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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Date of Decision: 11.10.2023**

% LPA 541/2019 and CM APPL. 37728/2019 & CM APPL. 8208/2020

S K PATTANAYAK

..... Appellant

Through: Mr. Sudarshan Rajan and Mr. Hitain
Bajaj, Advocates.

versus

MINISTRY OF RAILWAYS & ORS

..... Respondent

Through: Ms. Bharathi Raju, SPC for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The present LPA is arising out of the judgment dated 01.07.2019 passed by the Learned Single Judge in W. P. (C) 8310/2018 titled as “*S.K. Pattanayak v. Ministry of Railways and Ors.*” by which the services of the Petitioner/Appellant as Managing Director (MD) (Tenure appointment for five years) were put to an end. It is pertinent to mention herein that the Appellant, in the present case has already attained the age of superannuation.

2. The facts of the case as revealed from the record states that the Appellant after completing his Post Graduation (PG) in Applied Geology was appointed as a Scientist in the Cement Research Institute, Ballabhgarh, Haryana in June 1985. Subsequently, he has worked as a Geologist with the Oil & Natural Gas Commission (“ONGC”), West Bengal from June 1986 to August 1989, and later on was selected as a Group ‘A’ Officer of Indian Railways Accounts Services after clearing Civil Services Examination,



1989. The Appellant after his appointment was posted on probation training up to August, 1991. During the period he was regularly promoted and rose from the Rank of Junior Accounts Officer to FA & CAO (equivalent to a Joint Secretary in Government of India) in Railways.

3. Thereafter, the Appellant joined Heavy Engineering Corporation Ltd., Ranchi as Director (Finance) after his selection by the Public Enterprises Selection Board (“PESB”). The Appellant was later on selected as Managing Director (“MD”) on 09.03.2017 in Indian Railways Finance Corporation Ltd. (“IRFC”) by the PESB and his terms and conditions were detailed in order dated 16.05.2017.

4. The Appellant’s contention is that as per the terms and condition of his appointment order, he was appointed for a period of five years with effect from 09.03.2017 and the appointment order also included that the appellant’s services may be terminated during this period by giving three months notice or on payment of three months salary in lieu of notice by other side.

5. The Appellant further stated that he completed one year of his service on the said post on 08.03.2018 and as per the guidelines of PESB and DOPT OM he was a deemed confirmed employee on the post of MD. The record further reveals that the Appellant/ Petitioner has made an attempt to establish that his performance was unblemished and excellent, the Corporation saw unprecedented growth during his tenure.

6. The Appellant/ Petitioner further stated that despite having completed one period required for deemed confirmation to post of MD he was not still



not confirmed formally. Instead of confirmation, the Appellant got wind that the Ministry was contemplating proposal for non-confirmation of Appellant. Accordingly, the Appellant submitted a representation on 05.06.2018 to the Cabinet Secretary on the issue of his non-confirmation. However, the Ministry took a decision on 27.06.2018 divesting the Appellant of all powers of the MD of IRFC with immediate effect. Thereafter, charge-sheet was also issued against the Appellant on 16.07.2018 under Rule 25 of the Indian Railway Finance Corporation Ltd. (Conduct, Discipline & Appeal) Rules, 2008.

7. The Appellant after receiving the Charge-sheet again filed a representation on 23.07.2018 to the Cabinet Secretary protesting against the order divesting him of the charge of MD. The Appellant also denied all the charges leveled against him and submitted a reply on 25.07.2018, however, by an order dated 26.07.2018, the Ministry approved and communicated the decision to prematurely terminate the Appellant with immediate effect.

8. The Appellant before this Court has raised various grounds before the Learned Single Judge challenging his termination and it was argued that termination is bad in law as three months' notice nor three month's pay was given to the Appellant while discontinuing his services. It was also argued before the Learned Single Judge that the order of termination is stigmatic in nature and an Employee who is having unblemished service record has been removed from service in an unceremonious manner.

9. It was also contended that the order of termination was contrary to the terms and condition of the appointment order as he was a deemed confirmed



employee whose services could not have been terminated in the manner and method, it has been done.

