

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.24768 of 2003

ORDER:

This Writ Petition is filed by the petitioner for issuance of writ of Certiorari to call for the records relating to and connected with Order No.5(35)/2001/Sen.Cell dated 10.04.2003 of the 1st respondent and to set aside the same so far as promotion of petitioner as Technical Assistant Grade-I w.e.f. 25.08.2000 is concerned and consequently direct the respondents to promote the petitioner as Technical Assistant Grade-I from 25.08.2000 with all consequential benefits.

2) The factual matrix of the case is thus:

a) The petitioner joined in the service of Food Corporation of India on 12.11.1976 as Technical Assistant Grade—III and promoted to Grade—II w.e.f. 31.12.1984 and further promoted to Grade—I by order dated 25.08.2000 of the 1st respondent, but the said order was not implemented by the Regional Office. While so, the petitioner was served with memo dated 26.08.2000 on the ground that admixture percentage is more in rice while he was working as Technical Assistant Grade—II in Srikakulam District. The petitioner submitted his explanation. Having not satisfied with the explanation offered by the petitioner and without conducting any enquiry the disciplinary authority by order dated 29.11.2000 imposed penalty of reduction of pay by one stage in the time scale of pay attached to the post of Grade—II for a period of two years

without cumulative effect. Aggrieved, the petitioner filed appeal. The Appellate Authority confirmed the punishment imposed by the disciplinary authority. Against which petitioner filed W.P.No.19342 of 2001 which was pending. In the meanwhile, the petitioner was promoted as Grade—I Technical Assistant by order dated 25.08.2000. Thereafter, the petitioner was issued with charge memo dated 26.08.2000. Admittedly, on the date of promotion i.e. on 25.08.2000, no charge memo was pending and therefore the action of the respondents in imposing penalty of reduction of pay by one stage in the time scale of pay attached to the post of Grade—II for a period of two years without cumulative effect is illegal, arbitrary and unconstitutional.

Hence, the present writ petition.

b) The respondents filed counter stating that petitioner was issued charge memo dated 26.08.2000 proposing to take action against him for his misconduct while discharging the official duties under Regulation 60 of Food Corporation of India Staff Regulations 1971 and called for his explanation within 10 days. Accordingly, the petitioner filed his explanation on 30.08.2000. After taking into consideration the explanation offered by the petitioner and material on record, the disciplinary authority imposed minor penalty of reduction of pay by one stage in the time scale of pay attached to the post of Grade—II for a period of two years without cumulative effect. Aggrieved, the petitioner preferred appeal and the Appellate Authority confirmed the same. Against which the petitioner carried the matter in revision before the

Managing Director. While so, challenging the order of the Appellate Authority petitioner preferred W.P.No.19342 of 2001 and the same is pending. In the meanwhile, after completion of currency of penalty, the petitioner was promoted from Grade—II Technical Assistant to Grade—I Technical Assistant vide proceedings dated 08.10.2002. The petitioner accepted and joined in the promoted post at Nellore and reported to concerned Regional Manager.

c) While the matter stood thus, the petitioner submitted a representation dated 27.03.2003 seeking promotion from 25.08.2000 and to re-fix the seniority in the cadre of Technical Assistant Grade—I w.e.f. 25.08.2000. The 1st respondent examined the case of the petitioner and informed through proceedings dated 10.04.2003 that the officials whom the petitioner has quoted as his juniors are promoted during August, 2000 whereas the petitioner was promoted during August, 2002 and due to vigilance case, the petitioner was not empanelled for promotion during 2000 hence, the question of revising his seniority on par with his juniors in the cadre of Technical Assistant Grade—I in the year 2000 does not arise. He thus prayed to dismiss the writ petition.

3) Heard both sides.

4) The main plank of argument of learned counsel for petitioner is that the petitioner was considered for promotion and included in the panel of eligible officers for promotion to Grade—I and competent authority also issued orders of promotion vide order dated 25.08.2000

and by the date of said order there were several existing vacancies in Grade—I. Therefore, it was evident that no charge memo was pending against the petitioner as on the date of his promotion i.e. 25.08.2000 and consequently there was no impediment for him to be promoted also. However, a charge memo dated 26.08.2000 was issued only subsequently and therefore, the said charge memo cannot have any bearing retrospectively with his promotion 25.08.2000. Hence, the action of respondents in withholding his promotion dated 25.08.2000 is illegal.

b) Nextly, learned counsel would argue that he was imposed with only a minor penalty, his promotion should not have been withheld.

5) Per contra, learned counsel for respondent would argue that the promotions dated 25.08.2000 are subject to vigilance clearance. Since charge memo was issued immediately on the next day of issuing promotion list, the promotion of petitioner was withheld because he was facing the charge of misconduct and therefore, after serving of punishment he was given promotion as Technical Assistant Grade—I w.e.f. 08.10.2002 and there was no illegality in the order.

6) The point for determination is:

“Whether there are merits in the writ petition to allow?”

7) **POINT**: When the chronology of events transpired is taken into consideration, this Court finds merits in the contention of petitioner. When the petitioner was working as Technical Assistant Grade—II, a Memo Lr.No.QC.7(7)/99-2000 dated 07.07.2000 was issued calling for

his explanation within one week from the date of receipt of the said memo. The petitioner offered his explanation on 19.07.2000. While forwarding his explanation to the District Manager, the Assistant Manager recommended that a lenient view may be taken for the dropping of the memo. Be that it may, no immediate action appeared to have taken. In the meanwhile, as per proceedings DO No.286/2000/Estt.-I dated 25.08.2000, the Assistant Manager (EI) for Zonal Manager (S) issued an Office Order, promoting 151 selection Grade/Assistant Grade—II (Technical) staff to the post of Assistant Grade—I (Technical) in the IDA scale. The petitioner's name was mentioned at Sl.No.47 in the list. It is no doubt in the aforesaid order it was mentioned that the promotions are subject to regional vigilance clearance and without prejudice to the claims of the officers/officials who may be seniors to them and will take effect from the date of reporting to duty in the place of posting. However, petitioner is concerned, the vigilance clearance cannot be deemed to be a hurdle because no charge memo was framed or served on him by the date of promotion i.e. 25.08.2000. The charge memo dated 26.08.2000 was issued only subsequently. Therefore, for all practical purposes his promotion can be said to be taken effect from 25.08.2000. The subsequent charge memo which no doubt culminated into minor penalty cannot be pressed into service retrospectively to withhold the promotion given on 25.08.2000. Therefore, the contention of respondent authorities that since the petitioner was facing charges his promotion was withheld cannot be accepted.

8) In the result, this Writ Petition is allowed and the respondents are directed to promote the petitioner as Technical Assistant Grade—I w.e.f. 25.08.2000 and grant all consequential benefits including pay and seniority. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 05.06.2018
Murthy

