

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

+ **W.P.(C) 3968/2012**

Reserved on : 09.09.2014

Pronounced on : 07.11.2014

IN THE MATTER OF :

MADAN MOHAN

..... Petitioner

Through : Mr. Shankar Raju with  
Mr. Nilansh Gaur, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through : Mr. Sanjay Jain, ASG with  
Mr. Jasmeet Singh, Ms. Aastha Jain and  
Ms. Ruchi Jain, Advocates for UOI.

**CORAM**

**HON'BLE MS.JUSTICE HIMA KOHLI**

**HIMA KOHLI, J.**

1. The present petition has been filed by the petitioner praying *inter alia* for quashing of the order dated 23.4.2012 issued by the Appointments Committee of the Cabinet (in short '**the ACC**'), in supersession of its earlier order dated 19.3.2012, whereunder he was appointed as a Director (Finance) in the respondent No.2/Security Printing Minting Corporation of India Ltd. (SPMCIL) for a period of five years from the date of his assuming charge of the post or till his superannuation, and proceeding to approve the appointment of the respondent No.3 to the very same post.

2. Before dealing with the arguments advanced by the learned counsels for the parties, it is considered necessary to recapitulate the relevant facts of the case and some events that have transpired during the pendency of the present petition. The petitioner herein is an officer of the Indian Civil Accounts Service Group-'A' (1986 Batch). On 23.4.2007, he was appointed for a period of two years, as Director (Finance) on deputation basis with the respondent No.2/SPMCIL. The said term was extended by the ACC till 13.10.2011. The post of Director (Finance) is a Schedule-'A' post and the said Officer is a Member of the Board of Directors. Being the overall in-charge of finance and accounts functions of the organization, the petitioner was expected to directly report to the Chairman and Managing Director of the respondent No.2/SPMCIL. On 30.12.2010, the Public Enterprise Selection Board (PESB) advertised the post of Director (Finance) in the respondent No.2/SPMCIL. On 21.2.2011, the petitioner applied for the aforesaid post through proper channel and was shortlisted by the PESB for an interview that was held on 18.4.2011. Thereafter, the PESB prepared a panel for appointment to the subject post, wherein the petitioner's name was placed at serial No.1 and that of the respondent No.3 was placed at serial No.2. There was no movement between May, 2011 to January, 2012 on account of some delay that took place for obtaining vigilance clearance in respect of the petitioner from the

Central Vigilance Commission (CVC). Finally, on 9.1.2012, the CVC advised issuance of vigilance clearance to the petitioner for the post of Director (Finance) in the respondent No.2/SPMCIL.

3. Vide order dated 19.3.2012, the ACC approved the appointment of the petitioner as Director (Finance) in the respondent No.2/SPMCIL. Though, a copy of the aforesaid order was forwarded for information to different departments, including the PMO, Office of the Home Minister, Cabinet Secretariat and the PESB, but the same was not communicated to the petitioner. In a sudden turn of events, the ACC decided to supersede its order dated 19.3.2012 and passed an order dated 23.4.2012, whereunder respondent No.3 was appointed as Director (Finance). This was followed by a communication dated 27.4.2012 addressed by the Ministry of Finance to the respondent No.3, conveying the approval of the ACC for his appointment to the post of Director (Finance) in the respondent No.2/SPMCIL.

4. The grievance of the petitioner is that once his name was approved by the ACC for appointment to the post of Director (Finance) in the respondent No.2/SPMCIL, the respondents No.1 & 2 could not have issued the impugned order dated 23.4.2012, superseding the earlier order dated 19.3.2012 and the said action is illegal and a nullity, more so because before passing the said order, the ACC did not furnish/mention any reason for superseding its earlier order dated

19.3.2012.

5. When the present writ petition was listed for admission on 9.7.2012, an interim order was passed on the interlocutory application for stay filed by the petitioner, directing that till the next date of hearing, the respondents would not allow the respondent No.3 to join, if he had not already joined. On 5.7.2013, a statement was made on behalf of the respondent No.1/UOI to the effect that the respondent No.3, whose name was approved by the ACC for appointment in preference to the petitioner, had expressed his unwillingness for being appointed to the subject post. Subsequently, an affidavit dated 21.8.2013 was filed by the respondent No.3 himself stating *inter alia* that later on, the ACC had approved his appointment to the post of Director (Finance) in HUDCO and since he had joined the said post on 30.5.2013, he was no longer interested in the subject post. Though the respondent No.3 moved out of the picture, the learned ASG appearing for the respondent No.1/UOI informed the Court that the department had decided to contest the present petition on merits.

