years commencing from the year 2002-03 to 2011-12. The data provided in the Annual Report indicates that respondent company has declared a profit before tax in each of the 10 years commencing 2002-03 to 2011-12. In response to the same, the appellants have contended that the respondent company had made a profit in all the years commencing 2002-03 except in the financial year 2004-05 during which the respondent company had suffered an operating loss. Whilst, the final accounts of the respondent company disclose a profit before tax of ₹148.62 lakhs for that year, it is contended that the profit has arisen only on account of waiver of interest of ₹31.31 crores by the Government. It is further asserted that the Government had waived the interest due from the respondent company as a part of a revival package to improve the performance of the respondent company. It is contended that in the event such interest had not been waived, respondent company would have declared a loss of over ₹30 crores .

16. It is further contended by the appellants that the respondent company showed remarkable improvement in its performance in the year 2005-06 and declared a profit before tax of ₹310.80lakhs. The appellant had been appointed as Director (Finance) with effect from 01.04.2005 and it is

contended that since this was a Board level appointment, the appellant would be entitled to the benefit of the Office Memorandum dated 24.07.2007.

17. The contention that the respondent company had made a loss in the financial year ended 31.3.2005 has been contested by the respondents and it has been pointed out that the profit and loss account of the respondent company does not disclose a loss. Without prejudice to the contention that the respondent company did not make a loss in the year 2004-05, it is submitted on behalf of the respondents that the appellant was appointed to the post of the Managing Director (subsequently re-designated as Chairman cum Managing Director) on 1.5.2007 and as the appellant is seeking extension of his tenure on this post, the benefit of any turnaround in the performance of the respondent company during the period prior to the appointment of the appellant as a managing director would not entitle the appellant to claim benefit of the OM dated 24.07.2007.

18. The counsel for the appellants has argued that the decision of the respondents in not granting extension of tenure to the appellant is arbitrary and violates Article 14 of the Constitution of India. It is submitted that even though Public Sector Enterprises Selection Board recommended the case of the appellant for grant of extension of his tenure, the same has been rejected without communicating any reasons and without following principles of natural justice. It is, thus, contended that the decision making process is flawed. In support of this contention the counsel for the respondents has placed reliance on the decisions of the Supreme Court in the cases of **Ravi Yashwant Bhoir v District Collector, Raigad & Ors.**:

(2012) 4 SCC 407, Centre for PIL & Anr.v Union of India & Anr.: (2011) 4 SCC 1 and State of Punjab v Salil Sabhlok and Ors.: (2013) 5 SCC 1.

19. We have heard the learned counsel for the parties.

20. The principal question for consideration is whether the Office Memorandum dated 24.07.2007 confers a right on the appellant for extension of his tenure till the age of 65 years. It is also necessary to consider whether principles of natural justice have been violated and whether the decision of the respondent not to extend the tenure of the appellant violates Article 14 of the Constitution of India.

21. Admittedly, a CPSE would be considered as a sick CPSE only if it fell within the ambit of the resolution dated 06.12.2004 i.e. the accumulated losses of the CPSE in any financial year were 50% or more of the average net worth during the preceding four years or the CPSE is a sick company under Sick Industrial Companies (Special Provisions) Act, 1985. As per Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985, a company would be considered a sick company if its accumulated losses exceed the net worth of the company. In the present case, the respondent company has been a profit making company since past several years. The final accounts of the respondent company disclose that the respondent company has declared a profit in each year atleast since 1994-95. The net worth of the company has also been positive in all of the preceding 16 years. Under the circumstances, the respondent company could not be considered as a sick CPSE and thus, the benefit of the Office Memorandum dated 24.07.2007 would not be available to the appellant.

22. It is also important to note that a turnaround or revival of a sick CPSE does not by itself vest with the members of its Board of Directors, a right for extension in their tenure of service. The second criteria that must be satisfied in order to avail the benefit of the Office Memorandum dated 24.07.2007 is that the incumbent should have “contributed exceedingly well in the turnaround of that sick CPSE”. It is clear from the language of the Office Memorandum dated 24.07.2007 that the object of the policy is to provide incentive to the employees, in the top management of the company, to contribute to the turnaround of the sick CPSE. The contribution of the employee in aiding the turnaround of the sick CPSE would have to be evaluated.

23. In the present case, even if it is assumed that the respondent company made an operating loss in the year 2004-05, it is apparent that the said loss was made up by the Government by waiving Rs. 31.91 crores of interest due from the respondent company. The respondent company has otherwise, admittedly been a profit making company in the years prior to year 2004-05 as well as thereafter. In the given circumstance, we are unable to accept that the respondent company was a sick company as per resolution dated 06.12.2004 and consequently, the benefit of the O.M. dated 24.07.2007 would not be available to the appellant.

24. Another aspect which is relevant is that the appellant was not a member of the Board during the year 2004-05. He was appointed as a Managing Director of respondent company on 01.05.2007. Admittedly, the respondent company has not been a sick company during the tenure of the appellant as its managing director. Even if we accept the contention that the

benefit of the Office Memorandum dated 24.07.2007 is liable to be extended to an employee from the date he joins the Board of a company, the appellant cannot claim any benefit since he was appointed as the Director (Finance) on 01.04.2005 after the close of the financial year 2004-05, the Annual report of which indicates that the respondent company had made a profit after accounting for the waiver of interest of ₹31.91 crores.

25. The learned Single Judge has also observed the fact that the Office Memorandum dated 24.07.2007 uses the word 'may' and not 'shall' and thus, confers discretion on the respondents whether to extend the tenure of service of an employee or not.