10. On the behalf of the Respondents, it was contended that the Appellant was appointment as MD after obtaining clearance from Central Vigilance Commission (“CVC”) and after the approval of Appointments Committee of the Cabinet (“ACC”), the Appellant was appointed to the post of MD, IRFC. The Appellant assumed the Charge on 09.03.2017. The Respondents have admitted that the appellant completed one year of services on the post on 08.03.2018 and the confirmation process was initiated and Special Performance Report (“SPR”) was finalized. He was awarded a score of 41.50 in the SPR out of 50 and as such he met the PESB benchmark for confirmation. However, he was not cleared from vigilance angle due to a complaint forwarded by the CVC under Public Interest Disclosure and Protection of Information (“PIDPI”) being under investigation by the Vigilance Directorate of the Ministry and proposals were sent to PESB and DoPT on 06.04.2018 for deferment of confirmation process for a period of three months. The process of confirmation was deferred and the matter was finally placed before the ACC.

11. It was also stated by the Respondents before the Learned Single Judge that while the matter in respect of confirmation was pending, the CVC on 05.06.2018 advised initiation of major penalty proceedings against the Appellant and also advised on 07.06.2018 that the Appellant be forthwith divested of any sensitive work. The entire matter was placed before the ACC and finally the services of the Appellant were put to an end.



12. The Respondents took a stand before the Learned Single Judge that the Writ Petitioner was not a regular employee. The order of termination was issued due to the tainted vigilance angle of the petitioner. The order of termination was passed keeping in view the vigilance angle and the order does not pose any stigma on Petitioner in any manner whatsoever. The Petitioner was not confirmed at any point of time and a prayer was made for the dismissal of the writ petition.

13. The Learned Single Judge after hearing the parties at length has dismissed the Writ Petition, and the operative paragraphs i.e. Paragraph Nos. 8 to 25 of the order passed by the Learned Single Judge read as under:

“8. After issuance of the chargesheet, the petitioner again filed representation dated 23.07.2018 to the Cabinet Secretary appealed that the order divesting the petitioner of charge as MD of respondent no.4 ought to be withdrawn inasmuch as the same is amounting to punishment before trial and further informed that the petitioner is willing to contest the charges against him and prove his innocence with due process. To this effect, a copy of letter dated 23.07.2018 sent by the petitioner to the Cabinet Secretary is annexed and marked as Annexure-22. Vide letter dated 25.07.2018 submitted to the disciplinary authority, the petitioner denied all charges levelled against him and has further requested the authorities to conduct a day-to-day enquiry, in order to enable the petitioner to clear his name of the allegations made against him. But vide letter dated 26.07.2017, respondent no.1-Ministry approved and communicated the decision to premature termination of the petitioner with immediate effect.

9. Counsel for the petitioner further submitted that no reasons were disclosed in the office order, or in the recommendation of the Ministry for such decision. The immediate termination has left with no other alternative, than to approach this Court by



way of the instant petition.

10. Counsel for the petitioner further submitted that order of termination has been passed without notice to the petitioner and violated the terms of the appointment to the post of Managing Director of respondent no.4- Corporation. Because the terms of appointment permitted termination only on three months' notice or on payment of three months' salary in lieu thereof, neither of which has been complied with by the respondents. In addition, any standing order which conferred such arbitrary, uncanalised and drastic power to enable the employer to dispense with an inquiry and to dismiss an employee without assigning any reason by merely stating that it was expedient not to continue the employee or workman is violative of the basic requirement of natural justice. This proposition of law has been settled by the Hon'ble Supreme Court in various judgments including *West Bengal State Electricity Board & Ors. vs. Desh Bandhu Ghosh & Ors.*: (1985) 3 SCC 116; *Central Inland Water Transport Corporation Limited & Anr. vs. Brojo Nath Ganguly & Anr.*: (1986) 3 SCC 156; & *O. P. Bhandari vs. Indian Tourism Development Corporation Ltd. & Ors.* (1986) 4 SCC 337.

11. Counsel for the petitioner further submitted that the petitioner is an officer with outstanding, impeccable and unblemished service record in his 25 years as Group-A officer of the Indian Railway Accounts Services. As a result of his outstanding service record and credentials, the petitioner was selected by the respondent no.3 as Director Finance in Heavy Engineering Corporation Limited and subsequently was selected for appointment as MD of the respondent no.4. The mandate of the PESB assumes significance in the context of the present facts inasmuch as the PESB which is the recommending authority was not even consulted before passing of the impugned order of termination and in violation of the object clause 2 (d) of PESB. The impugned termination could not have been on account of pending inquiry proceedings inasmuch as disciplinary rules of the respondent no.4 classify termination as 'major penalty' which can only be passed as a consequence of



the completion of the inquiry proceedings. In the present case, the inquiry proceedings were at the stage of commencement, therefore, the impugned termination order could not have been passed merely due to the pendency of the inquiry proceedings.