6. On 26.9.2013, taking note of the fact that the order dated 19.3.2012 issued by the ACC appeared to have been circulated to various departments, directions were issued to the parties to file their respective affidavits clarifying *inter alia* as to whether the said decision had at all been circulated. In compliance of the said order, both the

parties had filed their respective affidavits taking different stands. Thereafter, pleadings were directed to be completed and the matter was taken up for final arguments. After conclusion of arguments, the judgment was reserved on 05.08.2014. However, on 02.09.2014, the petitioner filed an application seeking permission to file some additional documents that he had obtained through the RTI route. The said documents included copies of O.Ms dated 07.12.2011 and 05.08.2014 issued by the CVC and an extract of the relevant notings of the CVC file. The said application was allowed on 09.09.2014 and the documents in question were taken on record.

7. The first and foremost ground taken by Mr. Shanker Raju, learned counsel for the petitioner to assail the impugned order dated 23.4.2012 was that the previous order dated 19.3.2012, appointing the petitioner to the subject post, was a final order as copies thereof were marked to different departments, and circulation of the said order had amounted to publication. Therefore, the order dated 19.03.2012 ought to be treated as a "communication" to the petitioner, irrespective of the fact that it was not communicated directly to him. He stated that while adverse orders need to be communicated as the same is a mandatory requirement, a positive order, as was passed in the present case, need not necessarily be communicated in writing to the addressee and publication thereof would meet the requirements. It was thus urged

that the order dated 19.03.2012 had attained finality and could not be superseded by the ACC. To buttress the said argument, reference was made to the decision of the Supreme Court in the case of State of Punjab vs. Amar Singh Harika, reported as **AIR 1966 SC 1313**.

8. Learned counsel contended that in the present case, apart from the fact that copies of the order dated 19.3.2012 issued by the ACC had been marked to various departments, "communication" thereof would include publication in the website of a private portal and looked at in this background, non-intimation of the said order to the petitioner loses significance. Reference was made by him to the impugned order dated 23.4.2012 issued by the ACC to urge that the very fact that the said order had mentioned that it was being issued in supersession of its earlier order dated 19.3.2012 appointing the petitioner to the post of Director (Finance), fortifies his stand that communication of the order dated 19.3.2012 had already been made to him and had created a vested right in his favour that could not be disturbed. In support of the aforesaid submission, learned counsel had cited the decision of the Supreme Court in the case of Municipal Corporation of Delhi vs. Qimat Rai Gupta & Ors., reported as **(2007) 7 SCC 309**.

9. The second limb of the argument of the counsel for the petitioner was that the impugned order dated 23.4.2012 issued by the ACC is liable to be set aside as it was passed without following the due process

and without the participation of all its members, which is a mandatory requirement. He had quoted Rule 6(6) of the Government of India (Transaction of Business) Rules, 1961 (in short '**the Rules**') to contend that the power of review was specifically conferred upon the Cabinet but no such power was exercised in the present case and therefore an irregular ACC had cleared the appointment of the respondent No.3 on 23.4.2012, by reversing its earlier recommendation dated 19.3.2012, which was the only valid order on record.

10. To substantiate his submission that once the ACC passes an order, the same attains finality and ought to be implemented with promptitude, learned counsel had referred to an Office Memorandum dated 10.2.1991 issued by the Department of Personnel and Training (DOPT), Government of India, which lays down the procedure for implementation of the decision of the ACC and directs that it should be ensured that such an order is endorsed to the concerned department within fifteen days of its receipt. The OM mentions that ordinarily, the Ministries/departments should avoid sending the proposal for reconsideration of the decisions of the ACC so that the same can be implemented immediately on their receipt. It was thus submitted by the learned counsel for the petitioner that once the ACC had approved the name of the petitioner for the subject post, a valuable right enforceable in law had arisen in his favour and the same could not be

defeated by recalling the said order through an irregularly conducted ACC. To reinforce his arguments, the following citations were referred to by the learned counsel for the petitioner :

