

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

% Judgment delivered on: 22.01.2014

+ W.P.(C) 480/2014 and CM No.944/2014 (for interim relief)

ASHOK KUMAR JHAMB

..... PETITIONER

VERSUS

UNION OF INDIA & ORS

..... RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. Vineet Bhagat and Mr. Tarveen Singh Nanda,
Advocates

For the Respondents: Mr. B.V. Niren, CGSC and Ms. H. Hnunpuii,
Advocate for R-1

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The petitioner has filed the present writ petition to claim broadly the following reliefs :

(i). Direct Ministry of Water Resources (MOWR) / PESB / NPCC to extend his services or the date of retirement upto the age of 65 years.

(ii). Release a sum of Rs.5.40 Lakhs as arrears towards incentives

(iii). Costs by way of compensation for discontinuing his services on malafide grounds.

2. It is claimed by the petitioner that he has been responsible for turning around respondent no.4 i.e., National Projects Construction Corporation Ltd. (NPCC). It is the case of the petitioner that the said respondent which was in red i.e., making loss in the year 2007-2008 when the petitioner joined the

said organization as Director (Engineer) got turned around in 2009-2010, that is, within three years of his joining the organisation. It is also the case of the petitioner that the position improved between the financial year 2009-2010 and 2012-2013. The figures in that regard have been set out in paragraph 11 of the petition.

2.1 On the counsel for the petitioner being queried (and incidently the petitioner is also present in court), it has been indicated, as on today, respondent no.4 has registered a loss of Rs.47 Crores. The learned counsel for the petitioner has drawn my attention to page 92 of the paper book to contend that on 31.10.2013 respondent no.4 i.e., NPCC was conferred with : “Turnaround CPSE Award 2013”.

2.2 It is, however, conceded by the learned counsel for the petitioner that on an application dated 31.10.2013 being moved under the Right to Information Act, 2005 (in short RTI Act), a reply was received from the concerned Ministry i.e., MOWR dated 10.12.2013, wherein it was indicated that respondent no.4 i.e., NPCC had not been declared a turnaround entity, and that, it still figured in the list of sick companies. The reply went on to say that the information in respect of Public Sector Undertaking Section of that Ministry, be treated as Nil.

2.3 The record would show that the then Secretary in the MOWR, Mr. D.V. Singh had approved, the proposal dated 09.01.2013 put before him, for extension to be granted to the petitioner.

2.4 It is the contention of the petitioner that the concerned Minister did not take a decision in that behalf for a period of 45 days.

2.5 Notwithstanding the above, it is not disputed that on 28.02.2013 after the new incumbent, one Mr. S.K. Sarkar, took charge as Secretary, MOWR, the recommendation for extension of tenure was reversed.

2.6 What is not disputed before me is that the petitioner superannuated in the usual course on 31.03.2013.

3. The learned counsel for the petitioner in support of his submission that there was a legally enforceable right relied upon the guidelines appended at page 57 of the paper book. The relevant portion of the said guidelines is extracted hereinbelow :-

“..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 of the performance of the

incumbent to be conducted by Secretary of the concerned administrative Ministry.

(i). [sic (ii)] Where fresh appointment of the Chief Executive or any Functional Director is proposed and if the PESB procedure of circulation of vacancy does not ultimately lead to a panel for consideration by the competent authority, then relaxation of cut-off age for applying, to 62 years, with minimum tenure of 3 years, could be considered. In such cases, serving / retired CPSE executives, Government servants and private sector executives could be considered.

(ii). [sic (iii)] Chief Executives and Functional Directors of these CPSEs would be considered for a lump sum incentive up to maximum of Rs.10 Lakh out of the profits of the CPSE besides usual pay, allowances and perks attached to the post. The detailed guidelines in this regard would be issued separately..”

(emphasis is mine)

3.1 Based on the aforesaid, the learned counsel for the petitioner has argued that, not only is the petitioner entitled to extension of tenure as a matter of right but also would have a claim vis-a-vis incentives, which is the other relief sought for in the writ petition. The learned counsel for the petitioner says that entitlement to the incentives, in the sum of Rs.5.40 Lakhs, is not dependent on whether or not the petitioner is granted extension of tenure.

3.2 As against this, Mr. Niren, who appears on advance notice on behalf of respondent no.1 says that there is no right of an automatic extension. According to him much was dependent on the evaluation of the performance in terms of the guidelines. Mr. Niren submitted that facts would demonstrate that the proposal for extension of tenure was not carried forward after 28.02.2013 by MOWR.

3.3 At this stage, the learned counsel for the petitioner interrupted to submit that the argument of the counsel for respondent no.1 was that it is only the department, which is to grant the extension. I have put this query to Mr. Niren. Mr. Niren says that it is the Ministry which is required to put forth the proposal for grant of extension of tenure.

3.4 Continuing with the narrative in so far as the relief of compensation is concerned, Mr. Niren says that these are aspects which the concerned authority would have to examine and take a view in the matter.

