

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

Date of Decision: November 01, 2017

+ W.P.(C) 9555/2017 & C.M. 38886/2017

SHRI GIRISH KUMAR

..... Petitioner

Through: Mr. Romy Chacko & Mr. Amit A.
Pai, Advocates

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Dev. P. Bhardwaj, Central
Govt. Standing Counsel with Mr. Man Mohan,
Under Secretary, Ministry of Defence

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

1. Petitioner is presently working as Director (*Bengluru Complex*) in Bharat Electronics Limited (*BEL*). He had assumed the charge on the post of Director in *Bengluru Complex* in *BEL* on 1st May, 2016. He seeks a direction to respondents to grant deemed confirmation by virtue of Clause 2(a) of Policy Letter of 31st March, 2011 in this petition.

2. The facts which are not disputed are that prior to petitioner taking up the assignment of Director, *Bengluru Complex* in *BEL*, he was working as Executive Director in the above said institution and a preliminary inquiry was initiated against him on the complaints regarding irregularities in the procurement of Compactors. In the preliminary inquiry, petitioner was exonerated by the Committee of Corporate

Vigilance of *BEL*. The said exoneration was accepted by *BEL* at the time of petitioner's promotion as Director, *Bengluru Complex* in *BEL*. A vigilance clearance was granted by the Chairman-cum-Managing Director of *BEL* on 21st December, 2015 (*Annexure P/10*), while noting as under:-

"I wish to further add that Shri Girish Kumar has joined this Company in 1979 as Deputy Engineer and has risen to Executive Director position through hard work, dedication, devotion and excellent performance. The officer is known to have impeccable Integrity in the Company."

3. Thereafter, petitioner was appointed as Director in *Bengluru Complex* in *BEL* on 26th February, 2016. Complaint of 16th June, 2017 (regarding irregularities in procurement of Compactors way back in the year 2014) was received by the Central Vigilance Commission (CVC), which was examined by the CVC and initiation of proceedings for major penalty was advised by CVC vide its communication of 7th September, 2016 and in pursuance thereto, Articles of Charge were served upon petitioner on 25th July, 2017, which petitioner has denied vide detailed reply of 12th August, 2017 (*Annexure P/11*). Vide Communication of 11th October, 2017 (*Annexure P/12*), petitioner has also sought his confirmation as Director in *Bengluru Complex* in *BEL* from Secretary, Department of Defence production, Ministry of Defence, New Delhi i.e. the first respondent, in which there is no reference of respondent's communication of 31st March, 2011 (*Annexure P/4*), on which petitioner strongly relies. The existence of respondents' document of 31st March,

2011 (*Annexure P/4*) is not disputed and as per this document, the procedure has been prescribed for confirmation of Board Level Appointees, which includes Director, *Bengluru Complex* in *BEL*.

4. During the course of hearing, it was brought to the notice of this Court by learned counsel for first respondent that the CVC vide its communication of 10th August, 2017 has recommended denial of vigilance clearance to petitioner for confirmation of his tenure. According to counsel for first respondent, the said recommendation has been put up before the Appointments Committee of Cabinet (ACC), who is seized of petitioner's confirmation as Director, *Bengluru Complex* in *BEL* and so, this petition deserves to be dismissed as premature.

5. Upon hearing and on perusal of respondents' documents of 31st March, 2011 (*Annexure P/4*) and the material on record, this Court is of the opinion that the entire case of petitioner ought to be placed before the ACC, who is seized of the matter, so as to ensure that a complete picture of the case is before the ACC. Petitioner is permitted to send a concise note with relevant documents to the first respondent i.e. the Secretary, Department of Defence production, Ministry of Defence, New Delhi along with Communication of 31st March, 2011 (*Annexure P/4*) highlighting the parameters governing confirmation of Board level appointees, within a week and then, first respondent shall forthwith place it before the ACC for perusal and consideration. It is expected that ACC will look into this matter keeping in view the background of this case, particularly petitioner's exoneration by the Committee of Corporate Vigilance of *BEL*, as is evident from Communication of 21st September, 2015 (*Annexure P/10*) of Chairman-Cum-Managing Director of *BEL*.

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

7. A copy of this order be given *dasti* under the signatures of Court Master to counsel representing both the sides to ensure its compliance.

**SUNIL GAUR
(JUDGE)**

NOVEMBER 01, 2017

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