- (i) Prem Prakash vs. Union of India & Ors., **1984 (Supp.) 687,**
- (ii) Asha Kaul (Mrs.) & Another vs. State of Jammu & Kashmir & Others, **(1993) 2 SCC 573,**
- (iii) R.S. Mittal vs. Union of India, **1995 (Suppl.) 2 SCC 230,**
- (iv) A.P. Aggarwal vs. Govt. of NCT of Delhi & Anr., **(2000) 1 SCC 600,** and
- (v) Noida Entrepreneurs Association vs. Noida & Ors., **(2011) 6 SCC 508.**

11. Per contra, Mr. Sanjay Jain, learned ASG opened his arguments by explaining the procedure adopted by the Government for notifying appointments of candidates to Board Level posts in Public Sector Undertakings (PSUs). He submitted that the ACC comprises of the Prime Minister, Home Minister and the Minister in-charge of the concerned Administrative Ministry/department and the proposals of different Ministries/departments for appointment to Board Level posts in PSUs under their administrative control are approved by adopting the process of circulation wherein, the Office of Establishment Officer acts as the secretariat to the ACC. Once a decision is taken by the ACC, the same is communicated to the concerned Ministry/department through a

note/communication and based on the said communication, the concerned Administrative Ministry/department issues an offer of appointment to the selected candidates and only thereafter is the said appointment notified.

12. Learned ASG pointed out that in the present case, the decision taken by the ACC on 19.3.2012, recommending the name of the petitioner for appointment to the subject post, being confidential in nature, was only communicated to the Secretary of the Department of Economic Affairs (DEA) and to those officers who were involved in the process of appointment of Board Level Executives. However, at no stage had the said decision been circulated/communicated to the petitioner. He refuted the argument advanced by the learned counsel for the petitioner that once copies of the order dated 19.3.2012 were marked to different departments, including the PMO and the petitioner's appointment had appeared in the news circulated by an online magazine portal, the same ought to be treated as a "communication" to the petitioner and was not only sufficient for him to claim a vested right to the subject post, it also entitled him to raise a grievance with regard to the violation of the principles of natural justice, on account of non-grant of an opportunity of hearing to him, before passing a fresh order on 23.4.2012.

13. Learned ASG argued that even after the recommendation was made by the ACC in his favour by virtue of its order dated 19.3.2012, the petitioner could not have claimed that his appointment to the subject post was finalized for the reason that admittedly, no letter communicating the offer of appointment was ever issued to him. To substantiate his argument that when an order of appointment is not conveyed to a party, he cannot claim that he is entitled to appointment or raise a plea of infringement of a vested right, reference was made to the following decisions:

- (i) Bachhittar Singh vs. State of Punjab & Anr., **AIR 1963 SC 395** and
- (ii) Gulabrao Keshavrao Patil & Ors. vs. State of Gujarat & Ors., **(1996) 2 SCC 26.**

14. It was next submitted by the learned ASG that just as the Rules empower the ACC to make appointments, the said Rules also empower the ACC to review its own decision and in the present case, the Administrative Ministry in question was the Ministry of Finance and the Minister in-charge was the then Finance Minister who was well within his right to recommend the name of the respondent No.3 to the subject post on the ground that he was academically and professionally better qualified.

15. So as to understand how the events had unfolded in the present case between two crucial dates, i.e., 19.3.2012, the date when the ACC had initially recommended the petitioner's name for appointment to the subject post and 23.4.2012, the date when the ACC had recommended the name of the respondent No.3 to the very same post, in supersession of its earlier decision, the learned ASG was directed to produce the records and explain the circumstances. On 5.8.2014, the relevant records were produced by the learned counsel for the respondent for the perusal of the Court.

16. To explain the background in which the impugned order dated 23.4.2012 was passed by the ACC, learned ASG had submitted that the then Finance Minister, being the Minister in-charge had approved the petitioner's name for appointment to the subject post. But as per the prescribed procedure, the said recommendation could have been made to the ACC only after obtaining the approval of the CVC and at that point of time, vigilance clearance in respect of the petitioner was not received for the reason that an inquiry was pending against him with the CVC.

