
(2001) 06 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2377 of 1986

Sanjay Kumar Sabharwal	Vs	APPELLANT
Food Corporation of India		RESPONDENT

Date of Decision : 01-06-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2001) 06 P&H CK 0001

Hon'ble Judges : Bakhshish Kaur, J

Bench : Single Bench

Advocate : Mr. Munish Jolly, for the Appellant; Mr. Hemont Kumar, for the Respondent

Final Decision : Allowed

Judgement

Bakhshish Kaur, J.—Petitioners have filed this writ petition for issuance of a writ of certiorari quashing the order dated April 3, 1986 cancelling the acceptance of option and their consequent absorption in the Assistant Grade III (Technical Cadre).

2. The petitioners were appointed as Assistant Grade II (General Admn./Depot) in the Food Corporation of India (hereinafter referred to as "the" Corporation). Their date of joining the service is as under :

S.No.

Name of the Official

Cadre prior to acceptance of option

Date of joining in the FCI

1.

Parveen Kumar

A.G.II(D)

13.3.1984

2.

Sanjay Kumar Sabharwal

-do-

3.3.1984

3.

Sukhdev Singh

A.G.III(A/cs)

15.2.1984

4.

Ajay Kumar

A.G.III(D)

6.4.1984

5.

Gurparkash

-do-

1.6.1984

6.

Sanjeev Sayal

-do-

27-2.1984

It is averred that the petitioners being graduates were qualified for appointment as Assistant Grade II in the Technical Cadre. They were called upon to give their options for permanent transfer to Technical Cadre. They accordingly gave options for permanent transfer to Technical Cadre, which were accepted vide letter dated July 15, 1985 Annexure P-1. It was also ordered that they would be treated as juniors to persons already working the Technical Cadre and their inter se seniority will be fixed in terms of the Staff Regulations 18(7) and they will have no claim for seniority in the original cadre. In this way, they lost seniority in their original cadre. Consistent with the process of direct recruitment of Assistant Grade III (Technical) in the Technical Cadre, the petitioners service as Assistant Grade II in the original cadre (Admn./Depot) was not counted and they were put

at the tail considering their dates of joining in the Technical Cadre as the dates of their appointment. This was done in spite of the fact that the grades and pay of their earlier posts was identical with the new posts. Later on interviews were held by the Board constituted for recruitment to the Assistant Grade III in the Technical Cadre, but the petitioners did not appear in the interviews since they were already working regularly in the Technical Cadre. After the dates and times of interviews were over, the petitioners to their surprise received letter dated 23.4.1986 Annexure P-2 intimating that the notifications about their absorption in the Technical Cadre acceptance of their options stood cancelled which necessarily implies reversion to their original cadre. In this way, the order cancelling the acceptance of their options after a long time has been challenged by the petitioners as illegal, void, unconstitutional, arbitrary, against rules of natural justice, unfair, unjust and discriminatory.

3. The respondents in their joint written statement, admitted the selection and appointment of the petitioner as Assistant Grade III in the Admn./Depot Cadre. It has been averred however that their qualifications do not entitle them for absorption in the Technical Cadre, therefore, they could not be absorbed by inviting their option in the Technical Cadre in view of the judgment of this Court in CWP No. 4481 of 1980 decided on May 10, 1985. The petitioners were never asked to give option for their absorption from the General Cadre to the Technical Cadre as they had joined only in the year 1984. Options were invited from the employees of the General/Depot Cadre desirous for the change of cadre in the proforma enclosed with the letter dated 19.9.1983 to be submitted at the latest by October 31, 1983. Annexure R-I is copy of the letter dated 19.9.1983 inviting options for the change of cadre. It is, however, admitted that the options submitted by the petitioners were accepted inadvertently. The petitioners on their reversion to the General Cadre will get their seniority at the due place which they are entitled i.e. from their initial date of joining in the General Cadre. The date of inviting applications was October 31, 1983 whereas the petitioners who had been appointed in the year 1984 and thereafter, could not give their options under the Circular Annexure R. 1 and the question of accepting their options could not arise at all. The matter was enquired into and it was found that the options had been accepted inadvertently, therefore, they had rightly been reverted to the General Cadre and the impugned order is legal, valid, constitutional and in conformity with the Circular Annexure R-1.

4. I have heard Shri Munish Jolly, learned counsel for the petitioners and Shri Hemant Kumar, learned counsel for the respondents.

5. Mr. Munish Jolly, learned counsel for the petitioners, at the very outset, contended that this petition survives in respect of petitioner Nos. 1 and 5 only and no relief is claimed qua petitioner Nos, 2, 4 and 6.