12. Counsel for the petitioner further submitted that it is settled law that administrative decisions which are unreasoned are liable to be set aside on that ground, therefore, the order of termination is liable to be quashed on this ground alone. In view of the judgments referred by the Supreme Court in the case of Mohinder Singh Gill vs. Chief Election Commissioner: AIR 1978 SC 851, counsel for the petitioner submits that in view of the facts of the case, the impugned order is liable to be set aside and respondents may be directed to complete the departmental proceedings initiated against the petitioner.

13. Ms. Maninder Acharya, learned ASG appearing on behalf of respondent no.1 submitted that on the recommendations of PESB and after obtaining clearance from CVC and after approval of ACC, the petitioner was appointed to the post of MD, IRFC. Accordingly, the petitioner assumed charge of the said post on 09.03.2017. He has completed one year on the post on 08.03.2018. Confirmation process was initiated and Special Performance Report (SPR) was finalized. He has been awarded a score of 41.50 in the SPR out of 50 and as such he met the PESB benchmark of confirmation. However, since the petitioner was not cleared from vigilance angle due to a complaint forwarded by the CVC under Public Interest Disclosure and Protection of Informer (PIDPI) being under investigation by the Vigilance Directorate of the Ministry, proposals were sent to PESB and DOP&T on 06.04.2018 for deferment of confirmation process of the petitioner for a period of three months. PESB advised that the proposal of deferment of confirmation of the petitioner due to vigilance issues may be directly sent to ACC, if the Ministry desires so. DOP&T directed the Ministry to submit an appropriate proposal for consideration of the ACC, in the event of the Ministry finally deciding to propose non-confirmation of petitioner's tenure on the post of MD.



14. In the meanwhile, further investigation by the Vigilance Directorate of Ministry of Railways substantiated the allegations against the petitioner. A report in the matter was referred to Central Vigilance Commission on 21.05.2018 recommending the major penalty proceedings against the petitioner. Keeping in view the vigilance profile of the petitioner, Ministry of Railways recommended non-confirmation of the tenure of the petitioner and a proposal was referred to the DOP&T for obtaining approval of ACC. In the meanwhile, the CVC, on 05.06.2018, advised initiation of major penalty proceedings against the petitioner. The CVC on 07.06.2018, also advised that the petitioner be forthwith divested of any sensitive work. The above position was also conveyed to DOP&T for placing before the ACC. DOP&T on 25.07.2018, conveyed approval of ACC for the premature termination of tenure of the petitioner with immediate effect.

15. Learned Additional Solicitor General further submitted that the respondents have acted as per relevant rules and regulations. No cause has accrued against the petitioner which is not in dispute that the petitioner was employed initially for a period of five years and it was explicitly provided that after completion of the first year, the performance of the petitioner shall be reviewed to enable government to take a view regarding continuance or otherwise for the balance period of tenure, hence case of the petitioner is that not of any other employees of the government who are specifically covered under special rules. In this light, the petitioner was not a regular employee. The termination order has been issue due to the tainted vigilance angle of the petitioner. The Order does not cast any stigma upon the petitioner in any manner whatsoever. The case of non confirmation was processed in accordance with the guidelines of PESB & DOP&T. The petitioner is again wrong in stating that there was no consultation sought from respondent no.3, the PESB, before the issuance of order of termination/non-confirmation of the petitioner. The Ministry of Railways had in fact consulted PESB in the matter of non-confirmation of the petitioner, though the same was not required as per the guidelines. The petitioner's non-



confirmation was not on performance grounds which requires recommendations of PESB but on vigilance issues for which no consultation with PESB was required.

16. As per para 1.2 of the conditions, the performance of the petitioner will be reviewed after the expiry of the first year to enable Government to take a view regarding continuance or otherwise for the balance period of tenure. In accordance with the said para 1.2, performance was reviewed and on finding adverse vigilance profile warranting major penalty proceedings during the probation period itself, a conscious decision was taken by the ACC not to confirm the petitioner and ordered premature termination of his tenure with immediate effect.

17. It is further submitted that the guidelines, in fact, state that a CMD/MD/Functional Director would be confirmed unless the Ministry/Department sent a proposal to the PESB, to the contrary, within 30 days after the expiry of one year. The said guidelines also states that if the Ministry/Department is not inclined to confirm the appointee for reasons other than performance such as vigilance issues etc. then such proposal shall be submitted to ACC directly. Non-confirmation of the petitioner was done in accordance with the said guidelines and with the approval of ACC.

