

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

Date of decision: 10th February, 2011

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W.P.(C) 5161/2005

R.L. GIRDHAR

..... Petitioner

Through: Mr. Gulab Chandra, Adv.

Versus

**THE FOOD CORPORATION OF INDIA
& ANR.**

..... Respondents

Through: None.

AND

W.P.(C) 5687/2005

R.L. GIRDHAR

..... Petitioner

Through: Mr. Gulab Chandra, Adv.

Versus

THE FOOD CORPORATION OF INDIA

..... Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, after 10 years of retirement on 30th June, 1995 of lifelong service with the respondent, has filed these two writ petitions making monetary claims. W.P.(C) No.5161/2005 seeks mandamus for payment of ₹ 60,000/- as interest for inordinate delay in pay fixation and financial benefits. W.P.(C) No.5687/2005 seeks mandamus to consider the Notional Promotion of petitioner as Deputy Manager (General) from 1985 onwards and for release of ₹70,000/- as arrears of four increments as a consequence of such Notional Promotion.

2. The petitioner in the year 1970 was working as Assistant Grade-I (A/C) with the Delhi Office of the respondent. He was vide office order dated 26/27th June, 1970 promoted to the post of Assistant Manager (A/C) with posting to Punjab & Haryana region Chandigarh. He claims that on administrative ground that suitable substitute was not available, he was not relieved and owing where to he continued to draw the scale of Assistant Grade only and was deprived of the higher scale as an Assistant Manager. He claims to have been ultimately relieved on 19th May, 1971 whereafter

he joined Regional Office, Lucknow with effect from 9th June, 1971. He contends that because of the delay in relieving him, his contemporaries/juniors who had immediately joined as Assistant Manager started receiving higher scale and received increments, while he was deprived of the same. He claims that no decision was also taken on his representation inspite of the Circular dated 26th July, 1973. He claims that in accordance with the said Circular, others similarly placed as him, were granted the benefit but the benefit of the Circular was also denied to him.

3. The petitioner claims that on the basis of the seniority of 1972 as Assistant Manager, he was promoted to Deputy Manager (General) on 8th July, 1980 but which the petitioner could not avail for being unable to take up posting outside Delhi. He claims that he was similarly again promoted on 9th September, 1992 but again could not avail of the same. He ultimately under promotion order dated 13th July, 1994 with effect from 1st August, 1994 joined the post of Deputy Manager (General) and as aforesaid resigned from the said post on 30th June, 1995.

4. The petitioner post retirement continued to represent; he was

ultimately vide letter dated 26th November, 2002 granted the notional scale as Assistant Manager (General) with effect from 1970 with the stipulation that financial benefits would be allowed from actual date of joining as Assistant Manager i.e. with effect from 9th June, 1971 only.

5. The petitioner thereafter represented for financial benefits with effect from 27th June, 1970 with interest charge of ₹60,000/-. The said claim of interest was rejected on 16th September, 2003 and whereafter W.P.(C) No.5161/2005 was filed.

6. Though no grievance was made in W.P.(C) No.5161/2005 in any other respect but soon thereafter W.P.(C) No.5687/2005 was filed contending that pursuant to the notional empanelment as Assistant Manager in revised scale, financial benefit vide letter dated 3rd June/26th November, 2002 aforesaid, the petitioner has also become entitled to consideration afresh for Notional Promotion as Deputy Manager (General) against the panel of 1985 onwards and which had not been done. Claiming that a sum of ₹70,000/- as arrears would be due to him upon such Notional Promotion as Deputy Manager in 1985 as against actual promotion as

Deputy Manager in 1994, the sum of ₹70,000/- is claimed.

7. Notices of both the writ petitions were issued and counter affidavits filed by the respondent. The respondent in the counter affidavit in W.P.(C) No.5161/2005 has pleaded that the promotion on 26/27th June, 1970 from Assistant Grade-I to Assistant Manager was ad hoc only and even if the petitioner had then joined as the Assistant Manager, he would have been reverted after the expiry of maximum one year. It is thus contended that the petitioner had no right to any dues as Assistant Manager on the basis of such promotion.

8. It is also denied that the petitioner has been discriminated against. It is denied that the Circular dated 26th July, 1973 applied to the case of the petitioner. It is further pleaded that even those who were given ad hoc promotion along with the petitioner were subsequently reverted. It is yet further pleaded that the petitioner made a request for pay fixation only close to his retirement and at no earlier point of time. With respect to the promotion to Deputy Manager, it is pleaded that on account of 'low merit rating', the petitioner could not find place in the panel and his juniors with

better merit rating were empanelled.

9. The respondent in the counter affidavit in W.P.(C) No.5687/2005 has pleaded that Deputy Manager (General) is a selection post and selections are made on the basis of merit and the question of notional pay fixation from 1985 does not arise as he was promoted to the post of Deputy Manager (General) only on 24th June, 1994.

10. The petitioner has filed rejoinder to the counter affidavits.

11. The respondent was proceeded against *ex parte* on 28th September, 2010.

12. The counsel for the petitioner has stated that he has filed synopsis of submission and he has nothing further to add.

13. The files and the synopsis have been perused.

14. The claim in W.P.(C) No.5161/2005 for ₹60,000/- towards interest for the delay of 32 years in re-fixation of pay on notional basis, is not understandable. The petitioner was only granted notional pay fixation with

effect from the year 1970 but without any financial benefits and which accrued only from the date of actual joining as Assistant Manager. It is thus not understandable as to on what amount interest of ₹60,000/- is being claimed or as to how the said amount has been computed.

15. Similarly, in view of the post of Deputy Manager being a selection post, the basis of the claim of the petitioner of ₹70,000/- in the other writ petition on account of notional increments upon notional empanelment as Deputy Manager with effect from 1985 is not understandable. The petitioner having not been promoted as a Deputy Manager, merely because his name was in the panel for promotion, would not be entitled to increments with effect from the date of empanelment.

16. There is no merit in either of the writ petitions, the same are dismissed. I refrain from imposing any costs on the petitioner.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 10, 2011

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