17. The aforesaid position was also taken note of by the department on 6.9.2011. Since the department was of the opinion that the post of Director (Finance) in the respondent No.2/SPMCIL could not be left

unmanned for so long, the ACC was requested to extend the deputation period of the petitioner for six months w.e.f. 1.7.2011 or till the regular incumbent would join the post, whichever was earlier. However, the ACC did not accede to the said proposal and resultantly, the petitioner was repatriated to his parent cadre w.e.f. 13.10.2011. In the meantime, having regard to the urgent need to fill up the post of Director (Finance) in the respondent No.2/SPMCIL on a regular basis, the Administrative Ministry was of the opinion that it could not wait indefinitely for vigilance clearance proceedings to conclude in respect of the petitioner, particularly since the vigilance clearance in respect of other candidate, i.e., respondent No.3, was already available. As a result, on 12.9.2011, the Administrative Ministry forwarded a reference to the DOPT requesting that the ACC's approval may be obtained for appointment of the respondent No.3 to the subject post on a regular basis. But, vide order dated 19.3.2012, the ACC conveyed its approval for the appointment of the petitioner as Director (Finance) of the respondent No.2/SPMCIL.

18. The records reveal that immediately thereafter, vide note dated 2.4.2012, the then Finance Minister wrote to the Prime Minister requesting him to reconsider the aforesaid decision to appoint the petitioner to the subject post on the ground that as a Minister in-charge of the Administrative Ministry, it was respondent No.3 whose name was

recommended by him to the subject post and not that of the petitioner. The justification offered for recommending the name of respondent No.3 to the subject post over the petitioner was that he was better qualified, both academically and professionally and in view of the fact that the respondent No.2/SPMCIL is a security sensitive organization, that is engaged in the sovereign function of minting and printing of coins and currency, respondent No.3 was considered a better choice.

19. Learned ASG pointed out that the very same file containing the note dated 2.4.2012, addressed by the Ministry of Finance to the then Prime Minister, also contained a note dated 21.3.2013, prepared by the Directorate of Currency on the issue of initiation of action against five senior officers of the respondent No.2/SPMCIL, including the petitioner herein, for alleged procedural lapses in the procurement procedure relating to purchase of One Line Printing and Furnishing Plant and Machinery for the Bank Note Press, Dewas. The said note made a mention of the fact that the Chief Vigilance Officer of the Department of Economic Offences had directed that disciplinary action be taken against five officers, including the petitioner herein, and after considering the inputs received from the Vigilance Section, it was observed that in view of certain procedural and administrative lapses in the tendering process for procurement of the plant and machinery, there was a ground to initiate action against the officers involved, including the petitioner

herein.

20. As per the learned ASG, with the approval of the then Finance Minister and the competent authority, a decision was taken to initiate action against the petitioner for entering into a criminal conspiracy and causing pecuniary loss to the respondent No.2/SPMCIL and the Department of Expenditure, who has administrative control over him, was requested to issue a charge sheet against him.

21. After the judgment was reserved in this case on 5.8.2014, learned counsel for the petitioner had filed CM No.14699/2014, enclosing therewith a copy of the OM dated 07.12.2011 issued by the CVC advising closure of the complaint regarding irregularities in the procurement of One Line Printing Machine and suggesting rectification of procedural and administrative deficiencies in the tendering procedure. A copy of O.M. dated 05.08.2014 issued by the CVC was also filed by the petitioner. In the said O.M., the CVC expressed a view that there is no ground for seeking ex-post facto approval of the charge-sheets and if the department wanted to re-open the case and charge-sheet the officials, they ought to have sought the advice of the Commission before doing so. It was submitted by Mr.Shankar Raju, Advocate that the aforesaid documents were obtained by the petitioner through the RTI route and the information was furnished by the Department only after 5.8.2014.

22. Learned counsel for the respondent did not object to the court taking on record the aforesaid documents but stated that the said documents would not make any material difference as most of them relate to the period post 23.4.2012, when the impugned order was issued by the ACC.

23. This Court has heard the arguments advanced by the counsels for the parties, perused the records produced by the learned counsel for the respondents and examined the judicial pronouncements relied upon by both sides.

24. It may be stated at the outset that there is no quarrel with the submission made by the learned counsel for the petitioner that without good and valid reason, the Government cannot nullify the exercise undertaken by the concerned Department that is called upon to prepare a select list of candidates for appointment to particular posts. Further, the State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution of India and they must be in conformity with the same principles that meet the test of reason and relevance. To put it differently, the action/order of the State/instrumentality of State would be vitiated if it suffers from the vice of arbitrariness or if there is a colourable exercise of power. Therefore, the decisions of the Supreme Court cited by the learned counsel for the

petitioner on the aforesaid aspect, including those in the case of Prem Prakash (supra), Asha Kaul (supra), R.S. Mittal (supra), A.P. Aggarwal (supra) and Noida Entrepreneurs Association (supra) need not detain this Court for too long as they enunciate the settled judicial principles of service jurisprudence that have been consistently followed, on the issue of testing the State action on the anvil of non-arbitrariness, good faith and bonafide exercise of power when examining the decisions of the Government of filling up/declining to fill up the vacancies that may have arisen in a particular organization/PSU etc. from a select panel. The only caveat is that mere inclusion in the select list does not confer upon the candidates included therein, an indefeasible right to appointment.