18. I have heard learned counsel for the parties at length and perused the material available on record.

19. The fact remains that the petitioner was not cleared from vigilance angle due to a complaint forwarded by the CVC under Public Interest Disclosure and Protection of Informer (PIDPI), therefore, the case of the petitioner was under investigation before Vigilance Directorate of the Ministry. Consequently, the proposals were sent to PESB and DOP&T on 06.04.2018 for deferment of confirmation process of the petitioner for a period of three months. PESB advised that the proposal for deferment of confirmation of the petitioner may be directly sent to ACC, if the Ministry so desires. DOP&T directed the Ministry to submit an appropriate proposal for



consideration of the ACC, in the event of the Ministry finally deciding to propose non-confirmation of the petitioner's tenure on the post of MD. In the meanwhile, further investigation by the Vigilance Directorate of Ministry of Railways substantiated the allegations against the petitioner. A report in the matter was referred to Central Vigilance Commission on 21.05.2018 recommending the major penalty proceedings against the petitioner. Therefore, keeping in view the vigilance profile of the petitioner, Ministry of Railways recommended non-confirmation of the tenure of the petitioner and a proposal was referred to the DOP&T for obtaining approval of ACC. In the meanwhile, the CVC on 05.06.2018, advised initiation of major penalty proceedings against the petitioner. The CVC on 07.06.2018, also advised that the petitioner be forthwith divested of any sensitive work. This development was also conveyed to DOP&T for placing before the ACC. Accordingly, DOP&T on 25.07.2018, conveyed approval of ACC for the premature termination of tenure of the petitioner with immediate effect.

20. The fact remains that the petitioner's non-confirmation was not on performance grounds which requires recommendations of PESB but on vigilance issues for which no consultation with PESB was required. In fact, the guidelines, state that a CMD/MD/Functional Director would be confirmed unless the Ministry/Department sent a proposal to the PESB, to the contrary, within 30 days after the expiry of one year. The guidelines also states that if the Ministry/Department is not inclined to confirm the appointee for reasons other than performance such as vigilance issues etc. then such proposal shall be submitted to ACC directly. Therefore, I am of considered view that non-confirmation of the petitioner was done in accordance with the guidelines and with the approval of ACC.

21. It is a fact that the Ministry of Railways had made references to both PESB and DOP&T within one month after completion of one year for deferment of the confirmation process of the petitioner due to adverse vigilance issues. As



such, the claim of the petitioner that he stood deemed confirmed is mere mis-representation of facts. The decision was taken after due procedures and with the approval of competent authority, viz. the ACC. IFRC's letter dated 11.07.2018 seeking certain clarifications has already been replied to.

22. The contention of the petitioner is that serving of the chargesheet upon the petitioner itself is indicative that he is being considered as deemed to be confirmed employee, is not founded upon logic or law.

23. In the case of The Chief General Manager, State Bank of India & Anr. vs. Shri Bijoy Kumar Mishra: (1997) 7 SCC 550, the Hon'ble Supreme Court has held that deemed confirmation results on the conduct of the employer in permitting continuance in service after the expiry of the maximum period of probation fixed by the rules. When there is no such conduct of the employer, the very foundation for the argument of deemed confirmation does not exist.

24. Keeping in view the above discussion and the settled position of law, I find no merit in the present petition and the same is, accordingly, dismissed with no order as to costs.

CM APPL. No. 31902/2018

25. In view of the order passed in the present writ petition, the application has been rendered infructuous and is, accordingly, disposed of."

14. The aforesaid order passed by the Learned Single Judge reveals that the Learned Single Judge has declined to grant any relief to the Appellant in the matter of curtailment of his tenure on the post of MD, IRFC Ltd.

15. The learned Counsel for the Appellant contends that the Learned Single Judge has failed to appreciate that there was non compliance of the principles of natural justice, with no notice having being issued to the



Appellant prior to the order of termination passed by the respondents herein and therefore, violative of terms of the appointment

16. The learned Counsel for the appellant further submits that terms of appointment permitted termination only on three months' notice or payment of three months' salary in lieu thereof, neither of which has been complied with by the respondents. Furthermore, any standing order which conferred such arbitrary, uncanalized and drastic power to enable the employer to dispense with an inquiry and to dismiss an employee without assigning any reasons by merely stating that it was expedient not to continue the employee or workmen is violative of the basic requirement of natural justice.

