

GUNENDRA PRASAD SEN GUPTA

v.

UNION OF INDIA AND OTHERS

May, 3 1983

[S. MURTAZA FAZAL ALI AND E. S. VENKATARAMIAH JJ.]

Service Jurisprudence—Seniority and Promotion to higher post—Assurance given to the employee that his seniority in the post to which he was initially appointed on his retransfer would be considered—Departmental Promotion Committee first rejecting to consider the case for empanelling for promotion for want of personal records and later when available refuses to reopen the case—Legality of the refusal Estoppel by conduct, applicability of.

The appellant was working as a Godown-Keeper in the northern region of the Food Corporation of Delhi. He was transferred to the eastern region at his own request on March 1, 1961. In August 1962, the Union of India issued a circular to the effect that an officer who was transferred from one region to another at his own request should be treated as a fresh entrant in the cadre to which he belonged in the latter region for the purpose of seniority and thus thereby such an officer will forfeit his past services. In the Seniority List of 1969, the appellant's name was shown at S. No 261 but in the seniority list of 1972 his name was shown against Sl. No. 266 and as a result four of his juniors were promoted. The appellant's several representations against the said promotions having failed, he filed a writ petition in the Calcutta High Court praying for a mandamus directing the respondents either to forbear from giving effect to the promotions or to transfer him back to Northern region restoring his seniority. As per the High Court's orders, the Joint Personnel Manager of the Corporation wrote to the Zonal Manager (E) at Calcutta assuring that the seniority position of appellant in the Northern region prior to his transfer to the Eastern region would be restored to him. After his retransfer to the Northern region, the appellant found that some of his juniors had already been promoted. On his representation, the Departmental Promotion Committee empanelled him in the 1976 panel and refused to empanel him from 1970 on the ground of non-availability of service records. But when they were traced and produced, the Departmental Promotion Committee refused to empanel his name in the 1970 List with a cryptic resolution to the effect that "on the basis of records of his service, his case cannot be reopened". His representations against the said resolution having failed, the appellant filed a writ petition in the Delhi High Court which was dismissed *in limine*. Hence the appeal by Special Leave.

Allowing the appeal, the Court

HELD: 1:1 The resolution of the Zonal Committee passed in May 1979 stating that the case of the appellant could not be reopened has to be

treated as *non-est* and ineffective one in the eye of law. The Zonal Promotion Committee had not considered the case of the appellant for the purpose of including him in the 1970 panel. The re-opening of a case arises only when it has been once considered and a decision is taken thereon. [10 G-H, 11 A-B]

1:2 The resolution passed by the Zonal Promotion Committee means that it was not willing to reopen the case of the appellant on the basis of his service records. The resolution does not show that the Committee had in fact considered the suitability of the appellant for promotion to a higher post at the time when his juniors were empanelled for the purposes of promotion. If it had done so, the Committee would have recorded in its resolution that the appellant had been found to be unsuitable for promotion during the relevant time. When his case came up before the Committee for the first time in December 5, 1977, it deferred the consideration of his case on the ground that the relevant Confidential Reports were not available. Having thus deferred the consideration of the case of the appellant on that occasion, the Zonal Promotion Committee should have considered his case when the relevant Confidential Reports were placed before it and passed an appropriate resolution instead of remarking that his case could not be reopened. [10 C G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4061 of 1983

Appeal by Special leave from the Judgment and Order dated the 11th March, 1981 of the Delhi High Court in C.W.P. No 371 of 1981.

A. Ganguli for the Appellant.

K. C. Keshav Dayal, A. V. Rangam and *G. Gopalakrishnan* with him for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The appellant is an employee of the Food Corporation of India (hereinafter referred to as 'the Corporation'). For purposes of administrative convenience the entire territory of India in which the Corporation carries on its operations is divided into several Regions. The appellant was working as a Godown Keeper in the Northern Region in the year 1961. At his request the appellant was transferred to the Eastern Region on March 1, 1961. In July, 1962, a circular was issued by the Government of India to the effect that an officer who was transferred from one Region to another at his own request should be treated as a fresh entrant in the cadre to which he belonged in the latter Region for the purpose

A of seniority, that is, his seniority should be reckoned only from the date of joining duty in a particular post in the new Region and as such he would not be entitled to claim the benefit of service in the particular post in the former Region for the purpose of seniority in the same post in the latter Region to which he was transferred. The circular also stated that it would apply to all cases of transfers of officials made on or after March 1, 1960. In the seniority list dated November 1, 1969, the name of the appellant appeared against S. No. 261 but in the seniority list dated May 10, 1972, the appellant's name was shown against S. N. 266. In view of the seniority list dated May 10, 1972, four persons who had been considered to be juniors to the appellant earlier were promoted in supersession of the claims of the appellant. The appellant made several representations to the authorities concerned against his supersession in which he questioned the applicability of the above said circular issued in July, 1962 to him. Since the appellant was not given any reply, he filed a petition Civil Rule No. 6044 (W)/72 under Article 226 of the Constitution before the High Court of Calcutta on July 14, 1972. In that petition, he prayed for a writ in the nature of mandamus directing the respondents therein, namely, the Ministry of Food and Agriculture, Government of India, the Regional Director (Food), Eastern Region, Government of India, the Joint Manager (Port Operations) and the Zonal Manager (Eastern Zone), Food Corporation of India to forbear from giving effect to the aforementioned circular in his case or in the alternative to transfer him back to his original place of posting in the Northern Region with his former seniority. By its order dated May 13, 1974, the High Court of Calcutta issued a writ in the nature of mandamus to the respondents in that petition to consider the case of the petitioner for transfer back to his original place of posting in the Northern Region within two months from the date of the communication of that order. After some correspondence, the Joint Personnel Manager of the Corporation at New Delhi wrote to the zonal Manager (E) of the Corporation at Calcutta that the seniority position of appellant in the Northern Region prior to his transfer to the Eastern Region would be restored to him. The Zonal Manager, Calcutta conveyed the above information to the appellant by his letter dated September 1, 1976. Thereafter the appellant was transferred to the Northern Region in November, 1976. After he joined his post in the Northern Region, the appellant realised that some of his juniors had been promoted to higher positions during the period when he had been working in the Eastern Region. He, therefore, made a

