

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: August 11, 2017

Judgment delivered on: August 17, 2017

+ W.P.(C) 5260/2017

SURENDER BABBAR

..... Petitioner

Through: Mr. J.P. Sengh, Sr. Adv. with Mr. Salim A. Inamdar, Ms. Sana Ansari, Ms. Manisha Mehta & Ms. Vaishali Tanwar, Advs.

versus

DELHI TRANSCO LTD. & ORS

..... Respondents

Through: Mr. Dinesh Agnani, Sr. Adv. with Ms. Avnish Ahlawat, Ms. Palak Rohmetra, Advs. for R-1 & 2 with Mr. Gaurav Gupta (Manager) Mr. Ramesh Singh, SC with Mr. Anuj Aggarwal & Ms. Niti Jain, Advs. for R-3

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

W.P.(C) 5260/2017

1. The challenge in the writ petition is to the orders dated April 29, 2016 and June 5, 2017 whereby, according to the petitioner, he was divested of the official charge of General Manager (GM for short) (Finance) of Delhi Transco Limited (DTL in short) and respondent no.4 was given the additional charge of the Director (Finance) respectively.

2. Some of the relevant facts as noted from the writ petition are, the petitioner was

appointed in DTL as Deputy General Manager (Finance) [DGM (F) in short] on April 11, 2007. On November 19, 2012, he was given the Current duty Charge as GM (Finance) in DTL without any extra financial benefit. On August 1, 2014, he was promoted as GM (Finance) in DTL in the revised Pay Scale of Rs.37,400 – 67,000/- with Grade Pay of Rs.10,000/-. While working as GM (Finance) DTL, respondent issued one of the impugned orders dated April 29, 2016 whereby the petitioner was assigned the charge of GM (Finance) of Delhi Power Company Limited (DPCL in short) previously looked after additionally by respondent no.4. The petitioner represented to the Chairman, DTL on September 16, 2016, December 6, 2016 and May 12, 2017 for cancellation of order dated April 29, 2016. It is the case of the petitioner that he made representation on February 15, 2017 for his elevation as ED (Finance) in DTL. It is also stated that the representation was made on May 30, 2017 to the CMD, DTL for giving the charge of Director (Finance) to the petitioner. On June 5, 2017, another impugned order was passed, whereby consequent to the promotion of Mr. J.P.S. Chawla working as Director (Finance) DTL, as Principal Chief Controller of Accounts in the Department of Expenditure of Govt. of India, resulting in his repatriation, the Hon'ble Lt. Governor ordered the Executive Director (Finance), DTL and IPGCL / PPCL shall hold the additional charge of the post of Director (Finance) in the respective companies till further orders. It is the submission of Mr. J.P. Sengh, learned Sr. Counsel appearing for the petitioner that the order dated April 29, 2016 is arbitrary, inasmuch as DPCL is a separate company with a separate legal and corporate entity, the charge of GM (Finance) in DPCL given to the petitioner is neither by way of transfer

within the same organization, i.e., DTL nor an appointment on deputation basis. It is also not in the form of additional charge by the petitioner by holding, permanent and regular appointment of GM (Finance) in DTL. He would draw my attention to the order dated April 8, 2005 to contend that the employees on the rolls of the DTL are required to provide necessary assistance to the holding company, i.e., DPCL in addition to their normal duties as and when requested by CMD, DTL. According to him, the petitioner's position as GM (Finance) DTL is required to be restored with the additional charge of GM (Finance), DPCL. He states in view of this order, giving exclusive charge of GM (Finance) in DPCL to the petitioner vide order dated April 29, 2016 is liable to be set aside. In so far as the challenge to the order dated June 5, 2017 is concerned, it is the submission of Mr. Sengh, the order suffers from an error apparent on the face of it as there is no post of ED (Finance) in DTL, and as such, the charge of Director (Finance) could not have been given to a non-existent holder of post of ED (Finance). Secondly, respondent no.4 being the Company Secretary / ED Corporate Governance in DTL is not from Finance cadre of DTL; thirdly, respondent no. 4 does not meet the eligibility criterion for the appointment to the post of Director (Finance) in DTL as per the eligibility and experience criterion notified by the Power Department, Govt. of NCT of Delhi. In this regard, he draws my attention to Page 89 of the paper book which prescribes, qualification and experience required for the post of Director (Finance). He states that it is relevant for an incumbent to have at least 20 years of experience in handling accounts and financial matters in Central Govt./State Level PSUs. Fourthly, he states that the impugned order of June 5, 2017 attracts statutory restriction as per the

