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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 8th March, 2016

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LPA 152/2016

JAGDISH CHAND

..... Petitioners

Through: Mr. Rajiv Aneja, Adv.

versus

FOOD CORPORATION OF INDIA AND ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE R.K. GAUBA (OPEN COURT)

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1. This letters patent appeal impugns the judgment dated 16th December, 2015 of a learned Single Judge of this Court whereby the writ petition (Civil) No. 7292/2002 brought by the appellant was dismissed.

2. The appellant having been interviewed, was empanelled (at serial No.5) on 20.9.1972, along with others, for appointment to the post of typist in the service of the first respondent Food Corporation of India (FCI) in terms of FCI Staff Regulations, 1971. The candidates who ranked senior to him in the said select panel were offered appointments and joined the service of FCI in December, 1972. It appears that the FCI sanctioned the fifth post, which became available in January, 1973 for offer of appointment to be given to the appellant. Eventually, the appellant joined the service of FCI in May, 1973. He rose in rank through the hierarchy and was holding

the post of Assistant Grade in 2012 when the writ petition wherein the impugned judgment was passed, came to be preferred by him.

3. It appears that on 25th May, 1992, Circular No. 17/1992 was issued for and in the name of the Manager Personnel (P&IR) of FCI on the subject of settlement of old pay anomalies connected with the revision of pay-scales of the employees w.e.f. 1st January, 1973. This circular No. EP.17-21/83-Vol.I (copy at page 57 of the paper book) stated in the preface that the matter arising out of references received from the field offices for clarification as to the eligibility of the employees promoted after 30.4.1976 to exercise fresh options in the matter of fixation of pay in the revised scales had been examined and it had been decided that the benefits be extended to FCI employees *“even on promoted capacity between 1st May 1976 to 31st December, 1979”* as well. The circular invited fresh options to be exercised, specifying the last date for submission of such requests. It, however, clarified that *“the option will not be available to the employees appointed on or after 1st January 1973”*.

4. It appears that the appellant submitted a request exercising an option under the circular dated 25th May, 1992 and on that basis, by memorandum No. PF/J-133/E.II dated 23rd March, 1995, issued by Assistant Manager (Headquarters), it was communicated to him that it had been decided that he be treated to have *“deemed to have joined on 15.12.72”* thereby permitting him to exercise the option in terms of the circular dated 25th May, 1992. It appears that pursuant to the action taken in its wake, the pay of the appellant was revised.

5. On 21.2.1997, however, Deputy Manager (E.II) in the office of the second respondent herein, issued office order vide PF/J-133/E.II (copy at

page 65 of the paper book) recalling the earlier order, partially modifying the memorandum dated 23-24th March, 1995 intimating that the appellant would not be eligible to exercise the option in terms of circular dated 25th May, 1992 pointing out, *inter alia*, the fact that he had joined service of FCI w.e.f. 1.5.1973.

6. The appellant made certain representations against the said revised decision of the authorities and having failed to secure any favourable order, preferred the writ petition, *inter alia*, praying for grant of benefits under the circular dated 25th May, 1992 and declaration of the office order dated 21.2.1997 to be illegal and void.

7. The learned single Judge by the impugned judgment, finding no substance in the contentions raised by the petitioner, proceeded to dismiss it observing as under:-

"After having heard learned counsel for the parties at length and on perusal of the impugned office order, the material on record and the decisions cited, I find that vide office memo of 23rd March, 1995 (Annexure P-5) petitioner was permitted to exercise his option in terms of Circular of 25th May, 1992 (Annexure P-3) in the matter of fixation of pay in the revised pay scales. However, after about two years the benefit of revised pay scales was withdrawn by respondent vide office order of 21st February, 1997 (Annexure P-7) without giving any justification for doing so. In the counter affidavit filed by the respondent/FCI, it is highlighted that in the select panel of 20th September, 1972 petitioner was shown at Serial No.5 and first four persons in the select panel had joined prior to petitioner as sanction for their appointment had been given in December, 1972 itself. Thus, petitioner cannot claim parity with those four persons who were admittedly senior in the select panel. Merely because those four persons have been shown junior to petitioner in the tentative seniority list (Annexure R-4A), it would be of no avail because this list (Annexure R-4A)

has been prepared on the basis of date of selection and because it is not based on actual seniority from the date of joining. The core of the issue is as to when the sanction for the fifth post was given. The counter filed by respondent/FCI is silent on this vital aspect. However, the facts of this case make it abundantly clear that the sanction for the first four posts came in December, 1972. Therefore, judicial notice can be taken on the fact that the sanction for the fifth post on which petitioner had been appointed was given in January, 1973 and as per Circular of 25th May, 1992 (Annexure P-3), persons who had joined on or after 1 st January, 1973 were not eligible to exercise the fresh option in the matter of fixation of pay in the revised scales. In matters of appointment, the merit in the select panel has to be respected. Since petitioner was at Serial No.5 in the select panel list, therefore, in matters of pay fixation, he cannot claim parity with the four other persons in the select list, who were admittedly senior to him.

In the considered opinion of this Court, implicit reliance upon tentative seniority list (Annexure R-4A) cannot be placed because petitioner had joined service for the first time in May, 1973 whereas the persons shown junior to him in the seniority list (Annexure R-4) had joined service in December, 1972. So, undue benefit of a mere inadvertence cannot accrue to petitioner now after four decades particularly when it has not come on record as to when the seniority list was finalized. So, reliance placed by petitioner's counsel upon the decisions in B.N. Bajpai (supra) and Major General R.P.Mund (supra) is of no avail because these decisions were rendered in an altogether different context. Clearly, there is an apparent anomaly in the seniority list (Annexure R-4A) which dissuades this Court to rely upon the RTI Information regarding their being 08 vacancies i.e. 05 for Scheduled Castes to which petitioner belongs and remaining for other categories. Such a view is being taken because it is not known as to when the sanction for filling up the remaining vacancies was given to respondent FCI. Since petitioner's deemed date of joining i.e. 15th December, 1972 is without any basis and justification,

therefore, its withdrawal by the subsequent impugned office order (Annexure P-7) cannot be faulted with”.

8. Having heard the learned counsel for the appellant at length, we find no merit in the appeal. Since the appellant had taken up appointment to the post of typist under the respondents w.e.f. 1st May, 1973, there was no occasion for he to be treated or deemed to have been appointed w.e.f. 15.12.1972. As noted by the learned single Judge there was no post available for an appointment to be offered to the appellant prior to January, 1973. There were four candidates ahead of him in the select panel and there is no reason why the appellant should be given any benefit over and above what were their entitlements on the basis of appointments taken in December, 1972. At any rate, the circular dated 25th May, 1992 having clarified that the benefits thereunder would not be available to those employees who had been appointed on or after 1st January, 1973, the appellant was not eligible to exercise any option in its terms. Thus, the office order dated 23rd March, 1995 had been erroneously issued and was rightly withdrawn by the subsequent office order dated 21.02.1997.

9. For the above reasons, the appeal is dismissed in *limine*.

R.K. GAUBA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

MARCH 08, 2016

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