

Dharam Pal

Vs

Food Corporation of India

(Sujata V. Manohar, D. P. Wadhwa JJ)

24.10.1997

JUDGMENT

D.P.WADHWA, J.

1. In this petition under Article 32 of the Constitution the five petitioners have prayed for the following reliefs:

- "(a) issue declaration that the formation of Accounts Cadre in the Food Corporation of India made in the year 1977 is illegal, void;
- (b) issue a writ or certiorari quashing the Circular No.3 of 1984 dated 17.1.84, Office Order No.57 of 1987 dated 26.3.1987, No.80 of 1987, dated 22.4.1987 and No.87 of 1987 dated 29.12.1987 issued by the Food Corporation of India/Respondent No.1;
- (c) direct the Food Corporation of India by issuing an appropriate writ in the nature of mandamus that all the optees in pursuant of Notification dated 5.2.1977 and 17.11.1977 and Notification No.3 of 1984 dated 17.1.1984 be placed in their respective cadres and may declare that all the optees aforesaid shall remain placed in their respective cadres where before 1977;
- (d) issue a writ in the nature of prohibition prohibiting the respondents from making any further promotion in the Accounts Cadre;
- (e) to declare the Notification dated 5.2.1977 and 17.11.1977 issued by Food Corporation of India as illegal and void;
- (f) any other writ or writs, order or orders, direction or directions;
- (g) allow the costs."

2. The petitioners are working in the Food Corporation of India, a Corporation, established under the Food Corporation Act, 1964.

3. The Corporation with the approval of the Central Government took a decision to form a separate Accounts Cadre from the level of Assistant Grade-III onwards. A circular to this effect was issued on February 2, 1977. It was stated in the circular that Accounts Cadre at the level of AG III, AG II and AG I would initially be formed by transfer of the qualified personnel from the General Administration Cadre. Options were, therefore, called for from the AG I in General Administration Cadre possessing a degree in Commerce, Mathematics or Statistics for transfer to the Accounts Cadre as AG I (A/Cs). It was also mentioned that the options of such Ag I (General Administration)

for transfer to the Accounts Cadre would be subject to their passing a departmental test, details of which would be intimated in due course. Similar options were called from AG II and AG III (General Administration) for their transfer to the grade of AG II (A/Cs) and AG III (A/Cs) respectively. A notification incorporating the policy decision was issued on February 5, 1977 and accordingly the Corporation amended the Food Corporation of India (Staff) Regulation, 1971. If we refer to the notification initial requirement to Assistant Grade-III in the newly formed Accounts Cadre was from Assistant Grade III of General Cadre possessing the prescribed qualifications who would be transferred to the Accounts Cadre on the basis of option.

4. Subsequently by notification dated November 17, 1977 an amendment was issued which modified the earlier notification dated February 5, 1977 which provided that initially all the Assistant Managers, Accounts Grade I, II, and III belonging to all Cadres and possessing the prescribed qualification for respective posts and who were considered to be competent and capable and possessed the aptitude for accounts work would be transferred to the Accounts Cadre on the basis of such option. It had also been provided that the optees were to be subject to a very intensive training course and that those selected in the new accounts cadre were to be given necessary training at the Corporation's Zonal and Central Training Institutes. Four of the petitioners are Assistant Grade I and the 5th is Assistant Grade III in the General Cadre (Administration).

5. It is difficult to understand how can there be any challenge if the Corporation decides to form a separate Accounts Cadre considering the administrative necessity in its working. We also fail to see as to how the petitioners who are similarly placed like other employees in the general cadre, prejudiced by formation selection of the separate Accounts Cadre and consequent amending of the Regulations prescribing the qualifications for the initial absorption in the newly created cadre and subsequent filling up of the posts in that cadre. The petitioners cannot challenge the qualifications fixed by the Corporation for absorption or subsequent recruitment in the Accounts Cadre. It is not the case of the petitioners that they possessed the requisite qualifications for absorption in the Accounts Cadre or even if they were qualified they gave any option for absorption in the Accounts Cadre or their absorption was not acceded to. Grievance of the petitioners appears to be that the optees who went to the Accounts Cadre got accelerated promotion which the petitioners were unable to get while still working in the General Administration Cadre. That is chance an employee takes in any service. The petitioners refer to as many as 12 such officials who had been promoted to the posts of Assistant Manager (Accounts) when they possessed qualifications upto Matric, Higher Secondary or Intermediate and they were lower in seniority to the petitioners in the General Administration Cadre. Apart from mentioning their names, qualifications and their placement in the seniority no particulars have been given if those officials were first initially taken in Grade III (Accounts) and subsequently got promotions. In the absence of any particulars it is not possible for us to accept the plea of the petitioners.

6. Corporation issued a circular on January 17, 1984 inviting reference to its earlier circulars of 1981 providing for withdrawal of options from Accounts Cadre within a particular period. Again options were given to the employees to opt out of the Accounts Cadre and go back to the original cadre. Options were also given to category II and III employees who were interested to join the Accounts Cadre and who possessed necessary qualifications and/or requisite working experience prescribed for each post in the Accounts Cadre in category II and III posts. In the circular of January 17, 1984 it was clearly stipulated that those employees who would opt out of the Accounts Cadre would go to their original cadre and their transfer to the original cadres would be in the same grade for which they were transferred to the Accounts Cadre and that their seniority would, therefore, be maintained in the original cadre as it was before their transfer to the Accounts Cadre. It was clarified

that if some of the juniors in the original cadre stood promoted to higher grades the optees who would stand reverted on account of their option should also be considered for promotion as per the rules/instructions. It is again difficult to understand the grievance of the petitioners on this account as well. They cannot say that the employees who had given their options once to go to the Accounts Cadre should be stopped from all times to come back to the original cadre even if they retained their old position in the seniority in the General Cadre. We do not find any valid ground for the petitioners to challenge the decision of the Corporation to give the options to the employees in the Accounts Cadre to revert back to the original cadre. All the circulars to which challenge have been made follow the general principles laid in the earlier circulars. We find that in pursuance of Circular dated January 17, 1984 as many as 170 employees gave options to revert back from accounts cadre to their original cadre. They perhaps did not find the Accounts Cadre to be lucrative enough to remain there. It was a newly constituted cadre and the employees who give their options to go to that cadre subsequently did not find the usefulness of that cadre for their service for some reasons or others and the authorities had given them options to go back to the original cadre. Petitioners cannot make any grievance on that account.

7. We do not find any merit in this petition and dismiss the same. There will, however, be no order as to costs.