26. The learned Single Judge also came to the conclusion that there is no factual basis to indicate that respondent company was a sick company and has held as under:-

“However, when one goes through the averments made in the writ petition, one does not find any factual basis whatsoever laid out as to how this para 4(a) with its sub parts are complied with for the respondent No. 4-company to become a sick company in terms of this para 4(a) and how accordingly petitioner No. 1 can take benefit. In any case, I have already referred to the fact that the circular dated 24.7.2007 only requires the appointment as a discretionary measure because the word used is “may” and not “shall”. There is therefore no legal or contractual right for the petitioner No.1 for being continued as CMD for 65 years.

8. In view of the aforesaid discussion, I am of the opinion that petitioner No.1 has no legal entitlement to continue as a CMD of the respondent No.4-company upto the age of 65 years. Accordingly, I do not find any merit in the writ petition

which is accordingly dismissed, leaving the parties to bear their own costs.....”

27. We do not find any error in the order passed by the learned Single Judge. The respondent company cannot be considered sick under paragraph 4 of the Resolution dated 6.12.2004. The contention that the respondent company had incurred operating losses in the financial year 2004-2005 also does not assist the appellant in claiming extension of his term as a Chairman-Cum Managing Director of the respondent company for the following reasons:

- (a) Incurring an operating loss during the financial year ended 31.3.2005 does not result in the respondent company being considered as a sick CPSE for the said year as the final accounts of the respondent company as on 31.3.2005 disclose that the respondent company made a profit during the said year; and
- (b) The appellant was not holding this post at the material time. The appellant cannot seek an extension on the post of Chairman-Cum-Managing Director on the basis of his tenure as Director (Finance). Moreover, the appellant was appointed as the Director (Finance) of the respondent company on 1.4.2005 and, admittedly, the respondent company has not made any loss in that year (i.e. 2005-06).

28. The learned ASG has produced the relevant file for our perusal. The case of the appellant for extension of tenure was duly considered and as it

was found that the respondent company was not a loss making company and the tenure of the appellant could not be extended.

29. The contention that the decision of the respondent is vitiated for non observance of the principles of natural justice and it was necessary for the respondent to communicate the reasons for non-extension of his tenure to the appellant or to grant him a hearing is, in our view, erroneous. A distinction must be drawn between a judicial, quasi-judicial and an administrative action which adversely affect the legal rights of a person and a purely administrative decision which is taken in the normal course of functioning of a Government company. Whereas, it may be necessary to adhere to the rules of natural justice by a decision maker where the nature of function itself necessitates that the decision maker acts judicially, no such requirement exists in cases where the decision is purely administrative. The decision, whether to grant extension of tenure or not is a purely administrative decision.

30. In the case of **State of U.P. and Anr. V. Girish Behari and Ors. :** (1997) 4 SCC 362, the respondent was member of Indian Police Service and was to superannuate on 31.03.1996. In that case, Governor of Uttar Pradesh passed an order on 20.03.1996 for extension of service of the respondent for a period of six months from the date of his retirement. The said order granting extension was cancelled by another order passed by the Governor on 23.03.1996 without affording any opportunity to the respondent for being heard. The Supreme Court while considering the challenge to the order dated 23.03.1996 held as under:

“....Till the order came into force, as correctly observed by the Tribunal, no vested right could have arisen. If the order of extension did not create any right, the cancellation order could not have withdrawn any such right. Hence the question of right to hearing did not arise and we seen no violation of the rules of natural justice.”

31. The decision not to extend the term of the appellant cannot be stated to be in derogation of any vested rights of the appellant. The nature of this decision is purely administrative which does not affect any rights of the appellant and thus, does not warrant that a hearing be granted or principles of natural justice be observed. It is settled law that the elaborate principles of natural justice need not be observed while taking any administrative actions and the administrative authority has only to act fairly. We do not find the decision of the respondents to be unfair in any manner.

32. The reliance placed by the appellants on the decisions of the Supreme Court in the cases of **Ravi Yashwant Bhoir** (*supra*), **Centre for PIL** (*supra*) and **Salil Sabhlok** (*supra*) are also misplaced. In the case of **Ravi Yashwant Bhoir** (*supra*), the Supreme Court was considering a case where the Chief Minister of Maharashtra had disqualified the President of a Municipal Council under the Maharashtra Municipal Council, Nagar Panchayats and Industrial Townships Act, 1965. There were several charges leveled against the appellant therein and a chargesheet was served on the appellant. The appellant submitted his explanation and a notice of hearing was issued to him. The appellant was held guilty of charges and was removed from his post. The appellant challenged his removal by way of a writ petition on, *inter alia*, the ground that the order of dismissal

violated the principles of natural justice. The writ petition was dismissed and the appellant carried the matter to the Supreme Court. It is, in this context that the Supreme Court held that a speaking order, to dispose of the contentions of the appellant, was required to be passed. The case before the Supreme Court was of a punitive action being taken against a person under a statute. The decision was clearly a quasi-judicial and the nature of proceedings required that principles of natural justice be observed. This decision has no application to the facts of the present case where no punitive measures are being contemplated against an employee. In the present case, there is no vested right of the appellant which is affected as his term of employment has come to an end by efflux of time. The competent authority has to only consider whether the term of the appellant should be extended beyond the date of superannuation or not as per its policy. The decisions in the cases of *Centre for PIL* (*supra*) and *Sahil Sabhlok* (*supra*) relate to the factors that are relevant for consideration before recommending and appointing functionaries on certain posts and are equally inapplicable to the facts of the present case.

33. We, accordingly, dismiss the present appeals. The parties are left to bear their own costs.

**VIBHU BAKHRU, J**

**BADAR DURREZ AHMED, ACJ**

**AUGUST 8, 2013**  
**RK**