
(2000) 02 DEL CK 0144
In the Delhi High Court
Case No : LPA No. 63 of 2000

Anand Darbari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Citation : (2000) 84 DLT 247 : (2000) 53 DRJ 70

Hon'ble Judges : R.S. Sodhi, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. Shanti Bhushan, Mr. A. Sharan and Mr. Shree Prakash Sinha, for the Appellant; Mr. H.S. Phoolka and Mr. Virendra Rawat, for the Respondent

Judgement

Anil Dev Singh, J.—Rule D.B.

2. By means of the instant Letter's Patent Appeal the appellant challenges the order of the learned Single Judge dated January 27, 2000 whereby the prayer of the appellant for directing the Appointments Committee of Cabinet (for short "ACC") to reconsider the decision refusing to extend the tenure of the appellant as Chairman-cum-Managing Director of Cement Corporation of India beyond January 1, 1999 till March 31, 2001, was declined.

3. We have heard learned counsel for the parties. We do not find any infirmity in the order of the learned Single Judge. It is admitted on both sides that initially the appellant was appointed as Chairman-cum-Managing Director of the Cement Corporation of India on January 2, 1989 for a period of 5 years. Thereafter he was granted two extensions. The Public Enterprises Selection Board (for short "the PESB") recommended the case of the appellant for extension beyond January 1, 1999 to March 31, 2001 on the ground that BIFR had finalised a rehabilitation package for Cement Corporation of India and the implementation of the BIFR package within a specified time frame requires commitment to the package. It is note worthy that the ACC considered the recommendations of the PESB but did not accept the same since no rehabilitation package was under

implementation and that there was a sharp down turn in the production and the profitability of the company during the tenure of the appellant as its Chairman-cum-Managing Director. That apart the appellant had not been able to over come the difficulties and challenges before the Cement Corporation of India and to lead the Corporation effectively for an improved performance.

4. It is not denied by the appellant that the Cement Corporation of India was declared a sick company under Sick Industrial Companies (Special Provisions) Act, 1985 during the tenure of the appellant. The question whether a person is fit to be appointed to a post or entitled for extension, is a matter entirely for the employer to decide. It was the prerogative of the Government to decide whether or not the appellant should be given extension. We do not find the decision of the Government to be arbitrary, unjust or unfair. The appellant has not been able to show that the decision of the Government suffers from any infirmity.

5. Learned counsel for the appellant submitted that the opinion of the ACC was influenced on account of the alleged complaints against the appellant. He also submitted that the decision of the ACC was not in conformity with the principles of natural justice as no opportunity of hearing was provided to him by the ACC.

6. We have considered the submission of learned senior counsel for the appellant but we regret our inability to accept the same. It is correct that the ACC at the time of taking a decision was apprised of the fact that the charges against the appellant had been framed on the basis of recommendations of the CVC and a departmental enquiry was ordered against him but the enquiry was stayed by the High Court. At the same time it needs to be noticed that the appellant was not able to over come the challenges and difficulties before the Cement Corporation of India and there was a sharp decline in production during his period as Chairman-cum-Managing Director of the Cement Corporation of India. The performance of the appellant as Chairman-cum-Managing Director of the Cement Corporation of India is a relevant factor and cannot be ignored.

7. In view of the foregoing, we do not find any merit in the appeal and accordingly, the same is dismissed.