25. The first question that falls for consideration in the instant case is whether the order dated 19.3.2012 issued by the ACC recommending the name of the petitioner for appointment to the post of Director (Finance) in the respondent No.2/SPMCIL amounted to a "communication" to the petitioner for vesting a legal right in him. It is settled law that for an order passed by the State or its functionaries to be effective, the same must be communicated to the person who would be affected by that order and until the order is so communicated, it remains provisional in nature and it would be open to the concerned authority to reconsider the matter and recall/alter the order. In the well celebrated decision of a Constitution Bench of the Supreme Court in

the case of Bachhittar Singh (supra), the Supreme Court made the following observations :-

“9. The question, therefore, is whether he did in fact make such an order. **Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. The order has to be expressed in the name of the Governor as required by cl.(1) of Art. 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up, the State Government cannot in our opinion, be regarded as bound by what was stated in the file.** As long as the matter rested with him, the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of Pepsu provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an advisor and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatsoever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. **Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage, a Minister or the Council of**

**Ministers may express quite a different opinion one which may be completely opposed to the earlier opinion. Which of them can be regarded as the 'order' of the State Government? Therefore, to make the opinion amount to a decision of the Government, it must be communicated to the person concerned....."**  
(emphasis added)

26. The aforesaid observations were made after taking into consideration an earlier decision of the Constitution Bench of the Supreme Court in the case of State of Punjab vs. Sodhi Sukhdev Singh, reported as **AIR 1961 SCC 493**, relevant extract whereof reads as under :

“(42). .....Mr. Gopal Singh attempted to argue that before the final order was passed, the Council of Ministers had decided to accept the respondent’s representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. **Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent. Until the final order is thus communicated to the respondent it would be open to the Council to consider the matter over and over again, and the fact that they reached provisional conclusions on two occasions in the past would not alter the character of the said conclusions.** The said conclusions, provisional in character, are a part of the

proceedings of the Council of Ministers and no more.....” (emphasis added)

27. In the case of Gulabrao Keshavrao Patil (supra), relied upon by the respondents, while dealing with the question as to whether it could be said that the State of Gujarat had taken a decision on the objections raised by the appellants therein under the Land Acquisition Act, 1894, the Supreme Court had discussed as to how the Cabinet, known as the Council of Ministers, is the driving and steering body responsible for the governance of the country and is, as a whole, collectively responsible for the advice rendered to the President of India for conduct of business of each department. In the context of a Council of Ministers with the Chief Minister at its head to aid and advice the Governor in exercise of its functions, it was noted that before the action or the decision is expressed in the name of the Governor as prescribed in the Business Rules and communicated to the concerned party, by necessary implication it is open to the Chief Minister to send for the file, examine it by himself or take a decision, even though the subject was allotted to a particular Minister for convenient transaction of the business of the Government, the ultimate object being to secure an impartial, pure and efficient system of administration.

28. In the aforesaid decision, reference was also made to the decision of the Constitution Bench in the case of Bachhittar Singh (supra),

wherein it was held that the order must be expressed in the name of the Governor, as required under Clause (1) of Article 166 of the Constitution of India and then it has to be communicated, and till the said order is drawn up in accordance with law, the State Government cannot be regarded as bound by what it had stated in the file. Therefore, until the advice is accepted by the Governor, whatever the Minister or the Council of Ministers may say with regard to adopting a particular manner, it does not become the action of the State until the said advice is accepted by the head of the State. Thus, the order passed by the Chief Minister, even though it is a matter pertaining to the portfolio of the Revenue Minister, would be deemed to be an order of the Council of Ministers and its contents would be the Chief Minister's advice to the Governor for which the Council of Ministers would be collectively responsible. The view taken above was reiterated by the larger Bench of seven Judges in the case of State of Karnataka vs. Union of India, reported as **(1977) 5 SCC 608**.

