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

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LPA 472/2017

VIR BAHADUR

..... Appellant

Through: Mr. H.K. Chaturvedi, Advocate with
Mr. Sagar Chaturvedi, Advocate.

versus

FOOD CORPORATION OF INDIA & ANR.

..... Respondents

Through: Mr. Ajit Pudussery, Advocate with
Mr. Ajeet Singh Verma, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

06.12.2018

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Dr. S. Muralidhar, J.:

1. This appeal is directed against the orders dated 26th July, 2016 passed by the learned Single Judge, dismissing the Writ Petition (Civil) 4564/1997 and subsequent decision dated 5th May, 2017 dismissing the review petition No.482/2016.

2. This is the third round of litigation. The background facts are that the Appellant joined Food Corporation of India (FCI) – Respondent No.1 herein as Assistant Grade-III (AG-III) on 27th June, 1973. In due course, he was promoted to the post of AG-I (Ministerial) in 1991. According to the Appellant, while working in the Ministerial cadre, he worked in the Movement Cadre on being transferred there between 1974 and 1977. By

Office Order dated 19th May, 1982, FCI directed that the Appellant would be relieved as AG-II (Ministerial) and would report to the Joint Manager (Establishment) for further deployment. Thereafter, the Appellant was promoted from AG-II (Ministerial) to AG-I (Ministerial) against the 1991 panel.

3. One Vijay Kumar Kaushal who was selected in movement cadre in October, 1995, was promoted from AG-II (Ministerial) to AG-I (Ministerial) against the 1993 panel. One other person, Smt. Vijay Laxmi Lalla @ Vijay Laxmi Bhatia was selected from movement cadre in 1995. She was promoted from AG-II (Ministerial) to AG -I (Ministerial) against the 1994 panel.

4. On 21st February, 1994, the Appellant submitted his option for lateral deployment in the Movement Cadre for the post of AG-I from AG-I (Ministerial). On 21st September, 1994, FCI proposed lateral deployment in AG-I, Movement Cadre by 50% lateral deployment from the Godown Cadre and 50% from General Administration Cadre (Ministerial Cadre). By an Office Order dated 21st/25th October 1995, FCI invited options for formation of Movement Cadre.

5. According to the Appellant his claim for lateral deployment in the Movement Cadre on the basis of seniority and experience was ignored by FCI. In other words, according to the Appellant, his juniors were promoted illegally by FCI by the afore-mentioned Office Order to the Movement Cadre. The Appellant submitted representations on 8th May and 6th

December, 1996 for induction into the Movement Cadre. By Memorandum dated 5th May, 1997, they were rejected.

6. Thereafter, the Appellant filed Writ Petition (Civil) 4564/1997, in which an order was passed by the learned Single Judge of this Court on 27th October, 1997, the relevant portion of which reads as under:

“.....The respondent should specifically explain why in the rules, there is no condition of experience mentioned and why the petitioners junior had been selected and not the petitioner. Matter be listed on 26.03.1998. In the meantime, any appointment made will be subject to the outcome of the Writ petition”.

7. Admitting that Vijay Laxmi Lalla was junior to the Appellant and had been wrongly inducted in the movement cadre, FCI cancelled her induction. This was stated by the FCI in its counter affidavit dated 25th March, 1998.

8. On 11th February, 2014, the learned Single Judge passed a detailed order in which, *inter alia*, it was observed as under:

“11. Petitioner No.2, thus, in effect, seeks appointment on the basis of his right for consideration of lateral movement from general administration cadre, in which he was positioned at that relevant point in time, to the Movement cadre, in Assistant Grade-I, w.e.f. 1993.

12. What has emerged in the course of the arguments is that, though in the first instance, respondent no.1 had appointed, one Ms.Vijay Laxmi Lalla (whose actual date of promotion as AG-I has been shown as 27.12.1997) in movement cadre, based on lateral movement, her induction was subsequently cancelled. I am informed that, the induction of Ms.Vijay Laxmi Lalla, was cancelled in 1998. The aspect considering Ms.Vijay Laxmi

Lalla's induction and subsequent cancellation of appointment is referred to in paragraph 10 of the counter affidavit filed by respondent no.1.

13. It is argued by the learned counsel for petitioner no.2 that consequent thereto, the petitioner no.2 should have been inducted into the movement cadre, immediately, on cancellation of induction of Ms. Vijay Laxmi Lalla, which according to respondent no.1, occurred in 1998.

14. At this stage, Mr. Puddusery says that he would have to ascertain the correct position as to whether there were any other persons, who were senior to petitioner no.2 at that point of time. Let an affidavit be filed in that behalf, within two weeks from today”.

