

Food Corporation of India and another

Vs

H. N. Bharti and another

Civil Appeals Nos. 338 of 1987 with 530 and 531 of 1987

(A. M. Ahmadi, K. Jayachandra Reddy JJ)

25.03.1992

JUDGEMENT

AHMADI, J.: —

1. The facts giving rise to these appeals shortly are as under:

The respondent, H. N. Bharti, was working in the Food Department of the Central Government when it came to be abolished w.e.f. 1st January 1966. On its abolition employees of the Food Department were provisionally transferred to the Food Corporation of India (F.C. I.) with effect from the same date. H. N. Bharti was also transferred and was posted as Technical Assistant, Grade I, in the F.C.L. Later w.e.f. 19th April, 1972 he was promoted on an ad hoc basis as Assistant Manager (Technical). Sometime in September, 1979 the Government of India took a decision that those provisionally transferred should stand permanently transferred to the F.C.I. w.e.f. 1st March, 1969. In this manner, employees of the erstwhile Food Department came to be absorbed as employees of F.C. I. It appears that on 15th May, 1975 a circular was issued by the F.C.I. in regard to promotion of the transferred employees and others to higher posts on regular basis. Before we deal with this circular, it would be advantageous to refer to the relevant regulations framed by the F.C.I. in exercise of powers conferred by section 45 of the Food Corporations Act, 1964 (Act 37 of 1964). These regulations were framed with the previous sanction of the Central Government. Our attention was invited to Regulations 7, 10 and 15 thereof. Regulation 7 deals with the mode of appointment. It provides that regular appointments in the service of the FCI can only be to the posts specified in column (2) of the Table set out in Appendix 1 sanctioned for a period of not less than one year and shall be made:

- (a) in accordance with any of the modes specified against each in column (4) thereof; or
- (b) by transfer from the corresponding categories in column (9) of the said Table of employees of the Central Government in the Directorate General of Food / Pay & Accounts Offices; or
- (c) by permanent absorption of deputationists in the service of the Corporation.

If we turn to Appendix 1 we find that the post of Assistant-Grade I belongs to category III and is a non-selection post which can be filled hundred per cent by promotion; failing that by direct recruitment. So far as post of Assistant Manager is concerned, it belongs to category II and is a selection post, which can be filled in the ratio of 25:75 by direct recruits/promotees. Regulation 10

lays down the procedure for promotion and provides that the promotion shall be made on the basis of seniority subject to fitness in respect of non-selection posts and on the basis of merit, seniority being considered only when the merit of the contending candidates is approximately the same, in the case of selection posts. It further provides that all promotions shall be considered by a Promotion Board constituted for that purpose. There is a note appended to this rule which may be reproduced:

"Note : Purely as an interim measure, pending their permanent absorption in the service of the Corporation the employees of the Central Government in the Directorate General of Food posted to work under the administrative control of the Food Corporation of India may be given ad hoc promotions, in accordance with the principles mutually agreed upon between the Corporation and the Central Government."

It is, therefore, clear from this note appended to Regulation 10 that pending absorption in the service of the FCI the employees of the Directorate General of Food posted to work under the administrative control of the FCI were to be given 'ad hoc' promotions in accordance with the principles determined by the Corporation and the Central Government. These principles are enumerated in the circular referred to earlier. That brings us to Regulation 15, which inter alia, provides that every person regularly appointed to any post in the Corporation under sub-clause (a) of clause (I) of Regulation 7 shall be required to be on probation for a period of one year from the date of appointment. The appointing authority may in its discretion extend the period of probation by a further period not exceeding one year. In other words, the maximum period of probation can be two years.