17. It is further argued by the learned Counsel for the Appellant that the order of termination of the Appellant from the post is illegal and violative of Article 14, 16, 19(1)(g) and 21 of the Constitution of India.

18. Heard Learned Counsel for the Parties at length and perused the record. The facts of the case reveal that the Appellant before this Court was serving as an Officer in the Indian Railways Accounts Services, and has attained the age of superannuation. The Respondent IRFC is a Schedule A Central Public Sector Enterprises under the administrative control of Ministry of Railways.

19. The appointments to the post of Chairman, Chairman-cum-Managing Director and other members of the Board including Managing Director of any Schedule 'A' and Schedule 'B' State owned public corporations, company or enterprise vest in the ACC as per Government of India (ToB) Rule, 1961.



20. The Appellant was appointed as MD, IRFC on 09.03.2017 and copy of approval issued by the Railway Board in respect of the appointment of the Appellant to the post of MD, IRFC dated 16.02.2017 is reproduced as under:

“GOVERNMENT OF INDIA

MINISTRY OF RAILWAY

RAILWAY BOARD

New Delhi Dated: 16.02.2017

No. 2015.E(D) 12/40/9

The Company Secretary

Indian Railway Finance Corporation Ltd. (IRFC)

NBCC Place, Bhishma Pitamah Marg

Pragati Vihar, Lodhi Road

NEW DELHI-110003

Sub- Appointment to the post of MD/IRFC

The competent authority has approved the appointment of Shri S.k. Pattanayak, Director (Finance), Engineering Corporation Ltd to the post of Managing Director, Indian Railway Finance Corporation Ltd. (IRFC)" in the Scale of pay of Rs. 80,000-1, 25,000/- for a period of five years with effect from the date of his assumption of charge of the post or till the date of his superannuation or until further orders, whichever is the earliest. The date of assumption of charge by the officer may please be advised.

Sd/-

(Manoj Kumar)

Under Secretary//E (0) II

Railway Board



Tele: 23070459

New Delhi dated 16.02.2017

21. The appointment of the Appellant was for a period of 5 years with effect from 09.03.2017. Relevant clauses, as reflected in the appointment order of Ministry of Railways dated 16.05.2017 reads as under:

“1.2 After the expiry of the first year, the performance of Shri S. K. Pattanayak will be reviewed to enable Government to take a view regarding continuance or otherwise for the balance period of tenure.

1.3 Headquarters: His headquarters will be at New Delhi where the registered office/ headquarters of the CPSE is located. He will be liable to serve in any part of the country at the discretion of the CPSE.

1.4 Pay: Shri S. K. Pattanayak will draw a basic pay of Rs. 84,420/- per month in the scale of Rs. 80,000/- 1,25,000/- (revised) from the date of assumption of office.

1.5 Dearness Allowance: He would be paid DA in accordance with the new IDA scheme as spelt out in the DPE's O.M. dated 26.11.2008 & 02.04.2009.

1.6 Annual Increment: He will be eligible to draw his annual increment @ 3% of basic-pay on the anniversary date of his appointment in the scale and further increments on the same date in subsequent years until the maximum of pay scale is reached. After reaching the maximum of the scale one stagnation increment equal to the rate of last increment drawn will be granted after completion of every two-year period from the date he reaches the maximum of his pay scale provide he gets a performance rating of “Good” or above. He will be granted a maximum of three such stagnation increments.”

22. The facts of the case further reveal that the cases of Board level



functionary for confirmation/ non-confirmation at the end of the first year are considered by the competent authority, as per the guidelines issued by the Government of India from time to time, and the guidelines issued by the appointment committee of the Cabinet, Department of Personnel and Training (DoPT) dated 31.03.2011. The relevant clauses of the guidelines are reproduced as under:

“(2) Confirmation of Board level appointees;

- a. *A CMD/MD/Functional Director would be deemed to be confirmed unless the Ministry/ Department sends a proposal to the PESB, to the contrary, within 30 days after the expiry of one year.*
- b. *Within this stipulated period of one year and thirty days, the officer would be deemed to have been confirmed and the Ministry shall issue necessary order for confirmation, if the Ministry fails to send a proposal to contrary, to the PESB.*
- c. *The PESB shall hold a Joint Appraisal on receipt of the proposal, within one month after which the proposal shall be sent to the Ministry for placing before the ACC orders.*
- d. *If the Ministry/ Department is not Inclined to confirm the appointee for reasons other than performance such as vigilance issues etc., then such proposal shall be submitted to the ACC directly at least 30 days in advance of the expiry of the scheduled tenure of the incumbent.*
- e. *The EO shall monitor, all cases of confirmation every month and send a report for information of the ACC.”*

23. The Guidelines issued from time to time for confirmation provides for a procedure to be followed and also formats for SPR to assess performance in the first year. The assessment in the SPR is required to be recorded by the



Secretary of the Administrative Ministry in respect of the Chief Executive and by the Chief Executive of the CPSE. The minimum acceptable score in the SPR is 37.5 out of 50 with no single attribute having a score less than 3.

