

(2011) 03 DEL CK 0528

In the Delhi High Court

Case No : Writ Petition (C) No. 9681 of 2009

Rajeev Kumar Mishra

APPELLANT

Vs

Food Corporation of India and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Food Corporation of India Staff Regulations, 1971 — Regulation 16, 16(1), 16(7), 16(8), 4

Citation : (2011) 03 DEL CK 0528

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Rakesh Kumar Khanna, Piyush Sharma, Seema Rao and Neha Garg, for the Appellant; Kamal Sawhney and Satyakam, for the Respondent

Judgement

Manmohan Singh, J.—The Petitioner has filed the present writ petition under Article 226 of the Constitution of India thereby praying for the following relief's:

- a) Issue a writ or direction thereby quashing the integrated seniority list dated 29.01.2008 of Assistant Manager (General) and Assistant Manager (Depot).
- b) Issue an appropriate writ or direction thereby directing the Respondents 1 & 2 to redraft the integrated seniority list showing the Petitioner at Sl. No. 219 in accordance with the Regulation 16(1) and 16(8).
- c) Issue an appropriate writ or direction thereby quashing the panel of promotion as drawn on in the DPC dated 09.06.2009 of Respondent No. 3 to 11 as Assistant General Manager (General) as they have been considered wrongly for the said post.
- d) Issue an appropriate writ or direction thereby directing the respondent No. 1 & 2 to consider the Petitioner for the post of Assistant General Manager (General) and appoint him, if found suitable, from 09.06.09 with all consequential benefits.
- e) Award the cost of the petition to the Petitioner.

f) And/or pass any other further order/orders which are required in the facts and circumstances of the case.

2. In December 1998, Respondent No. 1 issued an advertisement about the requirement of 100 Management Trainees required for different cadres. The Petitioner applied for the post of Assistant Manager (General), written examination was held in February, 1999 and group discussion and interview was held in July/August 2000. He qualified the written exam, group discussion and interview. The Petitioner secured 6th Rank in the General Cadre. After completing the required training successfully and pursuant to the call letter issued to him, he joined as an Assistant Manager (Genl).

3. The recruitment/selection of Petitioner along with Respondents 3 to 11 for the post of Manager (General) was made on All India basis against All India vacancies through same process. In the order of merit, the Petitioner was senior to Respondents 3 to 11.

4. The panel of Management Trainees selected through the said selection process was finalised on 13.09.2000 by the Selection Committee of Respondent corporation on All India basis (Recruitment Unit Category I) and not zone wise. The recruitment unit for Category II posts is Zone wise as per the Regulation 4 of FCI (Staff) Regulation. The following are the relevant terms and conditions mentioned in the advertisement as published in the Employment News dated 05.12.1998 to 11.12.1998:

14. On qualifying the written test, group discussion and an interview, eligible candidates will be appointed as Management Trainees based on the merit obtained by them.

19. After completion of training, all appointee shall be subject to Rules and Regulations of the FCI and also governed by the Administrative instructions issued from time to time.

23. The candidates may opt for any one of the five zones as indicated in the application format for their absorption after completion of their training.

25. On completion of training, the trainees will be allotted to different zones as per their option subject to availability of vacancy. Such absorbed trainees will maintain their seniority in the respective zones in the cadre in which they opt.

5. As per one of terms of Clause 23 of the advertisement, the Petitioner opted for East Zone, however, the Petitioner was allotted North-East Zone by the Respondent management. Another grievance of the Petitioner was that the request made by Sh. Yoginder Singh and Anuj Tyagi in the year 2002 for change of their zone were considered and their Zones were changed from West to North and North East to West respectively. Their seniority was considered for the year of 2000 and they were placed above the Petitioner and the promotees.

6. The Petitioner states that the post of Assistant Manager was re-designated as

Manager and the next promotional post from the post of Manager (General) is the post of Assistant General Manager (General). On 29.01.2008, the Respondents 1 & 2 issued an integrated seniority list of Manager (General) and Manager (Depot) to fill up the post of AGM (Genl) through promotion and in the said list they had shown Respondent Nos. 3 to 11 much senior to the Petitioner. The said list was provided by the Respondents.