2. The FCI issued a circular on 15th May, 1975 pursuant to the note below Regulation 10 extracted earlier. Taking note of the fact that under the said note the employees transferred from the Directorate General of Food, described as 'food transferees' could be promoted to higher posts in the Corporation on an ad hoc basis pending their permanent absorption in the service of the FCI, it stated that all promotions to the various grades of the FCI, irrespective of whether one was a 'food transferee' or a direct recruit, need regularisation. It appears from the circular that both 'food transferees' and direct recruits were being termed as 'ad hoc' when promoted to the next higher post. With the final transfer of the 'food transferees' to the FCI w.e.f 1-3-69 promotions made on ad hoc basis pursuant to the note appended to Regulation 10 had to be regularised. The circular, therefore, states that regularisation shall be on the basis of the principles enumerated therein. It was decided keeping in view Regulation 7 and Regulation 15 that regular appointees in the service of the FCI whether direct recruits or promotees shall be placed on probation for a period of one year from the date of their appointment/ promotion. It was, therefore, posited that all promotions whether by direct recruitment or promotion will henceforth be subject to provision of Regulation 15, that is to say, every such person shall be placed on probation as provided by that Regulation and the instructions issued thereunder. In regard to 'food transferees' and direct recruits promoted to higher grades on ad hoc basis it was decided that they may be deemed to have completed the probationary period satisfactorily, if they have completed one year of service in the grade after following the procedure laid down in Regulation 15 and suitable orders issued in that behalf so that if a person has completed one year of service in the promoted grade his case was required to be reviewed with a view to determining whether or not he has satisfactorily completed the probationary period of one year. In regard to future promotions it was decided that regular procedure as laid down by the Regulations should be followed. Paragraph 3 of the circular directed the concerned authorities to issue suitable orders for the absorption of 'food transferees' into the FCI w.e.f. 1st March, 1969. It will be seen from this circular that the procedure for regularisation of 'food transferees' on their

absorption in the FCI was laid down and it was provided that the transferees as well as direct recruits described as 'ad hoc promotees' may be deemed to have completed the probationary period satisfactorily if they have completed one year of service in that grade after following the procedure laid down in Regulation 15 and allied orders. It appears that the respondent, H. N. Bharti, who had been granted ad hoc promotion to the post of Assistant Manager was reverted by an order passed by the Deputy Manager (Administration) on the ground that he was not approved for regular promotion. He challenged his reversion order by filing a Writ Petition No. 3624/76 in the High Court of Punjab & Haryana: (reported in 1983(2) Serv LR 235). That writ petition came to be allowed by quashing the order of reversion and the High Court directed the FCI to consider his case in the light of the circular dated 15th May, 1975. It is against this judgment of the High Court that Civil Appeal No. 338/87 has been preferred.

3. One P. N. Verma filed a Writ Petition No. 3580/77 in the High Court for quashing the seniority list and for a declaration that the promotion of respondents Nos. 4 to 41 to the post of Assistant Manager was null and void. That writ petition came to be disposed of on 14th October, 1983. Without going into the merits of the case, the learned single Judge in the High Court disposed of the matter on the basis of the decision in H. N. Bharti's case as it was contended before him that the case was squarely covered by the ratio of that decision since the claim for fixation of seniority had to be decided in the light of the policy decision in Annexure P-3 i.e., the circular dated 15th May, 1975. In view of that concession, the seniority list was set aside with a direction similar to the one granted in H. N. Bharti's case. This decision has given rise to C. A. No. 531/87. Soon thereafter, Dharam Singh and M. L. Batra filed the Civil Writ Petition No. 4482/ 78 for finalisation of the seniority list and incidental reliefs. This writ petition was disposed of by an order dated 24th October, 1983 relying on the decision in P. N. Verma's case. The seniority list was quashed and it was directed that the claim of the incumbents be considered in the light of the circular of 15th May, 1975. This was once again on concession by counsel. That has given rise to C.A. No. 530/87.

4. One Upendra Kumar has filed a Writ Petition (C) No. 1218/89 for fixation of his seniority and for incidental reliefs. That arose because by a letter dated 27th October, 1989, the Deputy Manager, informed him that his representation was examined and it was decided that as the matter was subjudice in this Court it was not possible to accede to his request regarding fixation of seniority till the matter was finally disposed of by this Court. He was informed that he was at liberty to approach this Court for any remedy he may deem fit. It was on account of this letter that he filed this petition under Article 32 of the Constitution.

5. We may clarify that H. N. Bharti and P. N. Verma were transferred employees from the Directorate General of Food whereas the other employees concerned in this batch of cases were direct recruits in the cadre of Technical Assistant-Grade I. The intervenors may belong to either category. Mr. Bhagat, the learned counsel for the FCI, contended that what the High Court had determined in the case of H. N. Bharti was that the FCI considered his case in the light of the circular dated 15th May, 1975. He submitted that the FCI would have no objection to acquiescence in that decision, had it not been interpreted to mean or convey that the entire seniority list prepared by the FCI was liable to be quashed, as has been done by the High Court in the subsequent two decisions in the case of P. N. Verma and Dharam Singh and M. L. Batra. He submitted that there was no need to quash the entire seniority list because all that the High Court had directed in H. N. Bharti's case was to reconsider the question in the light of the circular of 15th May, 1975. He submitted that he would have no objection to following the same course of action in the case of other employees also, whether transferees or direct recruits, since the question of regularisation had to be determined in the light of the principles and guidelines laid down in the circular of 15th May,

1975. Mr. Rohtagi, the learned counsel for the direct recruits submitted that their seniority had to be determined on the basis of Regulation 15 since they had satisfactorily completed the period of probation prescribed thereunder, He submitted that since their seniority had not been determined on the basis of that Regulation and the seniority list had been prepared without determining their seniority and placement in the seniority list on that premise the entire seniority list was liable to be quashed.

