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

Date of Decision: December 08, 2015

+ **W.P.(C) 10869/2006**

G.P.ROY Petitioner

Through: Mr. Satish Kumar Tripathi,
Advocate

versus

UOI &ORS.Respondents

Through: Mr. Ruchir Mishra, Mr. Mukesh
Kumar Tiwari and Mr. Ramneek
Mishra, Advocates for
Respondents No.1 and 2
Nemo for Respondent No.3
Mr. Debajyoti Behuria, Advocate
for Respondent No.4

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

CM APPLN.10986/2012

It terms of order of 27th September, 2013, this application stands
disposed of.

W.P.(C) 10869/2006 & CM APPLN.19150/2015

Appointment of respondent No.3 as Chairman and Managing
Director (CMD) of respondent No.4-*Hoogly Dock & Port Engineers Ltd.*
(hereinafter referred to as HDPEL) vide order of 3rd July, 2006 is
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assailed in this petition on the ground that it is in violation of relevant Rules and Regulations. Petitioner seeks quashing of the impugned order of 3rd July 2006 and claims that he be considered for the said post on notional basis as he has now retired and so, petitioner claims the pay and allowances of CMD of *HDPEL* (respondent No.4). Petitioner claims retiral benefits while relying upon RTI information of 7th October, 2015 which shows that the retiral benefits have not been paid to petitioner on or after 31st July, 2010.

At the hearing, learned counsel for petitioner had submitted that petitioner was on deputation with the *Board for Industrial and Financial Reconstruction (hereinafter referred to as BIFR)*, but the retiral benefits were to be paid by *HDPEL* (respondent No.4) in July, 2010. Petitioner was on deputation when he had retired in the year 2010 and respondent No.3, who was appointed in the post of CMD with *HDPEL* (respondent No.4), had resigned in September/October, 2010. Despite service of court notice, none appeared on behalf of third respondent.

It was pointed out by learned counsel for petitioner that in pursuance to the Advertisement of 11th December, 2005, petitioner was recommended for appointment on the post of CMD of *HDPEL* (respondent No.4) vide Communication of 20th February, 2006 and in the order of preference, name of petitioner was at No.1 and of third respondent at No.2.

It was pointed out that on 7th March, 2006, a complaint was made by the General Secretary of *INTUC* regarding manipulation of candidature to the post of CMD in *HDPEL* (respondent No.4) and it was alleged that petitioner was not Additional General Manager when he had

applied for the post of CMD.

Attention of this Court was also drawn to Communication of 2nd June, 2006 (*Annexure R-8*) of the *Central Vigilance Commission* (*hereinafter referred to as CVC*) to point out that on the basis of frivolous complaint of 14th April, 2006 (*Annexure R-7*), initiation of major penalty proceedings was advised by the CVC in contravention of the Office Order of 31st August, 2004, which prescribes a time limit for investigation of complaint and in the said Office Order, it is clearly stipulated that no cognizance should be taken of any complaint which is received six months prior to the initiation of selection process for senior posts.

It was pointed out that in view of the aforesaid Office Order, initiation of departmental proceedings against petitioner was ordered to be kept in abeyance in July, 2006 vide Office Memorandum of 3rd July, 2006 (*Annexure P-14*).

During the course of hearing, it was pointed out by learned counsel for petitioner that as per Office Memorandum of 3rd April, 2001 (*Annexure P-4*), if the Ministry/Department concerned decides to deviate from the recommendation made by respondent No.2, then such case has to be submitted to *Appointments Committee of the Cabinet* (*hereinafter referred to as ACC*) for approval and no such approval was taken. Thus, it was submitted that petitioner has been illegally ignored for the appointment to the post of CMD in *HDPEL* (respondent No.4) by respondent No.1 despite the recommendation made by respondent No.2 and so, the appointment of third respondent to the post of CMD has been illegally made and thus, the impugned order deserves to be quashed.

Learned counsel for respondents No.1 and 2 supported the
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impugned order and had drawn the attention of this Court to the counter affidavit filed by respondent No.1 to point out that petitioner had misrepresented that he was holding the post of Additional General Manager with *HDPEL* (respondent No.4) from the year 1990 to 1997 whereas he was holding the post of Deputy General Manager in the pay scale of ₹5500-6870/- whereas the pay scale of Additional General Manager was ₹7500-9900/-. It was pointed out that officers, who were in the pay scale of ₹7500-9900/- were alone eligible for being considered for the post of CMD in *HDPEL* (respondent No.4). Learned counsel for respondents No.1 and 2 had drawn the attention of this Court to petitioner's pay slip of January, 1997 (*Annexure R-7 colly.*) to point out that it is evident from this pay slip that petitioner was working as Deputy General Manager (Commercial) with *HDPEL* (respondent No.4) on the basic pay of ₹6600/- and this falsifies the stand taken by petitioner in his Bio-data of having worked from the year 1990 to 1997 as Additional General Manager in *HDPEL* (respondent No.4).