9. An additional affidavit was thereafter filed by FCI dated 10th March, 2014, in which in paragraph 3, it was stated as under:

“3. In the Rejoinder filed by the Petitioner in fact other than a general averment that a junior has been inducted there is no real denial of this factual averment made in the counter affidavit which is evident from a perusal of the same. The Petitioner is seeking to rely on the seniority list which was prepared and saw the light of the day only on 3.11.1995 after the induction was finalized. In fact as pointed out above, only Mrs.Vijay Laxmi Lalla who was junior to the Petitioner was inadvertently inducted in Movement Cadre but when the same was noticed her induction was subsequently cancelled. Copy of the agenda for induction of employees to the Ministerial Cadre for purposes of induction to the Movement Cadre is Annexure AA/1. Copy of the Minutes of the Screening Committee held on 28.9.1995 for considering candidates for induction into the Movement cadre is Annexure AA/2”.

10. It was additionally pointed out as under:

“4. I say that the induction to the movement cadre is not a promotion and does not confer any monetary or additional benefit on the employee concerned. It is only a lateral deployment or a transfer. It is submitted that an employee has consequently no right to demand induction to the Movement cadre. The prime consideration is the interest of the corporation. As admitted by the Petitioner only the chances of promotion improve upon posting to the movement cadre”.

11. Another detailed order came to be passed by the learned Single Judge on 4th December, 2014, which reads as under:

“1. At the outset, it may be noted that though the present petition has been filed by two petitioners, Mr. Chaturvedi, Advocate states that he has been engaged by the Delhi High Court Legal Services Committee to appear only on behalf of the petitioner No.2 and the petitioner No.1 has not contacted him.

2. Counsel for the respondents/FCI states that as per the records, the petitioner No.1 had not exercised his option for being placed in the seniority list for lateral movement and therefore, he would not be entitled to any relief.

3. The relief in the present petition is confined to petitioner No.2 alone.

4. Counsel for the respondents/FCI relies on the Office Order dated 3.11.1995 to state that the said order was passed so as to revise/recast the zonal seniority by implementing the judgment of the High Court in connected matters pronounced on 11.1.1994 and confirmed by the Supreme Court by dismissing the SLP preferred by the FCI. He states that the said Office Order does not upset the lateral movement list prepared by the respondent/FCI in the year 1993 and therefore the contention of the learned counsel for the petitioner that the list of AG-II approved for the notional empanelment by promotion to the post of AG-I (Ministerial) in

the year 1991, upon revision under the Office Order dated 3.11.1995, will not have any bearing on those persons who were appointed on the basis of lateral movement options that were submitted by them in the year 1993.

5. Learned counsel for the respondents/FCI states that before proceeding further in the matter, he may be permitted to interact with the department and redraw the lateral movement list for the year 1993, based on the revision/recasting of the zonal seniority list in terms of the Office Order dated 3.11.1995, so as to assess the placement of the petitioner in the said list. He further states that as the matter is very old and it will take time to collect the records and prepare such a statement, some reasonable time may be granted to undertake the said task.

6. The aforesaid exercise shall be completed by the respondent/FCI within four weeks and an affidavit filed within the same timeline along with the relevant list and the circulars that the counsel for the respondents/FCI proposes to rely upon, with an advance copy to the other side.

7. List this petition in the category of 'senior citizens' in the regular cause list in the week commencing from 8th January, 2015, as per its own seniority".

12. Thus, it is seen that the relief in Writ Petition (Civil) No.4564/1997 which had been filed by the present Appellant (who was Petitioner No.2) and one Ram Kishore Vashisht, who was being pursued only by the present Appellant from the above date onwards.

13. Pursuant to the above order, a further additional affidavit was filed by FCI on 8th January, 2015, wherein *inter alia*, it was stated that the list prepared for induction even as per the recast seniority list showed "that the Petitioner would not have been selected for the induction to the movement

cadre”. Enclosed with this affidavit as Annexure-C was copy of a circular No.44 of 1979 laying down procedure for induction to AG-I (Movement Cadre). It is again emphasized as under:

“3. I say that the induction to the movement cadre is not a promotion and does not confer any monetary or additional benefit on the employee concerned. It is only a lateral deployment or a transfer. It is submitted that an employee has consequently no right to demand induction to the Movement cadre. The prime consideration is the interest of the Corporation. As admitted by the Petitioner only the chances of promotion improve upon posting to the movement cadre. It being settled law that chances of promotion do not confer a legal right the Petitioner is not entitled to a writ of mandamus directing induction to the Movement Cadre”.