provisions of Section 203 of the Companies Act, 2013. He qualifies the aforesaid broad submissions to contend that the respondent No.4 who is holding the post of ED Corporate Governance, DTL is not ED (Finance). According to Mr. Singh by giving the charge of Director (Finance) to a Company Secretary, petitioner has been ignored, who is the senior most officer in the Finance cadre of DTL, below the Director (Finance) and as an internal candidate of DTL he meets fully the eligibility criterion for the post of Director (Finance) in DTL and on that basis was shortlisted previously for the post of Director (Finance) in DTL and IPGCL. This additional charge of Director (Finance) would render respondent no. 4 to act and function as the controlling officer of the petitioner. Mr. Singh has also drawn my attention to the order dated August 1, 2014 to contend that petitioner on his promotion as a GM (Finance) was directed to report to the Director (Finance). If that be so, grave prejudice shall be caused to the petitioner. The effect of the charge of Director (Finance) to the respondent no.4 would result in the respondent no.4 acting as Director (Finance), ED Corporate Governance, Company Secretary GM (Finance) of DTL simultaneously, which is in gross violation of basic tenets of corporate governance. Mr. Singh had submitted that the respondent nos. 1 to 3 purposely have filed short affidavits instead of detail affidavits incorporating para-wise reply. He states that the respondents have not answered the plea made by the petitioner on the ineligibility of respondent no.4 to hold the post of Director (Finance) except that the respondent no.4 possess the qualification of Costs and Works Account. In other words, it is his submission that respondent nos. 1 to 3 have not specified as to how respondent no.4 has at least 20 years of experience in handling accounts and

financial matters as required under the relevant rules. He states that despite making representations for withdrawing the order dated April 29, 2016, no steps have been taken by the concerned authority to address the grievance of the petitioner. He states that the action of the respondents is mala fide only to give benefit to the respondent no.4 even though he is not eligible. He states that record of the petitioner is outstanding since his joining in DTL and at no point of time, did the CAG commented adversely on any work relating to accounts / financial matters. Mr. Sengh has also stated that despite applications being called for making regular appointment in the year 2016, no steps have been taken appointing a regular Director (Finance) till date except a Selection Committee has been constituted only in June, 2017. That apart he states that as per the communication received by the petitioner, the petitioner's application dated June 23, 2016 for Director (Finance) on deputation in DTL has not been forwarded by the DTL to the concerned authority even though the petitioner has sent an advance copy to the concerned authority. Mr. Sengh would rely upon the judgment of the Allahabad High Court in the case of *Srinivash Sharma v. State of UP Through Its Secretary, Basic Education and Ors. 2007 (115) FLR 383* to contend that a person who does not possess the eligibility for a post, cannot be held to be a person suited for holding the charge even as a stop gap arrangement.

3. On the other hand, Mr. Dinesh Agnani, learned Sr. Counsel appearing for the respondent nos. 1 and 2 would justify the impugned orders. His first submission is on the locus of the petitioner to challenge the order date June 5, 2017 whereby the respondent no.4 was given the charge of Director (Finance) by stating, the petitioner