After the list was issued, the Petitioner and the similarly situated persons filed objections to the said seniority list. In his representation, the Petitioner pointed out that in the case of direct recruit, Regulation 16 (1) and Regulation 16 (8) (i) of Food Corporation of India (staff) Regulations 1971 are applicable, but the same was rejected by the Respondents by their letter dated 03.12.2008.

7. The Petitioner again made various detailed representations to the Respondents but the Respondents held the Departmental Promotional Committee and approved the names of 63 persons upto Serial No. 306 of integrated seniority list including the names of Respondent Nos. 3 to 11.

8. The contention of the Petitioner is that as the batch of year 2000 was recruited on All India basis, the inter-se seniority of all Direct Recruited Managers (Genl) based on ranking order on All India basis must be maintained in terms of Regulation 16(8)(i) of FCI (Staff) Regulations, 1971. This ranking order would be valid for all promotions related to the batch of 2000 which may take place during entire service period of direct recruits.

9. The Petitioner says that the attitude of Respondents 1 & 2 was discriminative towards the officers, as in the advertisement issued by the Respondents, it was mentioned that the selection was to be done on All India level but then they bifurcated the direct recruits on the post of Assistant Managers on the basis of Zonal Headquarters and granted seniority also on the basis of Zones.

The claim of the Petitioner is that the Respondents should revise the integrated seniority list and consider his name for the post of AGM (Genl).

10. It is argued by the Petitioner that while preparing All India Integrated Seniority List, only seniority of promotees based on their date of joining was taken into account and ranking order of Direct Recruits was ignored which is against the law. The Petitioner's promotion was tagged with promotees of North East Zone who joined late in their promoted capacity. It is also submitted that the mode of appointment/ selection of promotees and direct recruits is distinct and different. In the year 2000, five panels of promotees were prepared by respective ZPC (Zonal Promotion Committee) of each Zone while panel of direct recruits was prepared on All India basis at Headquarters level based on the ranking order.

Thus, All India seniority list prepared by the Respondents was in violation of Regulation 16(8)(i). Therefore, the said list needs to be quashed and further the Respondents 3 to 11, who secured less marks in the merit list than the Petitioner,

cannot be made senior to the Petitioner.

11. The Respondents 1 & 2, in their counter affidavit, submitted that integration of Managers was done at the Headquarter level after obtaining the seniority list from respective zones as the same is maintained zone wise and in the FCI, concerned ED (zones) are the appointing authority of Managers therefore all the service particulars including seniority, transfer and posting of managers are confined within the zone.

12. As per the Respondents, for the purpose of drawing a promotion panel from the grade of Manager to AGM, all the seniority lists of Manager (General) and Manager (Depot) are integrated at the Headquarter level and a single All India Integrated Seniority is prepared which consists of all the Managers whether directly recruited or promoted from the lower post.

13. The Respondents have submitted that after the completion of recruitment process management trainees are assigned and appointed as managers in different zones and their seniority is fixed at zonal level on their joining the post. Their seniority within the zone is strictly fixed on the basis of merit, in accordance with Regulation 16(1) of FCI (Staff) Regulations, 1971. There are five zones in total, and the seniority list of all the five zones is integrated at Headquarter level for the preparation of All India integrated seniority list and this is done on the basis of their date of joining the post, without changing the inter-se seniority of individual cadre.

14. It is also submitted by the Respondents that the zones have been allotted at the stage of selection as management trainees through the offer of appointment for the post of management trainees to the selected candidates with the request to send their letter of acceptance. On acceptance of such offers, which clearly indicated the assigned zone, they joined as management trainees. Further, as per Clause 23 of the advertisement dated 05-11 December, 1998, the candidates had to take an option for allotment to any of the five zones. This itself implied that the posts of management trainees were to be filled zone wise and not on All India basis. It is the prerogative of the Respondent corporation to decide the allotment of number of posts for each zone, as deemed appropriate as per operational necessities.

15. The Respondents have pointed out that the Petitioner was recruited under the regulation which is regulated by the powers of the FCI (Staff) Regulations, 1971 and as per Section 4 of the said regulation, zone is the recruitment unit for category-II officers and not category-I and since the Petitioner was recruited and appointed in the North East zone, his seniority will be maintained in the North East zone.

16. In reply to the submission of the Respondents, it is contended by the Petitioner that there is no Regulation in FCI (Staff) Regulations, 1971 governing method of Integration and the above-mentioned method is without mandate of any Regulations of FCI (Staff), i.e., nowhere in the FCI (Staff) Regulations, the

above mentioned principle has been mentioned.

17. The Petitioner submits that the method of preparation of All India Integrated Seniority list by the Respondents is contrary to law and against the decisions of the Supreme Court. It is stated that Sh. Yogender Singh (Genl.) and Sh. Anuj Tyagi (Depot), who were ranked lower in the merit list, became senior to the Petitioner after change of Zone in the year 2002. Similarly, Sh. Kaushik Nayak, who topped the list of Manager (Depot), opted East Zone and got it, whereas Sh. Falguni Banerjee who got 11th rank could not get the opted East Zone, as it was exhausted. Sh. Banerjee, however, was allocated North Zone by chance or otherwise and is placed at Sl. No. 382 in the Integrated Seniority list whereas Sh. Nayak is placed at Sl. No. 790. Sh. Banerjee, even after getting lower rank, became senior to the topper of the batch.

18. As far as the post of manager in Category II is concerned, it is not in dispute between the parties, that their seniority is maintained at the zonal level. Now, it is to be considered as to whether preparation of the list of seniority in the year 2008 of Direct Recruits of 2000 batch by the Respondents, when Integrated Seniority List of Manager (Genl. And Depot) is prepared after 8 years on Zonal basis and not on All India basis, is arbitrary and with malafide intention on the part of the Respondents, and is the demer of promotion to the Petitioner in violation of Articles 14 and 16 of the Constitution.

19. Here, it is necessary to refer the relevant rules of Regulation 16 of the Regulations governing the inter se seniority among the direct recruits and seniority among direct recruit and promotees. The relevant portion of Regulation 16 is as under:

16. Seniority:

(1) Direct recruits: The relative seniority of all direct recruits will be determined by the order of merit in which they are selected for such appointment by the selecting authority; persons appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selection.

(3) Relative seniority of direct recruits and promotes:

(i) The relative seniority of direct recruits and promotes will be determined according to the rotation of the vacancies as between direct recruits and promotes as based on the quotas reserved for direct recruitment and promotion respectively.

*Amended vide notification No. 13-5/84-BC dated 23.11.1984 (90th Amendment). Effective from 3.9.1984 (4-2/77-EP)

**Substituted vide notification No. 7-1/74-EP dated 11.12.1975. Effective from 1.5.1974. (27th Amendment).

(ii) (a) Vacancies arising in a calendar year shall be filled up during the same calendar year, as far as possible.

(b) Notwithstanding anything stated above, if for any reasons whatsoever, any vacancy or vacancies arising during a calendar year reserved for promotion or direct recruitment, as the case may be, remain unfilled by the prescribed mode such vacancy or vacancies shall be carried over to the subsequent calendar year. The inter se seniority of such persons as are promoted or recruited against such vacancy or vacancies shall be fixed as if such earlier year's vacancies for promotion or direct recruitment, as the case may be, had arisen during such subsequent calendar year and the persons selected against the additional vacancies shall be placed en-block below the last promote or the direct recruit, as the case may be, in the seniority list based on the rotation of vacancies for that year.

(7) Relative seniority of an employee transferred from one Unit to another:

An employee transferred from one unit of seniority to another will be ranked as the junior most in the particular category on the date he joins the new Unit. If, however, such transfer is in the opinion of the competent authority in the interest of the Corporation, seniority of the transferee will be fixed in the new Unit after giving full weightage to the service counting for seniority in the particular category in the old Unit.

(8) Relative Seniority of Management Trainees and Promotees.

(i) The seniority of Management Trainees absorbed as Asstt. Manager in the services of FCI will be determined by the order of merit in which they are finally selected for absorption after successful completion of their training period.

20. It is not denied by the Respondents that in the present case the selection process was not on All India basis and the zone wise vacancy was advertised in the newspaper before commencement of selection process.

