

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

Date of Order: January 30, 2018

+ **W.P.(C) 866/2018 & CMs 3673-74/2018**

SWAPAN KUMAR PAL Petitioner
Through: Mr. Prasenjit Keswani, Mr. Manu
Beri and Mr. Raghvendra Pratap Singh,
Advocates
versus

UNION OF INDIA & ORS Respondents
Through: Mr. Arun Bhardwaj, CGSC and
Mr. Nikhil Bhardwaj, Advocate for respondents
No.1 & 2
Mr. Sanjay Jain, ASG with Ms. Rhea Verma
and Mr. Yuvraj Sharma, Advocates for
respondent No.3-NBCC

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Vide impugned order of 22nd January, 2018 (*Annexure P-1*) petitioner's case for extension of his tenure has not been recommended to *Public Enterprises Selection Board (hereinafter referred to as 'PESB')* and petitioner has been directed to hand over the charge of Director (Finance), NBCC (India) Limited to Sh. R.K. Arora w.e.f. 1st February, 2018.
2. Learned counsel for petitioner assails impugned order on the ground that non-extension of petitioner's tenure has not been approved by *Appointments Committee of the Cabinet (hereinafter referred to as ACC)*.

Attention of this Court is drawn to the Guidelines regarding Board level appointments in Central Public Sector Enterprises (*Annexure P-10 colly.*) to point out that as per Clause 6 in Chapter 4 of the said Guidelines, the recommendation of PESB has to be necessarily referred to ACC for orders even if the incumbent does not meet the benchmark for extension of tenure. Chapter 7 of the aforesaid Guidelines also mandates that all cases for premature termination of Board level appointments in CPSEs including non-extension of tenure would require approval of the ACC.

3. Learned Additional Solicitor General of India for respondent No.3-NBCC maintains that no approval of ACC is required for passing the impugned order as the decision of the Government is not to extend the tenure of petitioner. It is submitted that the Government has forwarded its recommendation for non-extension of petitioner's tenure to PESB, which in turn shall place it before the ACC for approval. It is pointed out that petitioner has kept lien alive in his parent department and after expiry of his tenure with third respondent, he can always join back his parent department.

4. Learned Central Government Standing Counsel for respondents No.1 & 2 draws attention of this Court to Chapter 10 of the aforesaid Guidelines (*Annexure P-10 colly.*) to point out that matters relating to appointment falling within the purview of ACC have to be dealt with by the Central Administrative Tribunal and so, petitioner ought to be relegated to avail of the remedies before the Central Administrative Tribunal, New Delhi.

5. At this stage, learned counsel for petitioner submits that petitioner's tenure is going to expire tomorrow i.e. on 31st January, 2018,

and if impugned order is not stayed, then it would prejudice petitioner as the non-extension of tenure does not have the approval of ACC.

6. Upon preliminary hearing, it becomes evident that in view of Chapter 10 of the aforesaid Guidelines (*Annexure P-10 colly.*) matters relating to ACC have to be handled by the Central Administrative Tribunal. In view thereof, this matter is required to be placed before the Central Administrative Tribunal, New Delhi in the post-lunch session today.

7. Considering the urgency involved in this case, Registry is directed to send this matter to the Registrar, Central Administrative Tribunal, New Delhi forthwith *through special messenger*, so that petitioner is able to obtain appropriate orders today from the concerned Bench of Central Administrative Tribunal, New Delhi.

Copy of this order be given *dasti* under the signatures of the Court Master to learned counsel for petitioner.

(SUNIL GAUR)
JUDGE

JANUARY 30, 2018

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