having been given the exclusive charge of GM (Finance), DPCL and is not on the rolls of DTL cannot challenge the same as he cannot be a contender. He also states that challenge to the orders dated April 29, 2016 and June 5, 2017 is not maintainable as the prayers are mutually exclusive and as such petition is bad for misjoinder of prayers. He also states that the order having been passed on April 29, 2016, more than one year back cannot be challenged now. That apart, it is his submission that as the respondent no.4 was given the charge of GM (Finance) in DTL vide order dated April 29, 2016, more than one year back, was rightly given the charge of Director (Finance) in DTL. In other words, the respondent no.4 has been looking after the finance work of DTL for the last one year and giving the charge of Director (Finance) is justified. Mr. Agnani states that even though the petitioner is on the rolls of DTL, he is exclusively looking after the work of GM (Finance) DPCL and could not have been considered for giving the appointment of Director (Finance) in DTL. In so far as the submission of Mr. Singh that the impugned order dated June 5, 2017 attracts statutory restriction as per the provisions of Section 203 of the Companies Act, 2013 is concerned, Mr. Agnani would submit that as per the said section the Managing Director, Company Secretary and the Chief Financial Officer are the key managerial positions in a Company. He states there is no dispute that there is a Managing Director of DTL in place, that apart respondent no.4 is the Company Secretary and one Mr. Narendra Dev Govind is holding separately the position of Chief Financial Officer and therefore, giving charge of Director (Finance), which does not divest the respondent no.4 of his position of Company Secretary, would not violate Section 203 of the Companies Act. On the submission of

Mr. Sengh that respondent no.4 does not have the eligibility to the post of Director (Finance) is concerned, Mr.Agnani has drawn my attention to running page 526 of the paper book to contend that respondent no.4 is M.Com, LLB, FCS and ICWA. That being so, respondent no.4 having qualification for the post of Director (Finance) cannot be said to be ineligible for being given the charge of the post of Director (Finance) in DTL. Mr. Agnani states that the impugned order does not call for interference as the process for making regular appointment to the post of Director (Finance) having been initiated, a time period be fixed for completing that process leading to the appointment of Director (Finance).

4. Mr. Ramesh Singh, learned Standing Counsel appearing for respondent No.3 would submit that the Govt. of NCT of Delhi being 100% shareholder in the DTL is within its right under Section 161 (3) of the Companies Act, 2013 to make appointment(s) / nominate Directors in the Company including giving charge of Director (Finance) to respondent no.4. He states that respondent no.4 has been given the additional charge of Director (Finance) as a stop gap arrangement only till the time regular appointment of Director (Finance) is effected. He also states that applications have been called for and Selection Committee has been constituted for that purpose. He by relying upon the meeting notice dated August 9, 2017 has stated that the Selection Committee has decided to hold its meeting on August 18, 2017 at 11 AM. As per his instructions, the application of the petitioner shall be placed before the Selection Committee for consideration and he seeks the dismissal of the writ petition.

5. Having heard the learned counsel for the parties, two issues arise for

consideration in the present petition, firstly whether the order dated April 29, 2016 giving charge of the post of GM (Finance) in DPCL to the petitioner is justified and secondly whether the respondent no.4 was rightly given the additional charge of Director (Finance) overlooking the right of the petitioner for being given such charge.

6. In so far as the challenge to the order dated April 29, 2016 is concerned, Mr. Sengh had relied upon the office order dated April 8, 2005, which reads as under:

“After unbundling of erstwhile Delhi Vidyut Board w.e.f 01.07.2002 Delhi Power Supply Company Limited (Holding Company) is still required to perform large number of functions pertaining to past liabilities of DVB period, recovery of DVB arrears etc. but no staff has been transferred to the Holding Company or is on strength of the Holding Company as a result of Transfer Scheme.

In order to ensure that the work of the Holding Company does not suffer, all the officers / staff of Delhi Transco Limited will provide all necessary assistance to the Holding Company in addition to their normal duties as and when requested / required by CMD, DTL. Further, the services of officers / staff of Delhi Transco Limited and Indraprastha Power Generation Company Limited can also be used in diverted capacity exclusively in Delhi Power Company Limited (Holding Company) depending upon requirement with the approval of Special Secretary (Power)”

Reading of the aforesaid order would reveal that to ensure, DPCL (holding Company), work does not suffer, the Officers / Staff of DTL were to provide all necessary assistance to it in addition to the normal duties as and when requested by the CMD (DTL). It also stipulates that the services of the Officers / Staff of DTL and IPGCL can also be used in diverted capacity exclusively in DPCL (holding company) depending upon the requirement with the approval of Special Secretary (Power).

Suffice to state, the said order contemplates both the eventualities of holding the charge of a post in DPCL, while working in DTL and exclusively posted in DPCL in a diverted capacity, depending upon the requirement but with the approval of the Special Secretary (Power).