4. Having heard the learned counsel for the parties, I am of the opinion that the relief of extension of tenure upto the age of 65 years as sought by the petitioner, cannot be granted. The reason for this is, two-fold. Firstly, the cause of action, if any, arose on 28.02.2013. As a matter of fact, the petitioner had made a representation, which did not bear fruit. The petitioner should have approached the court before the date of superannuation or at least in close proximity. Though, the counsel for the petitioner has said, that there are other cases in which extensions have been given after superannuation, in my view this circumstance by itself would not confer any enforceable right in favour of the petitioner.

4.1 The second reason for denying this relief, is that, the said relief is pivoted on the guidelines framed in that behalf. A bare perusal of the guidelines, which have been extracted by me hereinabove, would show that proposal for extension has to be initiated by the Government which, as per the business allocation rules would be, the task of MOWR. The proposal is then put forth for appraisal before joint Public Enterprises Selection Board (PESB) before, it is approved by the competent authority.

4.2 As indicated above, though in the first instance Mr. D.V. Singh, the then Secretary initiated a proposal for extension of tenure of the petitioner, the next incumbent reviewed the proposal. The question is : was the review or reversal of the earlier decision legally tenable. In my opinion it was; as matter of law, completely within the jurisdiction of the executive to reverse its view in the matter. Unlike judicial decisions, administrative decisions can be reviewed. [see *R.R. Verma and Ors. Vs. Union of India and Ors., (1980) 3 SCC 402*].

4.3 There is then another aspect, which is, the absence of any legally enforceable right in favour of the petitioner. The petitioner's case was at the threshold stage of initiation of proposal for extension of tenure. It had admittedly not reached the stage of appraisal.

4.4 The petitioner claims a right under a guideline, which I doubt has any statutory force. Assuming it vests any right, that right, has to be examined in the light of the language used. The guideline itself uses the expression “*may be*”, which to my mind qualifies the provision for extension of tenure; turning it from an absolute right to that which is dependent on various parameters including the decision of the initiating Ministry. In somewhat similar circumstances, this court declined relief of extension of tenure to a Board level employee in a Public Sector Undertaking. [see judgment of a Single Judge of this court passed in WP(C) 1722/2013 dated 11.07.2013 titled *Sh. Mukesh Jha and Anr. Vs. Union of India and Ors.* This judgment was sustained by the Division Bench in LPA Nos.510/2013 and 511/2013 dated 08.08.2013 titled *Bridge and Roof Company India Ltd. Executives' Association Vs. Union of India and Ors.* and *Mukesh Jha Vs. Union of India and Ors.*, respectively. The Special Leave Petition i.e., SLP (C) No.29635/2013 titled *Bridge and Roof Company (India) Ltd. Vs. UOI*

and Ors., filed against the said judgment was dismissed in limine vide order dated 04.10.2013].

4.5 The above apart, malafides alleged against Mr. S.K. Sarkar; are vague. He is as a matter of fact not a party to the present proceedings. Apart from the averment made that, the review was carried out in three weeks, without inputs; there is no third allegation.

4.6 Even if one were to assume that these averments could form a basis for a plea of malafides, the petitioner for reasons best known to him has neither impleaded Mr. S.K. Sarkar nor the Minister of the day as a party to the proceedings.

4.7 The fact of the matter remains that though the petitioner superannuated on 31.03.2013, he has taken over nine (9) months to approach this court. In these circumstances, I am not inclined to entertain the plea of extension of tenure.

4.8 In so far as the relief of grant of incentives is concerned, I am inclined to direct the respondents herein to consider the same based on the assertions made in the present writ petition, in order to expedite the process. A decision in that behalf will be taken within six weeks from today. The decision will be communicated to the petitioner in writing. In case the petitioner is aggrieved, he would have liberty to take recourse to an appropriate remedy; albeit in accordance with law.

4.9 That brings me to the next relief whereby costs by way of compensation are sought. The petitioner claims this relief on the ground that his services were discontinued for malafide reasons. This relief cannot be granted for more than one reason. First, there is no quantification. Second, it would require parties to lead evidence. Third, concerned persons are not

impleaded. As indicated above, in the present writ petition, the individuals against whom malafides are alleged have not been impleaded as a party. As a matter of fact, charges of malafides have to be answered by the person against whom such a charge is laid. The writ action is inchoate to that extent and hence not tenable.

5. That brings me to the last relief sought by the petitioner, which is, that a writ of mandamus or any other writ be issued to the respondents to cease and desist from adopting discriminatory treatment qua the petitioner. This is not a relief; this is really, an averment or at best a ground to impugn the action of the respondents. Whether or not the petitioner is discriminated would form, I would think, the basis of an action; which the petitioner has filed. The fact that other appointees at Board-level in Central Public Sector Undertakings (CPSUs) have been granted extension of tenure, while the petitioner has not been bestowed with the same benefit, cannot form the basis of relief in this petition unless the petitioner is able to demonstrate subsistence of a legally enforceable right.

6. With the aforesaid directions in place, the captioned petition and the pending application are disposed of.

RAJIV SHAKDHER, J

JANUARY 22, 2014

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