

Before Permod Kohli, J.

VEENA MANTROO,—*Petitioner*

versus

THE FOOD CORPORATION OF INDIA &
ANOTHER,—*Respondents*

C.W.P. No. 1579 of 1989

19th September, 2007

Food Corporation of India (Staff) Regulations, 1971—Regs. 10 & 16 (2) (a)—Constitution of India, 1950—Art. 226—Consideration of petitioner’s name for promotion to Assistant Gr. I in 1976—No charge sheet pending against petitioner at that time—Whether subsequent issuance of charge sheet and punishment of Censure imposed can be impediment in her promotion—Held, no—Petitioner actually promoted in 1978 but failing to join on post in H.P. Region—Petitioner continued to serve against lower post in Punjab Region and promoted in 1980—Whether petitioner entitled to seniority with effect from date of her promotion—Held, no—Failure to join promotional post in H.P. Region, petitioner not entitled to count seniority prior to date of joining on promotional post.

Held, that the petitioner was considered for promotion in the year 1976 and was brought on the panel. Till then there was no charge sheet against her. Subsequent issuance of charge sheet and punishment of “Censure” cannot and should not be an impediment in her promotion. In any case no material is brought on record to show that either her promotion was withheld or withdrawn due to disciplinary proceedings. This ground of the respondent to deny promotion to the petitioner is not sustainable. However, it is a fact on record that the petitioner was promoted on 12th September, 1978 and asked to join in H.P. Region on promotional post, but she did not join on the post and continued to serve against the lower post in Punjab Region. She was promoted in Punjab Region only on 11th August, 1980. The petitioner having failed to join on the promotional post in H.P. Region and continued to serve on a lower post in Punjab Region, cannot claim seniority

with effect from 12th September, 1978. The respondents have rightly rejected the request of the petitioner for seniority with effect from any date prior to the date of joining on promotional post.

(Para 7)

Amit Chopra, Advocate, *for the petitioner.*

None, *for the respondent.*

PERMOD KOHLI, J. (Oral)

(1) None is present for the respondents. On the last date of hearing also, respondents were absent. This writ petition has been accordingly heard on merits in the absence of the respondents.

(2) The petitioner was selected as Assistant Grade-III with the respondent No. 1 Food Corporation of India on 6th July, 1970. She came to be promoted as Assistant Grade-II (Ministerial) in the year 1972. The petitioner was further promoted as Assistant Grade-I on 22nd September, 1976. Copy of the order dated 22nd September, 1976 is annexed with the writ petition as Annexure P-1. This order indicates that she was brought on promotion panel for appointment on substantive basis. The procedure for promotion is indicated in Regulation 10 of the Food Corporation of India (Staff) Regulations, 1971 (hereinafter referred to as "the 1971 Regulations"). The promotion is to be made on the basis of seniority subject to fitness in respect of non-selection. From the order (Annexure P-1), it also appears that a panel was drawn and the petitioner's name figured at Sr. No. 9 of promotion panel. The promotees were also directed to report for duty to the officers concerned. There was also stipulation in paragraph 2 of the order that the promotion of the official is subject to vigilance clearance by the concerned controlling office. In the aforesaid order, the petitioner was sought to be posted in Punjab Region. However, a corrigendum came to be issued on 26th August, 1978 (Annexure P-2) whereby the petitioner's posting on promotional post was changed from Punjab Region to H.P. Region and his date of joining was extended up to 11th September, 1978. This Corrigendum was followed by a formal promotion order issued on 12th September, 1978 (Annexure P-3) whereby besides ordering promotion of

the petitioner as Assistant Grade-I (M) on regular substantive basis, she was asked to report for duty to the Officer on Special Duty, H.P. Region, Shimla for deployment as AG-1. Her promotion was to take effect from the date she attends duty. It is also evident from this order that the petitioner was required to join latest by 19th September, 1978. The petitioner has stated in the writ petition that she was entitled to be promoted in Punjab Region and not H.P. She made a representation for her adjustment in Punjab Region, but was kept waiting and never permitted to join in Punjab Region. It appears that the petitioner did not join in H.P. Region and continued to be posted as AG-II in the Punjab Region. Eventually, she was posted as AG-I in Punjab with effect from 11th August, 1980. It is admitted case of the parties that since 11th August, 1980, the petitioner continued to perform the duty as AG-I. Seniority list of AG-I (Ministerial) (Annexure P-4) was circulated by the respondent-Corporation on 23rd August, 1979, as stood on 21st December, 1978. In this seniority list, the petitioner was placed at Sr. No. 504 above Gian Chand. In this seniority list, petitioner's date of promotion is shown as 18th November, 1976. She is not aggrieved of her seniority position as indicated in the seniority list (Annexure P-4). The aforesaid seniority list (Annexure P-4) was followed by another seniority list dated 31 August, 1982 (Annexure P-5) wherein her name was shown at Sr. No 491 above Gian Chand who was shown at Sr. No. 492. The petitioner is also satisfied with this seniority list. On 1st November, 1985, another provisional seniority list (Annexure P-6) came to be circulated with seniority as stood on 31st October, 1985. In this seniority list (Annexure P-6), the petitioner was shown at Sr. No. 563. The petitioner is aggrieved of her seniority position as reflected in this seniority list (Annexure P-6) She claimed that she should have been at Sr. No. 427-A above Gian Chand. Aggrieved of the seniority position, she filed CWP No. 1604 of 1987 which came to be disposed of,—*vide* order dated 14th January, 1988, with the following orders :—