29. Similarly, in the case of Kedar Nath Bahl vs. State of Punjab, reported as **(1978) 4 SCC 336**, a three-Judge Bench of the Supreme Court held that expression of an order in the name of the Governor as required by Article 166 of the Constitution of India and communication thereof to the party affected thereby are conditions precedent for the said order to bind the Government. In the aforesaid case, the order

initially made by the Minister was cancelled by the Chief Minister before it was communicated, and the said order was upheld to be legal. A similar view was taken in the case of State of Kerala vs. A. Lakshmikutty, reported as **(1986) 4 SCC 632**.

30. The court may usefully refer to another decision of the Supreme Court in the case of Tagin Litin vs. State of Arunachal Pradesh & Ors., reported as **(1996) 5 SCC 83**, where it had the occasion to examine a case where the Deputy Commissioner, State of Arunachal Pradesh being the competent authority under Clause 5(1) of the Assam Frontier (Administration of Justice) Regulation 1945, had approved the appointment of the petitioner therein as the Head Gaonburah and, without issuing a formal appointment order, directed the Additional Deputy Commissioner to inform the petitioner about the said approval. However, before such an information could be communicated to the petitioner, with a view to ensure a free and fair selection by considering a rival claim to that post, the Deputy Commissioner restrained the communication of the approval to the petitioner and thereafter by another order, he had appointed the rival claimant as the Gaonburah.

31. In the aforesaid case, the question that arose for consideration by the Supreme Court was whether by virtue of the order dated 15.2.1994, the petitioner therein could be treated as having been appointed as the Head Gaonburah and by passing the subsequent order dated 19.4.1994,

he was removed from the said post. After placing reliance on the decision of the Constitution Bench in the case of Bachhittar Singh (supra), the Supreme Court had observed that an appointment to a post or office postulates three steps: (a) a decision by the competent authority to appoint a particular person; (b) incorporation of the said decision in an order of appointment; and (c) communication of the order of appointment to the person who is being appointed and all the three requirements must be fulfilled for an appointment to be effective.

32. In the instant case, vide order dated 19.3.2012, the ACC had recommended the name of the petitioner for being appointed as Director (Finance) in the respondent No.2/SPMCIL. Subsequently, vide order dated 23.4.2012, the ACC had superseded its earlier recommendation dated 19.3.2012 and proceeded to recommend the name of the respondent No.3 for appointment to the very same post. This was followed by a communication dated 27.4.2012 addressed by the Ministry of Finance to the respondent No.3, conveying the ACC's approval to his appointment to the subject post.

33. Given the aforesaid facts, conditions (a) & (b) mentioned in the case of Tagin Litin(supra), for appointment to a post/office stand satisfied in the present case. The only question that remains is whether the litmus test prescribed in condition (c) with regard to communication of the order to the petitioner, was satisfied before the

order dated 23.4.2012 came to be passed, whereunder respondent No.3 was appointed to the subject post. For coming to any conclusion in respect of fulfillment of the third condition as stipulated above, it is necessary to examine the submission made by learned counsel for the petitioner that irrespective of the fact that the recommendations made by the ACC, vide order dated 19.3.2012, had not been communicated directly to the petitioner, the said order had become final on its circulation to other Ministries and departments and on its announcement on the website of a private portal, and this should be deemed to be a communication to him.

34. Going back to the case of Bachhittar Singh (supra), it was observed therein that until an order is communicated to the person affected by it, it would be open to the concerned authority to consider the matter over and over again. Following the said judicial dicta, this Court is of the opinion that unless and until the recommendations made by the ACC translate into some concrete action on the part of the State/authority by issuance of a communication to the person concerned informing him of his appointment, the said recommendation cannot be regarded an order of the competent authority, as it still remains open for consideration and subject to change.

35. In the instant case, before the recommendations made by the ACC, vide order dated 19.3.2012, were acted upon, the same were

superseded by virtue of the order dated 23.4.2012 that was duly conveyed to the respondent No.3 in the form of a communication dated 27.4.2012, addressed by the Ministry of Finance. It is apparent from the facts of the case that prior to issuance of the order dated 23.4.2012, there was no communication of the order dated 19.3.2012 made to the petitioner with regard to the recommendation made by the ACC for his appointment as Director (Finance) in the respondent No.2/SPMCIL. When the decision dated 19.3.2012 recommending the petitioner's appointment to the subject post, was never communicated to him directly, it has to be held that it had remained provisional/tentative in nature and the petitioner cannot argue that an indefeasible right had accrued in his favour that would entitle him to the appointment.

