

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 4971/2000

Reserved on : 13.7.2005

Date of Decision July 25, 2005

KRISHAN MURARIPetitioner
Through: Mr. Krishan Murari, Petitioner
in person

Versus

FOOD CORPORATION OF INDIA & ANR.....Respondents
Through: Mr. Himinder Lal, Ms. Ranji,
Advocates

CORAM:

THE HON'BLE MR.JUSTICE S.RAVINDRA BHAT

1. Whether reporters of local papers may be allowed to see the judgment.?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Yes

S.RAVINDRA BHAT, J

1. The issue involved in these proceedings under Article 226 of the Constitution is whether the previous employment of the petitioner in the Army Medical Corps as a Nursing Assistant can be taken into consideration for the purposes of seniority, promotion and increments etc., and a direction ought to

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be given to re-fix the service benefits being availed of by him.

2. The petitioner joined the Army Medical Corps as a Nursing Assistant on 6.10.1965, during a national emergency. It is averred that on 19.9.1970 he was discharged from the Corps after having served 4 years and 349 days. The discharge certificate describes him as a Sepoy. The basis for the petitioner's discharge was that he was a patient of Neurosis and that he was un-fit for army service but fit for civilian duties. Later on, on 3rd July, 1972, the respondent-Food Corporation of India (hereafter called "the FCI") appointed the petitioner to its services in a regional office at Chandigarh, as a Godown Assistant. The petitioner accepted the appointment and continued to work with the FCI. He was subsequently promoted to the rank of Assistant Grade-II (Ministerial) in September 1976; he was promoted as a Assistant Grade-I (Accounts) in October 1983.

3. The petitioner relies upon two circulars issued on 16.9.1974 and 23.11.1994 issued by the FCI on the subject of granting benefits of Military Services. He also relies upon a circular/order of the Chief Secretary, Government of Haryana dated 28.5.1985 to the same effect. It is averred that the petitioner made repeated representations to the FCI for counting the period of his service in the Army Medical Corps, granting seniority and other benefits but these were to no avail. Hence, he has moved this petition for

appropriate directions.

4. The defence of FCI in these proceedings is that the nature of petitioner's employment, namely, as a Nursing Assistant for 4 years and 11 months des-entitles him to the benefits claimed. The FCI contended that the benefit of the 1974 circular is available only to Combatant Clerks (Sepoy) and the petitioner did not serve that capacity. The petitioner was asked to produce documentary evidence to show that he was holding the position of Combatant Clerk or equivalent post but he did not do so. The FCI avers that a clarification was received from the Army stating that a Nursing Assistant is not a Combatant Clerk or person with equivalent rank. It is also averred that the FCI sought clarifications as to whether the benefits of seniority could be granted to which the Central Government replied on 28.3.1979, that the benefit of Military Service could not be extended for the purpose of seniority etc.

5. The petitioner who argued the matter himself submitted that the denial of the benefits sought, from FCI is arbitrary and illegal. He placed reliance upon the circular of 1974 and submitted that the ground taken by FCI to deny the benefit of seniority on the basis of past Military Service cannot be upheld. He submitted that the characterisation of Military Service in his case as a non-Combatant is completely irrational and un-justified.

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6. The petitioner has placed reliance upon a judgment of the Punjab and Haryana High Court in *Darshan Singh Cheema vs. Food Corporation of India and Ors.*, decided on 9.12.1998 by Division Bench to say that when an identical claim was raised by a person who had worked in the Bengal Engineering Group of the Army but subsequently discharged from the military service, the Court had directed grant of such benefit; the FCI accepted and released the benefits. Hence, there is no rationale in denying them to the petitioner.

7. The petitioner also relied upon the judgment of the Supreme Court in *K.C. Arora and Anr. vs. state of Haryana & Ors.*, (1984) 3 SCC 281. In that case, the Court while interpreting service rules framed by the State of Haryana held that an ex-serviceman who had rendered national service during emergency in the Armed Forces and given benefit of higher pay and seniority etc, upon re-employment with the State could not be deprived such benefits, retrospectively. The petitioner also relied upon the judgment reported as *Union of India & Ors. vs. Dr. S. Krishna Murthy & Ors.*, (1989) 4 SCC 689, in support of his submission that the Central Government held out a promise that service benefits would be given to all those who volunteered for military duties during national emergency. The ratio of that decision, he says clearly binds the FCI which cannot deny him the benefits claimed in these proceedings.

8. The respondents on the other hand submit that apart from the question as to whether the petitioner could be called a Combatant, no advantage could be sought from the judgment in Cheema's case (supra) since it was in the absence of a counter affidavit and effective defence. It was also submitted that the benefits in Cheema's case were granted since the employee had subsequently expired and the matter was not carried further in appeal.