representation on September 4, 1978 to the Managing Director of the Corporation that his cases for promotion to the higher cadre should be considered with effect from the date on which his immediate junior had been promoted. He made a further representation to the Personnel manager of the Corporation, on August 27, 1979 making a similar request. On January 20, 1980, he wrote to the Manager (Establishment) of the Corporation about his grievance and on January 30, 1980 to the Zonal Manager (North) of the Corporation. As these representations yielded no result, the appellant filed a writ petition under Article 226 of the Constitution before the High Court of Delhi in C.W.P. No. 371/81. That petition was dismissed *in limine* by the High Court of Delhi on March 11, 1981. This appeal by special leave is preferred against the aforesaid order of the High Court.

The case of the appellant is that since he had been reposted to the Northern Region with the seniority which he hold before he was transferred to the Eastern Region, the Corporation should consider his case for promotion to the higher cadre as on the date on which his immediate junior was promoted and if he is found fit he should be given such promotion and placed above his immediate junior in the seniority list. He also claims that he should be accorded all consequential benefits.

In this Court, the Corporation has filed a counter affidavit the deponent of which is Shri Madhusudan, Deputy Manager (Admn.), of the Corporation. In the said counter affidavit, it is admitted that before the appellant was retransferred to the Northern Region, he had been given an assurance that his seniority in the Northern Region prior to his transfer to the Eastern Region would be restored. It is further stated that the case of the appellant was placed before the Zonal Promotion Committee of the Corporation at its meeting held on December 5, 1977 for considering his case for promotion to the post of Assistant Manager (Depot) against 1970 panel wherein his juniors were empanelled. As the Confidential Reports relating to the appellant for the years 1966 to 1968 were not available for assessment of his suitability, the Zonal Promotion Committee deferred his case but the appellant was, however, empanelled against 1976 panel on the basis of the available reports. The Confidential Reports for the years 1966 to 1968 were later on traced and the case of the appellant was again placed before the Zonal Promotion Committee at its meeting held in May, 1979 for considering his claim for inclusion in

A the 1970 panel. Thereupon the Zonal Promotion Committee passed a cryptic resolution to the effect that, on the basis of records of his service, his case cannot be reopened'. It is contended on behalf of the Corporation that since the promotion in question one to be made on the basis of selection, the appellant is not entitled to any relief. It may be mentioned here that the appellant was not informed by the Corporation that the Zonal Promotion Committee had found him unsuitable for being included in the 1970 panel. The records pertaining to the proceedings of the Zonal Promotion Committee are not also placed before us. The resolution passed by the Zonal Promotion Committee does not convey the meaning which the Corporation wants to attribute to it viz. that the Zonal Promotion Committee had found on a consideration of the relevant Confidential Reports that the appellant was unsuitable for being included in the 1970 panel. The resolution passed by the Zonal Promotion Committee means that it was not willing to reopen the case of the appellant on the basis of his service records. The resolution does not show that the Zonal Promotion Committee had in fact considered the suitability of the appellant for promotion to a higher post at the time when his juniors were empanelled for purposes of promotion. If it had done so, the Zonal Promotion Committee would have recorded in its resolution that the appellant had been found to be unsuitable for promotion during the relevant time. It appears that the Zonal Promotion Committee had not considered the case of the appellant in the year 1977 in accordance with law. As mentioned earlier when the case of the appellant came up before the Zonal Promotion Committee for the first time on December 5, 1977, it deferred the consideration of the case of the appellant on the ground that the relevant Confidential Reports were not available. Having thus deferred the consideration of the case of the appellant on that occasion, the Zonal Promotion Committee should have considered the case of the appellant when the relevant Confidential Reports were placed before it and passed an appropriate resolution instead of remarking that the case of the appellant could not be reopened. The reopening of a case arises only when it has been once considered and a decision is taken thereon. Since we have no material before us to show that there has been such a consideration earlier, the resolution of the Zonal Promotion Committee passed in May, 1979 stating that case of the appellant could not be reopened has to be treated as an ineffective one in the eye of law. It is, therefore, difficult to accept the submission made on behalf of the Corporation that the case of the appellant had been duly considered by the Zonal Promotion Committee for the purpose

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of including him in the 1970 panel. In these circumstances, we have no option but to issue a direction of the Corporation to consider the case of the appellant for being included in the 1970 panel. We accordingly allow this appeal and issue a direction to the Corporation to consider the case of the appellant for promotion as on the date on which his immediate junior in the Northern Region in the year 1972, that is, Respondent No. 13 was promoted and if on such consideration the appellant is found suitable for promotion to promote him to the higher cadre and place him above such immediate junior in higher cadre. If the appellant is so promoted, the Corporation shall also give him all consequential benefits but he would not be entitled to any arrears of salary (the difference between the salary of the higher post and salary he had actually drawn) upto the date on which he rejoined his duties in the post in the Northern Region after he was retransferred.

There will be no order as to costs.

S.R.

Appeal allowed.