14. By an order dated 15th January, 2015, the learned Single Judge dismissed Writ Petition (C) 4564/1997. The learned Single Judge, *inter alia*, observed that if the relief sought by the present Appellant of being placed in the Movement Cadre at the post he was working in the Ministerial Cadre in the year 1993 was granted, then it might severely prejudice him because he would be effectively demoted and he would have to refund the monetary benefits that he had received so far in the promotional post that he got in the ministerial cadre since 1993. Accordingly, the writ petition was dismissed.

15. An application C.M.No.28896/2015 was filed by the Appellant for recalling of the above order. In this application, an order was passed by the learned Single Judge on 11th December, 2015 recording the statement of the Appellant that he was ready to give up all the monetary benefits earned by him in the Ministerial Cadre from 1993 onwards, once he was allowed to

join the Movement Cadre. He was asked to file an affidavit to the effect that he would be refunding all monetary benefits received including of promotions received in the Administrative Cadre from 1993 till the Appellant retired in 2010. The Appellant had to simultaneously state in the affidavit that he does not want any automatic promotion, except benefit of an Assured Career Progression (ACP) Scheme, if any, of the FCI, on the Appellant being posted as AG-I (Movement) with effect from 1993.

16. In terms of the above order, the Appellant filed an affidavit dated 23rd December, 2015 which was replied to by the FCI on 17th February, 2016. The Appellant then filed rejoinder thereto on 8th March, 2016. In the light of all these affidavits, the application for recall of the order was allowed and the writ petition was restored to file by the learned Single Judge by order dated 18th March, 2016.

17. Thereafter, on 26th July, 2016, the learned Single Judge dismissed the writ petition holding as under:

- (i) According to FCI, in the panel of 1991, the name of the Appellant figured at Sl.No.17.
- (ii) The Movement Cadre started from AG-I whereas the Appellant was holding the lower rank of AG-III. That could not have been counted as experience in the movement cadre, particularly since the work assigned to him was diary and dispatch work. The only relevant experience was at the level of AG-I.
- (iii) There were 16 vacancies for 1993 and 52 options were received from the depot cadre and 18 from the general administration cadre.

8 persons from the General Administration cadre, who were senior to the Appellant, were appointed.

- (iv) Although, Ms. Vijay Laxmi Lalla, who was junior to the Appellant was appointed, her reduction later was cancelled. The vacancy that arose could not have been filled by the Appellant, inasmuch as three persons senior to the Appellant, viz., Jitender Mohan Bhardwaj, Gyaneshwar Rai Deepak and Bala Sahai Meena had a prior right for the appointment in the movement cadre.
- (v) In the absence of relevant experience at the AG-I level, the case of the Appellant could not have been considered for appointment in the movement cadre that too by overlooking the prior right of persons who were senior to him.

18. The learned Single Judge, while dismissing the writ petition, also noted that the Appellant had retired in the month of February, 2010.

19. Aggrieved by the order dated 26th July, 2016, the Appellant filed LPA No.516/2016. By order dated 19th July, 2016, the said LPA was dismissed as withdrawn with liberty to the Appellant to file a review application. Consequent thereto, the Appellant filed review petition No.482/2016 where the principle contention was that the two officers, that is, Gyaneshwari Rai Deepak and Bala Sahai Meena, who were senior to the Appellant had never challenged their non-placement in the movement cadre in the AG-I and, therefore, their seniority above the Appellant would not come in the way of the Court granting him relief.

20. The learned Single Judge, in the second impugned order dated 5th May, 2017, rejected this contention and observed that in paragraph-12 of the order dated 26th July, 2016, this fact was already noted and, therefore, there was no error apparent on the face of the record. When this appeal was heard first by this Court on 17th July, 2017, the Court passed the following order:

“The submission of Mr. Chaturvedi, learned counsel for the appellant is that the respondents be asked to clarify whether Gyaneshwar Rai Deepak and Bala Sahai Meena who were admittedly senior to the appellant had given their consent to the transfer to the Movement Cadre. He does not dispute the fact that, in case, the said officers had given their consent for appointment in the Movement Cadre, he would have no - claim and only in case, they have not given their consent, this case would need consideration. Limited to the aforesaid aspect, issue notice to the respondents, returnable on 08.11.2017.

21. A detailed reply has been filed even in the LPA by the FCI wherein, inter alia, it is pointed out as under:

- (I) Transfer to the Movement Cadre is not a promotion but a lateral deployment.
- (II) While chances of promotion in the movement cadre are brighter, mere chances of promotion do not confer a legal right.
- (III) Circular No.44 dated 22nd March, 1979 of the FCI lays down a detailed procedure for induction in the movement cadre. It provides for a time-bound mode of transfer to the movement cadre. It clearly provides that the panel prepared would lapse at the end of the year. In the present case, the 1991 panel clearly lapsed at the end of the particular selection year.