It was vehemently submitted that there was no violation of Office Memorandum of 3rd April, 2001 requiring approval of the ACC as there was no pick and choose amongst the panel prepared and petitioner could not be appointed to the post of CMD in *HDPEL* (respondent No.4) because of the concealment made by him regarding his eligibility and because of denial of CVC clearance on 13th June, 2006 (*Annexure R-9*). It was pointed out that respondent No.3 being the next recommendee, was rightly appointed as he had the requisite vigilance clearance. Thus, the dismissal of the writ petition is sought.

In rebuttal, learned counsel for petitioner submitted that petitioner was given *proforma* promotion and to assert so, attention of this Court was drawn to *HDPEL's* (respondent No.4) Communication of 7th January, 2004 (*Annexure P-2*). Thus, it was submitted that petitioner was very much eligible for the appointment to the post of CMD in *HDPEL* (respondent No.4) and he has been illegally ignored for extraneous reasons.

To explain the assertion in the Bio-data (*Annexure R-2 colly.*) of petitioner working as Additional General Manager with *HDPEL* (respondent No.4) from the year 1990 to 1997 in the pay scale of ₹7500-9600/-, attention of this Court was drawn to the rejoinder to assert that while conveying the designation at all places, petitioner had given his present designation. Thus, it is submitted that there is no substance in the stand taken by respondents and since petitioner has been illegally ignored for being appointed as CMD, therefore, impugned order had to be quashed with consequential benefits to petitioner.

After having heard both the sides at length and on perusal of the impugned order, the material on record, I find that in the Office Order of 18th July, 2002 (*attached to the counter-affidavit by first respondent*) petitioner is referred to as Deputy General Manager (Commercial) in *HDPEL* (respondent No.4) and vide this order, petitioner was sent on deputation as Deputy Director in BIFR. This document conclusively shows that in July, 2002, petitioner was Deputy General Manager in *HDPEL* (respondent No.4) whereas his Bio-data (*Annexure R-2 colly.*) to the counter-affidavit filed by first respondent, petitioner has claimed that

he had worked as Additional General Manager with HDPEL (respondent No.4) from the year 1990 to January, 1997 on the pay scale of ₹7500-6600/-. No doubt, petitioner had been recommended for being appointed as CMD in February, 2006 by second respondent but the Communication of 13th June, 2006 (*Annexure R-9 to the counter affidavit filed by first respondent*) from CVC clearly shows that vigilance clearance was not accorded to the candidature of petitioner and initiation of major penalty proceedings was advised on account of aforesaid concealment of facts. It is evident from the Advertisement of first respondent that the essential requirement was that the candidate ought to be in the pay scale of ₹7500-9900/-. The Communication of 7th January, 2004 (*Annexure P-2*) by HDPEL (respondent No.4) indicates that *proforma* promotion on the post of Additional General Manager was offered to petitioner provided he joins back in HDPEL (respondent No.4). Undisputedly, petitioner had retired from BIFR and in January, 2004, he was with BIFR only. Thus, it is evident that petitioner was in the pay scale of Deputy General Manager whereas he had projected himself to be in the pay scale of Additional General Manager. Pertinently, essential requirement for being considered for the post of CMD was that a candidate must be in the pay scale of Additional General Manager.

Taking into consideration the afore-referred concealment on the part of petitioner, I find that petitioner cannot claim any benefit by relying upon the time limit of investigation as provided by Office Order of 31st August, 2004. For the reasons best known, initiation of major penalty proceedings on the charge of petitioner having disproportionate

assets was kept in abeyance and the fate of those proceedings is not known but that by itself would not have any bearing on the relief claimed because petitioner cannot get away by asserting in the rejoinder that while conveying his designation at all places, petitioner had given his present designation.

Pertinently, it is not disclosed in this petition in so many words that pay scale of petitioner at the relevant time was as required in the Advertisement. Undisputedly, the recommendation made by second respondent was subject to CVC clearance. Since CVC clearance had not been rightly accorded in the case of petitioner, therefore, petitioner cannot legitimately assail the impugned order vide which respondent No.3 was selected as CMD in *HDPEL* (respondent No.4).

In the considered opinion of this Court, there was no occasion to have obtained the approval of ACC because no choice of selection out of the panel recommended by second respondent was made by first respondent. Due to the ineligibility of petitioner, he was rightly excluded and third respondent was duly appointed as CMD in *HDPEL* (respondent No.4).

In view of the aforesaid, I do not find any merit in the stand taken by petitioner. Finding no palpable error in the impugned order, this petition is dismissed with the rider that petitioner's claim for retiral benefits on the basis of last drawn pay be considered by fourth respondent while treating C.M. 19150/2015 as a Representation and it be decided by respondent No.4 by passing a speaking order within a period of six weeks and the fate of the Representation be made known to petitioner within a week thereafter, so that petitioner may avail of remedy as available in

law, if need be.

With aforesaid directions, this petition and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

DECEMBER 08, 2015

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