

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1216 of 2011

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Harshit Narayan Singh, son of Sri Ram Bhaju Singh, resident of village Dumrawan, P.S. Ashawan, District Nalanda, at present residing at Mohalla Jai Prakash Nagar, P.S. Rajiv Nagar, District Patna

.... Petitioner

Versus

1. The Managing Director, Food Corporation of India (F.C.I.) 16-20, Barakhaba Lane, New Delhi
2. The Executive Director, East Food Corporation of India, 10-A, Middleton road, Kolkatta-71
3. The General Manager, Food Corporation of India, Exhibition Road, Arunachal Bhawan, Patna
4. The Area Manager, Food Corporation of India, Gaya

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Jha

For the Respondent/s : Mr. Prabhakar Tekriwal

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 06-07-2015 Heard learned counsel for the parties.

In this writ application the petitioner claims two relief, namely, a direction for grant of promotion on the post of Assistant Grade I (Depot) and the other with regard grant of selection grade from the date when the juniors have been granted such selection grade.

Learned counsel for the parties have agreed that so far the promotion to the petitioner is concerned, the matter stand resolved by an order of this Court dated 3.2.2015 in C.W.J.C.No. 5809 of 2014. Thus, this Court will not be required to pass any fresh order as with regard to first part of the grievance of the petitioner relating to promotion on the post of Assistant Grade I.



Learned counsel for the petitioner, however, has explained that the petitioner was entitled for grant of selection grade on the post of Watchman as he joined the said post on 18.9.1977 and was not given any promotion in the interregnum period of 12 years. He explains that as per the decision of the Food Corporation of India a person not promoted for a period of 12 years would be entitled to grant selection grade.

This Court, however, would find it difficult to accept such submission in absence of the policy or circular brought on record by the petitioner.

As a matter of fact whatever has been explained by Mr. Prabhakar Tekriwal, learned counsel appearing on behalf of Food Corporation of India, would really go to show that the petitioner's promotion having been given with retrospective effect 28.12.1982, probably the petitioner would be entitled for grant of selection grade because in that event as per the petitioner he could have served on the post of Watchman for a period of five years, whereas learned counsel for the petitioner accepts that the minimum period of 12 years was required.

Such reason, however, has not been given in paragraphs no. 10 of the counter affidavit. In the counter affidavit it is lack of vacancies in 30% quota which has been the main ground for denial

of selection grade to the petitioner with effect from 1.12.1995 instead of 1.12.1997. To that extent paragraph no.10 of the counter affidavit being relevant is quoted hereinbelow:

“10. That with regard to the statement made in para-18 and 19 of the writ application, it is stated that the petitioner who is now Assistant Grade-I (D), was considered for selection grade pay with effect from 1.12.1997 instead of 1.12.1995 since vacancies were earmarked for awarding selection grade i.e. 30% of the sanctioned strength as per Food Corporation of India headquarters’ instruction, which was accepted when the Zonal Promotion Committee was held long back. On that period of time, seniority of the writ petitioner was maintained as Assistant Grade-III(G). The question of considering selection grade as per availability of vacancy to the post of Assistant Grade-III(G) does not arise at this moment because changing of his cadre from Assistant Grade-III(G) to Assistant Grade-III(D) was made on 29.2.2000 as per direction of the Hon’ble Court passed in C.W.J.C.No. 2405/1999 and by subsequent order dated 12.9.2002 passed in C.W.J.C.No. 5637 of 2000 the petitioner got financial benefits with restoration of seniority i.e. 28.12.1982 but now the writ petitioner has filed the instant writ application requesting for direction to the respondents to grant selection grade pay with effect from 1995 instead of 1997 as well as promotion with effect from 2006 instead of 2007 to the post of Assistant Grade-III(D). The headquarters’ circular specifically states that in no case grant of selection grade should be considered

beyond 30% of the sanctioned strength. As such, petitioner's case for grant of selection grade with effect from 1995 cannot be considered at this juncture as there is no vacancy available."

Thus if the juniors to the petitioner were given the selection grade under 30% quota at the point of time when the promotion of the petitioner and his juniors were not notified, the petitioner cannot be denied such benefit only on the ground of his being not promoted. In fact his juniors given the benefit of selection grade w.e.f. 8.10.1996 also are said to have not been given such promotion on the said date. Therefore, lack of vacancies cannot weigh only against the petitioner for grant of relief of selection grade.

Nonetheless as the things are not very clear on this issue in the pleadings made by both the parties in this writ petition, the issue of grant of selection grade is remitted back to the authorities of F.C.I. and if it is found that any junior to the petitioner was granted relief of selection grade with effect from 1.12.1995 or even on any other date prior to 1.12.1997 the petitioner shall also be given such relief of selection grade with effect from such an earlier date in place of 1.12.1997 as has already been given to him.

This exercise must be completed by the respondent authorities of the Food Corporation of India within a period of

three months from the date of receipt of a copy of this order which has to be accompanied with a representation of the petitioner explaining his case at length and particularly, naming the juniors who were given such selection grade with effect from 1.12.1995.

While deciding the case of the petitioner the respondents must keep in mind that even if on 1.12.1995 none of the juniors have been given the benefit of selection grade and were given with effect from 8.10.1996 the petitioner at least should be given the benefit of selection grade with effect from 8.10.1996 instead of 1.12.1997 with all consequential benefits as given to his juniors.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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