7. It is not the case of the petitioner, that he has been placed at the disposal of DPCL without the approval of the Special Secretary (Power). If that be so, the order dated April 8, 2005 empowers respondents to send the Officers of DTL in diverted capacity exclusively in DPCL. Further the vires of the said order is not under challenge.

8. In so far as the plea of the learned Sr. Counsel for the petitioner that he was neither transferred nor sent on deputation to DPCL, would be inconsequential as long as the power exists for placing an officer of DTL in DPCL. I note the stand of the respondent no.3 that the service records of the petitioner are in DTL and there has not been any financial loss to the petitioner on being posted in DPCL which means, no prejudice is caused to the petitioner on his posting in DPCL. In view of the aforesaid position, in terms of order dated April 8, 2005, representations made by the petitioner justifying his recall to DTL would be without merit as it is the satisfaction of the Competent Authority that requirement exist in DPCL for continuance of the petitioner there, which shall be relevant and the Court cannot substitute the Authority's view, with its view as it is judicially impermissible, unless, a case of malafide is made out, with cogent evidence and the Competent Authority is made a party. Suffice to state, such a case has not been set up by the petitioner. So, the challenge to the order dated April 29, 2016 fails and is rejected.

9. In so far as the order dated June 5, 2017 is concerned, this issue needs to be proceeded on a premise that the petitioner is working in DPCL as GM (Finance). The DPCL is a separate legal entity. The additional charge given to respondent no.4 is of Director (Finance) in DTL, which is also a separate legal entity. It is a conceded position that respondent no.4 was given the additional charge of GM (Finance) of DTL. The vacancy of Director (Finance) has arisen because of the repatriation of Mr. J.P.S. Chawla to the Central Government. The case of the respondents is since respondent no.4 was holding the charge of GM (Finance), he was given the additional charge of Director (Finance) in DTL. No doubt, the impugned order dated June 5, 2017 does stipulate that ED (Finance) of DTL is being given the charge of Director (Finance). Apparently there is an error on the face of the order. It is a conceded position of respondent nos. 1 to 3 that there is no post of ED (Finance) in DTL. If that being the position, order could not have said so.

10. During the course of his submissions Mr. Agnani did submit that steps are being taken to make correction in the order dated June 5, 2017. In any case, it is a conceded case of the petitioner that respondent No.4 has been given the charge of Director (Finance) of DTL.

11. I may state here, the plea of Mr. Sengh during arguments has been if the respondent No.4 could not have been given the charge of Director (Finance), DTL, it is the petitioner, who being the senior most Finance Officer of DTL, even in DPCL, who is entitled to the said post. In that regard, his two submissions being that, the additional charge violate Section 203 of the Companies Act, 2013 and the respondent No.4 does

not have the eligibility of the post of Director (Finance), DTL. Insofar as the first submission is concerned, it is the case of the respondent Nos. 1 and 2, that the respondent No.4 being Company Secretary is a key Managerial Personnel of the Company. He has only been given, the additional charge of Director (Finance), which does not divest the respondent No.4 of his duties as Company Secretary. Mr. Agnani, during his submission had stated that the Managing Director, the Company Secretary (respondent No.5), one Mr. Govind being the Chief Financial Officer, are the key managerial personnel who are in place and by giving charge of Director (Finance) to respondent No.4, does not violate Section 203, is taken note of and is appealing. This plea of Mr. Singh based on Section 203 is liable to be rejected.

12. Insofar as the plea that respondent No.4 does not have the eligibility of the post of Director (Finance) is concerned, the relevant instructions/Rules stipulate the qualification and experience for the post of Director (Finance), DTL as under:-

“(B) For the post of Director (Finance):

(i) Qualified Chartered Accountants/Cost Accountants with experience of at least 20 years in handling accounting and financial matters in Public Sector Companies/Central and State level PSUs/Statutory or autonomous organization under Central/State Governments.

OR

Officers from Indian Audit and Accounts Services/Indian Civil Accounts Services/Indian Defence Accounts Services/Postal Accounts Services/Indian Railway Accounts Services/Indian Revenue Services (Income Tax); Indian Customs & Central Excise Service etc. with at least

15 years experience including 10 years experience in handling Accounting/Finance/Taxation matters.

(ii) For Serving Central/State Government/PSU employees the applicant for all the posts should be drawing pay in Pay Bank IV or equivalent for at least 5 years in his department/organization.”

13. The aforesaid would reveal an Officer apart from having qualification of Chartered Accountancy/Cost Accountancy must have at least 20 years of experience in handling accounting and financial matters in Public Sector Companies/Central and State level PSUs/Statutory or autonomous organization under Central/State Governments drawing pay in Pay Band IV for at least five years in his Department/Organization. Insofar as the eligibility of the respondent No.4 is concerned, the respondents 1 and 2, in their short affidavit have stated as under:-

“(xxiv) That the Respondent No.4 is an M.Com, LLB, FCS and ICWA. He has been handling the charge of General Manager (Finance)/ED (Finance) of the Company since 1st May, 2016. As Secretary to the Board of the Company he has broad exposure to all the important financial decisions/documents execution of the Company. Specifically, he has been assigned with some financial work from time to time like drafting of accounting policy of the Company and finalization of accounts, selection of Internal Auditors, drafting of Delegation of Powers and conduct of Internal Audit during the initial years of the Company, capital restructuring, representing in some committees to decide issues relating to finance, Bonds issues, Cost Audit etc. where he has delivered to the satisfaction of the management.”

14. The respondents have justified, the possession of necessary qualification and

experience by the respondent No.4 for appointment to the post of Director (Finance). In rejoinder, the petitioner has denied that the respondent No.4 handled the cost audit of the Company. According to the petitioner, it was only handled at the level of Assistant Manager (Finance), DTL who is a CA by profession. The petitioner does not deny that the annual accounts of the DTL were finalized under the charge of the respondent No.4, which was signed by respondent No.4 for the financial year 2015-16, which attracted substantial and significant audit observations from statutory and CAG auditors. Suffice to state, the parties are at variance on the aspect of possession of relevant experience by the respondent No.4. Be that as it may, there is no denial to the fact that the respondent No.4 was previously given the charge of GM (Finance) in DPCL; and also of DTL with effect from May 01, 2016. For the last one year he is looking after the work of GM (Finance) in DTL. It so happened that when Mr. J.P.S. Chawla, the earlier Director (Finance) DTL got promotion as Principal Chief Controller of Accounts in his parent cadre, he had to be repatriated to the Government of India. He was repatriated on June 05, 2017 to take up his new assignment, which is also the date of impugned order. This aspect reveals a contingency arising on account of promotion/repatriation of Mr. Chawla to the Government of India. It was required, as the post of Director (Finance) being an important Director level post, relating to accounting and financial matters of DTL, could not have been kept vacant. The Competent Authority i.e Hon'ble the Lieutenant Governor in order to meet the contingency had to fill up the post on emergent basis till such time a regular incumbent is appointed.

15. The respondent No.4 being the senior most Officer also holding the additional

charge of GM (Finance) was given the additional charge of Director (Finance). Suffice to state, the impugned order dated June 05, 2017 is very clear as it refers to giving additional charge of the post of Director (Finance). The word “*Additional Charge*” surely, denotes that respondent No.4 apart from discharging the duties of the post on which he is regularly working shall also have the additional charge of the post of Director (Finance). The grant of additional charge does not denote the appointment of the respondent No.4 on the post of Director (Finance) by leaving the post on which he was substantially appointed. It is one thing to say that he is given additional charge of the post of Director (Finance) and another thing that he has been given the charge of Director (Finance) as a stop gap arrangement, which charge is exclusive on the post. I have been informed that the process, for appointment of Director (Finance) has been initiated in the year 2016. No doubt, since then, it was only in the month of June, 2017 that Selection Committee has been constituted, which has notified its date of meeting on August 18, 2017. If that be so, the regular appointment of Director (Finance) shall be regulated by the outcome of the selection process.

