

\$~R-114

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

*Date of Decision: December 16, 2015*

+ W.P.(C) 7292/2002

JAGDISH CHAND

..... Petitioner

Through: Mr. Rajiv Aneja, Advocate

versus

FOOD CORPORATION OF INDIA & ORS. ....Respondents

Through: Mr. Rajeev Sharma, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**

**(ORAL)**

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Vide Memorandum of 23<sup>rd</sup> March, 1995 (*Annexure P-5*), the petitioner was permitted to exercise the option in terms of Circular of 25<sup>th</sup> May, 1992. The petitioner was appointed as typist in respondent/FCI on 1<sup>st</sup> May, 1973 but vide memo (*Annexure P-5*) it was directed that his deemed date of joining shall be 15<sup>th</sup> December, 1972. Vide Circular of 25<sup>th</sup> May, 1992, (*Annexure P-3*) it was clarified that the option in the matter of fixation of pay in the revised scales would be exercised by the employees who were employed before 1<sup>st</sup> January, 1973. Vide office order of 21<sup>st</sup> February, 1997, (*Annexure P-7*), the memo (*Annexure P-5*) was modified and the permission given to exercise the option in terms of Circular of 25<sup>th</sup> May, 1992 was withdrawn, which is assailed in this petition. The consequential effect of impugned office order of 21<sup>st</sup> February, 1997 (*Annexure P-7*) was that

petitioner's pay was lesser than his juniors. In this petition, a prayer is also made by petitioner for pay fixation at par with his juniors in terms of policy circulars of 13<sup>th</sup> March, 1986 and 25<sup>th</sup> May, 1992. The third and the last alternative prayer made in this petition, is to direct third respondent to decide the dispute by referring the matter to Industrial Tribunal, which was given up at the time of final hearing of this petition.

At the final hearing, learned counsel for the petitioner contended that the deemed date of joining i.e. 15<sup>th</sup> December, 1972 is rightly given to petitioner vide memo (*Annexure P-5*) and it has been arbitrarily withdrawn vide impugned office order (*Annexure P-7*) and no reason for this abrupt withdrawal of the deemed date of joining is forthcoming in the counter affidavit filed by the respondents.

During the course of hearing, attention of this Court was drawn by learned counsel for petitioner to the counter filed by the respondents to point out that respondent/FCI had not made true disclosure of facts and through RTI information petitioner has now come to know that the vacant position of typists at the time of petitioner's appointment was 08 and not 05 and there was no justification for the delay in issuing appointment letter to petitioner, who was at Serial No.5 in the select panel of 28<sup>th</sup> September, 1972.

Attention of this Court was drawn to the tentative Zonal Seniority List of Typists, Direct Recruits (*Annexure R-4*) to point out that as on 31<sup>st</sup> December, 1972, the rank of petitioner was at Serial No.237 and that seniority list was issued in the year 1974 and till date it holds good. Reliance was placed on Division Bench decisions of this Court in *B.N. Bajpai and Ors. Vs. Union of India and Ors.* 2002 II AD (DELHI) 557 and *Major General R.P.Mund v. Union of India & Ors.* 2015 LawSuit (Del)

4713, to submit that the settled seniority of the employees should not be unsettled after a long time. Thus, it was submitted that impugned office order (*Annexure P-7*) deserves to be quashed and petition ought to be granted benefit of the Circular of 1992 (*Annexure P-3*) in view of the office memo (*Annexure P-5*).

The aforesaid stand taken on behalf of petitioner was controverted by learned counsel for respondent/FCI, who submitted that the deemed date of joining was inadvertently given as 15<sup>th</sup> December, 1972 and petitioner was inadvertently shown as senior to other persons in the select panel of 20<sup>th</sup> September, 1972 in which petitioner was at Serial No.5. It was submitted that reliance placed by petitioner's counsel upon *B.N. Bajpai* (supra) and *Major General R.P.Mund* (supra) is of no avail as in the said decision the facts were altogether different. Lastly, it was submitted by learned counsel for respondent-FCI that since the joining of other four persons on the panel was prior to that of petitioner, therefore, petitioner cannot claim parity with them in matter of fixation of pay scales and so this petition deserves dismissal.

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 23<sup>rd</sup> March, 1995 (*Annexure P-5*) petitioner was permitted to exercise his option in terms of Circular of 25<sup>th</sup> 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 21<sup>st</sup> 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 20<sup>th</sup> 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 25<sup>th</sup> May, 1992 (*Annexure P-3*), persons who had joined on or after 1<sup>st</sup> 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. 15<sup>th</sup> December, 1972 is without any basis and justification, therefore, its withdrawal by the subsequent impugned office order (*Annexure P-7*) cannot be faulted with.

In view of the aforesaid, I find no substance in this petition and so it is dismissed while leaving the parties to bear their own costs.

**(SUNIL GAUR)**  
**JUDGE**

**DECEMBER 16, 2015**  
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