24. As per the guidelines, the ministries are required to send proposals to PESB only in cases of non-confirmation on performance grounds where the score on SPR is less than 37.5.

25. The guidelines further provide that CMD /MD /Functional Director would be deemed to be confirmed unless the Ministry/ Department sends a proposal to PESB, to the contrary, within 30 days after the expiry of one year.

26. In respect of executives who score less than 37.5 marks on the SPR are called for a joint appraisal meeting with the Board in the presence of the Secretary of the Administrative Ministry to assess the confirmation or otherwise of the functionary.

27. The Guidelines further provide that the PESB is required to hold a joint appraisal on receipt of the proposal, within one month, after which the proposal is sent to Ministry for placing it before the ACC for further orders.

28. The Guidelines also provide that in case, the Ministry/ Departments is not inclined to confirm the appointee for reasons other than performance such as vigilance issues etc., such proposal shall be submitted to the ACC directly at least 30 days in advance of the expiry of the scheduled tenure of the incumbent. In case, the recommendation of non-confirmation is approved by the Competent Authority, the executive vacates the post.



29. The procedure also provides for Board level appointment in CPSE under administrative control of Ministry of Railways that the PESB holds selection and recommends a panel of one candidate for appointment to the post. On receipt of recommendation of the PESB, CVC's clearance is obtained and the case is processed for obtaining approval of the Ministry of Railways.

30. After obtaining approval of the Ministry of Railways, reference is made to the DoPT for obtaining approval of the ACCs of the Cabinet to the appointment. On receipt of ACCs approval, final order of appointment is issued.

31. In the present case, on the recommendations of PESB and after obtaining clearance from CVC, the matter was placed before the ACC and the appellant was posted as MD, IRFC. The Appellant also took charge of the charge to the post of MD, IRFC on 09.03.2017. The Appellant completed one year on the post of MD on 08.03.2018 his date of joining being 09.03.2017, and the process of confirmation of the Officer was initiated and SPR was finalized. He was awarded 41.50 in the SPR out of 50 and he qualified the prescribed benchmark for confirmation.

32. The most important aspect of the case is that he was not cleared from the vigilance angle due to a complaint forwarded by the CVC under the PIDPI being investigated by the Vigilance Directorate of the Ministry. The proposals were sent to PESB and DoPT on 06.04.2018 for deferment of confirmation process of the officer for a period of three months. The relevant communication dated 06.04.2018 is reproduced as under:



“No.2015/E(0)II/40/9

New Delhi, dated 06.04.2018

OFFICE MEMORANDUM

Sub:- Confirmation of tenure of Shri S.K. Pattanayak , MD/IRFC,

The undersigned is directed to state that Shri S.K. Pattanayak, Managing Director, Indian-Railway Finance Corporation Ltd. (IRFC) completed one year on the post on 08.03.18, his date of joining being 09.03.17. Confirmation process of the officer was initiated and Special Performance Report (SPR) finalized. He has been awarded a score of 41.50 in the SPR and as such he meets the PESB prescribed benchmark for confirmation", Copy of SPR is enclosed.

2. However, Shri S. K. Pattanayak is not clear from vigilance angle as a complaint forwarded by the CVC under PIDPI (Public Interest Disclosure and Protection of Informer) is under investigation by the Vigilance Directorate of this Ministry, Copy of Vigilance profile as maintained in Vigilance Directorate of this Ministry is also enclosed.

3. This Ministry has considered the matter keeping in view the above vigilance position and is of the view that while it may not be appropriate to confirm the officer, it would equally be unfair to deny him the confirmation without verifying the details/nature of the allegations presently under investigation. As such, this Ministry proposes to defer confirmation of Shri S.K. Pattanayak for another 03 months by which time more facts about the case are expected to be available. A reference in this connection has also been made to PESB for its consideration and approval of the competent authority. Copy of this Ministry's to PESB is enclosed.