6. By means of filing C.M No. 165 of 2000, the petitioner has also placed on record Annexure P-3 dated October 9, 1996 regarding recruitment to the Technical Assistant Grade II in the scale of Rs. 290-10-380-12-440-15-485 in the

Corporation. Learned counsel for the petitioner contended that the order of reversion as claimed by the respondent was on the pretence that the petitioners were recruited in the service later on and the options were called for on an earlier date, is meaningless because they have again asked for the options vide Annexure P-3. Three of the petitioners gave fresh options and they have been absorbed in the Technical Cadre. They were again made to surrender their seniority in the Technical Cadre and they again fell back at the tail of seniority in the Technical Cadre despite they had been working in the Technical Cadre. The subsequent event of their absorption raises the question whether anything was wrong in accepting their options vide Circular dated April 24, 1994. If so, why again a circular Annexure P-3 was issued in the year 1986. All these facts indicate that the Corporation is adopting the unfair practice of pick and choose which amounts to discrimination besides being arbitrary.

7. As per Annexure P-4, Sanjiv Sayal-petitioner No. 2, Gurparkash-petitioner No. 3 and Ajay Kumar-petitioner No. 4 were offered posts of Technical Assistant Grade III in the Corporation along with others. This offer of appointment was made in the year 1987 on the same grounds as it was done in the year 1994, whether the respondents can legitimately do so that the options of the petitioners were accepted inadvertently and that the acceptance has been rightly cancelled vide the impugned order.

8. The substantive question needs consideration is whether the Corporation after accepting their options, who had changed their position to their detriment on account of acceptance of their options) by not availing the opportunity for selection in the Technical Cadre on the posts of Assistant Grade III (Technical) since they have already been absorbed in the Technical Cadre), can turn around and cancel the acceptance without issuing a show-cause notice or affording an opportunity of hearing to them. The petitioners admittedly were working on the Technical side and were qualified for the appointment in the Technical Cadre. Whether the petitioners can derive any benefit from the circular Annexure P-3 relating to recruitment to the post of Technical Cadre issue on October 19, 1986. According to their own showing, in pursuance of the circular Annexure P-3, vide which the respondents who had called for option, three of the petitioners gave their options and they have been absorbed in the Technical Cadre. They were again made to surrender their seniority in the Technical Cadre and they fell at the tail of the seniority in the Technical Cadre. If this is the case, then the act of the respondents cancelling the acceptance simply by saying that inadvertently the options were accepted, is not legal and justifiable. Rather, it shows that they are treating the petitioners as rolling stones in an arbitrary manner. It is a case where the principles of natural justice do not appear to have been followed at all. In *Punjab Cooperative Bank Ltd. v. Union of India* and another 2001(1) RCR (Civil) 154, it was observed by my learned brother, J.L. Gupta, J. that "the principles of natural justice belong more to the common conscience of mankind than to juridical science." These are the "general principles of law common to civilised communities." Simply put, the rules of

natural justice are not more than the principles of fair play. These are meant to promote justice. To ensure fairness of procedure, however, these cannot be subjected to "legal strait-jackets". The requirements vary with the circumstances of each case. It is basically recognized that a party should not "suffer in person or in purse without an opportunity".

9. Learned counsel for the respondents relied on V.K. Dhawan and another v. The Food Corporation of India and others 1985(2) SLR 449, but the same is not applicable to the case in hand as the authority pertains to Assistant Grade I and II (Technical) and it was held that the only mode prescribed for recruitment to these posts is by way of promotion and appointment by transfer is not permissible whereas the case in hand pertains to transfer to Assistant Grade III (Technical), which is permissible under the relevant rules.

10. Keeping in view the aforesaid facts, I am of the view that the impugned order Annexure P-2 cancelling the acceptance of options of the petitioners is arbitrary, unjust and ultra vires. Once the options were accepted for permanent transfer to Technical Cadre, the respondents cannot turn around, and say that it was done inadvertently more so when their act of acceptance has resulted into loss of seniority in the original cadre and placement at the tail of the seniority in the Technical Cadre. The petitioners were also made to change their position to their disadvantage as they did not avail the opportunity for selection in the Technical Cadre though they were eligible since they had been already absorbed in the Technical Cadre.

In view of the aforesaid, this writ petition is allowed. The impugned order Annexure P-2 is quashed. The petitioners shall continue to hold the posts they are presently holding in the Technical Cadre. No order as to costs.

10. Petition allowed.