9. Learned counsel for the respondents has placed strong reliance on a Division Bench of this Court in the case of FCI itself being *Food Corporation of India Vs. Laxmi Narayan & Ors.* (LPA Nos. 348, 351 and 336 of 1998) decided on 27.2. 2001. In that decision, the Court had occasion to consider Cheema's case (supra), judgment of Karnataka High Court rendered on 31.1.1997 in *K.P. Thomas vs. Union of India*, the regulations, (particularly, regulation 85 governing the FCI) and the effect of a general circular issued by the Central Government in 1959 to the effect that benefit of all previous service rendered in the same or equivalent posts in the armed forces should be given to those working in civil posts. The Division Bench also considered the judgment in *Dr. S. Krishna Murthy's* case (supra) and a judgment of Supreme Court in *All India Ex-Emergency Commissioned Officers and Short Commissioned Officers' Welfare Association and Anr. vs. Union of India and Anr.*, 1995 Supp (1) SCC 78,

10. The grant or otherwise of service benefits is a matter of rules and conditions of service. In the present case, the petitioner had worked for a period of 4 years and 11 months in the Corps. The FCI, in my considered opinion, has engaged in a needless controversy about the nature of the petitioner's duties. There is no dispute to the fact that the petitioner worked in the Army Medical Corps. It is also not disputed that he enrolled with the Army during the time of crisis when a national emergency was in existence; he participated in the theatre of war. The characterisation of the petitioner's employment as a non-combatant, therefore, cannot be a basis for denying him whatever benefits would be otherwise admissible to employees situated identically. The discharge certificate obtained by the petitioner, which admittedly was the basis for his employment by FCI shows him to be a Sepoy. Hence, the denial of benefits on this ground in my considered opinion is not justified.

11. The above finding in the petitioner's favour does not however automatically conclude the entire issue. The question for grant of service benefits, on account of military service was the subject matter of an appeal before a Division Bench of this Court in *Laxmi Narayan's* case (supra). The Division Bench considered a circular issued in 1959 which directed the inclusion of past military service for purposes of seniority benefits in civil posts. It was concluded, in the light of several judgments of the Supreme

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Court that the circular, could not be applied since employees of the FCI were not holders of civil posts. The Division Bench had occasion to deal with the judgment in *Dr. S. Krishna Murthy's* case which had dealt with whether those who have volunteered for emergency military service and had been granted benefits on account of "missed opportunities" by inclusion of their services in civil employment could be deprived that benefit. In that context the Court had observed that such deprivation was arbitrary, particularly, in view a promise held out by the Central Government at the time of engaging such personnel in the Armed Forces that they would not lose in the event of their deciding to join civil employment after completion of emergency commission/short service commission. The factor to be noticed here is that the rules permitted inclusion of such benefits. Likewise, in *K.C. Arora's* case (supra) the rule permitted inclusion of seniority and other benefits which were sought to be taken away subsequently. The Supreme Court held such amendment/later policy decision to be arbitrary.

12. In the present case, the Division Bench considered the effect of the 1959 circulars and the staff regulations governing employees of the FCI and concluded that they were not entitled to the benefits of past military service. The Court also noted other provisions. The Court held as follows:

"5. The respondents are working in the category III post in the FCI. The respondents after re-employment made

representations that their seniority may be fixed taking into account the military service rendered by them. The FCI rejected their representations. Thereafter, the respondents filed writ petitions before this Court. The writ petitions were allowed on the strength of the judgment of the Karnataka High Court delivered in Civil Writ Petition No. 7695 of 1976 *K.P. Thomas vs. Union of India* on 31.1.1977.

6. The appellant FCI is aggrieved by the judgment of the learned Single Judge and preferred these appeals against the said judgment.

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34. On careful analysis of aforesaid judgments it can be safely concluded that the respondents in these appeals, who are working with the FCI do not hold "civil post" either in the Centre or the State Governments and consequently they are not entitled to the protection of Article 311 of the Constitution. In this view of the matter, the judgment of the Karnataka High Court in the case of *K.P. Thoma* (supra) could not have been made applicable in the instant case by the learned Single Judge.

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40. On consideration of the totality of facts and circumstances, we are of the considered opinion that benefit given to the petitioners in the judgments of Karnataka and Punjab & Haryana High Court cannot be extended to the respondents herein because of the aforesaid reasons. Both these judgments were delivered on the peculiar facts and circumstances of those cases. Therefore, law laid down in these cases cannot be made applicable to the respondents in these appeals."

13. On an careful analysis of all the circumstances, it is evident that though the stand of the respondents that the petitioner was not a Combatant Clerk, cannot be sustained, nevertheless, on account of the clear position in the regulations of the FCI and the Division Bench ruling in *Laxmi Narayan's* case the relief claimed, namely, fixation of seniority, promotion and grant of

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higher stages of pay (re-fixation) in the existing pay-scale by counting the previous military service cannot be granted. In the result, the writ petition is dismissed. No costs.

July 25, 2005
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Ravindra Bhat
S. RAVINDRA BHAT, J