4. It is requested that the above position may please be conveyed to ACC for its appreciation.



5. This issues with the approval of Financial Commissioner/Railways (the administrative Secretary for IRFC) and Chairman, Railway Board;

-sd-

(K. Gangadharan)

Director/Deputation

Railway Board

Tele: 23387270”

33. The PESB advised the proposal of deferment of confirmation of Sh. S. K. Pattanayak i.e. the Appellant, due to the Vigilance issue may be directly sent to ACC, if the Ministry so desires. The relevant portion of the communication of the PESB is reproduced as under:

“The undersigned is directed to refer to Ministry of Railways's O.M. No. 5/E(0)II/40/9 dated 06.04.2018 regarding the subject mentioned above.

Kind attention of Ministry of Railways is invited to Para 4 of Chapter 3- "Confirmation procedure" of the guidelines depicted at DoP&T's website, under, the head "Compendium of guidelines regarding Board level appointments in CPSEs - Updated as on 29.08.2017" (copy of relevant portion enclosed) which provides that:

"The Ministries are required to send proposal to PESB only in cases of non-confirmation on performance grounds where the score on SPR is less than 37.5."

In view of above, it is requested that the proposal of deferment of confirmation of Shri S.K. Pattanayak may be directly submitted to the ACC, if the Ministry desires so.”

34. Other important aspect of the case is that the DoPT directed the Ministry to submit an appropriate proposal for consideration of the ACC for



non-confirmation of the Appellant's tenure on the post of MD, IRFC. While the matter was pending, the Vigilance Directorate of the Ministry referred the matter to CVC on 21.05.2018 for initiating disciplinary proceedings for inflicting major penalty.

35. The CVC on 05.06.2018, advised initiation of Major Penalty proceedings against the Appellant, and also advised to withdraw sensitive work from the Appellant and the matter was placed before the ACC. Finally, the DoPT on 25.07.2018 conveyed approval for ACC for the premature termination of tenure of the Appellant on the post of MD, IRFC with immediate effect, and consequential orders were issued on 26.07.2018. A relieving order was also issued on 26.07.2018.

36. Learned Counsel for the Appellant has vehemently argued before this Court that the Appellant has obtained a status of deemed confirmed employee keeping in view the terms and conditions of the appointment to the post of MD.

37. The undisputed facts of the case makes it very clear that the Appellant before this Court was not cleared for confirmation. On the contrary, a complaint was received against him by the CVC under PIDPI.

38. The matter was enquired and it is an undisputed fact that the case of the Appellant was under investigation before the Vigilance Directorate of the Ministry. The PESB advised the proposal for deferment of conferment of the Appellant and the matter was finally forwarded to ACC. In those circumstances, the ACC, keeping in view the fact that CVC on 21.05.2018 has recommended disciplinary proceedings for inflicting major punishment,



was certainly justified in not directing continuance of the tenure of the Appellant in the peculiar facts and circumstances of the case.

39. The present case is an open and shut case where the Appellant who was serving on the post of MD was involved in a vigilance case in which the CVC has finally recommended major penalty disciplinary proceedings, and therefore, an Officer who was under cloud has not been continued for the remaining four year's period on the post of MD.

40. The terms and condition of the appointment order as reproduced earlier, especially clause 1.2, makes it very clear that after expiry of first year, the performance of the Appellant was to be reviewed enabling the Government to take a view regarding continuance or otherwise for balance a period. In those circumstances, keeping in view the clause 1.2, the performance of the Appellant was reviewed and on finding adverse vigilance profile warranting major penalty proceedings during the probation period itself a conscious decision was taken by the ACC not to confirm the Appellant and to permit him to continue for the remaining balance period of tenure and his premature order of termination was ordered with immediate effect.

41. In the considered opinion of this Court, the present case is certainly not a case of deemed confirmation as the Office Memorandum issued by the DoPT categorically provides that, in case, the Ministry/ Department is not inclined to confirm the appointee for reasons other than performance such as vigilance issues etc. then such proposal shall be submitted directly to the ACC.



42. In the instant case, non-confirmation of the Appellant was done in accordance with law and Guidelines issued by the DoPT and as a matter of fact, the Ministry of Railways has made reference to PESB and DoPT within one month after completion of one year for deferment of the confirmation process of the Appellant due to adverse vigilance issued. Therefore, by no stretch of imagination, it can be said that the Appellant stood deemed confirmed on completion of one year's period.

