

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

% *Date of decision : July 17, 2015*

+ **LPA 448/2015**

SUNIR KHURANA Appellant

Represented by: Mr.M.Ravi and Mr.Harish
K.Bishnoi, Advocates.

versus

APPOINTMENTS COMMITTEE OF THE
CABINET REPRESENTED BY CABINET
SECRETARY AND ORS

..... Respondents

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM No.12399/2015 (Exemption)

Allowed, subject to all just exceptions.

CM No.12398/2015 (Delay in filing)

1. For the reasons stated in the application 37 days delay in filing the appeal is condoned.
2. Application is disposed of.

LPA 448/2015

1. The Appellant initially appointed as Assistant Divisional Manager with MMTC Ltd.in the year 1980 and rose to the post of Chief General Manager in the same organisation in the year 2005. He was selected for appointment as Director (Marketing) in MMTC Ltd.for an initial tenure for five years extendable for further period, till he attains the age of

superannuation vide the appointment letter dated May 07, 2007. He was also permitted to retain lien on his previous post of Chief General Manager for a period of five years co-terminus with his initial tenure as Director (Marketing).

2. On the completion of tenure as Director (Marketing) on May 06, 2012 his case for regular extension was processed as per the guidelines which *inter alia* provided that the incumbent Director needs to secure more than fixed benchmark score in his Special Performance Rating (SPR) to render himself eligible for regular extension without requiring a joint appraisal of Public Enterprise Selection Board (PESB). However, since major penalty proceedings were pending against the Appellant the extension of the Appellant to the post of Director (Marketing) was granted for two spells of three months each subject to approval by ACC upto November 06, 2012. On the basis of inputs which the Appellant claims to be wrongly made declaring that minor penalty has been imposed and without verifying those facts the ACC vide its order dated September 04, 2012 rejected the Ministry's proposal for approval of regular extension of Petitioner's tenure as Director (Marketing).

3. Aggrieved by the said order the Appellant filed a writ petition being W.P.(C) No.7885/2012 wherein this Court vide order dated July 23, 2013 noted that the disciplinary proceedings had already been dropped against the Appellant and thus he was entitled to be considered as Director (Marketing) of course, in accordance with the applicable guidelines/circulars/notifications, and also keeping in mind that employer's decision is final as to whether or not to give extension of tenure. The Court clarified that it was not exercising any power of directing appointment which power only vested

with Cabinet Committee of Appointments only. The writ petition was disposed of directing the Appellant to make a detailed representation within a period of two weeks and the authorities to consider the same within a period of two months.

4. Pursuant to the order of this Court July 23, 2013 the Search and Selection Committee constituted for making recommendations for appointment of Chairman-cum-Managing Directors of MMTC held on July 25, 2013 considered the case of the Petitioner along with 12 other candidates and recommended the panel in order of preference keeping Appellant at No.1 and Dr.Rajiv Sharma at No.2. However, vide its proceedings dated December 31, 2013, the ACC declined the proposal of the extension of the tenure of the Appellant for a period of five years beyond May 06, 2012 which was challenged by the Appellant by way of writ petition being W.P.(C) No.3052/2014.

5. Vide the impugned order dated April 16, 2015 the learned Single Judge held that this Court is not the employer and ordinarily does not decide as to whether or not to continue with the employment and a decision of the ACC could be challenged if the same is ex-facie in violation of any direction or circular or guidelines. There were no such pleadings in the writ petition rather the pleadings do not even show that the Appellant asked for the reasons given by the ACC to decline the extension of tenure. Having failed to challenge the decision of ACC as arbitrary, the Court could not interfere and thus the writ petition was dismissed.

6. The review petition filed also met the same fate and the learned Single Judge reiterated that there was nothing new in the pleadings nor was there error apparent on the face of record in the impugned order. The Court noted

that the contention of the Appellant that a reasoned order had not been communicated to him and therefore, the decision of the ACC has to be faulty is no ground for review.

7. Even in appeal there is no challenge to the order of the ACC to be arbitrary or malafide or violative of any of the guidelines rather the contention in the present appeal is as to how ACC could reject the proposal sent by MMTC Ltd. for regular extension of the Appellant when a specific order had been issued by this Court in view of the dropping of the disciplinary proceedings. As noted in the order dated July 23, 2013 this Court did not direct the Respondents to appoint and extend the tenure of the Appellant and only directed the Respondents to consider the case of the Appellant.

8. Before this Court the Appellant urges that in view of grounds C, D, G, H and J raised in the writ petition specially in Para-10 as noted under, it is proved that the decision of the ACC was arbitrary, unreasonable and violative of the applicable circulars and guidelines. Para 10 of the writ petition notes:

“10. Thereby, the first Respondent herein, was bound to consider the Petitioner for regular extension of the tenure as Director (Marketing) the applicable guidelines/ circulars/ notifications, the summation of which envisages the following three requirements:

- (i) To ascertain as to whether the Petitioner had secured more than the benchmark of 80% in his SPR for his performance in the post of Director (Marketing)*
- (ii) As to whether he is free from the vigilance angle and*

(iii) *Whether the employer (who, in accordance with the order of this Hon'ble Court, has to finally decide as to whether or not to give extension of tenure to the Petitioner) has proposed to grant regular extension of tenure to the Petitioner as Director (Marketing).*

The Petitioner has satisfied all the above said three requirements and thus had rendered himself fully eligible for extension of tenure as Director (Marketing)."

9. The contention of the learned counsel for the Appellant deserves to be rejected for the reasons that only persons who satisfy the eligibility requirement are recommended for consideration to the ACC who may chose one candidate as per the requirement of the post in terms of the guidelines. There is no specific challenge as to which guidelines/ notifications/ circulars has been violated by the ACC or as to how the decision is arbitrary or malafide, thus we find no infirmity in the impugned order.

10. Appeal is dismissed accordingly.

CM No.12397/2015 (Stay)

Application is dismissed as infructuous.

**(MUKTA GUPTA)
JUDGE**

**(PRADEEP NANDRAJOG)
JUDGE**

**JULY 17, 2015
'vn'**