16. Insofar as the judgment relied upon by Mr. J.P. Singh in the case of ***Srinivash Sharma (supra)***, is concerned, the facts in the said case are that one Maheshwari Shukla, who was working as Block Resources Coordinator in block Padarauna District Kushi Nagar, was to retire on June 30, 2007 after attaining the age of superannuation. No regular selection for filling the post of Coordinator at Block Resources Centre having been held, it became necessary to post a person or to give charge of the post of Coordinator at Block Resources Centre Padarauna District Kushi Nagar to an

appropriate official. The Specialist Basic Shiksha Adhikari, Kushi Nagar vide order dated June 29, 2007 directed to give charge of Block Resources Coordinator, Padarauna to Rajendra Tewari, the contesting respondent. Mr. Tewari was appointed as In charge, Block Resources Coordinator, Block Padarauna, District Kushi Nagar. Two writ petitions were filed by one by Mr. Srinivash Sharma and another by Sunil Kumar challenging the order dated June 29, 2007. It is noted by the High Court that Rajendra Tewari, who was made In charge of Block Resources Coordinator, Block Padarauna District Kushi Nagar has been working at the time of giving charge as In charge Urban Resources Centre, Padarauna. The contesting respondent while working on his original post of Assistant Teacher, Prathamik Vidyalaya vide order dated May 21, 2005 was nominated as In Charge of Coordinator Nagar Resources Centre, Padarauna. The plea of the petitioner was that posting of Mr. Tewari as In charge of Block Resources Coordinator, Padarauna was working in Urban Resources Centre, Padarauna which is a different entity than the Block Resources Coordinator and was not entitled to be given the charge of Block Resources Coordinator, Padarauna. It was contended on behalf of Mr. Tewari that he was fully eligible and his claim was duly approved by the Principal of District Institute of Education and Training, Kushi Nagar and he was rightly made the In charge of Block Resources Coordinator, Padarauna.

17. The High Court, insofar as the issue of eligibility of the respondent Mr. Tewari is concerned, has held that a person having eligibility for appointment to a post, can be appointed in stop gap arrangement. According to the High Court, the first principle which has to be kept in mind while deciding the issue of giving charge to a person on

the post of Coordinator, Block Resources Centre is, that the person should possess eligibility for appointment on the post on which he is sought to be given charge. In other words, a person does not possess eligibility for the post cannot be held to be a person suited for holding the charge even in stop gap arrangement. The other ground , as decided by the High Court was that since the post fell vacant of Block Resource Coordinator, Padarauna, it is a person who is working in the said Block, and is eligible for appointment has to be treated more suited for working on the said post even on temporary basis till regular selection than the person who is not working in the Block in question. The judgment of the High Court is distinguishable on facts, inasmuch as vide order dated June 29, 2007, Mr. Rajendra Tewari was appointed as In Charge, Block Resource Coordinator, as is clear from para 4 of the judgment. The relevant part of the judgment in this regard, is reproduced as under:-

“ 4. XXXX

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The Specialist Basic Shiksha Adhikari, Kushi Nagar vide order dated 29.6.2007 directed to give charge of Block Resources Coordinator, Padarauna to Rajendra Tewari, the contesting respondent. The contesting respondent Rajendra Tewari was appointed as In charge, Block Resources Coordinator, Block Padarauna, District Kushi Nagar. Both the writ petitions have been filed; challenging the order dated 29.6.2007, giving charge of Block Resources Coordinator to Rajendra Tewari.”

18. In other words, unlike the case in hand where the respondent No.4 was given the additional charge as Director (Finance), the contesting respondent was given the charge of Block Resources Coordinator. In other words, the charge of Block Resources Coordinator was exclusive. The judgment is distinguishable.

19. In view of above, I do not think that it is a case wherein this Court should interfere with the impugned orders in exercise of its jurisdiction under Article 226 of the Constitution of India and the prayers are rejected and petition is dismissed.

20. Before parting, I must note the submission made by Mr. Agnani that he is not opposed to a direction for making regular appointment to the post of Director (Finance) within a time limit. As stated above, the advertisement issued was more than one year back. It was only in June 2017 a Selection Committee has been constituted. That be so, to ensure, the appointment takes place at the earliest, it is directed that the authorities shall expedite the process of appointment to the post of Director (Finance) of DTL, so as to ensure the appointment is made as expeditiously as possible, preferably within six weeks from 18th August, 2017, the first date of meeting of the Selection Committee.

21. No costs.

CM No. 22323/2017 (for Stay)

Dismissed as infructuous.

AUGUST 17, 2017

jg/ak

V. KAMESWAR RAO, J