6. We have carefully considered the rival contentions and we are of the opinion that the decision taken by the High Court in H. N. Bharti's case (1983 (2) Serv LR 235) does not call for intervention. Even on the submission of Mr. Bhagat, the learned counsel for the FCI, the view taken by the High Court in H. N. Bharti's case does not require any intervention if it is understood to leave the matter of fixation of seniority to the FCI on the basis of the principles or guidelines laid down by the circular of 15th May, 1975 which in turn refers to Regulations 7, 10 & 15. Civil Appeal No. 338 of 1987 must, therefore, stand dismissed with no order as to costs.

7. The circular refers to the note below Regulation 10 which permitted ad hoc promotions to be given to the erstwhile employees of the Directorate General of Food as a purely interim arrangement pending their permanent absorption in the FCI. Consequently promotions granted to 'food transferees' as well as direct recruits were being termed 'ad hoc' pending the finalisation of question of absorption of the former in the FCI. The promotion to direct recruits were also termed 'ad hoc' presumably to avoid complications in the matter of fixation of inter se seniority between 'food transferees' and direct recruits. Regulation 10 (i) and (ii) set out the criteria for promotion to non-selection and selection posts. The note at the foot of that regulation was clearly an interim measure pending final absorption of 'food transferees' in the FCI. But, since even direct recruits were given ad hoc promotions pending the absorption of 'food transferees', the circular had to provide for the regularisation of both. It was therefore, decided that 'food transferees' and direct recruits promoted to higher grades on 'ad hoc' basis may be taken to have completed the probationary period satisfactorily if they have completed one year of service in that grade after following the procedure outlined in Regulation 15 and suitable orders, if any. Regulation 15 has two aspects viz., (i) it lays down the period of probation, and (ii) how the period spent on temporary service or deputation service shall be dealt with in counting the period of probation for confirmation. Once the date of completion of probation period is determined and confirmation made, the relative seniority between direct recruits and 'food transferees' has to be settled as laid down by Regulation 16. The illustration given in the circular clarifies how the question of termination of probation has to be determined. If an incumbent has completed service of one year in the promoted grade, his case would have to be reviewed to determine if he had satisfactorily completed the probationary period or would it have become necessary to extend the probationary period by another year as provided by Regulation 15(2). If the concerned authority finds his service to be satisfactory within the first year of his probation period it may confirm him but otherwise decide if he would have been confirmed on completion of the extended period. The decision taken in this behalf would regulate the seniority between 'food transferees' and direct recruits. Paragraph 3 of the circular envisages passing of formal orders of regular appointments in the FCI (as required by Regulation 7) after following the procedure laid down in the preceding paragraph of the circular, wherever applicable. These orders of regular appointment will be on the post held by the 'food transferees' on the date of absorption and if one has since been promoted a separate order in respect of the promotion post would also be passed. This in brief is the import of the circular read in the light of Regulations 7, 10 and 15 referred to earlier. The circular has, therefore, taken care of both the categories, namely, direct recruits as well as 'food transferees'. It is, therefore, essential that the question of seniority of both the cadres be determined on the basis of the principles laid down in the said circular as explained

hereinabove. There was no need to strike down the entire seniority list but it would suffice if the FCI is directed to review and determine the seniority of the 'food transferees' as well as direct recruits who were granted ad hoc promotions, in the light of the said circular as explained by us. We, therefore, allow the Appeal Nos. 530 and 531 of 1987 to this limited extent only, that is to say, instead of quashing of entire seniority list the FCI is directed to have the inter se seniority of the direct recruits/food transferees be determined in the light of the circular and grant appropriate placements to the incumbents on the basis of the seniority so determined in the existing seniority list. Such placements may require a reshuffle of the seniority list which the FCI would be free to do. Except for this modification, we do not see any reason to interfere with the order passed by the High Court which is the subject matter of Civil Appeal Nos. 530-531 of 1987. The case of the Writ petitioner, Upendra Kumar, will also be determined in the light of this judgment along with those of the respondents of the appeals. The case of the intervenors as well as Narinder Gangwar may also be similarly determined. Having regard to passage of time we direct that this may be done within six months from today. There will be no order as to costs. Order accordingly.

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