36. For the aforesaid reason, the contention of the learned counsel for the petitioner that an adverse order needs to be communicated but a positive order need not necessarily be communicated in writing to the addressee, is turned down being devoid of merits. Nor is the Court persuaded by the stand taken by the petitioner that even in the absence of non-communication of an order, based on the recommendation made by the ACC, a vested right had accrued in his favour and the said order could not be rescinded by the competent authority without affording an opportunity of hearing to him.

37. The decision in the case of Amar Singh Harika (supra) relied upon

by learned counsel for the petitioner would not be of any assistance as it does not state that a positive order passed in a case need not necessarily be communicated in writing to the addressee and publication thereof would meet the requirement. In the said case, a copy of the respondent's dismissal order was forwarded to six persons noted thereunder, but a copy of the same was not sent to the respondent himself. In the said factual matrix, the Supreme Court had observed that mere passing of an order of dismissal would not be effective unless and until it is published and communicated to the officer concerned and that an order of dismissal passed by an appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order or it is otherwise communicated to all parties concerned. The court had pointed out the perils and pitfalls of passing of an order of dismissal kept by the appropriate authority in its file, without communicating it to the officer concerned or otherwise publishing it and observed that it will take effect from the date when the same was actually written out by the said authority. The aforesaid decision does not deal with the converse situation where an order recommending appointment was not communicated to the person concerned.

38. This Court is not persuaded by the arguments advanced by the counsel for the petitioner that merely because a copy of the order dated

19.3.2012 was forwarded for information to some departments, it would amount to publication thereof. Copies of the order dated 19.3.2012 issued by the ACC, recommending the petitioner's name for appointment to the subject post were only conveyed within the departments and the concerned Ministries, but such a communication can hardly be treated as a "publication", as sought to be urged by the petitioner.

39. Similarly, the decision of the Supreme Court in the case of Qimat Rai Gupta (supra) would also not advance the case of the petitioner as in the said case, it was observed that communication of an order is a necessary ingredient for bringing an end result to a status and to provide an opportunity to a person to take recourse to law if he is aggrieved thereby, the said order is required to be "communicated".

40. Coming to the argument of the learned counsel for the petitioner that an irregular ACC had cleared the name of the respondent No.3 for appointment to the subject post and the order dated 23.4.2012 was passed by the ACC without following the due process and without participation of its members, in the light of the decisions of the Supreme Court in the cases of Bachhittar Singh (supra), Gulabrao Keshavrao Patil (supra), Kedar Nath Bahl (supra) and A. Lakshmikutty (supra), the said submission is found to be fallacious. It may be emphasized that the business of the State is very intricate and has to

be conducted through the agency of a large number of officials and authorities. In the case of the ACC, the constituents are the Prime Minister, Home Minister and the Minister In-charge of the concerned Administrative Ministry/Department. When it comes to Board level appointments to posts in PSUs, it is the ACC that finally recommends the name of the concerned officer for appointment, through the office of the Establishment Office that acts as a Secretariat to the ACC. Further, in the matters of appointment to Board level posts, the role of the CVC is pivotal. The CVC is required to act as a watchdog and ensure that persons appointed to Board level posts have an unimpeachable integrity. Thus, clearance by the CVC from the vigilance angle has been made mandatory and cannot be dispensed with under any circumstances.

41. In the present case, as noted above, after the subject post was advertised by the PESB and all the applications scrutinized, a panel for appointment was prepared where the petitioner's name was placed at Sr. No.1 and that of the respondent No.3 was placed at Sr. No.2. Between May, 2011 to January, 2012, no progress was made as vigilance clearance was not received in respect of the petitioner, though the same was received in respect of the respondent No.3. Due to the urgency expressed by the Department of Economic Affairs to fill up the

post of Director (Finance) on a regular basis for the efficient functioning of the respondent No.2/SPMCIL, a proposal was forwarded by it to the DOPT on 12.9.2011 recommending the name of the respondent No.3 for appointment to the subject post. In October, 2011, the DOPT requested the Ministry of Finance for details of the case regarding the complaint in respect of the petitioner, pending with the CVC and the CVO of the department and the said information was furnished to the Ministry on 13.10.2011.

42. After about two months, vide letter dated 6.1.2012, the DOPT informed the Ministry that the proposal for appointment of the respondent No.3 to the said post had been submitted to the ACC. However, the Ministry of Finance reiterated the name of the respondent No.3 for appointment to the post of Director (Finance) on the ground that he was academically and professionally better qualified. In the meantime, vide O.M. dated 19.3.2012, the ACC Secretariat conveyed the appointment of the petitioner to the subject post.

43. Immediately thereupon, the then Finance Minister had prepared a disagreement note dated 2.4.2012 stating *inter alia* that the name of the respondent No.3 had been recommended to the subject post and not that of the petitioner. The said note was placed before the Prime Minister and the order dated 19.3.2012 was superseded by the order

dated 23.4.2012, wherein the ACC recommended the name of the respondent No.3 to the subject post. Apart from explaining the circumstances in which the order dated 19.3.2012 was recalled/superseded and the order dated 23.4.2012 came to be passed, much emphasis was laid by learned ASG on the fact that departmental proceedings were contemplated against the petitioner and vide note dated 21.3.2013, the Directorate of Currency had mentioned the fact that the Chief Vigilance Officer of the Department of Economic Offences had directed that disciplinary action be initiated against five officers, including the petitioner herein, for alleged procedural lapses in the procurement procedure relating to purchase of One Line Printing and Furnishing Plant and Machinery for the Bank Note Press, Dewas.

44. The Court was informed that with the approval of the then Finance Minister and the competent authority, a decision had been taken to initiate departmental action against the petitioner for causing pecuniary loss to the respondent No.2/SPMCIL and the Department of Expenditure. At that stage, learned counsel for the petitioner had referred to an O.M. dated 7.12.2011 issued by the CVC, wherein on the complaint regarding irregularities in the procurement of One Line Printing Machine, it was noted that the Commission had considered the findings of its direct enquiry report along with the views of the CVO and

had advised closure of the said case against the petitioner and four other officers of the respondent No.2/SPMCIL. In the said OM, the limited recommendation made by the CVC was that the procedural and administrative deficiencies noted in the proceedings of the tender, need to be rectified and the tendering procedure streamlined by the respondent No.2/SPMCIL.

45. Subsequently, the petitioner had adopted the RTI route to obtain a copy of the O.M. dated 5.8.2014, issued by the CVC, wherein the Commission had reiterated the contents of its earlier O.M. dated 7.12.2011, advising closure of the aforesaid complaint and noting *inter alia* that there is no ground for seeking ex-post facto approval of the charge-sheets proposed to be issued in the matter regarding initiation of departmental proceedings against the petitioner. In other words, the CVC did not recommend initiation of any departmental action against the petitioner and resultantly, the vigilance clearance granted to him by the CVC on 9.1.2012, remains in force.

46. Having unraveled the labyrinthine twists and turn of events that have taken place in the instant case, right from 30.12.2010, when the subject post was advertised, till date, it has emerged that the respondent No.3, who was listed at Sr. No.2 in the panel for appointment to the subject post and actually selected by virtue of the

appointment letter dated 23.4.2012, has since withdrawn his hat from the ring and resultantly, the only name in the panel that survives for consideration is that of the petitioner, whose name was placed at Sr. No.1. In the meantime, during the pendency of the present proceedings, the CVC has issued an OM dated 5.8.2014, wherein a decision has been taken to close the case against the petitioner from the vigilance angle and the CVC has declined to grant an ex-post facto approval for initiation of departmental proceedings against him. As a result, the vigilance clearance granted to the petitioner by the CVC on 9.1.2012, remains quite intact.

47. In the aforesaid facts and circumstances, this Court is of the opinion that now there is no impediment in placing the name of the petitioner, which is the only name that survives for consideration in terms of the panel prepared by the PESB for the subject post, before the ACC for a fresh consideration for appointment to the post of Director (Finance) in the respondent No.2/SPMCIL, without insisting on any further vigilance clearance, but subject to his satisfying any other requirement as may be considered necessary. Ordered accordingly. As the subject post has not been filled up through regular appointment for the past almost four years due to the legal tangle in which the parties

have been embroiled, it is deemed appropriate to direct the respondent No.1/UOI to act without any further delay and place the matter before the ACC for a decision within four weeks from today, alongwith a written request submitted to the Office of the Establishment Officer to convey the decision taken by the ACC to the concerned Ministry, as per the procedure prescribed, as expeditiously as is possible.

48. With the aforesaid observations, the present petition is disposed of, while leaving the parties to bear their own costs.

**NOVEMBER 07, 2014**  
sk/mk/rkb

**(HIMA KOHLI)**  
JUDGE