21. In case of transfer of an employee from one unit of seniority to another, Regulation 16(7) of FCI (Staff) Regulations, 1971 stipulates that "if, however, such transfer is in the opinion of the competent authority in the interest of the corporation, seniority of the transferee will be fixed in the new unit after giving full weightage to the service counting for seniority in the particular category in the old unit".

22. It is settled law that the merit list must be sacrosanct for the purpose of seniority of Direct Recruits. This position has already been upheld in *Jatinder Kumar and Others Vs. State of Punjab and Others*, and *Prem Prakash Vs. Union of India (UOI) and Others*, wherein it has been held that when appointment is made from a panel, panel seniority shall not be disturbed. Further in Appeal (Civil) No. 4760/2006; *Suresh Chandra Jha v. State of Bihar and Ors.* 2006 17 SCALE 578, the Supreme Court has reiterated its opinion as held in *Chairman, Puri Gramya Bank and Another Vs. Ananda Chandra Das and Others*, .

23. The Petitioner was undisputedly selected under Direct Recruits batch so as Respondents 3 to 11 on All India basis. The processes of selection of promotees

and Direct Recruits are separate and distinct. Admittedly, after selection of the batch of 2000, zones were subsequently allotted to them, but still the merit list was prepared on zonal basis even though selection was not zone specific and the advertisement was issued at All India basis without any mentioning of zone wise vacancy, therefore, the option given by the candidates at the time of his application had no binding effect on the Respondents.

24. The Petitioner was allotted North East Zone by the management and Zonal Promotion Committee of North East Zone conducted promotion from Cat. III to Cat. II in the last and his seniority with promotees, who were selected/appointed on zonal basis of North East Zone, being linked with the seniority of Direct Recruits, is not as per regulation.

25. As per regulation 16(8)(i), the inter-se seniority of direct recruits would have to be as per order of merit. There is no dispute that the Respondents 3 to 11 secured less marks and were ranked lower in the merit list than the Petitioner. Since the selection process in the present case was held on All India basis against All India vacancies, the merit list prepared on zonal basis would have no consequence and this Court is of the considered opinion that it is necessary that the ranking given in the list of candidates selected in the order of merit by the selection board cannot be overlooked and Respondents 3 to 11 who secured less marks cannot be given seniority over the Petitioner, otherwise, the purpose of the seniority list on merit from All India Selection process, being original ranking, would be defeated. The Petitioner admittedly was shown senior to Respondents 3 to 11 during the entire process but he was made junior to the Respondents 3 to 11 as per Integrated Seniority List. It affected his service condition and promotion and denial of promotion in this fashion is in violation of Articles 14 and 16 of the Constitution.

26. It is pertinent to mention here that the management trainees were recruited on All India basis only with regard to the batch of the Petitioner of 2000. It appears from the record that all subsequent advertisements for recruitment of management trainees (manager) were published by the Respondents on zonal basis wherein zone-wise break up of posts was mentioned and the application was also sought by the Respondents for a particular zone only. Copies of some of the advertisements issued by the Respondents in August, 2003 have already been placed on record by the Petitioner. After perusal of the aforesaid advertisements, it is clear that the recruitment is always made for Category II and Category III at zonal level in terms of Regulation 4 of FCI (Staff) Regulations, 1971 but as far as the selection of management trainees of batch of Petitioner of 2000 is concerned, who were recruited on All India basis, was the exception made by the Respondents.

27. The Petitioner has also relied upon the judgment of the Single Judge of Andhra Pradesh High Court in titled as M. Venkenta Narayan and Ors. v. Zonal Manager (South), FCI. Writ Petition No. 29130/1997 In the said judgment, it was held that Regulation 16(1) requires the seniority of direct recruit to be

determined by the order of merit in which the candidates are selected for appointment by selection authority.

28. Under these circumstances, the directions are issued in the present writ petition to the Respondents 1 and 2 to consider the case of the Petitioner for the post of Asstt. General Manager and appoint him, if found suitable, under the compliance of Regulation 16(1) and 16(8)(i) discussed above. The Petitioner is permitted to submit a detailed representation to the Respondent No. 1 within the period of four weeks from today and the representation shall be disposed of by the Respondents 1 and 2 within four weeks thereafter and re-draft the Integrated Seniority list accordingly.

29. The writ-petition is accordingly disposed of with costs.