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

% **DECIDED ON: 05.02.2016**

+ LPA 77/2016, CM Nos.4125-4126/2016

G.P. ROY

..... Appellant

Through: Mr. Satish Kumar Tripathi, Advocate.

versus

UOI & ORS.

..... Respondents

Through: Mr. Dibajyoti Behuria, proxy counsel for
Mr. Ruchir Mishra, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (ORAL)

1. The appellant, in a writ petition- before this court, challenged the appointment of respondent No.3 as Chairman and Managing Director (CMD) of respondent No.4 - Hoogly Dock & Port Engineers Ltd (hereafter called HDPEL). The challenge was on the ground that the appointment was in violation of the relevant Rules and Regulations. An order quashing the appointment of the said third respondent, dated 3rd July 2006 was sought. The appellant-Petitioner also sought direction that he should be considered for the post of CMD, on notional basis as he has had retired. Further, he claimed the pay and allowances of CMD of HDPEL. Petitioner claimed retiral benefits on the basis of such notional selection and appointment. The writ petition was dismissed by the impugned judgment of the learned single judge.

2. The petitioner/appellant urged that in response to an advertisement issued on 11.12.2005, he applied for the post of CMD as he was eligible to do so. He claims that he was recommended for appointment to that post by a letter/communication of 20th February, 2006. His name, he contends was placed at Sl No. 1 of the select list, and that of the selected (and appointed) candidate, the third respondent, was Sl. No. 2. On 07.03.2006, a complaint was made by a Union that the selection for the post of CMD in HDPEL was manipulated. It was alleged that the petitioner was not even an Additional General Manager when he applied to the post of CMD. The appellant submitted in the writ petition that this complaint led to utterly frivolous initiation of major penalty proceedings at the behest of the Central Vigilance Commission. The initiation of such proceedings was contrary to an Office Memorandum of 31.08.2004, which had prescribed the time limits for initiation of such disciplinary proceedings. The office memorandum had stipulated that cognizance was not to be taken of complaints lodged six months before the start of selection proceedings in relation to any post. Thus, the initiation of disciplinary proceedings, which had prejudiced the appellant/petitioner, were without authority of law. The selection and appointment of the third respondent, was therefore contrary to the mandate of Article 14 of the Constitution of India. The appellant had also urged that the disciplinary proceedings initiated against him were directed to be kept in abeyance. The appellant had further relied on an earlier Office Memorandum of the Central Government dated 03.04.2001 which required that approval of the Appointment Committee of the Cabinet (ACC) was a must before a recommendation for appointment had to be accepted. This too, was overlooked for the fourth respondent in the present case. It was lastly

urged that the petitioner had been given *pro forma* promotion on 07.01.2004 and was therefore eligible.

3. The Union of India had urged before the learned Single Judge that the third respondent's appointment was unassailable and had further urged that the appellant/petitioner had misrepresented in his application for the post, that he held the position of Additional General Manager of HDPEL, from 1990 to 1997, whereas he actually held the post of Deputy General Manager in the pay scale of ₹5500-6870/- . The pay scale of Additional General Manager was ₹7500-9900/-. The Central Government also stated that officers, in the pay scale of ₹7500-9900/- were eligible for being considered for the post of CMD in HDPEL. The first two respondents had relied on the material documents, including the representations made by the petitioner, that were contrary to the facts, in his application for the post, despite his knowledge that they were false. The Union's stand on the issue of the office memorandum of 2001 was that its stipulations were not violated. Its argument was that since the appellant had to face inquiry, which was initiated, the selection of the third respondent was in order and also regular. The learned Single Judge was also informed that during the pendency of proceedings, the third respondent had resigned from the position of CMD in 2010.

4. The learned single judge considered all the submissions and dismissed the writ petition, holding, *inter alia*, that

“in the Office order of 18th July, 2002 (attached to the counter affidavit by the first respondent) the 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 the first respondent) from CVC clearly shows that vigilance clearance was not recorded to the candidature of petitioner and initiation of major penalty proceedings was advised on account of aforesaid concealment of facts.”

5. The single judge further found that the *proforma* promotion was offered to the appellant provided he *joined back the HDPEL*, as a condition for availing it. However, he was in the BIFR, in January, 2004 and at that time, was in the substantive pay scale of Deputy General Manager. On the contrary, his application claimed that he was Additional General Manager. Therefore, the petitioner could not have complained of wrongful appointment of the third respondent.

6. The appellant's learned counsel argues that the learned single judge completely overlooked the material circumstances as to the falsity of allegations, which led to rejection of the appellant's candidature, though he was selected and placed at Sl. No.1 by the competent selection committee. It was argued that the so called ineligibility was belied by the fact that the petitioner was on deputation with the BIFR; however that could not have led the authorities to conclude that he was not eligible, because he was offered

proforma promotion. That the petitioner was entitled to the post of Additional General Manager is a circumstance wholly overlooked by the single judge, who was persuaded to hold that he had misrepresented the facts, which was not the case.

7. This Court has considered the documents. It is apparent that the appellant held out, in his application that he was eligible for consideration to the post of CMD. Eligible applicants were those holding the grade of ₹7500-9900/-. The appellant clearly did not hold a post; he was undoubtedly on deputation with BIFR. However, he could not have said that he “held” a post carrying the pay scale of ₹7500-9900/-. On the other hand, he clearly held the post carrying the scale ₹5500-6870/-, substantively. He therefore, clearly made a statement, which was - to be charitable to him, at least inaccurate within his knowledge (if not downright false). Maybe he had an entitlement to *claim* the higher salary. However, he did not clearly hold the post for the seven-year period he represented to the respondents. This became the cause of his woe as disciplinary proceedings were recommended. The respondents took note of all these circumstances and decided not to appoint him though he was at Sl. No.1 in the select list.

8. It is now well known that a selected candidate *per se* has no right to the post; he, of course, has expectation of being appointed to it. The withholding of appointment for a good reason thus, cannot be characterized as arbitrary, since no selected candidate has a “vested right in appointment”. This is supported by *Sankersan Dash v. Union of India* AIR 1991 SC 1612. Therefore, the respondents in the circumstances, showed reasonable cause

for not appointing the appellant and in proceeding to offer the post to the third respondent.

9. For the above reasons, this Court does not find any infirmity in the findings or reasoning of the learned single judge. The appeal fails and is consequently dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

FEBRUARY 05, 2016

