

# **SUPREME COURT OF INDIA**

Union of India

Vs.

Tilak Raj Gandhi

C.A.No. 309 of 2014

(Anil R.Dave and Dipak Misra JJ.)

15.01.2014

## **JUDGMENT**

**ANIL R. DAVE, J.**

1. Delay Condoned.

2. Leave granted.

3. Being aggrieved by the Judgment delivered by the High Court of Delhi in Writ Petition (C) No.7816 of 2011 dated 21st January, 2013, whereby the order passed by the Central Administrative Tribunal (CAT), Principal Bench, in O.A.No.2164 of 2011 dated 12th October, 2011 has been quashed and set aside, has been challenged before this Court.

4. The facts giving rise to the present litigation in a nut-shell are as under:

There was a vacancy in the cadre of Director

(Finance) in the Bharat Sanchar Nigam Limited (BSNL) and for filling the vacancy, an advertisement had been published by the Public Enterprises Selection Board on 3rd January, 2008. Somehow, nothing happened in pursuance of the said advertisement and therefore, another advertisement was published on 13th/14th November, 2008. In pursuance of the second advertisement, several applications had been received and ultimately the Public Enterprises Selection Board found two candidates suitable for

appointment to the post in question. The first name was of Mrs. Anita Soni and the second name of the respondent herein.

5. After necessary scrutiny and upon getting report from the Central Vigilance Commission (CVC), it was found that Mrs. Anita Soni was not eligible for appointment to the post whereas the respondent, who was working as General Manager (Finance) with the MTNL, was facing an inquiry initiated by the CBI and therefore, no one was appointed from the said list.

6. As the respondent had not been appointed to the post in question, he had made a representation to the Appointment Committee of the Cabinet (ACC) so that his case might be reconsidered. The representation made by the respondent was considered and rejected by the ACC.

7. Thus, once again the post in question had been advertised on 19th March, 2010 and at that time the respondent herein did not apply for the post.

8. As the respondent was not given appointment to the post in pursuance of the advertisement dated 13th/14th November, 2008, he had filed a writ petition before the Delhi High Court. Ultimately, the petition filed by the respondent had been dismissed and he was asked to approach the Central Administrative Tribunal (CAT) by filing an O.A.

9. The respondent, thereafter, filed an O.A. No.261 of 2011 before the CAT praying that he should be appointed to the post of the Director (Finance) in the BSNL. The said O.A. was also dismissed by an order dated 12th October, 2011 as the CAT found that the process of taking decision with regard to appointment to the post in question was flawless. Being aggrieved by the said judgment, the respondent had filed W.P. (C ) No. 7816 of 2011 before the High Court.

10. Subsequently, the inquiry initiated against the respondent by the CBI had been closed in pursuance of an order dated 22nd December, 2012 passed by the Special Judge, CBI. After the inquiry initiated by the CBI was closed, the impugned judgment was delivered on 21st January, 2013 by the High Court in the above-mentioned writ petition filed by the respondent. As at the relevant time no inquiry was pending against the respondent, by the impugned order, the appellants have been directed to appoint the respondent as Director (Finance) in the BSNL immediately after superannuation of an officer who was working as Director (Finance) in the BSNL at the relevant time. The post in question was not vacant at

the relevant time and it was to become vacant on 30th November, 2013, as the person holding the said post was to be superannuated on 30th November, 2013.

11. Being aggrieved by the aforesaid direction given by the High Court, this appeal has been filed by the appellants praying that the impugned order passed by the High Court of Delhi, giving direction to the appellants to appoint the respondent as Director (Finance) in the BSNL be quashed and set aside.

12. The learned counsel appearing for the BSNL had mainly submitted that the respondent had submitted his application for appointment to the post in question in pursuance of an advertisement published on 13th/14th November, 2008. He had further submitted that none was appointed in pursuance of the said advertisement as Smt. Soni was found to be ineligible and the respondent was facing an inquiry initiated by the CBI. The representation made by the respondent to the ACC had also been rejected and therefore, the matter had rested there. Thereafter, another advertisement inviting applications for appointment to the post in question had been published on 19th March, 2010 and in pursuance thereof Shri K.C.G.K. Pillai had already been appointed as Director (Finance) in the BSNL. Thus, the entire issue with regard to the appointment to the post of Director (Finance) in the BSNL had come to an end. Therefore, the respondent had no right to be appointed to the post in question. He had further submitted that the term of the abovenamed incumbent was also to expire on 30th November, 2013 and in any case, the respondent would not have any right to be appointed as he had never been appointed to the post in question.

13. The learned counsel had submitted that the High Court had made an error by not considering the fact that a fresh appointment to the post in question had already been made and therefore, the respondent had no right to be appointed to the post in question. He had also submitted that an interim relief which had been granted in favour of the respondent in the aforesaid writ petition would not be of any help to the respondent that upon completion of the term of Shri Pillai, a fresh effort will have to be made for giving appointment from suitable and eligible persons so as to see that all eligible candidates get an opportunity to compete for an appointment to the post in question. He had, therefore, submitted that the impugned order be quashed and set aside.