(IV) A expert committee drew up the panel for induction which showed that there were officers senior to the Appellant who would have a prior right over him for induction into the movement cadre. The Appellant was at Sl.No.17 in the said list and there were 8 vacancies and, therefore, he could not have been inducted into movement cadre.

(V) The seniority was revised by the seniority list dated 3rd November, 1995 whereas induction to the movement cadre was done on 6th September, 1994. At the time of his induction, he did not have any chance of induction. Even after the revision of the seniority list, his position only improved to Sl.No.14. There were still other eligible candidates who were denied selection to the movement cadre. Therefore, even as per the re-cast seniority list, the Appellant could not have been selected for induction.

(VI) The working experience claimed by the Appellant in the movement cadre while being posted to the claim cell was done at the AG-III level and this was different from the duties performed in the AG cadre. He did not have the requisite work experience. It is further pointed out that:

“The Appellant in the ministerial cadre was working on the post of Assistant Grade-I (AG-I) and was considered and promoted to the post of Manager in his own cadre on which post he was working till his superannuation from service. Had the Appellant been transferred to the Movement Cadre, he would have continued as AG-I. The next post of Manager and all other posts above are selection posts and there is no certainty that the Appellant would have got promotions above the level of AG-I in the movement cadre”.

22. Pursuant to the order passed by the Court on 8th November, 2017, the FCI has produced the copy of the options submitted by the two officers, who were senior to the Appellant, namely, Bala Sahai Meena and Gyaneshwar Rai Deepak. This further diminishes his chances of being considered for placement in the movement cadre.

23. This Court has heard the submissions of Mr. H.K. Chaturvedi, learned counsel for the Appellant and Mr. Ajit Pudusseri, learned counsel for the Respondent.

24. Mr. Chaturvedi submitted that with Mr. Kaushal who was junior to the Appellant being wrongly placed in the Movement Cadre and once the revised seniority list placed Mr. Kaushal junior to the Appellant, right of the Appellant to be selected and appointed prior to Mr. Kaushal automatically matured. In other words, he stated that if relief could have been granted to Mr. Kaushal, who was junior to the Appellant, the same relief also ought to have been granted to the Appellant. He referred to an interim order dated 27th October, 1997 passed by the learned Single Judge in the W.P. (C) No.4564/1997 requiring the Respondent to specifically explain why in the rules, there is no condition of experience mentioned and why the Appellant's junior had been selected and not the Appellant.

25. Mr. Chaturvedi pointed out that it was clarified by the learned Single Judge any appointment made in the meanwhile would be subject to the outcome of the writ petition and, therefore, the mere fact that the Appellant

superannuated in April, 2010 could come in the way of his being granted the relief prayed for in the writ petition. The Court notices that what the Appellant is seeking is in a sense a right of negative equality. Merely because a person who is also junior has been inducted in the movement cadre will not mean that the Appellant should have also been inducted particularly when there were at least two persons senior to him, namely Gyaneshwar Rai Deepak and Bala Sahai Meena, who had also given their options for being placed in the movement cadre and whose rights, who were superior to him, could not have been overlooked.

26. The question is whether at the time the placement in the Movement Cadre took place, i.e. in 1994, the Appellant stood a chance for being placed there. There were 8 vacancies and he was at Sl.No.17 in the panel. There were at least two seniors above him who had given their options. Even assuming the vacancy created by the exit of Mrs. Vijay Laxmi Lalla and even assuming for a minute that Mr. Kaushal was also to vacate his seat, the two persons senior to the Appellant, having given their options, would have occupied those vacancies and not the Appellant.

27. The position in the revised seniority list only shows that the Appellant was at Sl.No.14 and even in the revised seniority list, as such a copy of which has been placed on record by the FCI, it is clear that Gyaneshwari Rai Deepak and Bala Sahai Meena were at Sl.No.12 & 13, i.e. seniors to the Appellant. The Appellant could not have possibly made the cut. It is futile, therefore, for the Appellant to contend that his claims for being placed in the Movement Cadre were wrongly overlooked. His reliance on the interim

order of the learned Single Judge is to no avail for the simple reason that in any event he did not have a valid claim for being placed in the Movement Cadre as AG-I.

28. There is no ground made out for interference with the impugned order of the learned Single Judge. The appeal is accordingly dismissed.

CM APPL. 24558/2018 (delay)

29. For the reasons stated in the application, the delay in filing the appeal is condoned and the application is disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 06, 2018
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