“The main grievance of the petitioner is that her name has been brought down by 123 places in the list circulated on 1st November, 1985. Mr. G.C. Garg, learned counsel for the respondents has contended that this seniority list is only provisional. This fact is conceded by Mr. Gupta also. In this situation, the petitioner may make a representation against this seniority list.

The representation, if any, made by the petitioner, shall be disposed of very expeditiously preferably within three months. With these observations, the writ petition stands disposed of.”

(3) Consequent upon the aforesaid observations of this Court, the petitioner made a detailed representation on 29th January, 1988 claiming her seniority with effect from 22nd September, 1976. The representation preferred by the petitioner has been disposed of,—*vide* the impugned order dated 27th October 1988 (Annexure P-7). her representation has been rejected and she has been granted seniority as AG-I (M) from 5th September, 1980 on the date when the petitioner is stated to have taken over as AG-I (M) in Punjab Region. It is this order (Annexure P-7) which is impugned in the present writ petition.

(4) The main grievance of the petitioner is that she is entitled to seniority with effect from 22nd September, 1976 i.e. the date of her promotion and not from 5th September, 1980 when she was given actual posting in Punjab Region. In this view of the matter, the petitioner places reliance upon Regulation 16 (2) (a) of the 1971 Regulations, which *inter alia*, provides that the relative seniority of persons promoted to various grades will be determined in the order in which their names appear in the panel drawn up in accordance with Regulation 10. According to the petitioner, she was entitled to seniority with effect from 22nd September, 1976.

(5) The claim of the petitioner is resisted by the respondents on two counts. Firstly, in the year 1976 when the petitioner was considered for promotion by the Zonal Promotion Committee, a vigilance case was pending against her. The case was registered in the year 1974. CBI enquiry was ordered. The C.B.I. submitted its report and ultimately, the petitioner was awarded the punishment of “Censure” in the year 1978. Secondly, the petitioner was issued promotion order on 12th September, 1978, but she did not join at her new place of posting on promotional post and continued to work in Punjab Region on lower post.

(6) I have heard learned counsel for the parties. The petitioner has stated in the writ petition that on the basis of the enquiry she was served charge-sheet in May, 1977 after the date she was brought on the promotional panel. The punishment of “Censure” was also awarded in the year 1978 and thus, the disciplinary penalty cannot be invoked to deny promotion and seniority to the petitioner from the date of her actual promotion. From the

order (Annexure P-1), it appears that the petitioner was only brought on the panel on 22nd September, 1976. However, she was actually promoted on 12th September, 1978. Therefore, the actual date of her promotion is only 12th September, 1978 and not 22nd September, 1976 as claimed.

(7) The question, whether the petitioner is entitled to be promoted with effect from 22nd September, 1978, after the commencement of the vigilance enquiry against the petitioner, is no more *res integra*. It has been settled by the Hon'ble Apex Court in the case of **Union of India etc. versus K.V. Jankirman etc.**, (1) that the promotion cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. The disciplinary proceedings will be deemed to have commenced from the date of issuance of charge-sheet and from the date of framing of charge, if criminal proceedings are pending. In the present case, the petitioner was considered for promotion in the year 1976 and was brought on the panel. Till then there was no charge-sheet against her. Subsequent issuance of charge-sheet and punishment of "Censure" cannot and should not be an impediment in her promotion. In any case no material is brought on record to show that either her promotion was withheld or withdrawn due to disciplinary proceedings. This ground of the respondent to deny promotion to the petitioner is not sustainable. However, it is a fact on record that the petitioner was promoted on 12th September, 1978 and asked to join in H.P. Region on promotional post, but she did not join on the post and continued to serve against the lower post in Punjab Region. She was promoted in Punjab Region only on 11th August, 1980. The petitioner having failed to join on the promotional post in H.P. Region and continued to serve on a lower post in Punjab Region, cannot claim seniority with effect from 12th September, 1978. The respondents have rightly rejected the request of the petitioner for seniority with effect from any date prior to the date of joining on promotional post. Under the above circumstances, no relief can be granted to the petitioner. The writ petition is accordingly dismissed.

R.N.R.