14. On the other hand, the learned counsel appearing for the respondent had submitted that the respondent was wrongly denied appointment to the post in

question and therefore, subsequent to the completion of the term of the existing incumbent, the respondent should be appointed to the post in question.

15. The learned counsel appearing for the respondent had submitted that the respondent was the only eligible candidate to be appointed to the post in question as Mrs. Soni was found to be ineligible and therefore, the respondent ought to have been appointed to the post. It was unfortunate that the respondent had been wrongly involved in a criminal case which was being looked into by the CBI but ultimately, the respondent was given a clean chit by the court of CBI by an order dated 22nd December, 2012 and therefore, the respondent should not have been prevented from being appointed to the post in question.

16. The learned counsel had relied upon certain judgments to substantiate his case to the effect that if an eligible candidate is not appointed due to any misunderstanding of correct legal position, such a candidate must be given appointment. The learned counsel had relied upon the judgments delivered in the case of Virender S. Hooda and others v. State of Haryana and another 1999 (3) SCC 696, Miss Neelima Shangla, Ph.D. candidate v. State of Haryana and others 1986 (4) SCC 268, A.P. Aggarwal v. Govt. of NCT of Delhi and another 2000 (1) SCC 600 and Asha Kaul (Mrs.) and another v. State of Jammu and Kashmir 1993 (2) SCC 573 to substantiate his case.

17. He had finally submitted that the grievance of the respondent can be redressed by giving him appointment at present as the person holding the post in question was to retire on 30th November, 2013.

18. For the aforesaid reasons, the learned counsel had submitted that the view expressed by the High Court of Delhi in the impugned judgment is correct and the appeal filed by the Union of India and others should be dismissed.

19. We had heard the learned counsel and had also perused the impugned judgment as well as the judgments referred to by the learned counsel appearing for the respondent.

20. It is unfortunate that the respondent was facing an inquiry at the time when he was selected in pursuance of the process of selection which had been initiated in pursuance of the advertisement published on 13th/14th November, 2008.

21. At the time when the respondent had applied for an appointment to the post in question, though he was found eligible, he could not be appointed as he was facing a CBI inquiry. In the circumstances, the respondent was rightly not appointed to the post in question. The respondent cannot make any grievance on the ground that he was wrongly denied appointment to the post in question because in fact he was facing a CBI inquiry at the relevant time.

22. The representation made by the respondent was also rejected and the Original Application filed before the CAT had also been rightly rejected as the respondent was not found suitable at the time when his case was being considered for appointment to the post in question.

23. It is true that the respondent was given a clean chit by an order of the CBI court on 22nd December, 2012 but by that time the entire process initiated in pursuance of the advertisement dated 13th/14th November, 2008 for appointment to the post in question had come to an end. Nothing with regard to appointment to the post in question was kept pending at the time when the next advertisement for appointment to the post in question had been published. It is unfortunate that the respondent did not apply again for the post in question. Had he applied for the post in question and had he been given a clean chit by the CBI court at the time when his case could have been considered, he might have been appointed to the post in question if he had been found to be the best amongst all candidates who had applied for the post in question. Unfortunately, this had not happened and therefore, the respondent cannot have any right to be appointed to the post in question at this juncture.

24. From the facts stated at the bar, we find that the post in question must have become vacant after 30th November, 2013 and another advertisement might have been published and if the respondent applies for the post in question, we are sure his case would be considered by the appellant authority. Looking at the plight of the respondent, as a special case we direct that if there is any particular age limit for the post in question, the case of the respondent be also considered along with other candidates even if he has crossed the upper age limit.

25. Unfortunately, the High Court did not give importance to the fact that an appointment in pursuance of the subsequent advertisement had already been made by the appellant authorities and therefore, the respondent had no legally subsisting right to be appointed to the post in question as he had not applied for the post in question again. In the circumstances we do not agree with the view expressed by

the High Court that even after completion of the term of the person who was appointed to the post in question, the respondent would have a subsisting legal right to be appointed without considering other suitable candidates who might be available at the relevant time. For the aforesaid reasons, in our opinion, interim relief granted in favour of the respondent would not be of any help to the respondent because at this stage, the respondent cannot be given appointment without considering other eligible candidates who might have applied for the post in question. If other eligible candidates are not given a chance to compete with the respondent for getting appointment to the post in question, injustice would be caused to the other eligible candidates and it would also not be proper to fill up any public office without giving an opportunity to other candidates who might be eligible and desirous for appointment to the post in question.

26. We had considered the judgments cited by the learned counsel appearing for the respondent but in our opinion the said judgments do not render any assistance to the respondent as facts and circumstances of the present case are quite different.

27. For the above reasons, we quash and set aside the impugned judgment delivered by the High Court. The appeal is allowed with no order as to costs.

28. We clarify that the case of the respondent, even if has crossed the maximum age limit, shall be considered along with other candidates, if in pursuance of the next advertisement the respondent applies for the post in question.