

(1998) 03 GAU CK 0014

Gauhati High Court

Case No: Civil Rule No. 795 of 1987

Lily Choudhury

APPELLANT

Vs

Zonal Manager, F.C.I. and Others

RESPONDENT

Date of Decision: March 19, 1998**Citation:** (1999) 3 GLT 324**Hon'ble Judges:** J.N. Sharma, J**Bench:** Single Bench**Advocate:** A.B. Choudhury and B. Banerjee, for the Appellant; C. Choudhury, for the Respondent

Judgement

J.N. Sarma, J.

This writ application has been filed by an employee of Food Corporation of India praying that a mandamus may be issued directing the Respondent Nos. 1, 2, 3, and 4 to consider the Petitioner to be duly promoted to the post of Assistant Manager (General) with effect from 7.7.87 i.e. from the date on which juniors to the Petitioners were so promoted and to give all the benefits to the Petitioner for the post of Assistant Manager (General) with effect from the said date. It may be stated herein that during the pendency of this Civil Rule on 9th July, 1992 the Petitioner alongwith Anr. person were promoted to the post of Assistant Manager (General). The only grievance of the Petitioner as on today is that she should get her seniority over the juniors who were promoted earlier on 7.7.87. Earlier the Civil Rule was disposed of by a judgment of this Court on 7.9.95, but on review that judgment was set aside and accordingly, this Civil Rule is being heard again today.

2. I have heard Sri A.B. Choudhury, learned Counsel for the Petitioner and Sri C. Choudhury, standing counsel, F.C.I. for the Respondents No. 1 to 4. None appears for the private Respondents. The single judge of this Court by relying on the earlier Division Bench Judgment of this Court allowed the writ application. The legality and validity of the Division Bench judgment was questioned before the Apex Court in Civil Appeal Nos. 4029-30 of 1995 and the Division Bench finding was set aside by

the Apex Court. In order to appreciate the facts, let us have a look at the brief facts of this case:

On 11.9.1978 the Petitioner alongwith Ors. were promoted on ad hoc basis. That order of promotion is quoted below:

Office Order No. 212/78

The following Assistant Grade 1 mini/GS/Steon is hereby selected for deployment to the post of Assistant Manager General/Accountant on purely temporary and on ad-hoc basis and posted to the places shown against each. They will be reverted to their original post as soon as persons promotion Zonal basis join in this region.

They will be entitled to draw deployment allowances of 25-B.M. to be treated as "Special Pay" for granting of compensatory allowances etc. in cases where change of stations are involved. Disturbance allowed will be entitled them. This allowance would be Rs. 5/- (Rupees five) less than the differential between they pay which the employee concerned would have got on promotion and the deployment allowance.

Those who are already under order of transfer to the out station but not yet relieved/joined should report to such places on deployment will take effect from the actual date of joining duties in their new place of posting.

They continued in that posts till 1987. On 7.7.87 without considering the case of these persons, other persons junior to them were promoted vide Annexure-8. That is quoted below:

The following Asstt. Gr. I (Admn) have been selected for promotion to the post of Asstt. Manager (Genl.) in the scale of pay of Rs. 650-30-740-35-880-40-1200/- and posted to the places indicated against each until further order. Their promotion is without prejudice to the claims of the employees who may be senior to them and will take effect from the dates they assume charge of the new post on promotion. Their promotion are subject to vigilance clearance of the Region when the promotees are presently posted. The concerned Head of the Region will release those under promotion order after obtaining vigilance clearance report from the Regional Vigilance Branch.

They will be placed on promotion for a period of one year with effect from the date of their assuming charge of the new post on promotion as AM (Aenl) which may be extended for a further period not exceeding one year.

Attention is invited to the head quarter circular No. 54 of 1982 issued under Ref No. 4/9-80 EP part III) dated 1.4.82 and refusal to accept promotion will be governed by the terms thereof.

The promotions would be subject to the revision if any in the light of decision/orders of the Hon"ble Courts while disposing of the case pending before them.

The grievance of the Petitioner is that these persons were promoted are juniors to her and as such she first should have been regularised on ad hoc promotion and it is the claim of her that she is entitled to the benefit of ad hoc service.

3. The law on this point has been crystallised by now by various decisions of the Apex Court in Civil Appeal Nos. 4029-30 of 1995, the Apex Court on 6th March, 1995 laid down the law as follows:

It is settled law that if the appointments are made according to rules, though initially on ad hoc basis, and are continued for long time, on regularising the service, the entire period of temporary service would be counted for seniority.

The case on which reliance has been placed in this Judgment in paragraph 44(B), the Supreme Court has pointed out as follows:

If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

To the some effect is the decision of the Apex Court in Civil Appeal No. 5408/1994 (Ram Pal Malik v. State of Haryana) as reported in SC Service Rulings, vol. 8 at page 43 has laid down the law as follows:

Mere fact that a person is promoted-initially on ad hoc basis did not preclude the government from treating the said date as the date of regular promotion if it was satisfied that it should be so done in the interests of justice.

The next case is SC Service Rulings, Vol-14 at page 44 (Kailash Chandra Rajawat v. Union of India and Ors.) wherein the Supreme Court pointed out that the period spent as temporary duty prior to regularisation was required to be taken into consideration for reckoning eligibility for promotion depending on the facts and circumstances of each case. To the same effect there is a decision of this Court reported in (1994) 1 GHC 87 (Food Corporation of India Employees' Union v. Food Corporation of India) wherein the same principle was reiterated.

4. In that view of the matter, this writ application is disposed of with a direction to the authority to determine the seniority of the Petitioner in the light of the judgment and law as laid down by the Apex Court. This shall be done within a period of three (3) months from the date of receipt of the order. The authority shall communicate the order/decision to the Petitioner immediately. It is needless to say that if the Petitioner is aggrieved by the order of the authority, she may approach this Court again. The Petitioner shall obtain the certified copy of this order and shall produce the same before the authority to do the needful in terms of the order. No costs.