

GAHC010106192010



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

Case No. : WP(C)/2557/2010

SEKHAR KANTI DEB
S/O LT. SACHINDRA CH.DEB, 2ND LINK ROAD, MAIN, SILCHAR P.O.
SILCHAR-788006, DIST CACHAR ASSAM

VERSUS

THE FOOD CORPORATION OF INDIA and ORS.
REP. BY THE CHAIRMAN AND MANAGING DIRECTOR, FOOD CORPN OF
INDIA,16-20, BARKHAMA LANE, NEW DELHI-110001

2:THE EXECUTIVE DIRECTOR NORTH EAST
FOOD CORPN OF INDIA
ZONAL OFFICE
ULUBARI
P.O.GUWAHATI-7
DIST KAMRUP
ASSAM

3:THE GENERAL MANAGER N.E.

FOOD CORPN OF INDIA
ZONAL OFFICE
ULUBARI
P.O.GUWAHATI-7
DIST KAMRUP
ASSAM

4:THE GENERAL MANAGER

FOOD CORPN OF INDIA
REGIONAL OFFICE
ULUBARI

P.O.GUWAHATI-7
DIST KAMRUP
ASSAM

5:THE AREA MANAGER

FOOD CORPN OF INDIA
DIST OFFICE
STEAMERGHAT ROAD
P.O. SILCHAR-788001
DIST CACHAR
ASSA

Advocate for the Petitioner : MR .B MALAKAR

Advocate for the Respondent : MR.P K ROY

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner	: None appears.
For the Respondents	: Mr. S. K. Chakraborty, Standing Counsel, FCI.
Date of Hearing	: 13.06.2023
Date of Judgement	: 13.06.2023

JUDGMENT & ORDER (ORAL)

1. None appears for the petitioner on call. However, Mr. S. K. Chakraborty, learned Standing Counsel is present representing the respondent /Food Corporation India.
2. By way of the present writ petition, the petitioner has challenged the following order(s)/letter(s):-

- I. An order dated 16.01.1998 passed by the Senior Regional Manager, Food Corporation of India, Regional Office, Guwahati, in imposing the penalty of censure upon the petitioner.
 - II. A letter dated 23.07.2009 (Annexure-9) issued by the General Manager, Food Corporation of India, Zonal Office, Guwahati, stating that the petitioner is not entitled to additional increment with effect from 29.08.1997 as he was imposed with penalty of censure on 16.01.1998.
 - III. Letter dated 23.01.2010 (Annexure-10) issued by the Assistant General Manager, Food Corporation of India, Regional Office, Guwahati, for cancellation of the additional increment granted to the petitioner with effect from 29.08.1997 without hearing the petitioner at all in the case.
 - IV. Letter dated 19.04.2010 (Annexure-11) issued by the Area Manager, Food Corporation of India, District Office, Silchar for recovery of the amount towards additional increment granted to the petitioner with effect from 29.08.1997 and without hearing the petitioner at all in the case.
3. By the first impugned order dated 16.01.1998 (Annexure-2), the petitioner who was serving as Assistant Grade-III (Depot) was imposed a penalty of censure. Prior to that, by an order dated 11.08.1989, the petitioner was promoted to the post of Assistant Grade III (Depot), notionally with effect from 31.12.1988, from the post of the Watchman, Grade-IV employee.

4. Thereafter the Food Corporation of India, Zonal Office, issued an office order on 12.08.1989, whereby, some employees including the Assistant Manager-III (Depot) were granted one additional increment on their completion of 8 (eight) years of continuous service in their Grade w.e.f. 29.08.1997. Such Grant was subject to a condition that there should be any vigilance case pending against the officials or official should not be undergoing any tenure of penalty at the time of, he/she was eligible for grant of stagnation increment.
5. Thereafter on the basis of such office notification, a formal order was issued by the Food Corporation of India, Regional Office an dated 07.10.1999 (Annexure-4) and such benefit was granted to the petitioner w.e.f. 29.08.1997.
6. Subsequently, by an order dated 07.12.2007, the date of effect of the aforesaid additional increment was given from 31.12.1996 instead of 29.08.1997, as the petitioner was promoted notionally with effect from 31.12.1988 to the post of Assistant Grade-III (Depot), Grade III employee and accordingly the petitioner was entitled to get the additional increment with effect from 31.12.1996 for completion of their 8 (eight) years of service as the Grade-III category employees in the department.
7. Thereafter by the impugned communication dated 23.07.2009 issued by the General Manager, FCI, Zonal Office, Guwahati and informed the General Manager, FCI, Regional Office, Guwahati that the petitioner is not entitled for such additional increment as a penalty of censure was imposed upon the petitioner on 16.01.1998 i.e. after completion of his 8 years of service and therefore, necessary action was requested to be taken.

8. Subsequent to this, by a communication dated 23.01.2010, a request was made by the Assistant General Manager (Administration) to the Area Manager, Food Corporation of India, District Office, Silchar to implement the order dated 23.07.2009. This order is also under challenge in this present writ petition.
9. Thereafter, the Area Manager, Food Corporation of India, District Office, Silchar, issued an order dated 19.04.2010 and asked the Manager (Accounts), Food Corporation of India, District Office, Silchar to take necessary action as per guideline. Thus recovery was proposed.
10. The basic issue involved in this writ petition is whether in view of Notification dated 12.08.1999 and in view of the penalty imposed upon the petitioner on 16.01.1998, the additional increment was wrongly paid to the petitioner.
11. Mr. S. K. Chakraborty, learned Standing Counsel for the Food Corporation of India submits that the condition precedent to grant any such additional increment was that there should be no vigilance case pending against the official or the official should not be undergoing any tenure of penalty at the time when the person became entitled for grant of such additional increment.
12. According to Mr. Chakraborty, learned counsel on the date of entitlement of the petitioner for such additional stagnation increment, already a penalty of censure was imposed upon the petitioner and therefore, in the aforesaid backdrop and in terms of the parent office order dated 12.08.1999, the petitioner could not have been granted additional increment and therefore,

the authorities were left with no other option to correct the such mistake to save the public money inasmuch as the petitioner was not at all eligible for such additional increment as per terms and conditions under which such increments were granted. Accordingly, Mr. Chakraborty, learned counsel submits that there is no merit in this writ petition and accordingly same is liable to be dismissed.

13. The other contention of Mr. Chakraborty, learned counsel for the respondent is that the order of censure has been challenged before this Court almost after 20 years and the petitioner has become wise when the wrong benefit granted to him was sought to be withdrawn and such challenge was made by amending the writ petition after filing of the affidavit-in-opposition by the Food Corporation of India raising the plea that the original censure order is not under challenge. Therefore, in that backdrop, the challenge to the censure order should not be entertained at this belated stage.
14. This Court has given thoughtful considerations to the argument advanced by Mr. S. K. Chakraborty, learned Standing Counsel for the Food Corporation of India. Also perused the materials available on record.
15. By an order dated 11.08.1989 issued by the Senior Regional Manager, Food Corporation of India, Regional Office, Guwahati, the petitioner who was holding a Category-IV official post was promoted to the post of Assistant Grade-III (Depot) Grade-III employee. Thus he entered into the cadre of Assistant Grade-III (Depot) with effect from 11.08.1989.
16. In terms of the communication dated 07.10.1999, issued by the Regional

Manager, Food Corporation of India, Regional Office, Guwahati, whereby the additional increment was granted provided that such additional increments are granted to those persons who have completed 8 (eight) years of continuous service in the same grade as on 29.08.1997. So far the same relates to the petitioner, 8 (eight) years of service of the petitioner in Assistant Grade-III (Depot) was over on 11-08.1998. The petitioner was imposed a penalty of censure on 16.01.1998 i.e. after completion of 8 (eight) years of his service as Assistant Grade-III (Depot).

17. Initially the date of entitlement was fixed to be w.e.f. 29.08.1997. Subsequently such date of effect was changed on 31.12.1996. On 31.12.1996, the petitioner had already completed his service in Assistant Grade-III, though the memo of charge was issued on 1995 and the effect of such additional benefit was granted on 31.12.1996 and for this reason, the Corporation is arguing that on the date of grant of additional increment, the departmental proceeding was already pending against the petitioner. Therefore, now this Court is to see what was the conditions which debar a person from entitlement of such benefit.
18. The Clause 2 of the Condition as emphasised that there should no vigilance case pending against the official. It is the contention of the learned counsel for the Corporation that on 31.12.1996, a departmental proceeding was pending against the petitioner. Even if we go by the condition-2 and accept the contention of the Corporation that on 31.12.1996, the departmental proceeding was pending against the petitioner, it is not a condition that such pendency of departmental proceeding shall debar a person from getting such additional benefit for

stagnation in the post for at least 8 (eight) years and such 8 (eight) years period was completed much prior to imposition of penalty i.e. on 08.01.1997.

19. The other part of the Clause 2 that the official should not be undergoing any tenure of penalty is also not applicable in the present case as the language itself says that the person should not be undergoing any tenure or penalty for all meaning of purport, undergoing of tenure of penalty will mean a penalty which is ranging for a specific period and the specific period falls within the consideration of the period for additional increment.
20. In the case in hand, the penalty was censure and therefore, it cannot be said that the censure will continue for a tenure and the imposition of order of penalty itself says that it is a censure and there is no question of undergoing any tenure of a penalty of censure.
21. This Court can see a situation where tenure of penalty can continue when a order of withholding of increment for a specific period is granted then it can be said that the withdrawal of increment is for a tenure. Tenure will mean a period, the censure cannot be said to be penalty having a specific period/tenure.
22. The fact also remains that the petitioner was granted the benefit of additional increment on 07.10.1999 and effect of such tenure was given from 29.08.1997 and on that day, there was no penalty was imposed upon the petitioner rather the penalty was imposed on 16.01.1998. What department has done is after giving all the benefits on the basis of the circular dated 12.08.1999 on 07.10.1999 and date of effect was changed

almost 8 (eight) years of giving such benefit by an order dated 07.12.2007 and the benefit granted to the petitioner was sought to be revoked on 23.07.2009. Thus, when the petitioner has been granted all the benefits of an additional increment for serving the department without any promotional revenues for more than 8 (eight) years such right in the considered of this Court cannot be taken away in the manner that has been done. Accordingly, this Court is of the view that the present writ petition is deserved to be allowed.

23. Accordingly, except the challenge to the order of censure, the other prayers are allowed by setting aside the decision of the Corporation to withdraw the benefit of additional increment to the petitioner.
24. The order of censure is not entertained only for the reason that the petitioner has challenged the order of censure almost after 20 years and that also without challenging the same before the appellate authority.
25. Accordingly, in the aforesaid terms, this writ petition stands allowed. however, parties shall bear their own cost.

JUDGE

Comparing Assistant