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

+ W.P.(C) 3052/2014

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16th April, 2015

SUNIR KHURANA

..... Petitioner

Through: Mr. M. Ravi and Mr. S. Aravindh,
Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjeev Narula, CGSC and Mr.
Ajay Kalra, Advocates for R-1 to 3
Mr. M.M. Sudan, Advocate for
Respondent No. 5

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks relief of extension of his tenure at the post of Director (Marketing) of the respondent no. 4 i.e MMTC Limited. The extension which is denied to him is in terms of the decision of the Appointments Committee of the Cabinet (ACC) dated 31.12.2013 and communicated to the petitioner by the communication dated 06.01.2014. These communications are prayed to be set aside by this writ petition.

2. There was an earlier litigation between the parties to this case, and the said earlier writ petition bearing W.P.(C) No. 7885/2012 was disposed of in terms of the order dated 23.07.2013 directing the Appointments Committee of the Cabinet (ACC) to take a decision on the appointment/continuation of the tenure of the petitioner to the post of Director (Marketing). This order dated 23.07.2013 reads as under:-

“1. In the present writ petition, petitioner seeks extension of tenure as a Director (Marketing) of respondent no.1/M.M.T.C. Ltd. There is no automatic right of appointment and the right is only of consideration of appointment in accordance with the relevant guidelines/circulars/notifications.

2. The case of the petitioner was that he was denied extension because of CVC advice which refers to the censure order against the petitioner. Today, however, the counsel for respondent no.2 has placed before me a letter dated 22.7.2013 issued by the Ministry of Commerce & Industry, Department of Commerce, alongwith which the order of the Disciplinary Authority dated 22.7.2013 is annexed, and which order states that the Disciplinary Authority has decided to drop the charge and to close the disciplinary proceedings against the petitioner- Sh. Sunir Khurana, Director (Marketing) (now Ex-Director) of respondent no.1/MMTC Ltd.

3. In view of the above, since the petitioner was not considered for extension of tenure on the ground that there was an order of the Disciplinary Authority against the petitioner, and today however, the decision is that the disciplinary proceedings have been dropped, petitioner will be entitled to be considered as Director (Marketing),

of course, in accordance with the applicable guidelines/circulars/notifications, and also keeping in mind that it is employer's decision finally to decide as to whether or not to give extension of tenure. I clarify that I am not exercising any power of directing appointment and which power only vests with the Cabinet Committee of Appointments.

4. In view of the above, the writ petition is disposed of with the direction that the appropriate authorities will now act pursuant to the order of the Disciplinary Authority dated 22.7.2013 whereby the charge against the petitioner is dropped. Petitioner will now make a detailed representation to the appropriate authorities within a period of two weeks from today. On such representation being made, the appropriate authorities will thereafter within a period of two months, take appropriate decision as to whether or not the petitioner's tenure has or has not to be extended. Parties are left to bear their own costs. All pending applications stand disposed of.”

(underlining added)

3. A reading of para 3 of the aforesaid order shows that it clearly states that it is the ACC which has to finally decide as to whether or not to give extension of tenure, and that this Court was not exercising any powers with respect to giving directions for appointment of the petitioner, and which powers are to be exercised only by the ACC.

4. By para 4 of this order, this Court directed that the ACC should now take a decision within a period of 2 months, as to whether or not the petitioner's tenure has or has not to be extended i.e only that the petitioner's

case was to be considered.

5. Therefore, it is clear that this Court is not the employer and this Court ordinarily does not decide as to whether or not to continue the employment of petitioner with respondent no. 4. A decision of the ACC can be challenged if the same is *ex-facie* in violation of any directions or circulars or the guidelines which mandates that a particular person must be continued at his post in a public sector undertaking. In the present case, the petitioner has not even pleaded what are the reasons given by the ACC, and therefore, there does not arise any issue of quashing of the reasons given for arriving at the decision. In fact, the writ petition does not even state that petitioner has asked for the reasons given by the ACC to be given to him, and in my opinion, the averments made in para 15 of the writ petition which are sought to be relied by the petitioner, do not in any manner show a pleading that petitioner asked for the reasons given by the ACC to decline the extension of the tenure, but that in spite of the asking, the reasons were not furnished to him.

6. In view of the above, since the ACC has decided that the petitioner is not to be given extension of tenure, and there is no challenge to the reasons given by the ACC, and in fact the reasons of the ACC are not even with the

petitioner for challenging the same as arbitrary, accordingly, this Court cannot interfere with the decision of the ACC which has decided not to extend the tenure of the petitioner to the post of Director (Marketing) of the respondent no.4-MMTC Limited.

7. Dismissed.

VALMIKI J. MEHTA, J

APRIL 16, 2015
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