43. The Learned Single Judge has rightly arrived at a conclusion in the peculiar facts and circumstances of the cases that the Appellant's tenure was rightly curtailed, keeping in view the Vigilance angle which finally resulted in recommendations for holding a departmental enquiry (major penalty).

44. Learned Counsel for the Appellant has placed reliance upon a judgment delivered by the Hon'ble Supreme Court in the case of **Chief G.M., State Bank of India v. Bijoy Kumar Mishra**, (1997) 7 SCC 550. The relevant paragraphs i.e. Paragraph Nos. 7, 8 and 10 of the aforesaid judgment read as under:

“7. The above-quoted last extract on which reliance was placed by the High Court and on which emphasis was laid by Shri K.K. Venugopal, learned counsel for the respondent, has to be read in the context and not divorced therefrom. In substance, Dharam Singh [AIR 1968 SC 1210 : (1968) 3 SCR 1] held that where the Service Rules permitted continuance in service as a probationer beyond a certain period, an express order of confirmation is necessary to give the employee a substantive right to the post, and the mere fact that he is allowed to continue in the post after the specified period of probation is not sufficient to hold that he should be deemed to have been confirmed; but where the maximum period of



probation is provided in the Service Rules and the employee is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he must be deemed to have been confirmed in the post by implication. It is significant that the effect of permitting the employee to continue in the post even on completion of the maximum period of probation without an express order of confirmation results in the only logical inference that he has been confirmed in the post by implication. In other words, for drawing such inference, it is necessary that the employer should allow the employee to continue on the post even after expiry of the maximum period of probation which is consistent only with the fact of his confirmation on the post. This inference is drawn from the conduct of the employer which is consistent only with the fact of confirmation of the employee. In short, it is a rule of evidence applied to the facts of the case because the continuance in employment after the maximum period of probation is consistent only with the confirmation, and that follows from the employer's conduct of permitting the employee to continue to work on that post after the maximum period of probation.

8. It is obvious that the decision in Dharam Singh [AIR 1968 SC 1210 : (1968) 3 SCR 1] can have no application in a case where the employee was absent from duty from a date much prior to the expiry of the maximum period of probation and remained absent even thereafter for a long time. There was no occasion in such a case for the employer to allow the employee (respondent) to continue to work on the post after the expiry of the maximum period of probation because he was absent and was not working on the post at the time of the expiry of the period of probation. Deemed confirmation results from the conduct of the employer in permitting continuance in service after the expiry of the maximum period of probation fixed by the rules. When there is no such conduct of the employer, the very foundation for the argument of deemed confirmation and reliance on Dharam Singh [AIR 1968 SC 1210 : (1968) 3 SCR 1] is not existent. In our opinion, this discussion alone is sufficient to indicate that the High Court has misread Dharam



Singh [AIR 1968 SC 1210 : (1968) 3 SCR 1] to grant relief to the respondent. However, we may refer to some later decisions also to indicate that this is the correct position in law.

10. There can thus be no doubt that the deemed confirmation which is inferred from the employer's conduct is permissible only when it follows from the positive act of the employer permitting the employee to continue to work on the post even after completion of the maximum period of probation permitted under the Service Rules since no other inference is possible in such a situation from the employer's conduct of continuing to take work from the employee after that period.”

45. This Court has carefully gone through the aforesaid judgment. In the present case there was no order of confirmation issued at any point in time and within a period of 30 days proposal was initiated in respect of the Petitioner for non-confirmation. The Petitioner was not cleared from the vigilance angle and finally complaint forwarded by the CVC was investigated by Vigilance Directorate of the Ministry. Even proposal was sent to PESB and DoPT on 06.04.2018 for deferment of confirmation process of the Officer for a period of 3 months. Not only this, the CVC on 05.06.2018 advised initiation of major penalty proceedings and also advised on 07.06.2018 to withdraw sensitive work from the Appellant. Finally, the DoPT conveyed approval for ACC for the premature termination of the Appellant on the post of MD, IRFC with immediate effect and consequential orders were issued on 26.07.2018. A relieving order was also issued on 26.07.2018. Furthermore, The Appellant has also attained the age of superannuation.

46. Therefore, in view of the aforesaid circumstances, the judgment relied upon in the case of *Chief G.M., State Bank of India v. Bijoy Kumar*



Mishra, (1997) 7 SCC 550 does not help the Appellant in any manner. Accordingly, the Court does not find any reason to interfere with the order passed by the Respondents as well as the order passed by the Learned Single Judge.

47. In view of the aforesaid, the present LPA stands dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

OCTOBER 11, 2023

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