

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.417 of 2020

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Ram Naresh Sharma Son of Late Bharat Sharma(M), aged about 64 years, Resident of Pirapur Pokhra, P.O. and P.S.- Jandaha, District- Vaishali, at present residing at Mohalla- Dharampur Nistama, P.S.- Samastipur Muffasil, District- Samastipur.

... .. Petitioner

Versus

1. The Food Corporation of India through the Executive Director (E), Zonal Office, East 10-A, Middleton Row, Kolkata-71.
2. The Executive Director (E) Food Corporation of India, Zonal Office, East 10-A, Middleton Row, Kolkata-71.
3. The General Manager (R) Food Corporation of India, Regional Office, Patna.
4. The Assistant General Manager (Personal) Food Corporation of India, Zonal Office, East 10-A, Middleton Row, Kolkata-71.
5. The Assistant General Manager (Personal) Food Corporation of India, Exhibition Road, Patna.
6. The Deputy General Manager, Food Corporation of India, Exhibition Road, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Navin Prasad Singh with Mr. Narayan Singh, Advocates
For the Respondent- FCI:		Mr. P. K. Verma, Sr. Adv with Mr. Mankeshwar Tiwari, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 28-06-2022

Heard learned counsel for the petitioner and learned senior counsel representing the Food Corporation of India (for brevity 'the Corporation').

2. The petitioner was working as Assistant Grade- II (Accounts). An F.I.R. bearing No. RC 14(A)/94-PAT was lodged on 11-05-1994 against the District Manager of the Corporation at Purnia. The petitioner was not named in the F.I.R., but has later



on been made an accused during investigation of the said case. The petitioner has finally been acquitted in the case on 04-04-2016, after he attained the age of superannuation on 31-03-2015. On being acquitted, the petitioner made his claim for promotions, which he was denied during pendency of the criminal proceedings, whereupon, the Assistant General Manager (Personal), Food Corporation of India, (Respondent No 4) has issued an office order dated 10-10-2018. The petitioner, as per the said office order, has been promoted to the post of AG-I (A/Cs) w.e.f. 31.12.2002 i.e. the date of promotion of his next junior. He has also been promoted to the post of Manager (A/Cs) w.e.f. 31-12-2008 i.e. the date of promotion of his junior. Insofar as the grant of promotion is concerned, the petitioner's counsel has not raised any grievance.

3. The grievance of the petitioner arises out of Clause-4 of the office order dated 10-10-2018 (Annexure-12 to the supplementary affidavit) which reads as follows:-

“4. He is not entitled for any arrear of pay for the period of notional promotion, in terms of para 3 of DoPT O.M. No. 22011/4/91-Estt.(A) dated 14.09.1992.”

4. Since the deprivation of arrears of pay is based on para-3 of DoPT office memorandum dated 14-09-1992, the Court has examined the said paragraph of office memorandum, which



reads as follows:-

“On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The government servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.”

5. In view of the aforesaid specific stipulation, taken note of in paragraph 3 of the office memorandum, it is more than



obvious that a reasoned and speaking order was required to be passed having regard to the consideration contemplated in para 3 of the office memorandum to ascertain the entitlement of the petitioner for arrears of pay, which obviously has not been done.

6. The learned senior counsel has tried to convince the Court that there is subsequent decision of the Govt. of India in the year 2016, which is referred to in para 8 of the counter affidavit, which sustains the order passed by the Authority. On realizing that there is no consideration of the said letter dated 22-02-2016, he is not in a position to defend the Clause-4 of the office order dated 10-10-2018.

7. In view of the aforesaid situation, the office order dated 10-10-2018 insofar as para 4 purporting to deprive the petitioner of his arrears of pay, is concerned, is held to be unsustainable and is hereby quashed. A fresh decision is required to be taken by Assistant General Manager (Personal), Food Corporation of India, (Respondent No 4), having regard to the clear stipulations made in the office memorandum dated 14-09-1992, taken note of above.

8. Since the petitioner has retired long back, this Court would only observe that fresh decision be taken based on the records expeditiously and preferably within a period of eight



weeks.

9. The application is allowed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11-07-2022
Transmission Date	

