

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

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Date of Decision : February 19, 2018

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W.P.(C) 1504/2018 & CM Nos.6151-52/2018

SHRI GIRISH KUMAR Petitioner

Through: Mr.Ankur Chhibber, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr.Sanjeev Narula, CGSC and
Mr.Abhishek Ghai, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Order of 24th January, 2018 (*Annexure P-1 Colly*) declines to confirm petitioner as Director (Bengaluru Complex), Bharat Electronics Limited (BEL) and the denial of confirmation has been communicated to petitioner vide order of 13th February, 2018 which is under challenge in this petition.
2. Learned counsel for petitioner submits that petitioner was appointed as Director (Bengaluru Complex), Bharat Electronics Limited (BEL) on 26th February, 2016 and he had assumed charge on 1st May, 2016. Letter of 26th September, 2016 (*Annexure P-11*) spells out the terms and conditions of petitioner's appointment as a Director with effect from 1st May, 2016.
3. As per appointment letter (*Annexure P-11*), petitioner's tenure was for a period of five years and after expiry of first year, petitioner's performance was required to be reviewed to enable the Government to take a view regarding continuance of petitioner or otherwise, for the balance period of

his tenure. Learned counsel for petitioner submits that petitioner had successfully completed his first year as Director (BC) and his performance was required to be reviewed on or before 1st May, 2017. It is submitted by petitioner's counsel that as per the Office Memorandum of 31st March, 2011 (*Annexure P-13*) proposal for petitioner's confirmation as Director (BC) was to be sent to Public Enterprises Selection Board (PESB) within 30 days after the expiry of one year, if petitioner is not to be confirmed, otherwise it would be a deemed confirmation. It is further submitted that as per OM (*Annexure P-13*) if petitioner was not to be confirmed for reasons other than performance such as vigilance issues etc., then such proposal was to be submitted to the Appointment Committee of Cabinet (hereinafter referred to as ACC) directly at least 30 days in advance of the expiry of the scheduled tenure of such incumbent.

4. Learned counsel for petitioner asserts that the afore-referred mandatory procedure as per OM (*Annexure P-13*) has not been followed and so petitioner is deemed to be confirmed and if any proceedings for initiation of major penalty are to be initiated against petitioner, then as per the BEL CONDUCT, DISCIPLINE AND APPEAL (CDA) RULES of 10th April, 2001, inquiry has to be conducted and it is not necessary to put such an employee under suspension unless the nature of charges so warrant. The emphasis of petitioner's counsel is that any conduct subsequent to the period of confirmation is not to be taken into consideration, to deny confirmation of petitioner. Reliance is placed upon Supreme Court decisions in *Head Master, Lawrence School, Lovedale Vs. Jayanthi Raghu & Anr.* (2012) 4 SCC 793 and *Mir Mohammad Khasim Vs. Union of India & Ors.* (2004) 10 SCC 721 to submit that the concept of deemed confirmation is clearly

attracted to the facts of instant case as vigilance clearance (*Annexure P-7*) has been already granted to petitioner vide communication of 21st December, 2015 by petitioner's Disciplinary Authority. So, it is submitted that the impugned order deserves to be set aside.

5. Learned counsel for respondent supports the impugned order and submits that petitioner's case has been considered under clause 2(d) of the OM (*Annexure P-13*) and there is no question of deemed confirmation as the Central Vigilance Commission has advised initiation of major penalty proceedings against petitioner and the charge sheet has been issued on 25th July, 2017. It is submitted that in compliance of orders of 1st November, 2017 (*Annexure P-18*) of this Court, the entire material was placed before the ACC who has chosen not to confirm petitioner as Director (BC). Reliance is placed upon a Single Bench decision of this Court in *Bhaskarendu Datta Majumdar Vs. Union of India (UOI) & Anr.* 2009 SCC OnLine Del 33 to submit that the recommendation to confirm petitioner was of an advisory nature and it is not binding on ACC and the ACC has to consider each case from the point of public interest. Thus, it is submitted that petitioner has no right to be confirmed as he is a charge sheeted Board Level Executive of respondent-Bharat Electronics Ltd. (BEL).

6. In rebuttal, petitioner's counsel has placed reliance upon a decision of a Division Bench of this Court in *Bhaskarendu Datta Majumdar Vs. UOI & Ors.* 2009 SCC OnLine Del 1461 to submit that the Single Bench's decision in *Bhaskarendu Datta Majumdar's* case (supra) has been set aside and so in view of the decision of the Supreme Court in *Jayanthi Raghu's* case (supra), impugned order ought to be quashed.

7. Upon hearing and on perusal of impugned order, material on record

and the decisions cited, I find that the concept of ‘*deemed confirmation*’ as referred to in *Jayanthi Raghu*’s case (supra) and *Mir Mohammad Khasim*’s case (supra) cannot be applied out of context. In the instant case, ‘*vigilance issue*’ has persuaded the concerned Ministry/Department and the ACC not to confirm petitioner as Director (BC). It has been so done on the advice of Central Vigilance Commission who has gone to an extent of advising the concerned Ministry/Department to initiate proceedings for major penalty against petitioner. In such a case, refusal to confirm petitioner as Director (BC) is eminently justified. No strict adherence to the guidelines as contained in OM (*Annexure P-13*) cannot be fatal as the said guidelines have been substantially complied. It is in the public interest to deny confirmation of petitioner’s tenure. No doubt, the vigilance angle has come to light after expiry of one year but that by itself would not justify mechanical confirmation of petitioner’s tenure especially when proceedings for imposition of major penalty have been initiated against him. Any infringement of the guidelines as contained in OM (*Annexure P-13*) would not enure to the benefit of petitioner as his case has been rightly considered under Clause 2(d) of the guidelines contained in OM (*Annexure P-13*). So reliance placed by petitioner’s counsel upon decisions in *Jayanthi Raghu* (supra) and *Mir Mohammad Khasim* (supra) is of no avail. A Division Bench of this Court in *Bhaskarendu Datta Majumdar* (supra) had referred the matter back because the ACC had chosen to differ with the recommendations of PSEB without assigning any reason. It is not so in the instant case. The finding of the Preliminary Inquiry Committee relied upon by petitioner has not been accepted by the Corporate Vigilance of Respondent-BEL. In such a situation, it cannot be said that impugned order

suffers from non-application of mind as it is evident from the Communication of 15th November, 2017 sent by the concerned Ministry to the Department of Personnel and Training that the entire material was placed before the ACC in view of the directions issued by this Court vide order (*Annexure P-18*). Since impugned order discloses due application of mind, therefore, no case for quashing of the impugned order is made out.

8. Hence, this petition and the applications are accordingly dismissed.

Copy of this judgment be given to the parties 'Dasti' under signatures of the Court Master.

(SUNIL GAUR)
JUDGE

FEBRUARY 19, 2018
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