

GAHC010054002018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1668/2018

MANIK CHANDRA DOLEY
S/O. LT. KUMARSON DAWO, VILL. KUMARGAON (RIVERSIDE), P.O.
DERGAON, P.S. GOLAGHAT, DIST. GOLAGHAT, ASSAM, PIN-781654

VERSUS

THE FOOD CORPORATION OF INDIA AND 4 ORS.
REPRESENTED BY ITS CHAIRMAN-CUM-MANAGING DIRECTOR,
MIDDLETON ROW, KOLKATA-71

2:THE AREA MANAGER
FOOD CORPORATION OF INDIA
HAIBARGAON
NAGAON
A.T. ROAD
PIN-782002

3:THE GENERAL MANAGER
FOOD CORPORATION OF INDIA
REGIONAL OFFICE
ASSAM REGION
GUWAHATI-781008

4:THE ASSISTANT GENERAL MANAGER (ADMN.)
(CPF)
FOOD CORPORATION OF INDIA
ZONAL OFFICE (NE)
ULUBARI
GUWAHATI-7

Advocate for the Petitioner : MR. S CHAUHAN

Advocate for the Respondent : SC, F C I (R1 TO R5)

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

ORDER

19.01.2023

Heard Mr. S. Chauhan, learned counsel for the petitioner and Mr. P.K. Roy, learned Senior Counsel assisted by Mr. S.K. Chakraborty, learned counsel for the respondent Food Corporation of India (FCI).

2. By filing this writ petition, the petitioner has claimed for regularization of his suspension period and to pay him the salary, less the subsistence allowance already paid to him for the period from 03.02.1988 to 01.06.1991. The second prayer of the petitioner is for notional promotion benefit from Assistant Grade-II (D) to Assistant Grade-I w.e.f. 09.12.1988 and further, from Assistant Grade-I to Manager w.e.f. 30.12.2010 with consequential benefit as was given to his junior. In so far as the first prayer is concerned, the same is not pressed by the learned counsel for the petitioner in view of the fact that the relief has been granted during the pendency of the writ petition. As for the second prayer, the same remains.

3. The case of the petitioner is that he was given *ad hoc* promotion from the post of Assistant Grade-II (D) to Assistant Grade-I (D), vide office order dated 09.12.1988 but the effect of promotion was not given to him in view of the fact that the vigilance case was pending against him. Thereafter, vide order dated 02.06.2003 the authority concerned while recalling the previous order dated

09.12.1988, gave the petitioner promotion to the post of Assistant Grade-I (D) from the post of Assistant Grade-II (D) along with two other employees. However, the same was also not given effect to. The vigilance case against the petitioner which ultimately was taken up for trial before the Court of Special Judge, CBI, Assam through Special Case No.90/2004 along with the other accused persons ended up in his acquittal since the learned Trial Judge came to a finding that no ample evidence was available to implicate the petitioner to the charge framed. It is the further case of the petitioner that 3 (three) Money Suits filed against him by the respondent FCI have also been dismissed by the Civil Court concerned. Despite the same, the petitioner having not been given the salary due to him and also the notional promotion to the next higher post and also his representation dated 16.09.2016 (Annexure-14) before the General Manager, FCI having not been considered and disposed of, the petitioner is before this Court.

4. Mr. S. Chauhan, learned counsel for the petitioner submits that since the learned Trial Court did not find any evidence against the petitioner to the charge framed, acquitted him from the charge. Similarly the Civil Court had also dismissed the Money Suits filed by the respondent FCI. He submits that this can clearly be appreciated from the fact that whatever dues were of the petitioner as regards his salary during the period of his suspension has been paid to him by the respondent authorities. The petitioner, therefore, having been deprived of the chance to be promoted to the next higher grade and he having retired on superannuation on 31.01.2015, the respondent authorities should be directed to give the petitioner notional promotion to the next higher post as stated in the prayer of the writ petition.

5. Mr. P.K. Roy, learned Senior Counsel on the other hand submits that the petitioner retired on superannuation on 31.01.2015 and the learned Trial Judge had also passed it's judgment in the criminal case on 31.12.2015 but for the reasons best known to the petitioner, he has approached this Court by filing this writ petition only in the year 2018. There being gross delay in seeking remedy, the writ petition is fit to be dismissed on the ground of laches and delay. The learned Senior Counsel further referring to the affidavit-in-opposition filed by the respondent FCI on 19.07.2022 submits that the learned Trial Court did not acquit the petitioner honourably. It was only due to the fact that the prosecution failed to prove the guilt for other reasons that the petitioner was let off. He submits that unless the finding and decision of the learned Trial Court is honourably acquittal in favour of the petitioner, the petitioner has no right to claim for further promotional benefit at this belated stage. He therefore submits that the writ petitioner cannot be said to have any legitimate grievance and the writ petition should be dismissed.

6. I have considered the rival submissions made by the learned counsels for the parties.

7. One thing the Court has noticed is that the petitioner had submitted his representations on 16.05.2016 and also on 16.09.2016. What had transpired after the submission of the representations is not discernable except, in response to the first representation, the petitioner was asked to obtain a Clearance Certificate from the CBI and to submit the same to the FCI, Regional Office, Guwahati for processing his payment of Earned Leave and Half Pay

Leave etc.. In so far as the claim for promotional benefit (notional), there appears to be no response. On this issue, the affidavit of the respondent FCI filed on 19.07.2022 is also silent.

8. Therefore, having regard to the fact that the petitioner was let off by the learned Trial Judge in the criminal case and also having regard to the claim of the petitioner that he was also let off by the Civil Court in the Money Suits, I am of the considered view that the respondent authorities should consider the claim made by the petitioner and take a proper and conscious decision about his entitlement. To enable the authorities to appreciate and consider the claim of the petitioner, the petitioner is given liberty to file a fresh precise and conscious representation putting forth his claim before the Zonal Manager (North East) now re-designated as Executive Director of the FCI within a period of 3 (three) weeks from today. Upon receipt of the representation, the authority concerned shall examine and consider the representation and pass appropriate Speaking Order as expeditiously as possible and at any rate within a period of three months from the date of receipt of the same. The decision and the order passed by the authority should be communicated to the petitioner without delay.

9. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant